

Louisiana Law Review

Volume 6 | Number 1
December 1944

Louisiana Legislation of 1944: Criminal Law and Procedure

Dale E. Bennett

Repository Citation

Dale E. Bennett, *Louisiana Legislation of 1944: Criminal Law and Procedure*, 6 La. L. Rev. (1944)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol6/iss1/17>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

II. CRIMINAL LAW AND PROCEDURE

DALE E. BENNETT*

A. *The Louisiana Criminal Code*¹

The Louisiana Criminal Code has now been tested by two years of practical application and a normal complement of litigation. Its constitutionality has been affirmed in *State v. Pete*,² and the Louisiana judiciary has handled the problems of interpretation which were bound to arise in an understanding and scholarly manner. A second phase of the testing process came in the 1944 legislative session when a considerable number of amendments were proposed—some carefully thought out in the light of experiences of the past biennium, and others suggested in a purely haphazard fashion. Fortunately, the 1944 legislature generally followed a sound and careful policy concerning such amendments. A number of changes in the penalties for the various crimes were proposed; but these were, with one exception, turned down by the judiciary committees of the House and Senate. The committeemen acted on the theory that the penalties set out in the Criminal Code had been fixed after a careful comparative analysis of all crimes involved and should not be changed by "hit or miss" amendments based upon isolated situations. Proposals to change the substantive nature and definitions of various crimes were likewise subjected to a very critical analysis, and most of the amendments actually approved and adopted were of a minor, yet beneficial, nature. Thus, the Louisiana Criminal Code, after two years of laboratory trial in our courts, emerged from the 1944 legislative session with its status secure, and generally strengthened by the additions and amendments which were made.

Fire-raising

Fire-raising, a new arson crime, was added to the Criminal Code by Acts 181 and 177. Fire-raising supplements the crime of simple arson and is primarily designed to provide added protection for forest lands in the state. Act 181 makes it a misdemeanor,

* Acting Dean, Louisiana State University Law School.

1. La. Act 43 of 1942.

2. *State v. Pete*, La. Sup. Ct. Docket No. 37232 (October, 1944); See Comment (1944) 6 LOUISIANA LAW REVIEW 72, *infra*.

with a maximum punishment of a \$500 fine and/or six months imprisonment for anyone who "maliciously" sets fire to grass, leaves, brush, or debris on the lands of another. The crime is fitted into the Criminal Code as Article 52.1, immediately following the more general crime of simple arson (Article 52). Act 177 provides a lesser penalty where the fire-raising results from "criminal negligence."³ This crime, designated as Article 52.2 of the Criminal Code, covers cases where a person starts a fire on his own property and negligently permits it to spread to the lands of another, where a camper negligently permits a fire to spread, where a smoker sets fire to grass or leaves by negligently tossing aside a lighted match or cigarette stub, or where a person starts a fire on his own property which adjoins woodlands of another without giving notice to the organized fire protection unit (if one has been organized in that particular territory). These two additions to the arson articles of the Criminal Code serve a very proper purpose and were carefully drafted.

Fire Prevention Interference

Act 178 defines the related crime of fire prevention interference, which is added to the arson articles of the Criminal Code and designated as Article 52.3. This crime covers the intentional defacing or destruction of fire warning notices or tools, equipment, towers, building, or telephone lines used in the reporting and suppression of fires. All of this activity is already prescribed as Simple Criminal Damage to Property (Article 56), but the new Article 52.3 goes further and covers "interference with the use of" fire prevention tools and equipment. The added coverage provided by the new Article 52.3 and the advantage of setting out all criminal activity related to fire-raising in the arson section of the Criminal Code, appear to justify fully this new and added crime.

