

Louisiana Law Review

Volume 15 | Number 1

Survey of 1954 Louisiana Legislation

December 1954

Criminal Law and Procedure, and Penal Institutions

Dale E. Bennett

Repository Citation

Dale E. Bennett, *Criminal Law and Procedure, and Penal Institutions*, 15 La. L. Rev. (1954)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol15/iss1/16>

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.

Criminal Law and Procedure, and Penal Institutions

Dale E. Bennett*

False Cotton Packing

Act 21 makes it a misdemeanor to pack cotton bales or other agricultural products "in such manner as is calculated to deceive persons with regard to quantity, weight or quality of the product." The crime is misleadingly designated as Section 67.2 of Title 14, thus giving the impression that it is to be considered as a special type of theft, whereas it embraces conduct which falls short of either theft or attempted theft. It covers the situation where the offender is apprehended when preparing to commit theft, by falsely packing the bales of cotton or other agricultural materials in a way "calculated to deceive" prospective purchasers. Where the offender goes one step further and sells or attempts to sell the misleadingly packed commodities he commits the more serious general crime of theft¹ or attempted theft.² This special misdemeanor might have been more logically included as one of the miscellaneous crimes found in Chapter 2 of the Criminal Law Title of the Revised Statutes.³ A further query may be raised as to the need for creating this special crime. The specific mental element, calculating that the falsely packed commodities will deceive prospective purchasers, will seldom be provable unless there has been at least an attempt to dispose of the goods. That situation is already adequately covered by the crime of attempted theft.

Narcotics Law—Penalties

Undoubtedly the most controversial criminal statute of the 1954 session is Act 682 which makes substantial reductions in the minimum penalties for narcotics law violations.⁴ In 1951 public sentiment, agitated by the prevalence of the use of narcotics by teen-agers, led to a drastic raising of the penalties for narcotic

* Professor of Law, Louisiana State University.

1. LA. R.S. 14:67 (1950).

2. LA. R.S. 14:27 (1950).

3. The crimes found in Part I of Chapter 2 are very similar in nature to the offense created by Act 21.

4. Amending LA. R.S. 40:981 (1950).

violations.⁵ The basic penalty was raised from "not less than twenty months nor more than five years" to "not less than ten nor more than fifteen years." An even more severe penalty of "not less than twenty nor more than thirty years" was provided for the sale of narcotics to persons under the age of twenty-one years.⁶ The 1954 amendment, without lowering the possible maximum penalties which the judge may impose, has reduced considerably the lower limit of the penalty. In ordinary cases the penalty is now fixed at from two to fifteen years, while in the aggravated crime of selling narcotics to minors the penalty is now from ten to thirty years. Is it sound legislative policy to empower the trial judge to impose these lighter sentences? In support of a continuation of the more drastic 1951 penalties, it was argued that narcotics peddlers had been definitely deterred through fear of the mandatory heavy penalties. Undoubtedly this is one area of the criminal law where prospective offenders do calculate prospective gain versus the risk incurred. On the other hand, it was argued that the trial judge should be given more leeway in considering the circumstances of the crime and in individualizing the punishment. It was pointed out that many narcotics "pushers" are themselves victims of the drug and merely seeking to earn their own supply. This argument finds general support in the flexible penalty clauses of the 1942 Criminal Code and in the trend of modern criminal statutes to allow the trial judge a larger discretion in sentencing.⁷ The writer finds himself in the inconsistent position of being somewhat in agreement with both views, and yet dissatisfied with both the 1951 and 1954 versions. A mandatory penalty of at least ten years for the narcotic violator who is an addict is almost Draconic despite the possibility of suspended sentence and probation, but there is much to be said in favor of a very heavy mandatory penalty for the peddler who promotes the use of these nefarious drugs by others. This is doubly true where the sales are made to minors. While certain and severe penalties will not completely prevent crime, they will serve to diminish it appreciably.

