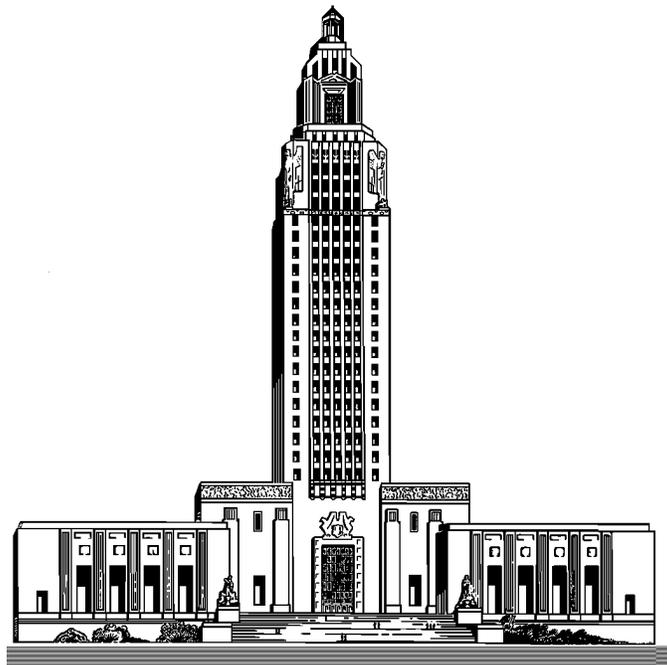


SELECTED LEGISLATION
ON
CRIMINAL LAW AND PROCEDURE
from the
2003 Regular Session
of the
Louisiana Legislature



Prepared by
House Legislative Services
Louisiana House of Representatives

August, 2003

TABLE OF CONTENTS

I.	NEW CRIMES	Page 1
II.	CRIMINAL CODE	Page 5
III.	CRIMINAL PROCEDURE	Page 13
IV.	EVIDENCE	Page 20
V.	DNA TESTING	Page 21
VI.	DRIVING WHILE INTOXICATED	Page 22
VII.	SEX OFFENSES/REGISTRATION	Page 24
VIII.	CORRECTIONS/PRISONERS	Page 25
IX.	PARDON AND PAROLE	Page 27
X.	SENTENCING	Page 27
XI.	CONTROLLED DANGEROUS SUBSTANCES	Page 29
XII.	JUVENILE JUSTICE	Page 32
XIII.	WEAPONS/FIREARMS	Page 33
XIV.	MISCELLANEOUS	Page 34

I. NEW CRIMES

1. Martiny (HB 796)

Act No. 654

Defines "air bag" and creates the crime of air bag fraud, which prohibits the knowing installation or reinstallation of either of the following in a motor vehicle:

- (1) An air bag, whether previously deployed or not, that was not designed to meet all applicable federal safety regulations for a vehicle of that make, model, and year; or
- (2) Any object in lieu of an air bag that was not designed to meet all applicable federal safety regulations for a vehicle of that make, model, and year.

Penalties: A fine not to exceed \$2,000 or imprisonment not to exceed six months, or both.

Effective August 15, 2003. (Adds R.S. 14:231)

2. Martiny (HB 849)

Act No. 1038

Creates the crime of domestic abuse battery, defined as the intentional use of force or violence committed by one household member upon the person of another household member without the consent of the victim. Defines "household member" and "community service activities".

Penalties:

- (1) 1st conviction. Fine of \$300 to \$1,000 and imprisonment for 10 days to six months. This sentence cannot be suspended unless the offender:
 - (a) Serves two days in jail, participates in a domestic abuse prevention program, and refrains from owning or possessing a firearm for entire length of sentence; or
 - (b) Performs four days of community service, participates in a domestic abuse prevention program, and refrains from owning or possessing a firearm for entire length of sentence.
- (2) 2nd conviction. Fine of \$750 to \$1,000 and imprisonment for 30 days to six months, with a minimum of 48 hours served without benefit of probation, parole, or suspension of sentence. The remainder of the sentence cannot be suspended unless the offender:
 - (a) Serves 15 days in jail, participates in a domestic abuse prevention program, and refrains from owning or possessing a firearm for entire length of sentence; or

- (b) Performs 38 days of community service, participates in a domestic abuse prevention program, and refrains from owning or possessing a firearm for entire length of sentence.
- (3) 3rd conviction. Fine of \$2,000 and imprisonment with or without hard labor for one to five years. One year shall be imposed without benefit of probation, parole, or suspension of sentence.
- (4) 4th or subsequent conviction. Fine of \$5,000 and imprisonment for 10 to 30 years. Three years shall be imposed without benefit of probation, parole, or suspension of sentence. However, if the offender previously received the benefit of suspension of sentence, probation, or parole as a fourth offender, no portion of the sentence shall be imposed with benefit of suspension of sentence, parole, or probation, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction.

Provides for a 10-year cleansing period for purposes of determining a prior conviction of domestic abuse battery.

Provides that when a minor child 12 years of age or younger was present at the time of the commission of the offense, the execution of the minimum mandatory sentence for a first, second, or third conviction shall not be suspended. For a fourth or subsequent offense, at least four years of the sentence shall be imposed without benefit of suspension of sentence.

Provides for a minimum sentence of 30 days to be served without suspension for a first conviction when the domestic abuse battery is committed upon a pregnant person and the offender knows of the pregnancy. Upon a second or subsequent conviction, the offender shall be imprisoned for not less than six months without benefit of suspension of sentence.

Adds the crime of domestic battery to the list of felonies defined under state law and which the governing authority of a parish or municipality is authorized to adopt an ordinance.

Effective August 15, 2003. (Adds R.S. 14:35.3 and 143(C)(18))

3. Schwegmann (HB 1009)

Act No. 1244

Creates the crime of battery of a bus operator. Provides that the battery of a bus operator is a battery committed without the consent of the victim when the offender has reasonable grounds to believe the victim is a bus operator.

Defines "bus operator" as a person who is employed by a public transit system who operates a bus as defined in R.S. 32:1(5), which means "every motor propelled vehicle designed for carrying more than 10 persons other than a taxicab, constructed and designed for transporting persons for commercial purposes", or who operates an electronically operated cable car. Provides that "bus operator" shall not include a school bus operator.

Penalties: A fine of not more than \$500 and imprisonment for not less than 48 hours nor more than six months without benefit of probation, parole, or suspension of sentence.

Effective August 15, 2003. (Adds R.S. 14:34.5.1)

4. Martiny (HB 1981)

Act No. 895

Prohibits any person from engaging in vaginal, oral, or anal sexual intercourse in a public place for the purpose of gaining the attention of the public. Provides for the following penalties: a fine of not more than \$1,000 and imprisonment for not less than 10 days nor more than one year, with at least 10 days imposed without benefit of probation, parole, or suspension of sentence.

Effective August 15, 2003. (Adds R.S. 14:106.2)

5. Bajoie and Rep. Peychaud (SB 476)

Act No. 1190

Creates the crime of theft of a used building component. Provides that theft of a used building component is the misappropriation or the taking of a used building component from immovable property belonging to another, either without the consent of the owner of the immovable property, or by means of fraudulent conduct, practices, or representations. An intent to deprive the owner of the immovable property permanently of the used building component is essential.

Defines "used building component" as any object produced or shaped by human workmanship or tools that is an element of structural, architectural, archaeological, historical, ornamental, cultural, utilitarian, decorative, or sentimental significance or interest, which has been and may be used as an adjunct to or component or ornament of any building or structure, regardless of monetary worth, age, size, shape, or condition, that is immovable property or fixture, including but not be limited to bricks, siding, gutters, downspouts, lightning rods, chimney roofs, lights, chandeliers, stoves, tubs, sinks, faucets, faucet handles, toilets, bidets, showers, fans, furnaces, air conditioners, water

heaters, sprinkling systems, shelving, countertops, cabinets, built-in speakers, shutters, trim, rafters, roof tiles, roofing, studs, foundation, barge boards, paneling, stairs, risers, banisters, wiring, plumbing, hinges, door latches, door knobs, medallions, mantles, flooring, carpet, tiles, molding, wainscoting, pavers, doors, windows, sills, transoms, joists, mailboxes, signage, fountains, decking, gates, fences, planters, landscaping, plantings or portions thereof, or component parts of immovable property of any nature or kind whatsoever.

Penalties:

- (1) When the theft or taking amounts to a value or replacement value, whichever is greater, of \$500 or more shall be fined not more than \$3,000, imprisoned with or without hard labor for not more than 10 years, or both.
- (2) When the theft or taking amounts to a value or replacement value, whichever is greater, of \$300 or more, but less than a value of \$500, the offender shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than \$2,000, or both.
- (3) When the theft or taking amounts to a value or replacement value whichever is greater, of less than \$300, the offender shall be imprisoned, for not more than six months, or may be fined not more than \$500, or both.
- (4) If the offender has been convicted two or more times previously of a theft or taking which, on each previous occasion, amounted to a value or replacement value whichever is greater, of less than \$300, he shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than \$2,000, or both.
- (5) When there has been a theft or taking by a number of distinct acts of the offender, the aggregate of the amount of the theft or taking shall determine the grade of the offense.

