



**SELECTED LEGISLATION FROM THE
CRIMINAL JUSTICE, CIVIL LAW, AND
JUDICIARY COMMITTEES**

from the
2018 Regular Session
of the
Louisiana Legislature

Prepared by

**House Legislative Services
Louisiana House of Representatives
July 2018**

Notice of Purpose and Use

This publication was prepared by House Legislative Services of the Louisiana House of Representatives to provide the user with general information concerning the subject matter covered. While reasonable effort has been made to provide accurate information, the House of Representatives does not warrant its accuracy and the use of this information is the sole responsibility of the user. This publication does not purport to fully state the law, is not designed to serve as a replacement for the official legal source of its content, and does not constitute the rendering of legal or other professional advice.

TABLE OF CONTENTS

I.	SELECTED CRIMINAL JUSTICE COMMITTEE LEGISLATION.	Page 3
	JUSTICE REFORM UPDATE.	Page 3
	CRIMINAL PROCEDURE AND SENTENCING.	Page 5
	CRIMINAL OFFENSES.	Page 8
	JUVENILE JURISDICTION, PROCEDURE, & COMMITMENT.	Page 15
	CONTROLLED DANGEROUS SUBSTANCES.	Page 16
	DOMESTIC ABUSE.	Page 16
	WEAPONS.	Page 18
	GAMING.	Page 19
	DRIVING WHILE INTOXICATED	Page 21
	MISCELLANEOUS.	Page 22
II.	SELECTED CIVIL LAW COMMITTEE LEGISLATION.	Page 23
	CIVIL PROCEDURE	Page 23
	DAMAGES.	Page 26
	PRESCRIPTION.	Page 27
	PROPERTY.	Page 28
	SUCCESSIONS	Page 30
	CHILD AND SPOUSAL SUPPORT.	Page 31
	CUSTODY AND VISITATION.	Page 33
	PATERNITY.	Page 35
	ADOPTION	Page 36
	MISCELLANEOUS.	Page 37

III. SELECTED JUDICIARY COMMITTEE LEGISLATION..... Page 38

IV. CONSTITUTIONAL AMENDMENTS. Page 40

SELECTED CRIMINAL JUSTICE COMMITTEE LEGISLATION

Justice Reform Update

Act No. 137 (HB 622) by Rep. Magee

Delays the effective date of Act No. 260 of the 2017 Regular Session from August 1, 2018, to August 1, 2019. Act No. 260 provided relative to the financial obligations an offender faces when charged and convicted of a criminal offense and includes a requirement for the court to determine whether payment in full of all criminal justice financial obligations would cause substantial financial hardship to the defendant or his dependants. Pursuant to Act No. 260, if the court determines that the financial obligations do cause substantial financial hardship, the court must either waive the obligations or place the defendant on a payment plan.

Act No. 508 (HB 537) by Rep. Marino

Extends probation eligibility to offenders convicted of a fourth noncapital felony offense or a third or fourth offense of operating a vehicle while intoxicated if certain conditions are met.

Authorizes the court to extend the period of probation beyond the three-year limit, up to eight years, for a first, second, third, or fourth conviction, if the defendant is ordered to complete a specialty court program like drug court or reentry court.

Provides that a defendant placed on probation or parole who is ordered to enter and complete a specialty court program, such as drug court or reentry court, is not eligible to receive earned compliance credits.

Act No. 542 (HB 253) by Rep. Connick

Clarifies the application of the habitual offender law by providing that the court shall apply to a defendant the provisions of the habitual offender law that were in effect on the date that the defendant's instant offense was committed.

However, the changes made by Act No. 282 of the 2017 Regular Session that reduced the "cleansing period" for nonviolent offenses from 10 years to 5 years and applied the prior 10-year period to persons convicted of sex or violent offenses, are applicable to any bill of information filed under the habitual offender law on or after November 1, 2017, accusing the person of a previous conviction.

Act No. 573 (SB 458) by Sen. Gatti

Provides that medical treatment furlough is not available to any offender serving a sentence for a

conviction of first degree murder and provides that neither the Dept. of Public Safety and Corrections (DPS&C) nor the warden of the correctional facility can recommend that an offender's sentence be commuted for any medical reasons.

Further provides that an offender who is denied medical parole or medical treatment furlough may apply for a rehearing within the time frame applicable to a denial of parole. Within seven business days of the decision of the committee on parole to grant medical parole or medical treatment furlough to an offender, DPS&C must notify any off-site medical facility designated for an eligible offender's medical treatment. Not less than 14 days before the offender begins treatment at the facility, the off-site medical facility must provide notice that an offender will be receiving treatment in such facility, and the facility must also provide notice to each patient's or resident's next of kin, curator, tutor, or person having power of attorney for a patient or resident.

Act No. 604 (SB 495) by Sen. Martiny

Changes the applicability of "administrative parole", a procedure by which an inmate is released on his earliest parole eligibility date without a hearing before the committee on parole if certain criteria are met, to persons who commit an offense on or after November 1, 2020.

Provides that persons serving a life sentence for 2nd degree murder which was committed after July 2, 1973, and before June 29, 1979, who are eligible for parole upon serving 40 years in prison, may only be released on parole if a five-member panel of the committee on parole votes unanimously to grant parole.

Act No. 668 (SB 389) by Sen. Claitor

Provides that the maximum probation term for nonviolent crimes shall not exceed three years, unless the court makes a determination that the defendant has failed to successfully complete the terms and conditions of probation. In such cases, the court may extend the probation for a period not to exceed two years.

Modifies the procedure by which a court determines whether a defendant should receive "earned compliance credits" based upon a compliance report submitted to the court by the division of probation and parole. Upon review of the report, the court may do any of the following:

- (1) Grant the defendant his "earned compliance credits".
- (2) Terminate the defendant's probation as "satisfactorily completed".
- (3) Extend the probation for up to two years.

Removes prohibition on the use of incarceration for lowest-tier violations of probation or parole or for first or second violations of probation or parole based on alcohol use. Adds that the court, for

a fourth or subsequent "technical violation" of probation, may order that the probation be revoked in lieu of imposing administrative sanctions.

Delays from August 1, 2018, to August 1, 2019, the effective date of Act No. 260 of the 2017 Regular Session which prohibited the court from extending a defendant's period of probation for the purpose of collecting any unpaid monetary obligations, except for the purpose of monitoring the collection of unpaid victim restitution. Further modifies Act No. 260 to provide that probation shall neither be revoked nor extended based solely upon the defendant's inability to pay fines, fees, or restitution to the victim. In addition, provides that if, at the end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed.