Issuing Worthless Checks—Penalties

The crime of issuing worthless checks⁸ is a specialized form

5. By La. Acts 1951(E.S.), No. 30, § 1, p. 46, amending LA. R.S. 40:981 (1950).

6. One bill had proposed capital punishment for this offense.

7. A comparison of the 1942 Criminal Code with the prior criminal statutes will show that a number of high minimum penalties were lessened.

8. LA. R.S. 14:71 (1950).

of theft⁹ when the "fraudulent representation" takes the form of a bad check. It was, therefore, logical for the Louisiana legislature, in Act 442, to make the penalty for that crime conform to the more severe prison sentences provided for the general crime of theft. According to a suggestion advanced at the committee hearing on the House bill, the real motive for the change may have been to make this offense a felony in order to facilitate extradition of those who give bad checks to local merchants and then remove themselves to other states. Extradition for misdemeanors is possible under the broad language of the federal extradition law which applies to "treason, felony, or other crime,"¹⁰ and of the Louisiana extradition provision which applies to a fugitive charged with the commission of "a felony or misdemeanor."¹¹ It is possible, however, that some other states may limit, either by statute or practice, extradition of criminals to those who are charged with a felony.

Regardless of the reason for the change in the penalty clause, the net result of the act, as amended in committee, is most unfortunate. The original bill¹² had a dual penalty clause. Where the amount of the check was \$100 or more the penalty was imprisonment "with or without hard labor, for not more than ten years." Where the amount of the check was less than \$100 the penalty was imprisonment "with or without hard labor for not more than two years." This was objected to for the reason that it required the lesser charge of issuing worthless checks for less than \$100 to be tried as a relative felony with the necessity of a jury trial, unless waived.¹³ Such lesser crimes could be much more appropriately tried as misdemeanors before a judge without a jury.¹⁴ This could have been accomplished by striking the words "with or" from the penalty clause for issuing checks of less than \$100, thus providing a penalty of up to two years "without hard labor." Instead, the deletion was inadvertently made in the penalty clause for the greater crime of issuing worthless checks of over \$100. This has resulted in the anomalous situation that the penalty clause for the major crime provides

9. LA. R.S. 14:67 (1950).

10. REV. STAT. § 5278 (1875), 18 U.S.C. § 3181 *et seq.* (1952).

11. LA. R.S. 15:160 (1950).

12. House Bill No. 985.

13. LA. CONST. Art. VII, § 41.

14. It will be noted that the penalty clause of the theft article has a special provision whereby the offender who procures less than \$20 is prosecuted for a misdemeanor, with the maximum prison sentence ranging from six months to two years in the parish jail depending upon whether the conviction is for a first, second, or third offense. LA. R.S. 14:67 (1950).

imprisonment "without hard labor for not more than ten years," and the penalty for the lesser offense is imprisonment "with or without hard labor for not more than two years." Under the new penalty provision a charge of issuing a worthless check of \$1000 would be a misdemeanor charge triable by the judge alone without a jury.¹⁵ The sentence "without hard labor," regardless of its length, would normally be served only in the parish jail. On the other hand, a charge of issuing a worthless check for \$5 would now constitute a relative felony with the corresponding right of the defendant to demand a jury trial. In view of the resulting confusion, district attorneys will probably be wise to prosecute their bad check cases under the general provisions of the theft article.¹⁶ This is authorized by Article 4 of the Louisiana Criminal Code,¹⁷ which permits such a choice where both general and special articles of the Code are applicable. It appears that the only real remedy for this situation is to amend again the penalty clause in the worthless check article.

Simple Escape

Act 122 elaborates upon the definition of simple escape in Article 110 of the Criminal Code,¹⁸ making it clear that the definition will also cover escape from an official of the state penitentiary. The new definition may well confuse, rather than clarify, the scope of this crime. The original phrase, "from lawful custody of any officer or from any place where he is lawfully detained by any officer," appears sufficiently broad to cover escape from an official of the state penitentiary. The new phrase, "from lawful custody of any officer or official of the Louisiana State Penitentiary," may be construed as limiting the offense to escapes from officers and officials of the state penitentiary, especially when read in connection with the penalty clause which is obviously drafted with such escapes in mind. If thus limited, this act will fall short of the provisions originally covering escapes from any lawful custody, whether it be by city, parish or state authorities. The increase of the penalty to imprisonment "for not less than two years and not more than five years," when the escape is from the state penitentiary or its officials, is a sound

15. LA. CONST. Art. VII, § 41.

16. LA. R.S. 14:67 (1950).

17. LA. R.S. 14:4 (1950): "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. . . ."

18. LA. R.S. 14:110 (1950).

change. The former general penalty of "not more than one year" imprisonment was scarcely adequate.