Placing Combustibles

An amendment to Article 54 of the Criminal Code by Act 111 illustrates the danger of changing an article of the Code without a full consideration of the nature of the change and its relation to the Code as a whole. A critical appraisal of this statute necessarily begins with a general survey of the Arson articles. Ag-

3. Criminal negligence is defined in Article 12 of the Criminal Code as conduct which "amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances."

gravated Arson contemplated the case where there was foreseeable danger to human life, as in the burning of a theater or an inhabited dwelling.⁴ Simple Arson was directed at the less serious criminal activity of burning another's property and was graded accordingly to the amount of damage done.⁵ Arson with Intent to Defraud covered the case where a man burned his own property with intent to defraud.⁶ A person who started out to commit Arson, but fell short of the consummated offense, was punished under the general Attempt article of the Code, with a penalty being fixed at one-half of that set for the particular type of arson attempted.⁷

Some jurisdictions had held that the mere collection and preparation of materials for the purpose of setting fire to them, unaccompanied by a present intent to set the fire immediately, did not constitute an attempt to commit arson.⁸ The intent to set fire immediately, where the materials have not yet been ignited is often difficult of proof; and Article 54 was inserted to make certain that any placing of materials for the purpose of setting fire to them should be sufficient to constitute an offense. This article merely served more clearly to define, and possibly broaden, the definition of Attempted Arson. Article 27 (the general Attempt article), read in connection with the appropriate Arson article, fixed the penalty for the offense.

Act 111 was evidently proposed as a result of a misunderstanding as to how Article 54 operated. The new Article 54 purports to define placing combustibles as a separate offense and reverts to the old practice of providing the same maximum penalty for all cases,⁹ regardless of whether the contemplated arson endangered human life, merely caused property damage, or was with intent to defraud an insurance company. The various basic arson crimes call for appropriately different sentences and the placing of combustibles in preparation for the commission for these offenses should be similarly differentiated.

4. Art. 51, La. Crim. Code of 1942, punishable by imprisonment at hard labor for from two to twenty years.

5. Art. 52, La. Crim. Code of 1942, where the damage amounted to \$500.00 or more the maximum penalty was imprisonment for ten years, but where the damage was less than \$500.00 the maximum imprisonment was for one year.

6. Art. 53, La. Crim. Code of 1942, maximum penalty imprisonment for five years.

7. Art. 27, La. Crim. Code of 1942.

8. *Commonwealth v. Peeslee*, 177 Mass. 267, 59 N.E. 55 (1901).

9. La. Rev. Stats. of 1870, § 846, La. Act 153 of 1898, § 1 [*Dart's Crim. Stats.* (1932) § 761] (preparing combustibles made with the intent to burn property) (repealed).

Another serious defect in the new Article 54 is the fact that it punishes any placing of combustible or explosive material in or near a structure with the intent to set fire to such structure. Nothing further is said or required as to the circumstances or as to the offender's intention. Under a literal interpretation of the language employed, it would constitute an offense if a man should prepare combustibles for the purpose of setting fire to his own barn to rid his farm of rats. The draftsmen of Act 111 evidently traced the language of Article 54, but lost sight of the fact that it necessarily referred back to Articles 51 through 53, which add the requirement that the intended burning must either endanger human life, destroy another's property, or be with intent to defraud.

Article 54, as originally written, merely served to further define an attempt to commit the various arson crimes. As now written, it purports to set up a separate crime with its own penalty, and hence the incomplete definition will probably render it invalid. Fortunately, the definitions of the various arson crimes are unaffected by the loss of Article 54. It will result, however, in uncertainty as to when the mere preparation of combustibles is sufficient to constitute arson.

Act 111 is the only amendment to the Criminal Code which was enacted without a full understanding of the general pattern of the law. Other amendatory statutes were called to the attention of the Louisiana State Law Institute, and were considered with a complete picture of affected articles of the Criminal Code in mind.

Criminal Mischief—Posting Advertisements

Clause 2 of the *Criminal Mischief* article of the Criminal Code¹⁰ provided for the punishment of anyone who attached or displayed a sign or advertisement upon the property of another without the owner's consent, or who displayed a political advertisement upon a public building or property. This provision would have done much, if enforced, to improve the appearance of the Louisiana countryside and streets, and also to protect the dignity of public buildings. However, it did not have the full support of public opinion and was frequently violated with impunity. This was especially true in regard to political posters and advertisements. It was therefore not surprising that the 1944 legislature

10. Art. 59, La. Crim. Code of 1942.

should amend the Criminal Mischief article so as to delete this particular clause.¹¹ In its place they inserted a provision to the effect that driving nails over one and one-half inches in length into trees belonging to another was criminal unless the nails were driven with the owner's consent or were later removed from the trees. This new provision was not based upon aesthetic considerations, but was largely for a protection of the lumbering interests. It was necessitated by the fact that large nails prove particularly injurious to saw blades and other lumbering equipment.

