

Louisiana Law Review

Volume 19 | Number 1

Legislative Symposium: The 1958 Regular Session

December 1958

Criminal Law and Procedure

Dale E. Bennett

Repository Citation

Dale E. Bennett, *Criminal Law and Procedure*, 19 La. L. Rev. (1958)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol19/iss1/21>

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 kreed25@lsu.edu.

only, and since they are not of general interest to members of the profession, no attempt will be made to review them here. Included in this category are the statutes creating additional judgeships, increasing the salaries of judges and other officers of various courts, increasing the schedule of fees in certain courts, and creating additional city courts throughout the state.

Criminal Law and Procedure

*Dale E. Bennett**

CRIMINAL LAW

The offense of criminal mischief¹ is extended by Act 174 to embrace another form of interference with law enforcement. Under added clause (5), the giving of false reports or complaints of crimes is an offense. Since criminal mischief requires a general criminal intent,² the false report must be known to be false.

The penalty for armed robbery³ is increased by Act 380 from imprisonment for from one to fifteen years to imprisonment for from two to thirty years. The increased maximum is in accord with the maximum penalty of thirty years for the comparably dangerous crime of aggravated burglary,⁴ but the minimum of two years appears a little stiff. Of course the trial judge may always place the lesser participant, who is a first offender, on probation.

Act 315 supplements the unlawful sales to minors article of the Criminal Code⁵ by setting up three special offenses where alcoholic beverages are sold to or for those under 18 years of age. All of the provisions avoid the possible limitations of the phrase "intoxicating and spirituous liquors" to distilled beverages, as distinguished from beer and wine. They refer to "alcoholic beverages of either high or low alcoholic content." Under Section 1 the purchaser who is "over the age of 17 and under the age of 18" is subject to a light penalty of not over a \$25.00 fine or not more than 10 days imprisonment. Under Section 2 the purchase

*Professor of Law, Louisiana State University.

1. LA. R.S. 14:59 (1950).

2. Articles 59 defines criminal mischief as "the intentional performance of any of the following acts."

3. LA. R.S. 14:64 (1950).

4. *Id.* 14:60.

5. *Id.* 14:91.

by a person under the age of 17 is unlawful and will constitute an act of juvenile delinquency. Section 3 provides that an adult who purchases any alcoholic beverage for a person under the age of 18 is guilty of a misdemeanor carrying a maximum penalty of a \$100.00 fine or imprisonment for not over 30 days. This penalty appears a bit light, as compared to the penalty for contributing to the delinquency of juveniles⁶ where the maximum is a fine of \$500.00 or imprisonment for one year, or both.

The illegal use of weapons or dangerous instrumentalities article of the Criminal Code⁷ is amended by Act 379, which is aimed at providing a plan of increased penalties for second and third offenders. Section 3 provides a 5 year immunization period similar to that found in the general habitual offender law.⁸ It states that the enhanced penalties shall not apply where more than 5 years have elapsed between the expiration of the sentence for the last previous conviction and "the commission of the last offense for which he has been convicted."

The illegal carrying of weapons article⁹ of the Criminal Code was amended twice during the 1958 legislative session. Act 21 added a clause (4) which expressly covered switch blades and spring knives. Act 379 re-enacted the article, without the newly added clause (4) but with two other changes. It redefined clause (1) to cover instrumentalities intended "for probable use" as a dangerous weapon, as distinguished from the previous somewhat more restrictive requirement that the instrumentality be one that is "customarily used" as a dangerous weapon. It increased the penalty for first offenders and provided enhanced penalties for second and third offenders. A legislative intent that the two statutes are to be construed *in pari materiae* is clearly evidenced by the provision in Section 2 of Act 379 that "all laws or parts of laws in conflict herewith are repealed *except Act 21 of 1928.*" (Emphasis supplied.) By construing the two statutes together the over-all legislative intent appears to be that clause (1) is amended, a new clause (4) is added, and increased penalties are provided.

The penalty for first offenders of operating a vehicle while intoxicated¹⁰ is raised by Act 81 so as to provide for a fine or

6. *Id.* 14:92.