A recognition of the state's responsibility for property damage or personal injury occasioned by the escape and recapture of prisoners from the state penitentiary is found in Act 205, which authorizes payments for such damage by the Board of Institutions. It should be noted that the law authorizes, but does not obligate, such payments; and the compensation shall not exceed one thousand dollars.

Criminal Neglect of Family

This offense¹⁹ was broadened in 1950 to embrace the non-support of illegitimate children,²⁰ thus providing a penal sanction for enforcing the much neglected obligation of a father to support his illegitimate child. Supreme Court decisions²¹ held that prior establishment of a civil duty to support, under the Civil Code, was a condition precedent to criminal liability for nonsupport of the illegitimate child. This meant that the criminal action could only be brought in cases when, prior to the nonsupport complained of, the father had either acknowledged the child or been adjudged its father in a civil action. The requirement of a prior civil action, usually beyond the means of the necessitous mother, was exactly what the 1950 act had sought to eliminate. It had been hoped to provide through the use of criminal law procedures and sanctions a simple means of forcing the father to support his illegitimate offspring. In 1952 the legislature took another try at this objective—this time it re-amended the criminal neglect of family article²² so as to make it clear that the father's inherent duty to support his illegitimate child, as enforced in a criminal action, was separate and distinct from proof of paternity under the Civil Code.²³ However, the Supreme Court took the view that the amendment had not altered the guiding principle of the prior jurisprudence that "a prerequisite

19. LA. R.S. 14:74 (1950).

20. *Ibid.*, amended and re-enacted, La. Acts 1950, No. 164, p. 330.

21. *State v. Love*, 220 La. 562, 57 So.2d 187 (1952), discussed in *The Work of the Louisiana Supreme Court for the 1951-1952 Term—Criminal Law*, 13 LOUISIANA LAW REVIEW 244, 247 (1953); *State v. Sims*, 220 La. 532, 57 So.2d 177 (1952); *State v. Jones*, 220 La. 381, 56 So.2d 724 (1951).

22. LA. R.S. 14:74 (1950), as amended, La. Acts 1952, No. 368, p. 920.

23. *Ibid.* The new clause provided that paternity in a criminal non-support action might be established in the criminal action and that the duty of support thus established "shall not be construed as establishing any civil obligation."

for conviction was proof of paternity by legal acknowledgment or civil judgment."²⁴

Act 298 of 1954 represents another effort to separate the question of criminal liability for nonsupport from the emasculating judicial requirement of a prior civil action establishing paternity. This time a direct frontal attack is made by adding a new section providing that "The provisions of Art. 242 of the Louisiana Revised Civil Code of 1870 shall not apply to any proceeding brought under the provisions of R.S. 14:74."²⁵ The success of this latest effort to seek a full legal separation of the civil and criminal aspects of the father's duty will not be known until the Supreme Court construes the new statute. The repeated amendments should be strongly indicative of a pervading legislative intent.

Contributing to Juvenile Delinquency

Act 624 purports to supplement the general provisions of Article 92 of the Criminal Code which sets out the offense of contributing to the delinquency of juveniles.²⁶ However, there is no need or excuse for two separate articles on this matter. The good features of the new statute could have been integrated into Article 92 without any difficulty, thus avoiding the extensive overlapping that has now resulted. The original Article 92 applies to "anyone over the age of seventeen," and clearly would apply to the parents or guardians who are specially designated in the new act. The definition of "delinquency" in Subsection B provides a full enumeration of the specific types of conduct covered. Greater clarity could have been achieved by working this material into Article 92 as additions to the types of delinquency listed there.