Effective July 3, 2003. (Adds R.S. 14:67.22)

6. Marionneaux (SB 711)

Act No. 231

Creates the crime of fraudulent acquisition of a credit card and provides that no person shall make or cause to be made, either directly or indirectly, any false statement as to his identity or that of any other person, firm, or corporation, knowing it to be false and with the intent that it be relied on, for the purpose of procuring the issuance of a credit card.

Penalties: A fine of not more than \$3,000 or imprisoned with or without hard labor for not more than 10 years, or both.

Effective August 15, 2003. (Adds R.S. 14:67.22)

7. Johnson (SB 1027)

Act No. 843

Creates the crime of burning a cross with the intent of intimidating and provides that 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.

Penalties: A fine of not more than \$15,000 or imprisonment with or without hard labor for not more than 15 years, or both.

Effective August 15, 2003. (Adds R.S. 14:40.4)

II. CRIMINAL CODE

1. Nevers (HB 10)

Act No. 434

Provides penalties for a second or subsequent conviction of cruelty to the infirmed of a fine of not more than \$10,000 and imprisonment at hard labor for not less than five years nor more than 10 years. Provides that five years of the sentence of imprisonment imposed shall be served without benefit of parole, probation, or suspension of sentence.

Effective August 15, 2003. (Amends R.S. 14:93.3(E))

2. Guillory (HB 111)

Act No. 310

Provides that a victim of a crime involving theft of identity or personal information can obtain the identity of an alleged offender who is arrested for that crime as follows:

- (1) When an alleged offender has been arrested and charged by a law enforcement agency with a violation of any crime which involves the use of the identity or personal information of another person, the victim may request that the arresting law enforcement agency release the identity of the alleged offender to the victim.
- (2) Requires the victim to submit a written request on a form provided by the arresting law enforcement agency. Upon receipt of the completed request form, the arresting law enforcement agency shall release the identity of the alleged offender to the victim.

Applies to alleged offenders who have been arrested and charged by a law enforcement agency with a violation of R.S. 14:67.3 (unauthorized use of "access card"), or a violation of R.S. 14:67.16 (identity theft), or a violation of R.S. 14:70.4 (access device fraud), or a violation of any other crime which involves the use of the identity or personal information of another person.

Effective August 15, 2003. (Adds R.S. 14:72.3)

3. Martiny (HB 509)

Act No. 637

Adds the following crimes to the listing of crimes of violence:

Aggravated second degree battery; aggravated assault upon a peace officer with a firearm; aggravated assault with a firearm; armed robbery, use of firearm; aggravated robbery; disarming of a peace officer; stalking; second degree cruelty to juveniles; and aggravated flight from an officer.

Effective August 15, 2003. (Adds R.S. 14:2(13)(gg), (hh), (ii), (jj), (kk), (ll), (mm), (nn), and (oo))

4. Baldone (HB 736)

Act No. 159

Changes the time of imprisonment for the crime of hit and run driving to not less than 10 days nor more than six months if there is evidence of alcohol or drug use prior to the accident, the consumption of such contributed to the accident, and the driver failed to stop, give his identity, or render aid knowing that his actions could affect a potential or actual criminal investigation or proceeding.

Effective August 15, 2003. (Amends R.S. 14:100(C)(1))

5. Martiny (HB 815)

Act No. 679

Provides that when an offender uses a firearm in the commission of an attempted armed robbery, the offender shall be imprisoned for an additional five years without benefit of parole, probation, or suspension of sentence. Also provides that the additional five years shall be served consecutively to the sentence imposed for the attempted armed robbery.

Effective August 15, 2003. (Amends R.S. 14:64.3)

6. LaFleur (HB 997)

Act No. 697

Includes park wardens within the definition of peace officer for the crime of disarming of a peace officer.

Effective August 15, 2003. (Amends R.S. 14:34.6(A)(2))

7. Devillier (HB 1022)

Act No. 166

Amends attempt statute to add a provision to provide for an attempt to commit arson by placing any combustible or explosive substance with the specific intent to set fire to or to damage by explosive substance a structure, watercraft, movable, or forestland.

Effective August 15, 2003. (Amends R.S. 14:27(B))

8. Devillier (HB 1025)

Act No. 168

Reduces the penalty for the second and subsequent offense of the crime of child desertion from a fine of not less than \$500 nor more than \$1,000 to a fine of not more than \$500 and from imprisonment for not less than six months to more than one year to imprisonment for not less than 30 days nor more than six months. Requires at least 30 days to be served without benefit of probation or suspension of sentence.

Effective August 15, 2003. (Amends R.S. 14:93.2.1(B)(2))

9. Devillier (HB 1178)

Act No. 660

With regard to justifiable homicide, provides that a homicide committed by a person engaged at the time of the homicide in the acquisition, distribution, or possession with intent to distribute a controlled dangerous substance is not justifiable.

Effective August 15, 2003. (Amends R.S. 14:20(4))

10. Durand and Senator Smith (HB 1191)

Act No. 115

Provides that the following acts constitute theft of livestock:

- (1) The misappropriation or taking with the intent to permanently deprive the owner of the livestock or proceeds derived from the sale of such livestock or its meat.
- (2) Transporting livestock to a slaughterhouse or a public livestock market for purposes of selling or keeping the livestock or meat with the intent to permanently deprive the owner of the livestock, meat, or proceeds derived from the sale of the livestock or meat.

- (3) Failing or refusing to pay for livestock, purchased from an agent, dealer, public livestock market, or owner, within 30 days of the date the livestock was purchased or acquired or the date payment was due, whichever is longer, with the intent to permanently deprive the owner of the livestock or the livestock's value.

Defines "livestock" to mean any animal except dogs and cats bred, kept, maintained, raised, or used for profit; or in agriculture, aquaculture, or silvaculture, or for related purposes; or for the purpose of producing crops, animals, or plant or animal products for market. "Livestock" also includes cattle, buffalo, bison, oxen, and other bovine; horses, mules, donkeys, and other equine; goats; sheep; swine; chickens, turkeys, and other poultry; domestic rabbits; imported exotic deer and antelope, elk, farm-raised white-tailed deer, farm-raised ratites, and other farm-raised exotic animals; fish, pet turtles, and other animals identified with aquaculture which are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; any commercial crawfish from any crawfish pond; and any hybrid, mixture, or mutation of any such animal.

Retains provisions which provide that the Livestock Brand Commission shall have primary responsibility for the collection of information in such cases and shall aid all police agencies in such investigations. Retains penalties of a fine of not more than \$5,000 or imprisonment, with or without hard labor, for not more than 10 years, or both. Provides that only one offense committed prior to the enactment of this may be used to establish the second or third offense.

Repeals the crimes of theft of domesticated fish from fish farms and theft of crawfish.

Effective upon signature of governor (May 28, 2003). (Amends R.S. 14:67.1; Repeals R.S. 14:67.4 and 67.5)

11. LaFleur (HB 1352)

Act No. 1089

Existing law provides that any person who commits the offense of stalking against a person for whose benefit a protective order, a temporary restraining order, or an injunction is in effect in either a civil or criminal proceeding, protecting the victim of the stalking from acts by the offender which otherwise constitute the crime of stalking, shall be punished by imprisonment for not less than 90 days and not more than two years and fined not more than \$5,000, or both.

Deletes reference to injunction and adds any lawful order prohibiting contact with the victim issued by a judge or magistrate. Clarifies intent of penalty to provide for imprisonment or a fine, or both. Otherwise retains the provisions of existing law.

Creates within the existing law crime of public intimidation the crime of public retaliation which is defined as the use of violence, force, or threats upon an elected official when such violence, force,

or threat is related to the duties of such elected official or is in retaliation or retribution for actions taken by such elected official as part of his official duties. Retains penalties for the conviction of the crime of public retaliation.

Effective August 15, 2003 (Amends R.S. 14:40.2(B)(3) and 122)

12. Faucheux (HB 1846)

Act No. 1140

Provides that it is unlawful for any person to possess body armor if that person has been convicted of the following crimes or to use or wear body armor while committing or attempting to commit any of the following:

- (1) A crime of violence as defined in R.S. 14:2(13), which is a felony.
- (2) Simple burglary, burglary of a pharmacy, or burglary of an inhabited dwelling.
- (3) Unauthorized entry of an inhabited dwelling.
- (4) Felony illegal use of weapons or dangerous instrumentalities.
- (5) Manufacture or possession of a delayed action incendiary device.
- (6) Manufacture or possession of a bomb.
- (7) Any violation of the Uniform Controlled Dangerous Substance Law.
- (8) Any crime defined as an attempt to commit one of the offenses enumerated in (1) - (7).
- (9) Any law of any other state or of the U.S. or of any foreign government or country of a crime which, if committed in this state, would be one of the crimes enumerated in (1) - (8).