Criminal Procedure and Sentencing

Act No. 61 (HB 131) by Rep. Stefanski

Authorizes a merchant who employs at least 25 persons, or an authorized agent or employee of the merchant, to offer a person suspected of theft the opportunity to complete a pre-arrest theft prevention program in lieu of reporting the offense to law enforcement. Further provides that an offer by a merchant to a person suspected of a theft of goods to participate in a theft prevention program is not a violation of the crime of extortion.

Authorizes a provider of a theft prevention program to charge a fee of not more than \$500 for participation in the program and prohibits the exclusion of a person otherwise eligible to participate on the basis of the person's race, national origin, religion, sex, or the ability to pay the fee. Further provides that a provider that charges a fee to participate in the program may reduce or waive the fee based upon the inability of a participant to pay. Provides that the participant in the program shall not be required to sign an admission of guilt nor sign any binding agreement in connection with participation in the program.

Requires certain information relative to the theft prevention program be made available to the district attorney upon request and provides that the authority given to merchants to offer a theft prevention program does not preclude a district attorney or court from offering a theft prevention program that meets the same qualifications required of a merchant's theft prevention program.

Provides that any person who successfully completes a theft prevention program shall not be subject to any additional civil penalties under any other provision of law.

Act No. 126 (HB 260) by Rep. Leger

Adds the crimes of misdemeanor sexual battery, illegal possession of a handgun by a juvenile, and illegal carrying of weapons to the list of offenses that require collection of a DNA sample.

Act No. 335 (HB 699) by Rep. Stagni

Removes the authority of the court to conduct an oral poll of the jury after a verdict is rendered.

Requires jury polls to be conducted in open court and provides that the polling slips used to conduct a written poll of the jury may be placed under seal upon order of the court. Further provides that the slips shall not be released to the public without a subsequent order of the court authorizing their release. If the court orders the release of the polling slips, the names of the jurors are required to be redacted.

Act No. 351 (SB 70) by Sen. Mizell

With the intent to legislatively overrule the La. Supreme Court's decision in *State of Louisiana v. Brignac*, 17-448, (La. 10/18/17), 234 So.3d 46, provides that searches of defendant's person, property, residence, or vehicle, agreed to by the defendant as part of his release on probation or parole, may be conducted by any probation or parole officer who is assigned or directed by DPS&C to supervise the person, whether the assignment or directive is temporary or permanent.

Act No. 431 (HB 440) by Rep. Hodges

Expands DPS&C's substance abuse probation program to provide counseling and treatment for defendants with substance abuse disorders, or defendants with co-occurring mental illness and substance abuse disorders, who are sentenced to substance abuse probation.

Further authorizes DPS&C to enter into cooperative endeavors or contracts with local governmental entities or the office of behavioral health to provide for substance abuse treatment and counseling and mental health treatment for defendants participating in the program.

Act No. 561 (HB 631) by Rep. Hunter

Provides that when no action is taken by the governor on a recommendation for clemency issued by the Board of Pardons, the person seeking clemency shall not be required to reapply to the board and the recommendation shall not expire upon the expiration of the governor's term in office and may be reviewed by the next governor to take office.

Further requires the board to adopt rules pursuant to the Administrative Procedure Act to provide for a clemency application procedure that does not require the person seeking clemency to reapply when no action is taken by the governor on the board's recommendation that the person receive clemency.

Act No. 663 (SB 335) by Sen. Mizell

Increases the fines for the crime which prohibits the purchase of commercial sexual activity and the

crime of soliciting for prostitutes and provides that the first \$500 or 50% of the fine, whichever is greater, shall be distributed by the sheriff or the executive officer of the court for the administration of the court. Provides that the remainder of the fine shall be distributed as follows:

- (1) 25% to the sheriff or law enforcement agency that made the arrest to be used for training officers in recognizing and preventing human trafficking.
- (2) 25% to the district attorney, in furtherance of the administration of justice in the district and to prevent future recidivism, to be paid to a program for victim services that counsels, treats, and helps victims of human trafficking or those who are charged or convicted of prostitution.

Provides that, in addition to a fine or jail term, the court shall order the offender to complete the Buyer Beware Program to educate offenders about the harms, exploitation, and negative effects of prostitution, and requires the court to impose additional court costs in the amount of \$200 to defer the costs of the program, with the proceeds of the fine being paid to the operator of the Buyer Beware Program.

Authorizes district attorneys, at their discretion, to be the operator of the program using his own office personnel or to choose a vendor as the operator of the program. Provides that the program may be used for pre-trial diversion as well as a program for post-conviction sentencing.

If the district attorney fails to develop a program alone or in conjunction with the district attorney of an adjacent judicial district, the court shall order that the offender, who is sentenced for the purchasing of commercial sexual activity or for soliciting for prostitutes, to attend a certain number of sexual addiction recovery meetings with a local recovery group. If there is no local recovery group for sexual addiction within the judicial district or within a 50-mile radius of the offender's home, the court shall order that the offender, who is sentenced for the purchasing of commercial sexual activity or for soliciting for prostitutes, to complete an online course which educates defendants or offenders about the harms, exploitation, and negative effects of prostitution.

Act No. 722 (SB 243) by Sen. Morrell
Act No. 493 (HB 365) by Rep. Jordan

Act No. 722 proposes an amendment to the constitution that would require a unanimous jury vote in all felony cases, instead of a 10 out of 12 vote, for offenses committed on or after January 1, 2019.

Submission of the proposed amendment to the voters will be at the statewide election on November 6, 2018.

If the proposed constitutional amendment in Act No. 722 (above) is adopted at the statewide election and becomes effective, Act No. 493 amends the Code of Criminal Procedure to conform with the amended constitution to require a unanimous verdict in all felony cases for offenses committed on or after January 1, 2019.

Criminal Offenses

Act No. 68 (HB 212) by Rep. Jackson

Reenacts the provisions of law regarding theft of livestock and theft of timber which were repealed by Act No. 281 of the 2017 R.S.

For the crime of theft of livestock, the criminal penalties include a fine of \$5,000, imprisonment with or without hard labor for not more than 10 years, or both.

For the crime of theft of timber, the criminal penalties are dependent upon the value of the timber taken.