The provision in Subsection A for suspension of sentence, with the imposition of "conditions upon the defendant as to his future conduct," is a very worthwhile addition to the law. While this crime is only a misdemeanor, there is special reason for the imposition of conditions when sentence is suspended, especially where the offender is a parent or guardian.

24. *State v. Mack*, 224 La. 886, 889, 71 So.2d 315, 316 (1954), 14 LOUISIANA LAW REVIEW 898.

25. LA. R.S. 14:74.1 (Supp. 1954).

26. The general Criminal Code article is LA. R.S. 14:92 (1950) and the new provision is designated LA. R.S. 14:92.1 (Supp. 1954).

Miscellaneous New Crimes

Act 435²⁷ makes the use of "obscene, profane, vulgar, lewd, lascivious or indecent language, suggestions or proposals" in an anonymous telephone conversation a misdemeanor. The phrase "profane or vulgar" may be unduly broad, but the statute aims at a well-recognized evil.

Act 623²⁸ supplements the criminal anarchy article of the Criminal Code by a comprehensive "Subversive Activities Act." The new statute provides the means for an additional attack upon subversive activities by authorities at the state level in an area which is largely policed by the federal authorities.

The recent plague of pathetic cases involving children who suffocate after accidentally locking themselves in abandoned ice boxes gave rise to Act 75.²⁹ This statute makes it a misdemeanor, with a maximum penalty of a \$1000 fine and six months imprisonment, to leave unattended in a place accessible to children, an ice box or other air tight container which may not be opened from the inside. The act also prohibits the abandonment of such a device unless the lock has been removed.

Bail Pending Appeal

Acts 359 and 517 amend Articles 85 and 550 of the Criminal Code to permit bail pending appeal from felony convictions, except for capital crimes. This is a material liberalization of the existing law which only allowed bail pending appeal from sentences of less than five years.³⁰ This change does not become effective unless the present constitutional prohibition of bail pending appeal in such felony cases is amended as proposed by a companion act.³¹ Conflicting policy considerations should be mentioned. The present limitation is based upon the idea that a convicted felon who has been sentenced to five years or more is very likely to jump bail if released. On the other hand, the proposed liberalized bail procedure seeks to avoid unnecessary hardship. Frequently a successful appeal drags over a considerable length of time while the accused languishes in jail. It is interesting to note that the American Law Institute's proposed Model Code of Criminal Procedure allows bail after conviction,

27. LA. R.S. 14:285 (Supp. 1954).

28. LA. R.S. 14:366-380 (Supp. 1954).

29. LA. R.S. 14:324 (Supp. 1954).

30. LA. R.S. 15:85, 15:550 (1950).

31. La. Acts 1954, No. 739, proposing the amendment of LA. CONST. Art. I, § 12. See page 95 *infra*.

except for a capital crime.³² The fly in the ointment, however, is the fact that the accused is given an absolute right to bail under the proposed provisions even though he has previously absconded and probably will abscond again,³³ or even where the present offense was committed while the accused was released on a previous bail.³⁴ Similarly, a narcotics law violator or armed robber with a twenty-year sentence pending appeal is a very poor bail risk. The new provision, and proposed enabling amendment, would be less fraught with the danger of abuse if it made the granting of bail discretionary with the trial judge or placed some limitations on the right to bail.³⁵

Suspended Sentence and Probation

Act 43 makes a number of changes in the law governing suspended sentence and probation. Article 530 of the Code of Criminal Procedure,³⁶ which authorizes suspension of sentence and probation in felony cases and criminal neglect of family, had prohibited the placing of an offender on probation after he had begun to serve his sentence. The offense of criminal neglect of family, where a change in family conditions may dictate a shift in sentencing policy, has been excepted in the new act from that prohibition. If circumstances render it advisable, the imprisoned father may now be released on probation to take care of his family. Article 531³⁷ is amended to clarify the rule allowing a sixty-day postponement of sentence while a pre-sentence investigation is made to assist the trial judge in determining whether or not to place the offender on probation. Article 536,³⁸ which allows unsupervised suspended sentences in misdemeanor cases, was amended to except the misdemeanor of criminal neglect of family, where the offender may be placed on probation as in felony cases. In these cases the neglected family of the offender can be immeasurably assisted by supervised conditions requiring him to support and otherwise properly care for his wife and children.