It should be noted that the new statute, which provides a substitute for the original Clause 2 of the Criminal Mischief article, actually makes Louisiana's law more lenient than it was prior to the Criminal Code. Act 273 of 1940¹² prohibited the placing of political posters or advertisements in any public building or on any public property. Even though this provision was very poorly enforced, one may question the wisdom of letting the bars down completely in this regard.

Soliciting for Prostitutes

Article 83 of the Criminal Code defined soliciting for prostitutes as the inducing or transporting of a "male" to any place with the intention of promoting prostitution. While this article covered cases where solicitors induced or transported men to houses of prostitution, it did not comprehend the situation where a bell boy in a hotel would direct the prostitute to a man's room. In such a case the *male* was not directed or transported by the offender. In order that this article would be sufficiently broad to cover all cases of those who actively further the practice of prostitution, it was amended by Act 222 so as to cover the inducing or transporting of any "*person*" for purposes of prostitution. With this change the crime of soliciting for prostitutes will embrace both the case where the male is directed or transported to the prostitute and the case where the prostitute is directed or transported. This amendment, which definitely strengthens Article 83, was suggested by the Criminal Law Section of the Louisiana State Bar Association with the approval of the Louisiana State Law Institute.

11. La. Act 182 of 1944.

12. Dart's Crim. Stats. (Supp. 1941) §§ 1228.4-1228.5. This statute was repealed at the time of the enactment of the Criminal Code. The matter was fully covered by Clause 2 of Article 59, which has been deleted by the statute under discussion.

Bribery

The Criminal Code correlated and combined all the numerous and confusing special bribery statutes in a general article on public bribery¹³ and a special article dealing with the separate and lesser offense of bribery of voters.¹⁴ The special article on bribery of voters is amended by Act 289. No change was made in the definition of the offense, but a special provision was added which grants immunity from prosecution to the informer, except for perjury in connection with his testimony. It is further provided that the informer is to be paid any fine collected from the convicted person. A similar provision had been discussed by the Council of the Louisiana State Law Institute when the bribery articles were drafted. The Council felt that it was not good social policy to permit one offender to escape punishment and even secure financial benefit by turning stool pigeon. It is axiomatic that there should be some honor, even among thieves. On the other hand there was considerable argument to the effect that bribery convictions are very difficult to secure unless the state has some method of securing immunity for,^{14a} and otherwise encouraging, either the giver or the taker of the bribe to inform and testify against his partner in crime. It is this latter practical consideration which motivated the amendment set out in Act 289. The amending statute also adds the stipulation that "no penalty imposed under the provisions of this article shall be suspended or remitted by any court or other authority . . ." This means that the suspended sentence provision in Article 536¹⁵ of the Louisiana Code of Criminal Procedure will not be available where the offender is convicted of bribery of voters.

Act 288 is a special statute relative to the bribery of eliminated candidates. It provides a fine of from one to ten thousand dollars and imprisonment for not more than a year where a withdrawn or eliminated candidate is given or offered, or receives or offers to receive, any money or property for throwing his political support to a candidate remaining in the race. This statute contains the same provision of immunity and remuneration for

13. Art. 118, La. Crim. Code of 1942.

14. Art. 119, La. Crim. Code of 1942.

14a. Art. 121, La. Crim. Code of 1942, granted immunity to the informer, but did not provide financial inducements.

15. As amended by La. Act 48 of 1942, § 1. This article provides that where an offender is found guilty of a misdemeanor the judge may sentence him and suspend that sentence during his "good behavior." The term "good behavior" is specifically defined as meaning that the offender shall not be convicted of any other crime during the time of his suspended sentence.

informers that is found in the amendment to the bribery-of-voters article.¹⁶

Perjury Article Clarified

Act 224, jointly sponsored by the Criminal Law Section of the Louisiana State Bar Association and the Louisiana State Law Institute amends the perjury article¹⁷ of the Criminal Code so as to rectify a printer's omission in that article. The offense of perjury contemplates the making of a *false* statement. In the various printings of the Criminal Code, the word *false* had been inadvertently omitted from line one of the definition of the offense. A complete reading of Article 123 would clearly indicate that the statement must be false. However, the amendment adopted completely clarifies the definition of perjury and removes any possibility of its being construed as an inadequate statement of the offense.