Act No. 263 (HB 79) by Rep. Mack

Creates the crime of abuse of persons with infirmities through electronic means and provides that the offense is committed when all of the following occur:

- (1) The person transfers an image that was obtained by any camera, videotape, photo-optical, photo-electric, unmanned aircraft system, or any other image recording device and that was obtained for the purpose of observing, viewing, photographing, filming, or videotaping any person with an infirmity.
- (2) The person transfers the image by live or recorded telephone message, electronic mail, the internet, or a commercial online service.
- (3) The person transfers the image with the malicious and willful intent to embarrass, shame, harass, coerce, abuse, torment, or intimidate, regardless of whether the victim has knowledge of the transfer.

Defines "person with an infirmity" for purposes of this crime and provides for the following penalties:

- (1) First offense conviction - a fine of not more than \$1,000, imprisonment for up to six months, or both.
- (2) Second or subsequent offense conviction - a fine of not more than \$2,000, and imprisonment at hard labor for up to three years, without benefit of parole, probation, or suspension of sentence.

Provides certain exceptions to this offense for telephone, television, or internet service providers and for any healthcare provider through its use of any of its cameras, videotape, photo-optical, photo-electric, unmanned aircraft system, or any other image recording device within the facility.

Act No. 468 (SB 181) by Sen. Milkovich

Relative to the crime of abortion, provides that it is unlawful for a physician to perform an abortion after 15 weeks gestational age.

Provides for definitions of "abortion" and "gestational age".

Also provides that, relative to the crime of abortion, new law will become effective upon final decision of the United States Court of Appeals for the Fifth Circuit upholding the Act that originated as House Bill 1510 of the 2018 Regular Session of the Mississippi Legislature, which decision would thereby provide the authority for a state within the jurisdiction of that court of appeals to restrict abortion past 15 weeks of gestational age.

Certain provisions are repealed in favor of the provisions of R.S. 40:1061 (health provisions: abortion), immediately upon and to the extent that the U.S. Supreme Court upholds the authority of states to prohibit elective abortions on demand or by the adoption of an amendment to the U.S. Constitution that would restore the state's authority to prohibit elective abortions.

Effective upon signature of governor (May 23, 2018).

Act No. 485 (SB 236) by Sen. Morrell

Removes the unnatural carnal copulation by a human being with an animal as an element of the offense of crime against nature and creates the crime of sexual abuse of an animal and defines the offense as the knowing and intentional performance of any of the following:

- (1) Engaging in sexual contact with an animal.
- (2) Possessing, selling, transferring, purchasing, or otherwise obtaining an animal with the intent that it be subject to sexual contact.
- (3) Organizing, promoting, conducting, aiding or abetting, or participating in as an observer, any act involving sexual contact with an animal.
- (4) Causing, coercing, aiding, or abetting another person to engage in sexual contact with an animal.
- (5) Permitting sexual contact with an animal to be conducted on any premises under his charge or control.
- (6) Advertising, soliciting, offering, or accepting the offer of an animal with the intent that it be used for sexual contact.

- (7) Filming, distributing, or possessing pornographic images of a person and an animal engaged in any of the activities described in Paragraphs (1) through (6) above.

Provides exceptions to the offense for certain veterinary, husbandry, and judging of breed conformation practices.

Provides for the following penalties:

- (1) Whoever commits the offense of sexual abuse of an animal shall be fined up to \$2,000, imprisoned with or without hard labor for up to five years, or both.
- (2) Whoever commits a second or subsequent offense of sexual abuse of an animal shall be fined between \$5,000 and \$25,000, imprisoned with or without hard labor for not more than 10 years, or both. Further requires such persons to register and provide notification as a sex offender.

In addition to any other penalty imposed, a person convicted of sexual abuse of an animal shall be ordered to do the following:

- (1) Relinquish custody of all animals.
- (2) Not harbor, own, possess, or exercise control over any animal.
- (3) Not reside in any household where an animal is present, engage in an occupation involving animals, or participate in a volunteer position at any establishment where animals are present.
- (4) Undergo a psychological evaluation for sex offenders and participate in any recommended psychological treatment.
- (5) Reimburse the owner of the animal for any expenses incurred for medical treatment or rehabilitation of the victimized animal.

Provides for the procedure by which law enforcement may take lawful possession of the animal and for the proper placement of the animal in a shelter or veterinary clinic.

Effective upon signature of governor (May 25, 2018).

Act No. 576 (SB 54) by Sen. Martiny

Creates the crime of negligent arson and defines it as the damaging of any building of another when the offender's criminal negligence causes the fire or the explosion.

Provides for the following penalties:

- (1) Whoever commits the crime of negligent arson where it is not foreseeable that human life might be endangered, the offender, on first conviction, shall be fined not more than \$1,000 or imprisoned for not more than six months and is required to pay restitution for the damage sustained.
- (2) On a second and subsequent conviction, the offender shall be fined not more than \$2,000 and imprisoned for not more than two years and is required to pay restitution for the damages sustained.
- (3) Whoever commits the crime of negligent arson where it is foreseeable that human life might be endangered shall be fined not more than \$3,000 and imprisoned, with or without hard labor, for not more than three years, and shall be ordered to pay restitution.
- (4) Whoever commits the crime of negligent arson resulting in death or serious bodily injury to a human being shall be fined not more than \$5,000, or imprisoned, with or without hard labor, for not more than five years, and in addition must pay restitution.

Provides for a definition of "serious bodily injury".

Persons convicted of the crime of negligent arson must register with the state fire marshal.

Does not apply to commonly accepted practices of prescribed burning of agricultural and forestry land.

Effective upon signature of governor (May 31, 2018).

Act No. 635 (HB 78) by Rep. Nancy Landry

Creates the crime of criminal hazing which prohibits any person from committing an act of hazing as defined by law, regardless of whether the person voluntarily allowed himself to be hazed or consented to the hazing. Further provides for the following penalties:

- (1) A fine of up to \$1,000, imprisonment for up to six months, or both.
- (2) If the hazing results in the serious bodily injury or death of the victim, or if the hazing involves forced or coerced alcohol consumption that results in the victim having a BAC of at least .30 percent, the person who committed the act of hazing shall be fined up to \$10,000, and imprisoned, with or without hard labor, for up to five years.

Also provides that if any person serving as a representative or officer of an organization knew and failed to report to law enforcement that one or more of the organization's members were engaging in or participating in the hazing of another person, the organization may be subject to the following:

- (1) A fine of up to \$10,000.
- (2) Forfeiture of any public funds received by the organization.
- (3) Forfeiture of all rights and privileges of being an organization that is organized and operating at the educational institution for a specific period of time as determined by the court. If the hazing results in the serious bodily injury or death of the victim, or results in the victim having a BAC of at least .30 percent, the period of time shall be for not less than four years.