Provides that the prohibition against possessing body armor does not apply to persons in witness protection programs.

Effective July 1, 2003. (Amends R.S. 14:95.3)

13. LaFleur (HB 1856)

Act No. 675

Provides that the prosecution for the crime of issuing worthless checks may enter into evidence any check, draft, or order which the bank or other depository has refused to honor because the person who issued the check, draft, or order did not have sufficient credit with the bank or other depository.

Provides that in addition to entering the check, draft, or order, the prosecution may enter into evidence any tangible copy, facsimile, or other reproduction of the check, draft, or order, any electronic reproduction of the check, draft, or order, or any other form of the record of the check, draft, or order which has been made, recorded, stored, and reproduced in accordance with the requirements of state or federal banking regulations, provided that the appropriate officer of the

bank or other depository has certified that the copy, facsimile, or reproduction is a true and correct record of the transaction involving the check, draft, or order upon which the prosecution is based.

Effective August 15, 2003. (Adds R.S. 14:71(H) and (I))

14. Gary Smith (HB 1984)

Act No. 1223

Adds to the crime of first degree murder the killing of a human being when the offender has specific intent to kill or inflict great bodily harm and any lawful order prohibiting contact between the offender and the victim has been issued by a judge or magistrate. Provides that the order shall be in effect at the time of the homicide and must be served on the offender.

Authorizes the attorney general to investigate, prosecute, or intervene in a criminal action or proceeding involving a homicidal death, with the consent of the district attorney, if deemed necessary for the assertion or protection of the rights and interests of the state.

Effective August 15, 2003. (Amends C.Cr.P. Art. 62; Adds R.S. 14:30(A)(8))

15. Lentini and Representative Thompson (SB 98)

Act No. 802

Amends the criminal trespass provisions. Prohibits a person from entering or remaining upon movable or immovable property without express, legal, or implied authorization. Provides for a listing of persons who may enter or remain upon property, including but not limited to law enforcement personnel, emergency medical personnel, and certain governmental or public utility employees engaged in dealing with emergencies. Also authorizes certain persons to enter or remain unless specifically forbidden by the property owner, including but not limited to land surveyors, persons making a delivery, soliciting, conducting business or communicating with the property owner, owners of domestic livestock or animals for the purpose of retrieving the animals, candidates for political office, and owners or occupants of a watercraft for the purpose of retrieving his property or obtaining assistance in an emergency situation.

Removes the posting requirements and repeals the various criminal statutes on trespass for different types of immovable property. Provides for criminal penalties of criminal trespass, and provides that the owner of property shall not be answerable for damages sustained by a person who enters the property without authorization except for intentional acts or gross negligence.

Effective August 15, 2003. (Amends R.S. 14:63; Repeals R.S. 14:63.1, 63.2, 63.5, 63.6, 63.7, 63.8, 63.9, 63.10, and 63.12)

16. Boissiere (SB 207)

Act No. 745

Increases the penalties when the victim of the attempted offense is a peace officer acting in the performance of his duty when the offense attempted is punishable by death or life imprisonment from not less than 10 nor more than 50 years imprisonment without benefit of parole, probation, or suspension of sentence to not less than 20 nor more than 50 years without benefit of parole, probation, or suspension of sentence. Defines "peace officer".

Effective August 15, 2003. (Amends R.S. 14:27(D)(1); Adds R.S. 14:27(E))

17. Chaisson (SB 406)

Act No. 758

With regard to the crimes of vehicular homicide, vehicular negligent injuring, and first degree negligent injuring involving the influence of a combination of alcohol and one or more drugs which are legally obtainable, provides for an affirmative defense to such charge that the label on the container or the manufacturer's package does not contain a warning against combining the medication with alcohol.

Effective September 30, 2003. (Amends R.S. 14:32.1(A)(5), 39.1(A)(4), and 39.2(A)(4))

18. Hoyt (SB 756)

Act No. 232

Removes the spousal exception to the crime of simple rape and sexual battery thereby providing for the criminal application of both simple rape and sexual battery if the offender is the spouse of the victim and the act is not consensual.

Effective August 15, 2003. (Amends R.S. 14:43 and 43.1(A)(intro para))

19. Cain (SB 761)

Act No. 795

Increases the age of the victim from under 12 years of age to under 13 years of age as one of the circumstances to determine the crime of aggravated rape.

Requires the court to consider, at a minimum, the following facts when determining the grant of release on bail for a defendant alleged to have committed aggravated rape:

- (1) The previous criminal record of the defendant.
- (2) The threat the defendant poses to the victim, the family of the victim, or the public.
- (3) Any statistical evidence prepared by the American Psychiatric Association that the defendant or any child molester or rapist may commit such a crime in the future.

Requires that condition of bail granted to any defendant of a violation of aggravated rape include electronic monitoring and that the condition of such monitoring shall be determined by the court. Provides that the defendant may be required to pay for the cost of the electronic monitoring. Further provides that any violation of the electronic monitoring may be punishable by forfeiture of bail and the arrest or remanding to custody of the defendant or a modification of the terms of bail.

Effective August 15, 2003. (Amends R.S. 14:42(A)(4); Adds C.Cr.P. Art. 336.1)

20. Dardenne (SB 863)

Act No. 237

Relative to the crime of obscenity, includes "electronic communication" as a medium of transmitting or distributing obscene materials.

Further requires that sexually explicit materials electronically communicated over the Internet include the warning "ADV-ADULT" on the subject line of the communication.

Defines "sexually explicit" as the graphic depiction of sex, including, but not limited to, sexual audio, text, or images; depiction of sexual activity; nudity; or sexually oriented language.

Effective August 15, 2003. (Amends R.S. 14:106(A)(2)(a), (3), (4), and (6) and (F)(1); Adds R.S. 14:106(A)(7))

21. Mount (SB 875)

Act No. 239

Increases the penalties for the crimes of aggravated assault upon a peace officer with a firearm and aggravated assault with a firearm by providing that both the fine and the term of imprisonment are penalty options.

Effective August 15, 2003. (Amends R.S. 14:37.2(C) and 37.4(C))

22. B. Jones (SB 964)

Act No. 244

Requires an investigation by law enforcement when a report of abuse or neglect is received from an adult protection agency. If it appears after investigation that an adult has been abused or neglected, the adult protection agency may refer the matter to the district attorney's office or may initiate judicial proceedings to provide protective services for the adult. Provides for the issuance of both emergency protective orders and verbal emergency protective orders.

Provides for access to records that are necessary in investigations of abuse and neglect.

Effective August 15, 2003. (Amends R.S. 14:403.2(E)(6) - (8), (F)(1)(intro. para.), (e), (G), (I)(2), and (N)(1) - (4); Adds R.S. 14:403.2(D)(5) and (E)(9))

III. CRIMINAL PROCEDURE

1. Martiny (HB 21)

Act No. 596

With regard to rented or leased motor vehicles obtained by false or fraudulent representation, authorizes delivery by commercial courier as a means of making notice to return or surrender the rented or leased motor vehicle.

Effective August 15, 2003. (Amends R.S. 14:220(A))

2. Martiny (HB 115)

Act No. 311

Provides that in every judgment of guilty of a felony or of one of the five specified classes of misdemeanors enumerated in C.Cr.P. Art. 871(B)(2), the sheriff shall cause the fingerprints of the defendant against whom the judgment is rendered to be **attached** rather than **affixed** to the bill of indictment or information which resulted in the judgment.

Effective August 15, 2003. (Amends C.Cr.P. Art. 871(B)(1)(a) and (2)(intro.para.))

3. Martiny (HB 116)

Act No. 356

Deletes the requirement that a motor vehicle which has been seized in connection with conduct in violation of the Uniform Controlled Dangerous Substances Law shall be sold after six months by the seizing agency. Retains provisions authorizing the use of the motor vehicle in the course and scope of undercover surveillance and investigation of violations of the Louisiana Controlled Dangerous Substances Law.

Effective August 15, 2003. (Amends R.S. 40:2616(A)(2))

4. Farrar (HB 221)

Act No. 364

Requires the suspension of a driver's license of a convicted person who fails to pay a fine assessed as a criminal penalty within 180 days. Provides that the suspension begins when DPS&C receives notice of the failure to pay from the court or sheriff. Requires DPS&C to provide written notification to the convicted person that his driving privileges are suspended. Further provides that the suspension shall continue until the department receives notice from the court that the convicted

person has paid the fine. Prohibits the reinstatement of such license until the fine and any other required cost, fee, or penalty is paid.