Unsigned Political Statements

Act 206, a measure which had wide support, requires that political circulars, cards or posters concerning any political candidate must identify the person or organization responsible for the publication. This act, modeled on a proposed federal law,¹⁸ provides a stiff penalty for anonymous campaign statements. It should do much to eliminate scurrilous and unfair attacks upon candidates for public office.

B. Criminal Procedure

Orleans Parish Jury Commissioners and Jury Lists

Act 151 effects a number of minor changes in the articles of the Louisiana Code of Criminal Procedure governing the selection and duties of the board of jury commissioners for the Parish of Orleans. Articles 191 and 198 are amended so as to raise the salaries of the jury commissioners and of process servers, and to increase the annual budget of the jury commissioners for office help, supplies, and printing.

Article 194 had formerly provided that the jury list should comprise one thousand names. This number is reduced to seven

16. La. Act 289 of 1944, *supra*.

17. Art. 123, La. Crim. Code of 1942.

18. H.R. Bill No. 2973, 78th Cong., 1st sess. (1944) (Passed the House with amendments on March 20, 1944, referred to Senate Judiciary on March 21, 1944).

nundred and fifty. In ordinary cases, no drawing may be made from a list which does not include the full seven hundred and fifty (formerly one thousand) names. In extraordinary cases and in order to avoid delay, the judge may now draw from a list and jury wheel containing a minimum number of five hundred names. The former minimum had been set at six hundred. An amendment to Article 195 reduces the number of names to be drawn from the jury wheel for petit jury service from one hundred and fifty to one hundred names, and the additional list authorized for special jury terms is reduced from seventy-five to fifty names. Through what is apparently a clerical error, the provision as to the number of petit jurors drawn and assigned to each section of the criminal district court uses the old figure of seventy-five. Probably, this clause will be interpreted in light of the intent of the legislature to reduce the petit jury list to fifty names.

While Article 200 is restated in the amended statute, a careful comparison fails to reveal any changes in that article.

Short Form Indictments

Article 235 of the Louisiana Code of Criminal Procedure authorized short form indictments for a number of the more important and recurring offenses. The purpose of the short form indictment is to permit an accurate and succinct charge, saving the accused a right to request a bill of particulars stating the specific manner in which the crime was committed. This provides protection for the state from the delay and expense incidental to mistrials caused by technical defects in indictments.¹⁹ It also insures ample protection for the accused who, through a bill of particulars, may secure the details of the charge made against him.²⁰ A procedural statute,²¹ prepared by the Louisiana State Law Institute and enacted at the same time as the Criminal Code, served to correlate the new substantive criminal law and the 1928 Code

19. For example, in *State v. McDonald*, 178 La. 612, 152 So. 308 (1934) a burglary indictment charged that the defendant broke and entered "the American Hat Company." After conviction and sentence the supreme court sustained a motion in arrest of judgment, and ordered the verdict and sentence set aside on the ground that the indictment had failed to specifically state that defendants had burglarized "a building or structure." While the decision was undoubtedly correct, it is not sound procedure to permit defense lawyers to sit back while the case is tried on its merits and then come forward and urge a defect in the indictment after an adverse verdict by the jury. It is to prevent situations of this sort that short form indictments have been authorized in a number of states.

20. See comment dealing with the constitutionality and purpose of short form indictments, *infra*, p. 76.

21. La. Act 147 of 1942.

of Criminal Procedure. One of the most important provisions in this statute redrafted Article 235 of the Code of Criminal Procedure so that the short forms provided therein would conform to the changed names and nature of the offenses set out in the Criminal Code. A large proportion of the crimes in the new Criminal Code were not, however, covered by Article 235 in either its original or amended form. Thus, in the recent cases of *State v. Herbert*²² and *State v. Morgan*,²³ where the respective offenses of indecent behavior with juveniles²⁴ and disturbing the peace²⁵ were charged, the prosecuting authorities ran into difficulty by failing to state the specific manner in which the offenses were committed. Act 223 of 1944, recommended by the Criminal Law Section of the Louisiana State Bar Association, enlarges the scope of the short form indictment article. This statute provides that, in addition to the short forms already set out in Article 235, any crime included in the Criminal Code may be charged "by using the name and article number of the offense committed." Thus, as in the case of the short forms already provided by Article 235, the defendant is clearly informed of the specific offense charged and may secure the alleged details of the crime through a bill of particulars.