Authorizes the national or parent organization to conduct a timely and efficient investigation, of not longer than 14 days, to determine the veracity of an allegation of hazing prior to reporting the hazing to law enforcement.

Provides for a definition of "hazing" for purposes of this crime, and further provides for certain exceptions to the definition of "hazing" for normal physical activity associated with athletics, physical education, military training, or similar programs.

Provides that the penalties applied under the crime of criminal hazing do not preclude any civil remedies provided by law and may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same incident or activity, and in addition to any penalty imposed by the organization or educational institution pursuant to its by-laws, rules, or policies regarding hazing.

Act No. 637 (HB 446) by Rep. Falconer

Imposes criminal penalties upon any person who fails to comply with the following requirements:

- (1) Any person at the scene of an emergency who knows that another person has suffered serious bodily injury shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the injured person.
- (2) Any person who engages in reckless behavior that results in the serious bodily injury of any person shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the injured person.

Provides that reasonable assistance includes immediately seeking or reporting the need for medical assistance from an appropriate authority which is defined to include any state or local law enforcement agency, a 911 Public Safety Answering Point, and emergency medical personnel.

Provides that any person who fails to immediately seek or report the need for assistance pursuant to the provisions of this law shall be subject to the following penalties:

- (1) A fine of up to \$1,000, imprisonment with or without hard labor for up to one year, or both.

- (2) If the serious bodily injury results in the death of the person, a fine of up to \$2,000, imprisonment with or without hard labor for up to five years, or both.

Act No. 674 (SB 534) by Sen. Milkovich

Adds the following to the list of "crimes of violence":

- (1) Criminal abortion.
- (2) First degree feticide.
- (3) Second degree feticide.
- (4) Third degree feticide.
- (5) Aggravated criminal abortion by dismemberment.

Prohibits "coerced abortion" and defines the term to mean when any person intentionally engages in the use or threatened use of physical force against the person of a pregnant woman, with the intent to compel the pregnant woman to undergo an abortion against her will, whether or not the abortion procedure has been attempted or completed. Provides for penalties including a fine not to exceed \$5,000, imprisonment up to five years, or both.

Effective upon signature of governor (June 1, 2018).

Act No. 692 (HB 727) by Rep. Thibaut

Adds the following to the definition of "critical infrastructure":

- (1) Any and all structures, equipment, or other immovable or movable property located within or upon such facilities, including any site where the construction or improvement of any such facility or structure is occurring.
- (2) A "pipeline" which is defined to include flow, transmission, distribution, or gathering lines, regardless of size or length, which transmit or transport oil, gas, petrochemicals, minerals, or water in a solid, liquid, or gaseous state.

Amends the criminal penalties to provide that such persons shall be imprisoned with or without hard labor for not more than five years, fined not more than \$1,000, or both.

Further provides that the crime of unauthorized entry of a critical infrastructure does not apply to or prevent the following:

- (1) Lawful assembly and peaceful and orderly petition, picketing, or demonstration to express ideas or views regarding legitimate matters of public interest.
- (2) Lawful commercial or recreational activities conducted in the open or unconfined areas around a pipeline.
- (3) The right of ownership for an owner of an immovable.

Creates the crime of criminal damage to a critical infrastructure and defines it as the intentional damaging of a critical infrastructure. Provides for the following penalties:

- (1) Imprisonment with or without hard labor for not more than 15 years, a fine of not more than \$10,000, or both.
- (2) If it is foreseeable that human life will be threatened or operations of a critical infrastructure will be disrupted as a result of the conduct - imprisonment at hard labor for not more than 20 years, a fine of not more than \$25,000, or both.

Act No. 707 (HB 88) by Rep. Mack

Creates the crime of government benefits fraud and defines the crime as the act of any person who, with intent to defraud the state or any person or entity through any government benefits, including any record, voucher, payment, money or thing of value, good, service, right, or privilege, administered by any state department, agency, or political subdivision, does any of the following:

- (1) Presents for allowance or payment any false or fraudulent claim for furnishing services, merchandise, or payments.
- (2) Knowingly submits false information for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services, merchandise, or payments.
- (3) Knowingly submits false information for the purpose of obtaining authorization for furnishing services, merchandise, or payments.
- (4) Knowingly makes or causes to be made a false statement or representation of material fact on an application or form for assistance, goods, services, or payments when the false statement or representation is made for the purpose of determining the person's eligibility to receive benefits or payments.
- (5) Knowingly conceals or fails to disclose any material fact affecting the applicant's or recipient's initial or continued eligibility to receive benefits.

Provides that whoever commits the crime of government benefits fraud shall be imprisoned for not more than five years, may be fined not more than \$10,000, or both.

Juvenile Jurisdiction, Procedure, and Commitment

Act No. 179 (HB 726) by Rep. Bouie

Adds a representative of the Families and Friends of Louisiana's Incarcerated Children to the membership of the Juvenile Justice Reform Act Implementation Commission.

Act No. 321 (HB 482) by Rep. Leger

Removes the requirement that motions filed by DPS&C seeking to make the conditions of the juvenile's disposition less restrictive are to be tried contradictorily against the district attorney. Instead, requires only those motions filed by DPS&C seeking the release of the child from its custody to be tried contradictorily.

Act No. 355 (SB 106) by Sen. Morrell

For a child who is adjudicated delinquent for a felony-grade offense that is not a crime of violence, requires the court, at the time of the disposition, to set the date for the mandatory contradictory modification hearing.

In order for a child who is adjudicated delinquent for a felony-grade offense that is not a crime of violence to be committed to DPS&C for a period of time exceeding nine months, requires the court to make a finding by clear and convincing evidence that the child's treatment cannot be accessed and completed in a less restrictive setting, instead of a finding required by prior law that the continued out-of-home placement of the child is necessary for completion of the child's treatment.

These requirements apply to all children in the custody of the office of juvenile justice on and after August 1, 2018.

Act No. 467 (SB 102) by Sen. Morrell

Allows for modification of sentence for a child who is adjudicated delinquent of a felony-grade delinquent act based upon a violation of first degree rape, aggravated kidnapping, or armed robbery, but retains the prohibition on probation or suspension of sentence in such cases.