Effective August 15, 2003. (Adds C.Cr.P. Art. 885.1 and R.S. 32:414(P))

5. Morrell (HB 294)

Act No. 1231

Amends the habitual offender law to provide that the current offense shall not be counted as, respectively, a second, third, fourth, or higher offense if more than 10 years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence or sentences of the previous conviction or convictions, or adjudication or adjudications of delinquency, or between the expiration of the maximum sentence or sentences of each preceding conviction or convictions or adjudication or adjudications of delinquency alleged in the multiple offender bill and the date of the commission of the following offense or offenses. Also provides that any period of servitude by a person in a penal institution, within or without the state, shall not be included in the computation of the 10-year period between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.

Authorizes the Louisiana Risk Review Panel to evaluate the risk of danger to society of persons who are serving life sentences for violations of the Uniform Controlled Dangerous Substances Law and who have served at least 20 years in actual custody, provided that Risk Review Panels are not authorized to evaluate the risk of danger to society of those persons if the person has been convicted of a sex offense or if the person has been convicted as an habitual offender when one or more of the crimes was a crime of violence.

Effective August 15, 2003. (Amends R.S. 15:529.1(C); Adds R.S. 15:574.22(G)(2)(d))

6. Faucheux (HB 376)

Act No. 623

Adds "guilty of negligent homicide" as a third responsive verdict which may be rendered when an indictment charges the offense of manslaughter.

Effective August 15, 2003. (Amends C.Cr.P. Art. 814(A)(5))

7. Hudson (HB 404)

Act No. 1024

Creates the crime of tampering with electronic monitoring equipment, and defines it as the intentional alteration, destruction, removal, or disabling of electronic monitoring equipment which is being utilized in accordance with R.S. 46:2143.

Penalties: A fine of not more than \$500 and imprisonment for not more than six months. If the offender violates this law while he is involved in the commission of a felony then the penalties include a fine of not more than \$1,000 and imprisonment for not more than one year. Requires at least 72 hours of the sentence to be served without benefit of probation, parole, or suspension of sentence.

Establishes a pilot program in the parishes of East Baton Rouge and Lafourche which authorizes the use of electronic monitoring equipment when one of the following is ordered for the purpose of preventing acts of domestic violence: peace bond, temporary restraining order, protective order, preliminary injunction, permanent injunction, court-approved consent agreement, or as part of the disposition, sentence, or bail condition of certain criminal matters. Provides that electronic monitoring can be used only if the protected party consents to its use.

Requires the courts to specify the terms of the electronic monitoring program, which shall include but is not limited to the following:

- (1) The device shall alert the domestic violence victim and appropriate law enforcement agency when the offender is within a certain distance of the protected person or premises. The court issuing the order shall be notified of the violation of the order by the local law enforcement agency within 24 hours.
- (2) The device shall be worn by the offender at all times.
- (3) The appropriate equipment shall be installed in the home of the offender to monitor compliance.
- (4) The offender shall be placed under the supervision of DPS&C or the court in misdemeanor cases for the purposes of monitoring.

Further provides that the offender shall pay the costs of electronic monitoring.

Requires records to be kept on the use of electronic monitoring devices, their effectiveness, additional costs, and any other relevant information. Requires the submission of such records to the Judicial Council and requires the Judicial Council to review all records to determine whether the authority to use such devices should be expanded to courts in all parishes.

Effective August 15, 2003. (Adds R.S. 14:79.2 and R.S. 46:2143)

8. Cazayoux (HB 752)

Act No. 650

Authorizes the issuance of an arrest warrant upon:

- (1) Oath of complainant is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing fax transmission equipment.
- (2) The magistrate confirms with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature is acknowledged as genuine.
- (3) If the magistrate has probable cause to believe that an offense was committed and that the person against whom the complaint was made committed it and decides to issue the warrant, he or she shall:
 - (a) Sign the warrant.
 - (b) Note on the warrant the exact date and time of the issuance of the warrant.
 - (c) Indicate on the warrant that the oath of the declarant was administered orally over the telephone. The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.
 - (d) The magistrate shall transmit via fax transmission equipment the signed warrant to the declarant who shall telephonically acknowledge its receipt and telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant, and this document shall be deemed to be a duplicate original warrant.

Retains existing law provisions regarding the issuance of arrest warrants.

Effective August 15, 2003. (Amends C.Cr.P. Art. 202(A)(intro. para.); Adds C.Cr.P. Art. 202(D))

9. Heaton (HB 884)

Act No. 1043

Authorizes the Louisiana Bureau of Criminal Identification and Information to charge a processing fee of \$125 when it is ordered by the court to expunge an arrest record and requires that such fee be deposited into the Criminal Identification and Information Fund. Provides for the clerk of court to collect the fee at the time the motion is filed and either forward it to the bureau or return it to the moving party depending on whether expungement is granted. Authorizes the clerk of court to collect a fee of not more than \$10 to cover administrative costs.

Effective August 15, 2003. (Amends R.S. 44:9(A))

10. Devillier (HB 1024)

Act No. 167

Provides that in **misdemeanor** cases, the defendant may file a motion to reconsider a sentence at any time following commencement or execution of the sentence. Authorizes the court to amend the sentence, even following completion of the execution of the sentence.

The 30-day time limit (or longer period of time set by the court) following the imposition of sentence to file a motion to reconsider a sentence is retained for **felony** cases.

Permits the court to deny the motion to reconsider without a contradictory hearing, but may not grant a motion to reconsider without a contradictory hearing. Further provides that if the court denies the motion without a hearing, the moving party may proffer the evidence it would have offered in support of the motion.

Effective August 15, 2003. (Amends C.Cr.P. Art. 881.1)

11. Toomy (HB 1118)

Act No. 942

Assesses a \$15 fee in connection with every criminal bond posted within each parish. Provides for the fee to be distributed as follows:

- (1) \$7 to the district attorney.
- (2) \$2 to the indigent defender board which serves the parish.
- (3) \$2 to the criminalistics lab which primarily serves the parish.
- (4) \$2 to the clerk of court, except in Orleans Parish, the fee shall be remitted to the clerk of the criminal district court.
- (5) \$2 to the sheriff.

Provides that the sheriff shall collect the fee from every person seeking release by means of a criminal bond, or their designated representative. Provides that the proceeds from fees in cases in which criminal prosecution has been concluded shall be distributed on a quarterly basis.

Creates a crime lab committee in each parish to determine which criminalistics lab will be the recipient of the proceeds of the fees collected based upon which lab performs the majority of the crime lab services in that parish.

Provides that any person claiming to be incapable of paying the fee may petition the district court for a waiver. Further provides that any person found not guilty or whose charges are dismissed may petition the court for a refund of the fee.

Effective August 15, 2003. (Adds R.S. 15:85.1)

12. Townsend (HB 1266)

Act No. 949

Changes the deadline for filing a motion for an appeal in a criminal matter from five to 30 days after the rendition of the judgment or ruling from which the appeal is taken, or from the ruling on a motion to reconsider the sentence if such motion is filed.

Effective August 15, 2003. (Amends C.Cr.P. Art. 914(B))

13. Durand (HB 1383)

Act No. 954

Provides that when a person has been released on bail pursuant to a commercial surety and is located in another state, the reasonable and necessary charges incurred in having that person returned to the parish shall be paid by the surety provided the surety was given notice of extradition or waiver of extradition and was provided 72 hours to return the person to the parish at his cost. Requires payment of such costs within 30 days of notice. Provides that the surety will not be relieved on the bond until the surety has paid such costs.

Adds that the necessary and reasonable expenses in all other cases shall be paid by the authority requesting extradition.

Effective August 15, 2003. (Amends C.Cr.P. Art. 279)

14. Townsend (HB 1528)

Act No. 720

Amends the responsive verdicts for theft and attempted theft to correspond to penalties provided under R.S. 14:67 for the crime of theft as follows:

- (1) Responsive verdicts for theft:
 - (a) Guilty of theft of property having a value of \$500 or more.
 - (b) Guilty of theft of property having a value of \$300 or more, but less than \$500.
 - (c) Guilty of theft of property having a value of less than \$300.
 - (d) Guilty of attempted theft of property having a value of \$500 or more.
 - (e) Guilty of attempted theft of property having a value of \$300 or more, but less than \$500.
 - (f) Guilty of attempted theft of property having a value of less than \$300.
 - (g) Guilty of unauthorized use of movables having a value in excess of \$1,000, but only if a value in excess of \$1,000 is stated in the indictment.
 - (h) Guilty of unauthorized use of movables having a value of \$1,000 or less.
 - (i) Not guilty.

- (2) Attempted theft:
- (a) Guilty of attempted theft of property having a value of \$500 or more.
 - (b) Guilty of attempted theft of property having a value of \$300 or more, but less than \$500.
 - (c) Guilty of attempted theft of property having a value of less than \$300.
 - (d) Guilty of attempted unauthorized use of movables having a value of less than \$100.
 - (e) Guilty of attempted unauthorized use of movables having a value in excess of \$1,000, but only if a value in excess of \$1,000 is stated in the indictment.
 - (f) Guilty of attempted unauthorized use of movables having a value of \$1,000 or less.
 - (g) Not guilty.