Another significant change effected by Act 223 is the added proviso "that the indictment may, in addition to the necessary averments of the appropriate short forms hereinbefore set forth, also include a more particularized statement of the facts of the offense charged; and, that this may be done without affecting the sufficiency of the short form indictment authorized by this article." This enables the district attorney to avoid the delays necessarily incidental to the filing of a bill of particulars, by stating the details of the crime in the original indictment. There had been a general feeling, which may or may not have been well founded, that a district attorney lost the benefit of a short form indictment if he went further and set out the specific way in which the crime was committed. Under Article 235, in its amended form, the full protection of the short form indictment may be had and ample particulars furnished to the defense at the same time.

Act 223 is probably the most important single amendment that has been recently made to the Code of Criminal Procedure.

22. 205 La. 110, 17 So.(2d) 3 (1944).

23. 204 La. 499, 15 So.(2d) 866 (1943).

24. Art. 8, La. Crim. Code of 1942.

25. Art. 103, La. Crim. Code of 1942.

It will do much to speed up the trial of criminal cases, without in any way prejudicing the right of the accused to secure full information as to the nature of the charge being made against him.

Alternate Juror Law

The Louisiana alternate juror law, adopted in 1940,²⁶ gave the district judge a discretionary power to direct the selection of one or two alternate jurors for criminal cases where he was of the opinion that the trial would probably be a protracted one. These alternate jurors were to be selected in the same manner as the regular jurors and were subject to the same restrictions and compulsory attendance. If a regular juror died or became seriously ill, an alternate juror could take his place and the trial would proceed. Trial judges have not ordered the selection of alternate jurors in ordinary criminal cases, but have frequently used them in long drawn out trials for murder or other serious felonies. In such cases, alternate jurors serve a very useful purpose and safeguard against the contingency of a mistrial resulting from the death or incapacity of a regular juror before verdict.

Once the jury is sworn, only death or serious illness will excuse a juror from continuing to serve until a verdict is reached. Where alternate jurors have been selected the court can afford to be more lenient in excusing a juror who is confronted with sickness in his immediate family or with urgent business transactions. Such a juror, perturbed by family or business worries, can hardly reach a sound and well-reasoned verdict. Act 226, enacted upon the recommendation of the Criminal Law Section of the Louisiana State Bar Association, amends the alternate juror law so as to permit the trial judge to discharge a juror for illness "or for any other cause which in the opinion of the court renders him unable or disqualified to perform his duty or warrants his discharge as a juror . . ."²⁷ This provision will eliminate much unnecessary hardship upon jurors, and will also tend to insure more careful justice.

26. La. Act 6 of 1940, enacted upon the recommendation of the Louisiana State Law Institute, and modeled after a Federal Statute, 47 Stat. 380 (1932), 28 U.S.C.A. § 417a (Supp. 1939).

27. See Louisiana Legislation of 1940 (1940) 3 LOUISIANA LAW REVIEW 98, 173, where, in a discussion of the original alternate juror law, it is suggested that "further provision should be made in the statute to take care of instances where there is serious illness or death in the family of a juror or any other unforeseen emergency of such nature that a juror could not be expected to continue his duties. Alternate juror provisions in several of the states have provided for these contingencies." (Citing laws from California, New York, North Carolina, and Pennsylvania.)

Probation

The 1942 probation statute²⁸ made a big improvement in the administration of criminal justice by providing for probation, in lieu of the old unsupervised suspended sentence, where a person convicted of a felony is given an opportunity for self-rehabilitation. The statute's effectiveness, however, was seriously impaired by the requirement of a jury recommendation before the sentencing judge could suspend sentence and place an offender on probation. Where an offender waived a jury or pleaded guilty and threw himself upon the mercy of the court, the trial judge was unable to grant probation without impaneling a jury for the special purpose of passing upon that question. This practical difficulty precluded any substantial use of the probation law in an important class of cases.