Provides that a child is eligible for modification after serving 36 months of the disposition. If the act is based upon a violation of armed robbery and the disposition is less than 36 months, the child is eligible for modification upon serving 2/3 of the disposition.

Provides that a contradictory hearing for a motion for modification of a disposition shall be set no sooner than thirty days from the date of notice to the district attorney.

Provides the specific factors a court must find or consider in order to grant the motion for

modification of disposition.

Act No. 654 (SB 248) by Sen. Johns

With regard to delinquent acts that are not crimes of violence, delays the effective date on which juvenile court jurisdiction extends to include 17-year-olds from July 1, 2018, to March 1, 2019.

Controlled Dangerous Substances

Act No. 677 (HB 165) by Rep. Mack

Adds a definition of the term "aggregate weight" to mean the gross weight of an exhibit of evidence.

Retains the classification of fentanyl as a Schedule II substance and retains the criminal penalties, but relocates those penalties to the penalty provisions in Schedule II. Further applies these penalties to violations involving the substance carfentanil.

Relocates the provisions relative to substance abuse treatment and probation in certain cases of possession or possession with intent to distribute fentanyl to the penalty provisions in Schedule II, and makes the treatment provisions applicable to carfentanil as well.

Act No. 199 (HB 186) by Rep. Marino

Relative to persons who attempt or conspire to distribute or to possess with the intent to distribute a Schedule I controlled dangerous substance that is a narcotic drug, such persons shall be fined or imprisoned in the same manner as for the offense planned or attempted, but the fine or imprisonment shall not exceed one-half of the longest term of imprisonment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Act No. 203 (HB 224) by Rep. Marino

Reduces the penalties for the crime of sale, distribution, or possession of legend drugs without prescription or order and the crime of obtaining legend drugs by misrepresentation or fraud to include imprisonment for not more than six months, a fine of not more than \$500, or both.

Domestic Abuse

Act No. 282 (HB 776) by Rep. Patricia Smith

Authorizes the court to order that a defendant be prohibited from possessing a firearm for the duration of a Uniform Abuse Prevention Order issued as result of the defendant's conviction of the crime of stalking.

Act No. 293 (HB 896) by Rep. Patricia Smith

Provides that when the crime of battery of a dating partner or domestic abuse battery involves strangulation or a pregnant victim, or is committed in the presence of a child who is 13 years of age or younger, the offender, in addition to any other penalties imposed, shall be imprisoned at hard labor for not more than three years.

Provides that if the offense results in serious bodily injury, by means other than burning, the offender, in addition to any other penalties imposed, shall be imprisoned at hard labor for not more than eight years. However, if the offense results in serious bodily injury committed by burning, the offender, in addition any other penalties imposed, shall be imprisoned at hard labor for not less than five nor more than 50 years without benefit of parole, probation, or suspension of sentence.

Adds the following crimes to the list of enumerated crimes of violence:

- (1) Domestic abuse battery that results in serious bodily injury to the victim.
- (2) Battery of a dating partner that results in serious bodily injury to the victim.
- (3) Violation of protective orders if the violation involves a battery or any crime of violence against the person for whose benefit the protective order is in effect.

Provides that a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one dating partner upon another dating partner shall also constitute a prior conviction for purposes of imposing increased penalties for a second or subsequent conviction.

Prohibits communication between a victim and an offender who is charged with or who has been sentenced for any felony offense committed upon a family member, household member, or dating partner. Requires the judge to have prepared a Uniform Abuse Prevention Order, which shall be forwarded to the clerk of court for filing and transmittal to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry. Further requires the court to order that the defendant be prohibited from possessing a firearm for the duration of the order.

Provides that persons who violate these prohibitions on communication shall be subject to the crime of violation of protective orders.

Act No. 697 (HB 773) by Rep. Lyons

When the court grants a protective order or approves a consent agreement to bring about the cessation of domestic abuse, authorizes the court to order a mental health evaluation, in lieu of or in addition to a medical evaluation, and removes the court's authority to order a medical opinion regarding a medical evaluation of the abused person.

Weapons

Act No. 367 (SB 231) by Sen. Morrell

Provides for the following with respect to the prohibition on the possession of a firearm based upon a conviction or protective order:

- (1) Provides that a person commits the crime of violation of a protective order when the person possesses a firearm, carries a concealed weapon, or purchases or attempts to purchase a firearm when a protective order has been issued against the person that prohibits the person from possessing a firearm or when the person is prohibited from possessing a firearm or carrying a concealed weapon based upon a conviction for certain offenses.
- (2) If a person is reported ineligible to purchase a firearm by the National Instant Criminal Background Check System (NICS), the licensed dealer is required to report the denial to the sheriff of the parish in which the attempted purchase occurs.
- (3) Creates the crime of illegal transfer of a firearm to a prohibited possessor and provides criminal penalties for the offense.
- (4) Increases the fines and maximum term of imprisonment from five years to 20 years for the crime of illegal possession of a firearm by a person convicted of certain domestic abuse offenses. Provides that such term of imprisonment shall be served without benefit of parole, probation, or suspension of sentence.
- (5) Provides the procedure by which a person convicted of certain domestic abuse offenses, or a person against whom certain injunctions or protective orders are issued, transfers all firearms he possesses to law enforcement or to a third-party for the duration of time that he is prohibited from possessing the firearm based upon such conviction, injunction, or order. Provides for the duties of the court, law enforcement, the third person who possesses the firearm, and any third-party to whom the firearms are transferred. Further provides for the procedure by which the transferred firearms may be sold or returned to the person when the prohibition on possession of the firearm no longer exists.

Effective October 1, 2018.

Act No. 532 (SB 411) by Sen. White

Provides that release of a person committed to a mental institution based on a recommendation by the superintendent of the institution requires a unanimous vote of the three-member review panel. Adds medical psychologist to the list of persons who may comprise the three-member panel and requires the panel to render specific findings of fact in support of its recommendation.

Authorizes a person who is prohibited from receiving or possessing a firearm or from obtaining a

concealed handgun permit, based upon the person being adjudicated as a mental defective or committed to a mental institution, to petition the court for restoration of his firearm rights.

Prohibits persons who have been found not guilty by reason of insanity for a crime of violence which is a felony or for certain other enumerated crimes from possessing a firearm or carrying a concealed weapon for ten years from the date of discharge from a mental institution by a court of competent jurisdiction. Provides for the procedure by which such person may file a civil petition seeking a judgment ordering the removal of the firearm prohibition. However, this authority does not extend to any person on conditional release or conditional discharge nor to any person who, in the ten years prior to the filing of the petition, has been convicted of or found not guilty by reason of insanity for an offense for which state law would prohibit the person from possessing a firearm.