Effective August 15, 2003. (Amends C.Cr.P. Art. 814(A)(26) and (27))

15. Devillier (HB 1641)

Act No. 1118

Requires the governor to extradite a person charged with a felony in another state who has fled from justice and is found in La.

Authorizes the governor to extradite a person to another state when a person living in La. commits an act in this state which results in a crime in another state even though the person has not fled from another state.

Provides that bail shall not be allowed in the case of a person who has violated probation.

Provides that after a person has been brought back to this state by, or waiver of, extradition proceedings, he may be tried in La. for other crimes for which he may be charged as well as the crime for which he was extradited.

Effective August 15, 2003. (Amends C.Cr.P. Arts. 262, 271(A), and 272; Adds C.Cr.P. Arts. 262.1 and 281)

16. Devillier and Senator Dardenne (HB 1732)

Act No. 288

Requires that the indigent defender board or its designee collect a \$40 nonrefundable application fee from each accused applying for indigent defense. Requires the proceeds to be deposited to the judicial district indigent defender fund for each judicial district.

Requires the Indigent Defense Assistance Board to develop and promulgate rules pursuant to the APA to provide uniform guidelines to be used by the indigent defender board or its designee in making a determination as to the indigency of a defendant.

Authorizes the waiver or reduction of the fee if the person lacks the financial resources to pay at the time of application. An accused may not be refused counsel for failure to pay the application fee.

Gives the local judicial district indigent defender boards authority to use and administer all interest and other income earned from the investment of such funds.

Requires the district boards or other appropriate official to maintain a record of all persons applying for representation and the disposition of each application, such information to be provided to the Indigent Defense Assistance Board on a monthly basis, as well as reporting the amount of funds collected or waived.

Provides that nothing in Chapter 1 of Title 15 of the Revised Statutes, composed of R.S. 15:21 through 313, shall prevent a criminal defendant from obtaining representation through the indigent defender board at no charge.

Effective August 15, 2003. (Adds R.S. 15:147(A)(1)(d), (e), (f), and (g) and (C))

IV. EVIDENCE

1. Devillier (HB 1021)

Act No. 1245

Adds provisions regarding the privacy of the crime victim when the evidence pertains to child pornography or video voyeurism evidence or certain obscenity evidentiary items. Provides for a procedure by which the access of such evidence may be limited and such evidence may be destroyed. Provides for a contradictory hearing to be held and guidelines to be used in this procedure.

Adds autopsy images and evidence of child pornography and video voyeurism and certain obscenity evidentiary items to the listing of exceptions to the public records law.

Effective August 15, 2003. (Amends R.S. 14:81.1(F) and 283(D) and R.S. 44:4.1(B)(26) and (27); Adds R.S. 14:283(E) and 1845)

V. DNA TESTING

1. Dardenne (SB 346)

Act No. 487

Requires the collection of DNA samples from persons who are arrested or convicted of felony offenses and other specified offenses for inclusion in the state DNA database. Provides that juveniles arrested for a covered offense or adjudicated delinquent for a felony-grade delinquent act shall also be required to provide a DNA sample.

Extends the time period in which sex offense prosecutions may be commenced when the identity of the offender is established after the expiration of the statutory time limitation through the use of a DNA profile.

Effective June 20, 2003. (Amends R.S. 15:603(8), (9), (10), and (11) and 609(A), (B), and (C) and C.Cr.P. Art 572; Adds R.S. 15:609(F), (G), (H), and (I); Repeals R.S. 15:615 and 619)

2. Dardenne (SB 295)

Act No. 809

Extends the time period in which sex offense prosecutions may be commenced when the identity of the offender is established after the expiration of the statutory time limitation through the use of a DNA profile.

Effective July 1, 2003. (Amends C.Cr.P. Arts. 571.1 and 572; Adds C.Cr.P. Art. 572.1)

*This provision is also contained in Act No. 487 (SB 346), but that Act has an effective date of June 20, 2003.

3. C. Jones (SB 522)

Act No. 823

Extends the period of time in which an application for post-conviction relief through DNA testing can be made to August 31, 2007. On or after August 31, 2007, a petitioner may request DNA testing under the general provisions for filing an application for post-conviction relief.

Also extends the period of time in which evidentiary items known to contain biological material must be preserved, after service of the application on the district attorney and the law enforcement agency in possession of the evidence, to August 31, 2007.

Effective August 15, 2003. (Amends C.Cr.P. Art. 926.1(A)(1), (H)(3), and (K))

VI. DRIVING WHILE INTOXICATED

1. Dupre (SB 71)

Act No. 533

Imposes the following penalties when a person **refuses to submit** to a chemical test to determine the alcoholic content of blood or the presence of a substance when a fatality or serious bodily injury has occurred:

A fine of not less than \$300 nor more than \$1,000 and imprisonment for not less than 10 days nor more than six months. The sentence shall not be suspended unless:

- (1) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and driver improvement program; or
- (2) The offender is placed on probation with a minimum condition that he perform four eight-hour days of court-approved community service, at least half of which shall consist of participation in a litter abatement or collection program, and participate in a court-approved substance abuse program and driver improvement program.

Effective August 15, 2003. (Amends R.S. 32:666(A))

2. Dupre (SB 72)

Act No. 800

Requires ignition interlock devices to be installed, calibrated, and monitored directly by trained technicians who shall train the offender in the proper use of the device.

Requires an ignition interlock device to be installed for not less than six months in any motor vehicle operated by any of the following persons whose driver's license has been suspended:

- (1) Any person who has refused to submit to an approved chemical test for intoxication for a second offense operating a vehicle while intoxicated.
- (2) Any person who has submitted to an approved chemical test for intoxication where the results indicate a blood alcohol level of 0.08% or abuse and whose driver's license has been suspended for a second or subsequent violation occurring within five years of the first violation.
- (3) Any person arrested for operating a vehicle while intoxicated and is involved, as a driver, in a traffic crash which involved moderate or serious bodily injury.

- (4) Any persons arrested for operating a vehicle while intoxicated when a minor child 12 years of age or younger was a passenger in the vehicle at the time of the offense.

Effective August 15, 2003. (Amends R.S. 15:307(B); Adds R.S. 32:667(I))

3. Dupre (SB 143)

Act No. 535

Changes the criminal penalties and period of driver's license suspension for operating a vehicle while intoxicated when the offender has a blood alcohol concentration (BAC) level of 0.20% or more, including but not limited to the following:

- (1) Increases the criminal fines to a fine of not less than \$750 nor more than \$1,000 for a first offense and \$1,000 for a second offense.
- (2) Increases the length of a driver's license suspension to two years for a first offense and four years for a second offense. Contains provisions regarding the issuance of a hardship license and the use of ignition interlock devices in each case.

Effective August 15, 2003. (Amends R.S. 14:98(B)(2), (C)(2), and (K), R.S. 15:306(A), and R.S. 32:378.2(A)(2)(a)(i) and 667(B)(1) and (3); Adds R.S. 32:414(A)(1)(c))

4. Chaisson (SB 320)

Act No. 752

Relative to the crime of operating a vehicle while intoxicated involving the influence of drugs which are legally obtainable with or without a prescription, provides for an affirmative defense to such charge that the label on the container or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

Effective September 30, 2003. (Amends R.S. 14:98(A)(1)(d))

5. Chaisson (SB 767)

Act No. 543

Creates the crime of refusal to submit to a chemical test to determine the alcoholic content of blood or the presence of an abused substance or a controlled dangerous substance. Prohibits a person under arrest for operating a vehicle while intoxicated from refusing to submit to a chemical test when requested by a law enforcement officer if he has refused to submit to such test on two previous and separate occasions.

Penalties: a fine of not less than \$300 nor more than \$1,000 and imprisonment for not less than 10 days nor more than six months. Provides that the sentence shall not be suspended unless:

- (1) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and driver improvement program; or
- (2) The offender is place on probation with a minimum condition that he perform four eight-hour days of court-approved community service, at least half of which shall consist of participation in a litter abatement or collection program, and participate in a court-approved substance abuse program and driver improvement program.

Effective August 15, 2003. (Amends R.S. 32:666(A); Adds R.S. 14:98.2 and R.S. 32:661(C)(1)(f))

VII. SEX OFFENSES/REGISTRATION

1. Futrell (HB 232)

Act No. 574

Adds to the registration and notification requirements of sex offenders that the offender provide descriptive information including the offender's sex, race, hair color, eye color, height, age, and weight.

Effective August 15, 2003. (Amends R.S. 15:542(B)(intro. para.), (1)(intro. para.), and (2)(a); Adds R.S. 15:541(18))

2. Hunter (HB 924)

Act No. 690

Adds the crime of video voyeurism to the definition of sex offense for the purpose of sex offender registration. Provides that a person convicted of the crime of video voyeurism shall register as a sex offender.