Upon a request of the Criminal Law Section of the Louisiana State Bar Association, the Louisiana State Law Institute prepared a statute which amended the probation law so as to eliminate the necessity of a jury recommendation. It was the theory of the proposed statute that the jury's proper function is to determine guilt or innocence, and that the sentencing of the offender in light of the circumstances and evidence of the individual case was the function of the trial judge. The Federal Probation Statute,²⁹ which has worked very satisfactorily, places the question of whether or not an offender is a good probation risk solely in the hands of the trial judge. He is, by training and experience, more capable of handling this question than is the average jury of laymen.

The legislative committee which considered the proposed bill did not agree with the idea that the question of probation is essentially a judicial function, and felt that the issue should be presented to the jury if a jury were already impaneled to hear the case. The committee agreed, however, that where the defendant pleads guilty or waives a jury trial, the probation law would be much more effective if the trial judge were empowered to grant probation without summoning a jury for the sole purpose of passing upon that issue. The statute adopted by the legislature³⁰ is thus a compromise measure. It requires a jury recom-

28. La. Act 49 of 1942, amending Arts. 530 through 534, and repealing Art. 535 of the La. Code of Crim. Proc. of 1928, discussed in Wilson, *Making the Punishment Fit the Criminal* (1942) 5 LOUISIANA LAW REVIEW 53, 55.

29. 43 Stat. 1259 (1925) 18 U.S.C.A. § 724 (1927).

30. La. Act 147 of 1940 [Dart's Stats. (Supp. 1941) §§ 5708.1-5708.2].

mentation in those cases where a jury trial is held, but eliminates the necessity of a jury recommendation in those cases where the offender pleads guilty or goes on trial before a judge without a jury.

Theoretically, Louisiana would be more in line with other jurisdictions if the issue of probation were placed entirely in the hands of the sentencing judge. Practically a big improvement is effected by the statute as enacted, and the most important reform sought by the Criminal Law Section and the Louisiana State Law Institute is achieved. It has made probation a workable device by not requiring the calling of a special jury to pass upon the question in instances where the case has not been tried by a jury. In this important class of cases, the delay and added expense of a jury had virtually precluded any use of probation. In jury trials, where a jury recommendation is still required, it is unlikely that it will operate to preclude probation in proper cases. The difficulty in the old law had not been in a Draconic attitude of juries toward probation, but rather in the practical difficulty of specially impaneling a jury for that purpose. It is important to note that in jury cases where a jury recommendation is a prerequisite to the granting of probation the sentencing judge is not bound to follow that recommendation. The judge may still refuse to place the offender on probation if he feels that the jury has allowed sentiment to run away with its better judgment. Actually, however, a court will be very reluctant to disregard the jury's recommendation.

Juvenile Court—Appeals

Article VII, Section 10, of the Louisiana Constitution carries the unique provision that appeal in civil and probate cases shall be "both upon the law and upon the facts," but adopts the usual rule that the appellate jurisdiction of the supreme court in criminal cases is limited to "questions of law alone." The appellate jurisdiction in juvenile proceedings, as set out in Section 54 of Article VII, was also limited to "matters of law only," with the juvenile judge being final arbitrator of factual questions. Act 309 proposed an amendment to this constitutional provision so as to authorize appeals from judgments of the juvenile court "on matters of law and fact where the judgment of the court affects the custody, care and control of minor children, . . ." In other cases, such as delinquency proceedings and prosecution of adults charged with the violation of laws enacted for the protection of

children, appeals are still limited to matters of law. A sampling of the appellate provisions in some of the other more forward-looking states does not reveal any jurisdiction which allows an appeal on questions of fact in juvenile cases.³¹ It is important, however, to note that the constitutional amendment, which has been approved by popular vote, only provides for appeal on matters of fact in cases affecting "the custody, care and control of minor children." This class of controversies is fundamentally civil rather than criminal in nature. Thus, the amendment is in line with the rule permitting appeals on both fact and law in civil and probate cases. The added proviso, that the party desiring an appeal on a question of fact shall bear the expense of having the evidence taken and transcribed, will serve to prevent an abuse of this privilege.