Act No. 629 (HB 602) by Rep. Miguez

Adds an exception to the crime which prohibits the carrying of a firearm or dangerous weapon by a student or nonstudent on school property for any person who has a valid concealed handgun permit and who carries a concealed handgun within one thousand feet of any school campus.

Gaming

Act No. 451 (HB 152) by Rep. Leger

Lists the following persons who may be excluded from gaming establishments because their presence would be adverse to the interests of Louisiana or gaming operations:

- (1) Persons suspected of cheating.
- (2) Persons whose gaming privileges, permits, or licenses have been suspended, revoked, or denied.
- (3) Persons who pose a threat to the safety of the patrons or employees of the casino operator or casino manager or any casino gaming licensee.
- (4) Persons with a documented history of conduct involving the disruption of the gaming operations in any jurisdiction.
- (5) Persons subject to an order of a Louisiana court excluding such persons from any gaming establishment.
- (6) Persons with pending charges for a gaming or gambling crime or a crime related to the integrity of gaming operations.

Further prohibits a person from being excluded from a gaming establishment for reasons based solely on the skill level of the person.

Removes the authority to exclude or eject persons for any reason and provides that gaming operators, licensees, or permittees may exclude or eject persons who engage in unlawful or disruptive conduct. Retains the provisions prohibiting the exclusion of persons from a gaming establishment based upon race, color, creed, national origin, sex, or disability.

Act No. 322 (HB 484) by Rep. Talbot

Creates the "Louisiana Fantasy Sports Contests Act" and provides for a proposition election to be held on November 6, 2018, to determine whether fantasy sports contests shall be permitted in a particular parish. "Fantasy sports contest" means any fantasy or simulation sports game or contest played through the internet or mobile device with all of the following elements:

- (1) Participants create a simulation sports team based on the current membership of actual amateur or professional sports organizations.
- (2) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest, and the value of the prizes or awards is not determined by the number of participants or the amount of any fees paid by those participants.
- (3) All winning outcomes reflect the relative knowledge and skill of the participant and are predominantly determined by accumulated statistical results of the performance of the individuals, including athletes in the case of sporting events.
- (4) No winning outcome is based upon either of the following:
 - (a) On the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams.
 - (b) Solely on any single performance of an individual athlete in any single real-world sporting or other event.

The above provisions are effective August 1, 2018.

If a majority of the qualified electors in at least one parish in the state vote to approve the proposition to permit fantasy sports contests in such parish, the La. Gaming Control Board is required to adopt all rules necessary to implement, administer, and regulate fantasy sports contests. (Effective November 7, 2018.)

Upon adoption of rules by the La. Gaming Control Board and the enactment of laws to provide for the licensing, regulation, and taxation of revenue relative to fantasy sports contests, new law does all of the following:

- (1) Authorizes fantasy sports contests in only those parishes in which a majority of qualified

electors in the parish voting on the proposition voted for the proposition to permit fantasy sports contests in the parish.

- (2) Provides an exception to the crimes of gambling (R.S. 14:90) and gambling by computer (R.S. 14:90.3) for fantasy sports contests.

Act No. 491 (SB 184) by Sen. Martiny

Sets the minimum fuel sales requirement for truck stops that have been in operation for 10 years to 30,000 gallons per month. After 10 years of operation, such facility is permitted to retain the number of video poker devices operated the previous calendar year.

Limits the number of devices such facilities retain to not more than 40.

Act No. 469 (SB 316) by Sen. Johns

Relative to riverboat gaming, removes the operable paddlewheel requirement.

Provides for a definition of "gaming position" and provides that a designated gaming area of a riverboat shall not exceed 2,365 gaming positions.

Further permits a licensee of a riverboat to submit an application to the La. Gaming Control Board to relocate its gaming operations to a facility located within 1,200 feet of the riverboat's licensed berth.

Effective upon signature of governor (May 23, 2018).

Act No. 575 (SB 525) by Sen. LaFleur

Allows the La. State Racing Commission to approve the transfer of slot machine proceeds received for thoroughbred race purses from one licensed eligible facility to another to supplement thoroughbred purses at a thoroughbred race meet.

Further provides for a definition of "gaming positions" at a racing facility and provides for 1,632 gaming positions rather than a square foot limitation at an eligible facility.

Driving While Intoxicated

Act No. 198 (HB 184) by Rep. Leger

Increases the special costs assessed for convictions of operating a motor vehicle while intoxicated from \$75 to \$125, with \$75 paid to the governing authority owning the instrument used to perform

a blood, breath, or urine analysis for alcohol or any controlled dangerous substance.

Act No. 130 (HB 318) by Rep. Connick

Removes the exception for New Orleans city, municipal, and traffic courts from an existing provision of law (R.S. 13:1894.1), which provides that prosecutions in any city, parish, or municipal court, based on or arising out of DWI, may be charged and prosecuted under the state law DWI provisions or under any applicable city, parish, or municipal ordinance that incorporates the standards, elements, and sentences of state DWI law.

Miscellaneous

Act No. 352 (SB 72) by Sen. Martiny

Provides that a coroner or his staff may apply to the court for an order of protective custody that allows law enforcement to use forced entry to gain access into premises when executing an order of protective custody.

Further provides for accompanying documents for an order for protective custody and provides for both oral and telephonic orders of protections under exceptional circumstances.

Provides for limitations of civil liability to an elected coroner and his support staff, and the executing law enforcement agencies and its officers for acts done in good faith while executing an order of protective custody. The limitation does not apply in instances of gross negligence or willful and wanton misconduct.

Provides that the limitation of civil liability does not extend to any action for the serious bodily injury or wrongful death as a result of the restraint or transportation of the person subject to the request and order for protective custody.

Also provides that the limitation of civil liability does not extend to injuries or damages sustained by a third party physically injured during the execution of a request and order for protective custody.

Effective May 20, 2018.

Act No. 678 (HB 196) by Rep. Marino

Provides that the limitation on the number of expungements a person may receive during a 15-year period does not apply to persons who seek the expungement of a record of arrest and conviction for a conviction that was set aside and the prosecution dismissed.

SELECTED CIVIL LAW COMMITTEE LEGISLATION

Civil Procedure

Act No. 443 (HB 5) by Rep. Connick

Specifies that a settlement and subsequent dismissal of a defendant pursuant to a transaction or compromise does not qualify as a voluntary dismissal relative to the interruption of prescription.