Effective August 15, 2003. (Amends R.S. 15:541(14.1); Adds R.S. 14:283(E))

3. Schedler (SB 375)

Act No. 215

Requires sex offenders to notify the La. Bureau of Criminal Identification and Information when enrolled or employed at any institution of postsecondary education. Requires each institution of postsecondary education to issue a statement informing students, faculty, and staff where they can obtain information identifying sex offenders who are enrolled in or employed by the institution.

Requires the superintendent of each city, parish, or other local public school system or his designee to notify local law enforcement agency of any allegation made by a student of the commission of a sex offense. Requires such notification to be made within 24 hours of the time the student notified the superintendent or other appropriate school personnel, as provided by rules adopted by local public school boards.

Effective August 15, 2003. (Amends R.S. 15:542(B) and 542.1(D); Adds R.S. 15:541(18), (19), and (20), 542(B)(5), 542.1(C)(6) and (G)(3), and 542.2 and R.S. 17:3135)

4. Chaisson (SB 480)

Act No. 821

Provides that the requirement of a sex offender to register as such shall apply to offenders who are pardoned. Amends the existing law regarding automatic pardons for first offenders to provide that no person convicted of a sex offense (as defined in R.S. 15:541(14.1)) or determined to be a sexually violent predator or a child predator (see R.S. 15:542.1 et seq). shall be exempt from the registration requirements as a result of a first offender pardon.

Effective August 15, 2003. (Amends R.S. 15:542.1(H)(1) and 572(B))

5. Dardenne (SB 502)

Act No. 759

Amends the elements of the crime of simple rape. Prior law defined the crime of simple rape as a rape committed when the act of sexual intercourse is deemed to be without lawful consent because one of three circumstances exist. The first circumstance is when the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition produced by any cause other than the administration by the offender of any narcotic or anesthetic agency or controlled dangerous substance when the offender knew or should have known of the victim's incapacity.

New law limits the circumstance to require only that the victim be incapable of resisting or understanding and that the offender knows or should have known of the victim's incapacity. Eliminates as an exclusion from the circumstance that the victim be incapable of resisting or understanding because the offender has administered a substance.

Effective August 15, 2003. (Amends R.S. 14:43(A)(1))

VIII. CORRECTIONS/PRISONERS

1. Martiny (HB 504)

Act No. 634

Allows persons convicted of distribution or possession with intent to distribute cocaine where the offense of conviction involves less than 28 grams of cocaine or any person convicted of distribution or possession with intent to distribute marijuana where the offense of conviction involves less than one pound of marijuana to participate in the work release program.

Effective August 15, 2003. (Amends R.S. 15:1111(I))

2. Martiny (HB 505)

Act No. 635

Provides that inmates convicted of distribution of cocaine where the offense of conviction involves less than 28 grams may be assigned to Work Training Facility North.

Repeals obsolete provisions providing for the Work Training Facility South and the utilization of the Work Training Facility North as a work release program to conform to DPS&C classifications.

Makes technical change to the listing of offenses which make an inmate ineligible for assignment at Work Training Facility North.

Effective August 15, 2003. (Amends R.S. 15:893.1)

3. Cazayoux (HB 1041)

Act No. 113

Adds to the enumerated powers of the La. Correctional Facilities Corp. (LCFC) the authority to sell, alienate, or otherwise dispose of property acquired for the purpose of financing and acquisition of correctional facilities for lease to the state, but never used by the corporation for this purpose.

Exempts the LCFC from the provisions of R.S. 41:1338, which requires state agencies acquiring property to offer to sell back the property to the original owner before the property can be transferred to a third party.

Effective May 28, 2003. (Adds R.S. 39:1786(A)(10))

4. C. Jones (SB 518)

Act No. 822

Establishes the reentry preparation program to assist incarcerated persons with skills and resources needed for a successful reentry into society. Requires each state correctional facility to identify a transition specialist to coordinate the transition assistance services, to assist the offender in a post-

release plan, job placement information, medical discharge plan, placement in a private transition housing program, if requested, and furnishing of a photo identification card.

Requires an offender to participate in a 100-hour standardized pre-release orientation program not more than six months prior to the anticipated date of release, which shall include instruction relating to employment skills, job placement assistance, money management, problem solving, anger management, etc. Requires the Dept. of Public Safety and Corrections to promulgate rules necessary for the implementation of the reentry preparation program.

Effective August 15, 2003. (Adds R.S. 15:827.1)

IX. PARDON AND PAROLE

1. Martiny (HB 706)

Act No. 587

Provides that the Parole Board, as an additional condition of parole, may require any person who has been released on parole to agree to searches of the person, personal effects, property, place of residence, or vehicle of that person, at any time, by the probation officer or the parole officer assigned to him, with or without a warrant of arrest or with or without a search warrant, when the probation officer or the parole officer has reasonable suspicion to believe that the person who is on parole is engaged in or has been engaged in criminal activity since the person was released on parole.

Effective August 15, 2003. (Adds R.S. 15:574.4(H)(4)(r))

2. Perkins (HB 1862)

Act No. 1145

Provides that a pardon shall not be issued to any person unless that person has paid all of the court costs which were imposed in connection with the conviction of the crime for which the pardon is to be issued.

Applies to pardons issued by the governor upon the recommendation of the Pardon Board and to automatic pardons for first offenders.

Effective August 15, 2003. (Amends R.S. 15:572(A) and (B))

X. SENTENCING

1. Martiny (HB 508)

Act No. 636

Prior law provided that an inmate was ineligible for a diminution of sentence for good behavior if the instant offense was one of the following:

- (1) Second offense crime of violence, as defined in R.S. 14:2(13).
- (2) An offense committed during the time that the inmate was under the jurisdiction of DPS&C or placed on probation as a juvenile.

New law retains prior law regarding second offense crime of violence but deletes prohibition against diminution of sentence with regard to offenses committed while the inmate was under the jurisdiction of DPS&C or placed on probation as a juvenile.

Effective August 15, 2003. (Amends R.S. 15:571.3(D))

2. Devillier and Senator Lentini (HB 1017)

Act No. 698

Prohibits the death penalty from being imposed upon mentally retarded persons and provides for the following procedures when there is a claim of mental retardation:

- (1) Requires a capital defendant claiming to be mentally retarded to file a motion in accordance with the provisions governing pretrial motions; such motion must be filed within 15 days after arraignment.
- (2) Provides that any defendant making such a claim must prove the allegation by a preponderance of the evidence.
- (3) Provides for either the jury or judge to try the issue of mental retardation, depending upon whether or not the state and the defendant agree.
- (4) Provides that any pretrial determination by the judge that a defendant is not mentally retarded shall not preclude the defendant from raising the issue at the penalty phase and shall not preclude a jury instruction.
- (5) Provides for the sharing of medical, correctional, educational, and military records, reports, evaluations, expert opinions, etc.

- (6) Provides for an independent psychological and psychiatric evaluation of the defendant to be conducted.

Effective August 15, 2003. (Adds C.Cr.P. Art. 905.5.1)

XI. CONTROLLED DANGEROUS SUBSTANCES

1. Morrell (HB 869)

Act No. 164

Adds responsive verdicts for possession of cocaine, guilty of possession of cocaine, guilty of attempted possession of cocaine, guilty of possession of drug paraphernalia, and not guilty.

Provides that the possession of drug paraphernalia verdict is responsive only if there is evidence of drug paraphernalia in the charged offense of possession of cocaine.

Effective August 15, 2003. (Adds C.Cr.P. Art. 814(A)(50.1))

2. Devillier (HB 1011)

Act No. 1051

Creates the crime of creation or operation of a clandestine laboratory for the unlawful manufacture of a controlled dangerous substance. Defines the crime of creation or operation of a clandestine laboratory for the unlawful manufacture of a controlled dangerous substance as any of the following:

- (1) The purchase, sale, distribution, or possession of any material, compound, mixture, preparation, supplies, equipment, or structure with the intent that it be used for the unlawful manufacture of a controlled dangerous substance.
- (2) The transportation or arranging for the transportation of any material, compound, mixture, preparation, supplies, or equipment with the intent that such material, compound, mixture, preparation, supplies, or equipment be used for the unlawful manufacture of a controlled dangerous substance.
- (3) The distribution of any material, compound, mixture, preparation, equipment, supplies, or products, which material, compound, mixture, preparation, equipment, supplies, or products have been used in, or produced by, the unlawful manufacture of a controlled dangerous substance.
- (4) The disposal of any material, compound, mixture, preparation, equipment, supplies, products, or byproducts, which material, compound, mixture, preparation, equipment, supplies, products, or byproducts have been used in, or produced by, the unlawful manufacture of a controlled dangerous substance.

Provides that it shall be unlawful for any person to knowingly or intentionally create or operate a clandestine laboratory for the unlawful manufacture of a controlled dangerous substance.

Penalties: Imprisonment at hard labor for not less than five years nor more than 15 years, and in addition may be sentenced to pay a fine of not more than \$25,000.