Juvenile Court—Orleans Parish

Act 169 supplants and repeals a 1921 statute³² which provided for the establishment, jurisdiction and procedure of the Juvenile Court for the Parish of Orleans. The new juvenile court statute is in line with the latest thought and developments as to the handling of juvenile cases. Section 2 of the act states the purpose and underlying principle of the juvenile court, i.e., to serve the neglected or delinquent child's welfare and "secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents." This phrase sounds the keynote of proper juvenile administration. The delinquent child is not a criminal. He is before the court for guidance and help rather than punishment. This attitude and approach is necessary if the juvenile court is to serve its proper function and bring about the rehabilitation of neglected and wayward youth. Important words and phrases are fully but concisely defined, and this should help immeasurably in a proper interpretation of the statute.³³ A definition of the "delinquent child" enumerates four types of conduct which constitute juvenile delinquency. These are the violation of a criminal law or ordinance, habitual truancy, disobedience, and evil associations. This definition stating the general nature of activity which shall constitute delinquency, is a vast improvement over the previous provision

31. States whose laws and constitutional provisions were examined included California, Colorado, Illinois, New Jersey, New York, and Pennsylvania.

32. La. Act 126 of 1921 (E.S.) [Dart's Stats. (1939) §§ 1709-1718.3].

33. La. Act 169 of 1944, § 4.

which sought to define by enumeration of specific acts of delinquency. The definition of "neglected child" is also revised, and greatly improved both as to substance and clarity. These new definitions, which do not purport to enumerate the various specific acts which shall constitute delinquency or neglect, are in accordance with these flexible procedures which are essential to successful juvenile court administration.

Formerly proceedings against delinquent children were only by affidavit. Pursuant to authority granted by an amendment to Section 96 of Article VII of the Louisiana Constitution,³⁴ proceedings may now be by a verified petition filed by any person having facts tending to show that the child is neglected or delinquent. The court, upon facts being called to its attention, may, upon its own volition, authorize the filing of a petition.³⁵ The informal manner of the proceedings is expressly provided for³⁶ and the privacy of the hearings is guaranteed by an express stipulation that the general public shall be excluded. Again, the proceedings are clearly distinguished from criminal trials by provisions to the effect that the child need not appear in person and that all cases shall be heard without a jury. The technical rules of evidence, which loom so important in the criminal trial, are eliminated, and all circumstances and facts concerning the environment and life history of the child are inquired into.³⁷ Limitations of time and space do not permit a complete discussion of this remarkably up to the minute statute which has caught the true spirit of juvenile proceedings. It will facilitate the efforts of juvenile judges to render real assistance to neglected and delinquent children, rather than to punish them as criminals for their early transgressions which are usually the result of a poor home environment.

Two facts somewhat mar the otherwise encouraging future of this fine legislation. First, an adequate handling of juvenile cases is largely dependent upon suitable facilities where the delinquent child will be given the training and understanding supervision that he did not secure at home. Present facilities for white delinquents are substantially inadequate, and there is no place provided for the handling of negro delinquents. Efforts are being made to remedy this situation but restrictions on building

34. Proposed by La. Act 322 of 1944.

35. La. Act 169 of 1944, § 6.

36. *Id.* at § 3.

37. *Id.* at § 12.

priorities stand in the way at the present time. Secondly, it is very doubtful whether the constitutional amendment³⁸ which permits an appeal to the supreme court on both law and facts in all Orleans Parish juvenile cases is sound or practical. Juvenile proceedings should be, and are under the new statute, very informal in nature. They are not trials but rather hearings at which the juvenile judge, aided by previous investigations, seeks to arrive at a decision as to what is best in order to care for the neglected child or to effect a rehabilitation of the delinquent child. Men should be elected to the important post of juvenile judge who by nature and experience are fitted to handle these cases on their individual merits, and little is to be gained by providing a second hearing, which is necessarily of a very formal nature, before the State Supreme Court.

38. Amendment to La. Const. of 1921, Art. VII, § 96, note 34, *supra*.