7. *Id.* 14:94.

8. *Id.* 15:529.1, as amended by La. Acts 1956, No. 312, § 5.

9. *Id.* 14:95, as amended by La. Acts 1956, No. 345.

10. *Id.* 14:98, as amended by La. Acts 1948, No. 331, and La. Acts 1956, No. 122.

imprisonment "or both," while the prior provision authorized the fine *or* imprisonment.

The penalty for obscenity¹¹ was raised substantially by Act 388, so as to authorize that the offender "shall be fined not more than \$2000, or imprisoned for not more than five years at hard labor or both." While the writer is sympathetic to the increase in the maximum fine from \$500 to \$2000, the increase of the possible prison sentence to "not more than five years *at hard labor*" (emphasis supplied) will present practical difficulties. It means that all obscenity charges must now be tried before a jury. The problem is further aggravated by a doubt as to whether a five-man or twelve-man jury is called for. The provision for imprisonment "at hard labor" would appear to call for a twelve-man jury; yet the writer inclines to the belief that since the penalty may be a fine *or* imprisonment the case is one where the punishment "may be at hard labor" and will be triable by a five-man jury.¹² The prior maximum sentence of two years, with the case triable before a judge, avoided the above problem of construction and also was more appropriate for the great majority of obscenity prosecutions.

The statute punishing the use of obscene or indecent language in anonymous telephone conversations¹³ is amplified by Act 121. It now states "no person shall engage in or institute a local telephone call, conversation or conference of an anonymous nature and therein use obscene, profane, vulgar, lewd, lascivious or indecent language, suggestions or proposals *of an obscene nature and threats of any kind whatsoever.*" The language added, shown by italics, should serve to provide a broader prohibition of the reprehensible conduct that the statute is aimed at. The increased maximum penalty of a \$5000 fine or two years imprisonment, or both, appears a little out of line with the gravity of the offense.

The evil of drinking by those serving on juries is recognized by Act 80. It adds the drinking of "any beverage of low or high alcoholic content during the time he is in actual service as juror" to the acts which shall constitute the misdemeanor of jury misconduct.¹⁴

11. *Id.* 14:106, as amended by La. Acts 1950, No. 314.

12. LA. CONST. art. VII, § 41 (providing for the method of trial of criminal cases).

13. LA. R.S. 14:285 (1950).

14. *Id.* 14:130.

Act 260 prohibits any association "engaged in social, educational or political activity" from being affiliated with any Communist or other subversive organization. It requires such organizations, where affiliated with an out-of-state or foreign corporation, to file an affidavit with the Secretary of State attesting to the fact that none of the officers of the out-of-state organization are members of Communist or other subversive organizations. Failure to file the required affidavit is punishable by a \$100 fine and 30 days imprisonment; and the making of a false statement in the oath "shall constitute perjury and be punished as provided by L.R.S. 14:123." Were it not for this special provision, the making of a false extra-judicial oath would have constituted the lesser crime of false swearing under L.R.S. 14:125.

CRIMINAL PROCEDURE

Act 301 seeks to authorize a practical and effective procedure dealing with shoplifters. Under general arrest provisions the suspected shoplifter could only be arrested by an officer, since a private person is not authorized to arrest for a misdemeanor.¹⁵ The officer was limited by the requirement that the arrest for a misdemeanor must be for an offense committed in the officer's presence, and at the time of the offense.¹⁶ Section 1 of the new statute authorizes a peace officer, merchant or special employee to detain a suspect for questioning, for a period not to exceed an hour, in any case where there is "reasonable ground to believe" that the person detained has committed theft of goods displayed. Several points are worthy of note: (1) the general authorization is for a short detention for questioning, and not for a formal arrest; (2) the authorization extends to the merchant and specially designated employees; (3) wilful concealment of goods is "prima facie evidence" of the taker's "intent to steal and permanently deprive." Section 2 clarifies and extends the officer's authority to *arrest* without a warrant. The value of the goods taken is immaterial, thus extending the authorization to misdemeanor cases where the officer would not ordinarily have authority to arrest without a warrant for a previously committed offense. Section 3 may have been intended as a grant of immunity from civil liability to the peace officer, merchant, or special employee who acts on "reasonable ground" in detaining

15. *Id.* 15:61 limits arrests to felonies.