Provides that a person convicted of this offense may be ordered to make restitution for the actual governmental cost incurred in the cleanup of any hazardous waste resulting from the operation of a laboratory for the unlawful manufacture of a controlled dangerous substance. The court may order that such amount be paid directly to the governmental agency or agencies that actually incurred the cleanup expense.

Effective August 15, 2003. (Adds R.S. 40:1002)

3. Devillier (HB 2009)

Act No. 1000

Provides that it is unlawful for any person to possess 12 grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, or salts of optical isomers. Provides that new law does not apply to any of the following:

- (1) Any person possessing a valid prescription for ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers.
- (2) Any licensed manufacturer, wholesaler, or distributor who sells, transfers, or otherwise furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers to any licensed practitioner operating within the course and scope of that profession.
- (3) Any licensed pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers in the course of their professional practice, pursuant to the prescription of any licensed practitioner.
- (4) Any licensed practitioner who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers in the course of their professional practice.
- (5) Any person in possession of ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers in his residence under circumstances that are consistent with typical medicinal or household use.

- (6) Any manufacturer, wholesaler, distributor, or retail business which sells, transfers, or otherwise furnishes products to customers for medicinal purposes, which products contain ephedrine, pseudoephedrine, or phenylpropanolamine or their salts, optical isomers, and salts of optical isomers, while acting within the scope and course of that business.

Provides that new law does not apply to any pediatric products primarily intended for administration, according to label instructions, to children under 12 years of age provided that:

- (1) For any solid dosage form, the individual dosage unit, according to label instructions, does not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine.
- (2) For any liquid dosage form, the recommended dosage unit, according to label instructions, does not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of the liquid product.
- (3) For any liquid dosage form intended for administration to children under two years of age, and the recommended dosage does not exceed two milliliters and has a total package content of not more than one fluid ounce.

Provides that the Department of Health and Hospitals, office of public health, is authorized to adopt rules in accordance with the APA to exempt a product from the provisions of new law, if the product is formulated to effectively prevent conversion of the active ingredient into amphetamine or methamphetamine.

Penalties: a fine of not more than \$2,000 or imprisonment, with or without hard labor, for not more than two years, or both.

Effective August 15, 2003. (Adds R.S. 40:962.1.1)

4. C.D. Jones (SB 511)

Act No. 761

Deletes a cross-reference in the penalty provisions for possession of large quantities of the drug gamma hydroxybutyric acid (GHB) or of its analogues.

Existing law excludes a controlled dangerous substance from the definition of a controlled dangerous analogue. New law removes this exclusion.

Effective August 15, 2003. (Amends R.S. 40:961(8) and 967(F)(3))

XII. JUVENILE JUSTICE

1. Hill (HB 720)

Act No. 377

Adds the parishes of Allen and St. Landry to the list of the following parishes authorized to create truancy and assessment and service centers: Bossier, Caddo, Calcasieu, East Baton Rouge, Iberia, Jefferson, Lafayette, Lincoln, Orleans, Ouachita, Rapides, St. Tammany, Tangipahoa, and Union.

Effective August 15, 2003. (Amends Ch.C. Art. 791.1)

2. Winston (HB 950)

Act No. 334

Extends the period of duration of a deferred dispositional agreement or judgment of disposition for the duration of the child's full-time participation in a juvenile drug court program operated by a court of this state, if such participation is mandated by the deferred dispositional agreement or as a condition of the child's probation.

Effective August 15, 2003. (Amends Ch.C. Arts. 896(D) and 900(A); Adds Ch.C. Art. 898(C)(6))

3. Gallot (HB 1129)

Act No. 277

Adds the parishes of Bienville, Claiborne, Jackson, and St. Landry to the truancy and assessment and service center program.

Effective August 15, 2003 (Amends Ch.C. Art. 791.1)

4. C.D. Jones (SB 552)

Act No. 762

Requires the court, in every case or proceeding involving a **judgment of disposition of a child** to refrain from manifesting by any words or conduct, bias or prejudice based on race, sex, religion, national origin, age, or disability.

Effective August 15, 2003. (Amends Ch.C. Art. 903(A))

XIII. WEAPONS / FIREARMS

1. Flavin (HB 181)

Act No. 313

Provides that enforcement officers of the Public Service Commission (PSC) shall be commissioned law enforcement officers and provides for the powers, including the authority to carry weapons, the qualifications, and the training of those enforcement officers.

Note: Existing law provides that enforcement officers have the authority to enforce the laws which are administered by the PSC, the rules adopted by the PSC, and the orders issued by the PSC, including the power to make arrests, to serve subpoenas, and to stop motor vehicles.

Provides that enforcement officers have all of the powers, duties, responsibilities, and privileges of commissioned peace officers, including the power to carry weapons, both open and concealed, while acting in the course and scope of their duties as enforcement officers.

Requires enforcement officers to comply with R.S. 40:2405, which provides that full-time law enforcement officers must be certified by the Council on Peace Officer Standards and Training (POST Council) prior to carrying weapons in the course and scope of their duties.

Requires enforcement officers to be qualified annually in the use of firearms by the POST Council. Requires the PSC to pay for the POST Council training received by the enforcement officers. Requires enforcement officers to wear uniforms and to use marked vehicles while on duty.

Effective August 15, 2003. (Adds R.S. 45:163(C)(5)-(8))

2. Devillier (HB 1851)

Act No. 737

Provides that the governing authorities of political subdivisions may authorize the chief of each fire protection district, fire department, and volunteer fire department within that political subdivision to issue commissions subject to certain specified requirements to local arson investigators allowing them to carry and use firearms and to arrest individuals suspected of violating certain specified crimes.

Effective August 15, 2003. (Amends R.S. 40:1563.1(C); Adds R.S. 40:1563.1(D))

3. Morrell (HB 1855)

Act No. 674

Provides that it is unlawful for any person who has been convicted of a crime which is defined as a sex offense in R.S. 15:541(14.1) to possess a firearm or to carry a concealed weapon. This is in addition to R.S. 14:95.1(A) which makes it unlawful for any person who has been convicted of certain specified felonies to possess a firearm or to carry a concealed weapon.

Effective August 15, 2003. (Amends R.S. 14:95.1(A))

4. Heitmeier (SB 660)

Act No. 766

Provides that the law (R.S. 14:95) which prohibits the illegal carrying of weapons, including the carrying of a concealed weapon, does not apply to active or retired reserve or auxiliary law enforcement officers who are annually qualified in the use of firearms by the Council on Peace Officer Standards and Training (POST Council).

Effective August 15, 2003. (Amends R.S. 14:95(G)(3)(a))

5. Romero (SB 1031)

Act No. 844

R.S. 14:67.16 establishes the crime of identity theft, which is the intentional use, or attempted use, with fraudulent intent by any person of another person's personal identifying information to obtain anything of value without the authorization or consent of the other person.

Amends these provisions to provide the victims of identity theft with increased rights and opportunities to restore their credit ratings and to protect themselves from further harm due to the identity theft.

Effective August 15, 2003. (Amends R.S. 40:2403(H); Adds R.S. 14:67.16(G) and R.S. 44:3(G))

XIV. MISCELLANEOUS

1. Cazayoux (HB 106)

Act No. 563

Provides that any law enforcement officer or animal control officer may seize any dog which when unprovoked, in an aggressive manner, causes the death of or inflicts bodily injury on a human being.

Provides for the further impoundment of seized dogs pending the outcome of the hearing held pursuant to the provisions of this Act.

Provides that a dog determined by the court to have, when unprovoked, in an aggressive manner, caused the death of or inflicted bodily injury on a human being, may be humanely euthanized by the animal control agency, a licensed veterinarian, or a qualified technician.

Provides that the owner of the dog is liable to the municipality or parish for the costs and expenses of keeping the dog if the dog is later adjudicated to have caused death or inflicted bodily injury to a human being.

Effective August 15, 2003. (Amends R.S. 14:102.12(intro. para.); Adds R.S. 14:102.18)

2. Martiny (HB 481)

Act No. 631

Provides that DPS&C, office of motor vehicles, is authorized to make proof of the official driving record of a person by the certificate of the assistant secretary or the assistant secretary's designees which shall include the following information:

- (1) The date and time the certificate is completed.
- (2) The name, physical and mailing address, driver's license number, social security number if available, the date of birth, and any other identifying information that may be on file with the department of the person whose driving record is being certified.
- (3) A description of all convictions on the person's driving record, including date of offense, date of conviction, the convicting court, and a description of the offense for which the person was convicted. The convictions shall be included in the certificate even if the conviction has been set aside and dismissed in accordance with the Code of Criminal Procedure.
- (4) A description of all suspensions or revocations on the person's driving record. The description shall include the date the suspension commences, the date the suspension ends if applicable, and the reason for the suspension, if it is stayed or pending, or if the suspension or revocation has been reinstated, the date of reinstatement.
- (5) Such other information as the department may deem appropriate or necessary.

Provides that the certificate shall be signed by the assistant secretary or a person designated by the assistant secretary to complete the certificate. Provides that the certificate shall not be a public record and shall be used only in accordance with new law.