Execution of Sentences

Two 1954 statutes establish practical and logical rules relat-

32. Official Draft § 66 (1930).

33. *Kendrick v. State*, 180 Ark. 1160, 24 S.W.2d 859 (1930).

34. For example, ORFIELD, *CRIMINAL PROCEDURE FROM ARREST TO APPEAL* 108, n. 23 (1947).

35. A.L.I., *MODEL CODE OF CRIMINAL PROCEDURE* §§ 66-70 (1930).

36. LA. R.S. 15:530 (1950).

37. LA. R.S. 15:531 (1950).

38. LA. R.S. 15:536 (1950).

ing to the execution of sentences.³⁹ Act 694 adds a provision to the effect that a sentence of imprisonment in the state penitentiary shall begin to run on the day following the sentence, regardless of the date of actual incarceration there. This avoids possible hardship in cases where there has been a delay in delivering the prisoner to the state prison authorities. When immediate delivery to the state penitentiary is precluded because the offender has "been released on bail or perfected a suspensive appeal," the new provision does not apply.

Act 387 extends the provision permitting voluntary labor by parish prisoners upon any "public roads, levees, streets, or public buildings, works, or improvements" to work upon "any cemetery or graveyard."

Miscellaneous Criminal Procedure Amendments

Act 76 makes a number of improvements in the procedure for selection of jury commissioners in Orleans Parish⁴⁰ and increases the membership of the commission from three to four. It provides continuity in the operation of this important office by providing for overlapping six-year terms. The terms of appointment are of definite duration and the commissioners are no longer removable at the Governor's pleasure.⁴¹ Gubernatorial control is further limited by a new proviso that Governor's appointments shall be "by and with consent of the Senate."

Act 153⁴² amends the rule for the distribution of fines and forfeitures in criminal cases, by providing that ten percent of the fines collected and bonds forfeited shall go into the sheriff's salary and expense fund. This does not apply to Orleans Parish, where the entire amount collected is still paid into the New Orleans city treasury.

Prison Reforms

The program of the Department of Institutions to improve facilities for handling offenders who are amenable to possible rehabilitation and reformation, is reflected in a number of statutes. Act 223 spells out a clear and logical procedure for the release of inmates from the State Industrial School for (white delinquent) Girls.⁴³ The spirit of proper administration of justice

39. La. Acts 1954, No. 694, adding LA. R.S. 15:566.2 (Supp. 1954); La. Acts 1954, No. 387, amending LA. R.S. 15:708 (1950).

40. LA. R.S. 15:191 (Supp. 1954).

41. Cf. LA. R.S. 15:191 (1950), as amended, La. Acts 1950, No. 221, p. 398.

42. LA. R.S. 15:571.11 (Supp. 1954).

43. LA. R.S. 15:917 (1950), as amended, La. Acts 1954, No. 223.

for juveniles is shown in the statement that "the commitment of a juvenile to said school is not punitive nor in anywise to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile" and admonishes the court to give "careful consideration" to recommendations for release. As a precaution against hasty re-commitment of a juvenile who does not respond to supervision, the new act requires a new commitment "made in the same manner as if the juvenile had been released outright by the court and was subsequently brought before the court on a new charge."⁴⁴ Similar improved releasing procedures from juvenile detention homes are provided by Act 224 for inmates of the Louisiana Training Institute for white male juveniles,⁴⁵ and by Act 225 for inmates of the State Industrial School for Colored Youths.⁴⁶

Act 459⁴⁷ requires the heads of institutions for juvenile delinquents to transmit to the State Bureau of Identification the same information as to commitments for violation of indictable offenses, paroles granted and discharged, fingerprints, photographs and other pertinent data as is required of institutions receiving persons convicted of crime or committed as criminally insane or feeble-minded delinquents. While the juvenile delinquent does not have a "criminal record" in the usual sense of the phrase, his delinquency record may be very helpful if he should commit later transgressions either as a juvenile or as an adult.