The provisions are intended to codify the ruling of the court in *Pierce v. Foster Wheeler Constructors, Inc.*, 906 So.2d 605 (La. App. 1st Cir. 2005).

Act No. 254 (HB 6) by Rep. Connick

Provides that upon motion of any party when a suit has been pending for more than one year without a trial date being set, the court shall set the matter for conference for the purpose of resolving all pretrial matters, including scheduling discovery time limitations, fact and issue stipulations, witnesses and testimony, and setting a trial date.

Provides that the conference may be conducted in chambers, by telephone, or by video teleconference.

Act No. 184 (HB 16) by Rep. Danahay

Deletes the requirement of submitting printed books or pamphlets in order for the court to recognize statutes of other states, territories, and foreign jurisdictions, and provides that the court shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States pursuant to existing law (C.E. Art. 202).

Act No. 264 (HB 100) by Rep. White

Specifies that the damages and consequences of bringing a frivolous action under existing law (C.C. Art. 2315.8) only relate to tort actions and do not relate to any other action in which domestic abuse may be alleged.

Retains the existing classification of an obligation of attorney fees and costs awarded pursuant to a divorce based on domestic violence as a separate obligation but moves the authorization of the assessment to a new provision of law (R.S. 9:314).

Retains the existing requirement that in any family violence case, all court costs, attorney fees, evaluation fees, and expert witness fees shall be paid by the perpetrator of the family violence and makes the award consistent with the Domestic Abuse Assistance Act by also including costs of enforcement and modification proceedings and costs of appeal.

Act No. 195 (HB 174) by Rep. Garofalo

Permits final default judgments granting or confirming preliminary defaults to be signed by the district judge in chambers.

Deletes the phrase "for all purposes" from C.C.P. Art. 853 to resolve an inconsistency with Article 966(A)(4), which prohibits the filing of exhibits to pleadings in connection with motions for summary judgment unless the exhibits themselves are properly authenticated.

Recognizes and addresses exceptions to the general rule in C.C.P. Art. 855 that it is not necessary to allege the capacity or authority of a party to sue and be sued, such as C.C.P. Art. 4061.1, which requires a natural tutor in some circumstances to allege that he qualifies to act of right as tutor.

Prior law (C.C.P. Art. 1471(A)(3)) used the term in a manner that is inconsistent with other provisions of the Code of Civil Procedure.

Replaces the term "judgment by default" with "final default judgment" and provides that when a final default judgment is rendered as a discovery sanction against the defendant, the plaintiff must still set forth a prima facie case as required by Article 1702.

Provides that service of a final default judgment by the sheriff is only required when the defendant did not otherwise make an appearance by filing a pleading.

Provides that notice of the signing of a final default judgment shall be mailed by the clerk of court to the defendant unless the defendant was not served personally, in which case the requirements of Article 1913(B) will apply.

Replaces the term "curator" in C.C.P. Art. 3952 with "attorney" in accordance with Article 5091.

Act No. 128 (HB 288) by Rep. Jackson

Provides that a legal holiday is excluded in the computation of a period of time allowed or prescribed to seek rehearing, reconsideration, or judicial review or appeal of a decision or order by an agency in the executive branch of state government, except for the rehearing, reconsideration, or judicial review or appeal of a decision or order by the Dept. of Revenue.

Act No. 368 (SB 233) by Sen. Morrell

Provides that a party may petition a court for a declaratory judgment that a clause in an agreement, contract, settlement, or other similar instrument that prevents a party to the instrument from disclosing factual information related to acts that if proven would establish a cause of action for civil damages for any act that may be prosecuted as a criminal offense is null, void, and unenforceable as a matter of law and shall be considered against public policy.

Provides that the fact that an agreement, contract, settlement, or similar instrument states that the providing of consideration is not an admission of liability for an alleged criminal offense, of the commission of a criminal offense, or of an awareness of a criminal offense shall not be conclusive in determining whether the provisions of new law apply.

New law applies to any agreement, contract, settlement, or other similar instrument entered into, revised, or amended before, on, and after August 1, 2018.

Act No. 135 (HB 550) by Rep. Magee

Reduces the time delay to respond to written interrogatories and requests for production of documents from 30 days to 15 days in family law matters, including divorce, custody, support, community property, and incidental matters.

Act No. 180 (HB 731) by Rep. Hunter

Provides that the filing of a motion for a legislative continuance be done at no cost to a member of the legislature, a legislative employee, or their client.

Act No. 275 (HB 744) by Rep. Leger

Provides that a district court or a court of limited jurisdiction may sign orders and judgments while outside of its territorial jurisdiction during an emergency or disaster declared as such by the governor if the emergency or disaster prevents the court from operating in its own jurisdiction. Further requires that the court shall indicate the location where the order or judgment was signed.

Act No. 228 (SB 60) by Sen. Martiny

Authorizes the admissibility and consideration of evidence of the defendant's commission of a crime, wrong, or act involving domestic abuse, family violence, or sexual abuse in civil actions alleging acts of domestic abuse, family violence, or sexual abuse.

Effective upon signature of governor (May 15, 2018).

Act No. 359 (SB 147) by Sen. Morrell

Provides that a court shall stay proceedings in cases of defamation of character, libel, slander, or damage to reputation brought by an alleged perpetrator of sexual misconduct against the alleged victim. Further provides that the stay shall remain until the completion of all investigations, hearings, or proceedings relating to the allegations of sexual misconduct.

Provides that the party instituting the suit against an alleged victim waives all privileges and protections relating to the findings and evidence of the investigation, hearing, or proceeding on the allegations of sexual misconduct. Such waiver does not apply to attorney-client privilege.

Provides that if the court determines that the defamation of character, libel, slander, or damage to reputation claim brought by an alleged perpetrator is fraudulent or frivolous, the court shall order the plaintiff to pay all court costs and reasonable attorney fees and the defendant is entitled to exemplary damages.

Provides that a defendant shall not be required to prepay costs to file an answer in a defamation of character, libel, slander, or damage to reputation claim.

Act No. 607 (SB 537) by Sen. Luneau

Relative to monies paid to a minor as the result of a judgment or settlement, requires that funds paid directly into the registry of the court and subsequently withdrawn be invested in an interest-bearing investment approved by the court, unless the court for good cause approves another disposition. Requires court approval of payments made under a structured settlement. Requires that the court approve direct investment of funds only in interest-bearing investments. Requires that any funds placed in trust be administered by an individual or corporate trustee as determined by the court.