Provides that in all criminal cases and in all cases in juvenile or family courts which are of a criminal nature, and in civil forfeiture proceedings arising from criminal activity, the courts of this state shall receive as evidence any certificate made in accordance with and subject to the conditions of new law. Provides that the certificate shall be received in evidence as prima facie proof of the facts shown thereon.

Provides that the party seeking to introduce a certificate made in accordance with new law shall, not less than 10 days prior to the commencement of the trial, give written notice of intent to offer proof by certificate. Such notice shall include a copy of the certificate.

Provides that the party against whom such certificate is offered shall be permitted to subpoena on cross-examination a representative of the department. If the subpoena is requested at least five days prior to the commencement of trial or the person subpoenaed responds to the subpoena, the certificate shall not be prima facie proof of the facts shown thereon.

Provides that when the attorney for the defendant, or the defendant acting in his own defense, requests that a subpoena issue to a representative of the department the examination or analysis, the request shall be in writing and shall contain a certification that the attorney or the defendant intends in good faith to conduct the cross-examination.

Effective August 15, 2003. (Adds R.S. 15:521-523 and R.S. 44:3(G))

3. Kennard (HB 755)

Act No. 272

Adds an additional ground for which an explosives license may be revoked, suspended, or denied if the applicant for the license poses a threat to the public or effective regulation of the explosives industry or who is currently under investigation for, or who has been criminally charged with, terrorist activity, a crime involving the possession or use of a dangerous weapon as defined in R.S. 14:2(3), a crime involving the manufacture or distribution of a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Law, or certain crimes of violence.

Effective August 15, 2003. (Adds R.S. 40:1472.10(A)(9))

4. Kennard (HB 756)

Act No. 160

Provides that the license fees relative to explosives are nonrefundable and shall be submitted with the license application. Does not change the amounts of those fees.

Effective August 15, 2003. (Amends R.S. 40:1472.3(C)(2))

5. Kennard (HB 757)

Act No. 161

Repeals exception to licensing provisions which provided that no license is required for persons detonating or otherwise effecting the detonation of explosives working under the immediate and personal supervision and control of a person holding a valid blaster's license.

Repeals exception to licensing provisions which provided that no license is required for persons possessing explosives while under the immediate and personal supervision and control of a person holding a valid blaster's license and then engaged in the preparation for and in the detonating or otherwise effecting the detonation of an explosive.

Effective August 15, 2003. (Repeals R.S. 40:1472.3(F) and 1472.4(B)(2))

6. Devillier (HB 1023)

Act No. 1053

Adds a provision to provide that a conviction or adjudication of delinquency for the offense of simple battery shall not be the sole basis for ineligibility for the drug division probation program.

Effective August 15, 2003. (Adds R.S. 13:5304(B)(10.1))

7. Landrieu (HB 1105)

Act No. 940

Authorizes the court when entering an informal adjustment agreement to utilize or initiate a teen or youth court program and may assess a fee to a participant in the program to offset costs. Provides that, regarding deferred dispositional agreements, the court has the authority to utilize or initiate a teen or youth court program and may assess a fee to a participant in the program to offset costs.

Effective August 15, 2003. (Adds Ch.C. Art. 839(C) and 896(G))

8. Triche (HB 1250)

Act No. 170

Amends provisions of law regarding tax evasion to provide that any person who willfully fails to pay such tax, penalty, and interest shall be subject to penalty. Increases the penalty to \$2,000 or imprisonment, with or without hard labor, for not more than two years, or both, when the total actual tax exceeds \$1,000. Retains the penalty of \$1,000 or imprisonment for not more than one year, or both, for all other violations.

Corrects obsolete references to the collector of the Dept. of Revenue.

Effective upon signature of governor (June 2, 2003). (Amends R.S. 47:1642)

9. Toomy (HB 1806)

Act No. 735

Provides that a municipal or parish fire department, a fire protection district, or a volunteer fire department (fire department) may require any person who applies to work with a fire department as a paid employee or as a volunteer to supply fingerprint samples and submit to a criminal history records check.

Provides that, when requested, state and national criminal history record information shall be provided to the department on any person seeking to work with a fire department as a paid employee or as a volunteer. Provides that the La. Bureau of Criminal Identification shall forward fingerprints and other identifying information to the FBI for a criminal records check. Provides for a fee of \$26 to cover the additional costs of providing national criminal history records which shall be paid by the person seeking to work with the fire department. Provides that the fees shall be included in the Criminal Identification and Information Fund.

Prohibits any person who refuses to submit to a criminal history records check from working with a fire department as a paid employee or as a volunteer.

Effective upon signature of governor (June 27, 2003). (Amends R.S. 15:598; Adds R.S. 15:587.4)

10. Marionneaux (SB 801)

Act No. 796

Authorizes an employer or his representative to obtain conviction records of an applicant seeking employment, directly from the Bureau of Criminal Identification and Information in order to further qualify the applicant for the position being sought, if the applicant has signed a consent form authorizing the employer to obtain such conviction records. Upon written request and upon presentation of a consent form prepared by the bureau and executed by the applicant, the bureau shall provide any conviction records of the applicant to the employer or his representative in a timely manner. Provides that "conviction records" include only those records which are electronically maintained by the bureau and are records of a finding of guilty, a plea of guilty or nolo contendere, including those which have been set aside or dismissed pursuant to C.Cr.P. Arts. 893 or 894, or for which an individual has received an automatic first offender pardon. "Conviction records" shall not include records which have been ordered expunged pursuant to R.S. 44:9.

Provides that the existing law authorization to charge a \$26 processing fee applies to this information. Provides that the bureau shall not be liable civilly or criminally for the release of information released pursuant to the provisions of this Act.

Effective August 15, 2003. (Adds R.S. 15:587(E))

11. Lentini (SB 1057)

Act No. 556

Authorizes the attorney general, a designated representative of the New Orleans Police Department, a designated representative of the office of state police within the Department of Public Safety and Corrections, or any district attorney or sheriff may provide for the security of a witness, potential witness, or any member of the immediate family of a witness in any criminal or civil proceeding or investigation, if testimony by such witness may subject the witness or any immediate family member of such witness to danger or bodily injury. Such security may include but is not limited to providing for housing, financial assistance, and security. Defines "witness" and "immediate family".

Provides that the costs of providing such security, housing, or financial assistance shall be borne by the agency or agencies authorizing it unless an appropriation for such matters has been approved by the parish or municipal governing authority.

Provides that any information relating to any witness participating in any program established pursuant to this Act shall remain confidential and shall not be subject to disclosure pursuant to the Louisiana Code of Criminal Procedure, the Public Records Act, or any other provision of state law.

Provides that the state, any political subdivision of the state, or any officer or employee of the state or political subdivision shall not be subject to any civil liability as a result of any decision to provide or not to provide protection under this Act and shall be entitled to absolute immunity for any action or inaction in providing or failing to provide witness protection.

Effective August 15, 2003. (Adds R.S. 15:262)

12. Mount (SB 303)

Act No. 749

Provides for the establishment of a multidisciplinary investigative team for the investigation of child abuse in each judicial district not later than February 15, 2004.

Provides that the team shall be responsible for the investigation of all child sexual abuse cases, abuse and neglect cases involving allegations of the commission of a felony-grade crime against a child, and any other case involving trauma to a child, in accordance with their agency scope of services, which is referred to the team by any member and accepted by the team for investigation in compliance with the interagency protocols developed and instituted in accordance with the provisions of this Act.

Provides for the composition of multidisciplinary investigative teams, and requires the teams to establish interagency protocols for the investigation of child abuse and provides issues which must

be agreed to in those protocols. Provides for the establishment of child abuse protocol committees in each judicial district. These committees are established by the district attorney or his designee. Provides for the minimum membership to be included on these committees.

Provides for the availability of information necessary to perform its official duties and provides for the restricted use of such information. Provides for a limitation of liability for a board member, staff member, volunteer of a child advocacy center, and member of a multidisciplinary team. Provides that this limitation on civil liability does not apply if such person acts with gross negligence or in bad faith.

Provides criteria for the establishment of child advocacy centers. Provides for the governing of child advocacy centers established after August 15, 2003, by board of directors.

Provides that the files, reports, records, communications, working papers, or videotaped interviews used or developed in providing services under the provisions of this Act and existing law are confidential and not subject to the public records. Disclosure may only be made to a member of a multidisciplinary investigative team who is engaged in the investigation of a particular case and who needs access to the information in order to perform his duties for purposes consistent with this Act and existing law.

Provides that any public or private department, agency, or organization may share with a child advocacy center information that is made confidential by law when it is needed to provide or secure services as provided by this Act and existing law. Confidential information shared with or provided to a center remains the property of the providing organization.

Effective August 15, 2003. (Amends Ch.C. Arts. 501 and 502; Adds Ch.C. Arts. 507-514, 521-526, and 531-533; Repeals Ch.C. Art. 503)