A most significant penal reform is effected through the establishment of the "Louisiana Correctional Institute" by Act 729.⁴⁸ The statutes establishing this new institution are not only sound in principle, but the details of administration have also been very carefully worked out. This institute, a special branch of the state penitentiary, is to be established for the handling of male inmates of the state penitentiary who are found suitable for rehabilitation, and for male inmates of institutions for juvenile delinquents who are at least twelve years of age and have been found to be incorrigible or to have tendencies that interfere with the rehabilitation of other inmates.⁴⁹ Adult first offenders,

44. *Ibid.*

45. Amending LA. R.S. 15:977 (1950).

46. Amending LA. R.S. 15:1017 (1950).

47. Amending LA. R.S. 15:581.5 (1950).

48. Adding LA. R.S. 15:1061-1068 (Supp. 1954).

49. As a special safeguard for the juveniles transferred, it is expressly stated that "adequate provision" shall be made "for the segregation of convicts and juvenile offenders." LA. R.S. 15:1065(1) (Supp. 1954). Further, the transfer of a juvenile offender to the correctional institute does not alter the fact that he is to be considered as a juvenile delinquent, rather than as a criminal. LA. R.S. 15:1063 (Supp. 1954).

sobered by the prison hangover of their taste for crime, will stand a much better chance of rehabilitation if removed from the contaminating environment of habitual and professional criminals. Removal of the incorrigible type of teen-age offender will give those in charge of juvenile institutions a better opportunity to reform and rehabilitate the more normal inmates. Juvenile institutions sometimes become schools of crime, despite the best efforts of those in charge, when the really bad boys dominate and indoctrinate other inmates. Retransfers to the original correctional institution are authorized when the adult inmate is found unsuitable for corrective guidance, and where the juvenile transferee is found to have overcome the tendencies which had been considered incorrigible.⁵⁰ Implementing statutes amend existing laws to provide for the transfer of incorrigible male juveniles⁵¹ or adult prisoners suitable for rehabilitation⁵² to the correctional institute.

Louisiana R.S. 15:854 established certain general requirements for the rules and regulations to be established, subject to the approval of the Governor, by the Superintendent of the State Penitentiary. Act 149 adds a specific requirement as to uniforms for prisoners.⁵³

Act 521 makes a number of changes in the law authorizing the creation of prison districts for the operation of prison farms with parish prisoners.⁵⁴ The composition of the board of governors⁵⁵ is changed in situations where a single parish administers a district. The board now consists of the president of the police jury and two, instead of one, other police jurors and is authorized to maintain a special department on the farm for "juveniles," while the prior law had only authorized such a department for "colored juveniles."⁵⁶

50. LA. R.S. 15:1068 (Supp. 1954).

51. La. Acts 1954, No. 730, amending LA. R.S. 15:978, 15:1018 (1950).

52. La. Acts 1954, No. 732, amending LA. R.S. 15:851 (1950).

53. Adding LA. R.S. 15:854(2) (Supp. 1954).

54. LA. R.S. 15:801-807 (1950).

55. LA. R.S. 15:804 (1950).

56. LA. R.S. 15:805 (1950). An added clause, LA. R.S. 15:805(11) (Supp. 1954), authorizes use of the prisoners on public works "if prisoners are willing, . . . but only with the approval and under the supervision of the committing district judge." Statutory salary limits imposed on prison managers and on the secretary-treasurer of the board of governors are deleted by the 1954 amendatory act. LA. R.S. 15:805(2) (Supp. 1954), placing \$3600 limit on salary of prison manager, and LA. R.S. 15:805(9) (Supp. 1954), placing \$25 per month limit on salary of secretary-treasurer.