16. *Id.* 15:62.

a person on a suspicion of theft. However, the scope of the immunity will probably be limited by the fact that the section begins "No *peace officer* shall be . . . liable for false arrest . . ." On the whole Act 301 may well prove a very practical and usable device for dealing with the ever-present shoplifter problem.

The interests of the *surety on an appearance bond* are protected by the requirement of Act 192 that, where a bond does not specify the return date, the sheriff shall notify the surety, in writing, of the time and place set for the appearance. This notice must be delivered at least forty-eight hours in advance of the time set.

Article 109 of the Code of Criminal Procedure had provided that there should be *no forfeiture of an appearance bond* in cases where the non-appearance of the accused was due to "physical disability." Act 191 amends Article 109, adding a logical exemption from forfeiture where the principal "is prevented from attending due to the fact that he is being detained in jail . . . in another jurisdiction."

The enumeration of those *exempt from jury service* is augmented by an addition of "all employees of common carriers who are required to travel in the course of their employment."¹⁷

The charging of a convicted felon as a *second or subsequent offender*, which subjected him to greatly increased penalties, was *mandatory* under the original habitual offender statute.¹⁸ Under Act 469 the filing of a prior conviction charge is discretionary, for Article 529.1 now states that the district attorney "*may* file an information accusing the person of a previous conviction." (Emphasis supplied.)

Suspension of sentence in misdemeanor cases is generally without other conditions than that the offender is released during his "good behavior." "Good behavior" is defined as meaning "that the offender shall not be convicted of any other crime during the time of such suspended sentence."¹⁹ Act 41 authorizes the sentencing judge to place the offender on probation under supervision of the Department of Public Welfare where the sentence imposed for a misdemeanor "is in excess of ninety

17. *Id.* 15:174, as amended by La. Acts 1958, No. 239.

18. *Id.* 15:529.1, as amended by La. Acts 1956, No. 312, stating that the district attorney "*shall* file an information accusing the person of a prior conviction." (Emphasis added.)

19. *Id.* 15:536, as amended by La. Acts 1954, No. 43.

days." In felony cases supervised probation is already authorized.²⁰ In the multitudinous cases where a sentence of less than ninety days is imposed, the cost of supervised probation precludes its utility. The authorization of supervised probation, as distinguished from suspension of sentence "on good behavior," provides a very sound device for rehabilitation of those misdemeanants for whom a fairly long sentence is appropriate.

Two statutes place further limitations upon release of prisoners from the state penitentiary on parole. Act 58 amends R.S. 15:574.3 by adding the limitation that "no prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner." Act 377 amends and re-enacts the same provision and, since it is the later act, will apparently supercede Act 58. Since this subsequent amendment does not repeat the limitation as to those charged with crimes committed as a prisoner, that provision appears to be impliedly repealed.²¹ It does, however, add its own further limitation, i.e., that "no person convicted of *theft of cattle* in this state and sentenced to the penitentiary shall be eligible for parole until such person has served a minimum of twelve months of the sentence imposed." Cattle theft is already singled out for particularly drastic punishment,²² and there is slight justification for this additional denial of possible clemency for the first offender whose theft may have been accompanied by somewhat mitigating circumstances.

Insurance

*G. Frank Purvis, Jr.**

The 1958 Legislature considered an unusually large number of proposals in the field of insurance law, and over 35 measures were enacted.

RE-ENACTMENT OF INSURANCE CODE

The most voluminous of these, although it made few substan-

20. *Id.* 15:530, as amended by La. Acts 1952, No. 367, and La. Acts 1954, No. 43.

21. *State v. St. Julian*, 221 La. 1018, 61 So.2d 464 (1952).

22. LA. R.S. 14:67.1 (1950), as amended by La. Acts 1956, No. 154, so as to provide a mandatory penalty of imprisonment "at hard labor for not less than one nor more than ten years."

*Vice President and Associate General Counsel, Pan-American Life Insurance Company, New Orleans.