Damages

Act No. 481 (SB 91) by Sen. Claitor

Provides that, in addition to general damages, exemplary damages may be awarded upon proof that the death of a person was caused by the wanton and reckless disregard for the rights and safety of the person through an act of hazing, regardless of whether the defendant was prosecuted for his acts.

Effective upon signature of governor (May 25, 2018).

Act No. 178 (HB 719) by Rep. Foil

Relative to the payment of medical care and related benefits that may be incurred subsequent to judgment in any suit for personal injury against the state or a state agency, limits payment from the Future Medical Care Fund for the medical care and related benefits that the court determines the claimant is entitled to, only, and removes the requirement of a separate court order authorizing payment.

Act No. 360 (SB 156) by Sen. Carter

Provides that there shall be no liability on the part of a person for property damage or trespass to a motor vehicle, if the damage was caused while the person was rescuing a minor or an animal in distress.

Provides that there shall be no liability on the part of the owner of the vehicle for any conduct that might otherwise be actionable in defending his vehicle.

Provides that the immunity from liability for property damage to a motor vehicle does not affect a person's liability for bodily injury suffered by the minor or animal while the person was rescuing the minor or animal.

Provides that the immunity shall apply only if the person:

- (1) Makes a good-faith attempt, based on the circumstances known to the person at the time, to locate the owner of the motor vehicle before entering, forcibly or otherwise, the vehicle.
- (2) Contacts the local law enforcement agency, the fire department, animal control, or the 911 emergency operator before entering the motor vehicle forcibly or otherwise.
- (3) Determines that the motor vehicle is locked and has a good-faith belief that there are no other reasonable means for the minor or animal to be removed from the vehicle.
- (4) Believes that removal of the minor or animal from the motor vehicle is necessary because the minor is in imminent danger of suffering harm or the animal is in imminent danger of death.
- (5) Uses force that was reasonably necessary under the circumstances to enter the motor vehicle to rescue the minor or animal.
- (6) Places a notice on the windshield of the motor vehicle providing details of the person's contact information, the reason the entry was made, the location of the minor or animal, and notice that the proper authorities have been notified.
- (7) Remains with the minor or animal in a safe location, out of the elements of nature but reasonably close to the motor vehicle, until emergency responders arrive.

Act No. 416 (SB 466) by Sen. Price

Provides that a tenant or lessee has the right to recover any portion of the security deposit wrongfully retained and \$300 or twice the amount of the portion of the security deposit wrongfully retained, whichever is greater, from the landlord or lessor, or from the lessor's successor in interest.

Effective January 1, 2019.

Prescription

Act No. 337 (HB 759) by Rep. Foil

Specifies that an action brought by a person who suffers any ascertainable loss of money or property under the Unfair Trade Practices and Consumer Protection Law is subject to a one-year prescriptive period.

Act No. 471 (SB 502) by Sen. Perry

Removes payment for tuition fees as an action subject to a liberative prescription of three years.

Property

Act No. 452 (HB 172) by Rep. Garofalo

Relative to property sold at sheriff's sale, provides for the cancellation or partial release of inferior inscriptions by the clerk of court or proper filing officer, regardless of whether they appeared on the mortgage certificate in the foreclosure proceeding.

Provides that if the inscription of an inferior mortgage, lien, or privilege encumbering the immovable property sold through a judicial sale is not cancelled as required by C.C.P. Art. 2376, the seizing creditor or its attorney of record may have the inferior mortgage, lien, or privilege cancelled or partially released as to the immovable property sold by recording in the mortgage records of the parish in which the immovable property sold is located an "affidavit to cancel an inferior encumbrance".

Requires written notice of seizure to the inferior creditor prior to the judicial sale.

Provides that an affidavit executed by a seizing creditor or its attorney of record to cancel or partially release an inferior mortgage, lien, or privilege shall include all of the following information:

- (1) The name, mailing address, telephone number, and email address of the seizing creditor or its attorney of record.
- (2) The name of the court, case name, and docket number of the action under which the seizure and sale of the immovable property was ordered.
- (3) The date of the judicial sale.
- (4) A description of the seizing creditor's foreclosed mortgage, lien, or privilege, including the recordation information and recording date.
- (5) A description sufficient to identify the foreclosed immovable property.
- (6) A description of the inferior mortgage, lien, or privilege, including the recordation information and recording date, and a declaration that the described mortgage, lien, or privilege requested to be cancelled or partially released is inferior to the foreclosed mortgage, lien, or privilege.
- (7) A certification that written notice of seizure was given to the inferior creditor prior to the judicial sale, and a copy attached of the written notice together with evidence that it was

delivered to the inferior creditor.

- (8) A request that the clerk of court cancel or partially release the identified inferior mortgage, lien, or privilege.

Requires the clerk of court to cancel or partially release the inferior mortgage, lien, or privilege upon the recordation of an affidavit that is in compliance with these provisions, and provides that the cancellation of a mortgage, lien, or privilege shall have no effect if the mortgage, lien, or privilege is actually superior to the seizing creditor's foreclosed mortgage, lien, or privilege.

Act No. 568 (SB 405) by Sen. Price

Provides that, in an incorporated municipality under a home rule charter and which has a population between 6,650 and 7,650, according to the latest federal decennial census and upon satisfaction of certain requirements, ownership of an immovable may be acquired by the prescription of three years without need of just title or possession in good faith. Requires that the land and all the improvements thereon are located in the municipality and are declared or certified blighted after an administrative hearing, pursuant to R.S. 13:2575 or 2576. Further, requires certain documents to be filed in the mortgage and conveyance records of the parish including the following:

- (1) An affidavit by the possessor stating the name and address of the possessor, stating the intention of the possessor to take corporeal possession of the immovable property for the possessor's own account, stating that such corporeal possession shall commence no sooner than 14 days from the date of filing of the affidavit and a short legal description of the immovable property intended to be possessed.
- (2) A copy of an order, declaration, determination, resolution or ordinance of the municipality, certified by the municipality as a true copy, declaring the property as blighted property.

Provides that an affidavit and resolution shall be mailed by certified mail to all interested parties, within 30 days of being filed. Provides that a notice, stating the name and address of the possessor, possessor's intent to take possession of the immovable, and the date the notice was posted, shall be affixed on a prominent location on the immovable property within one month after an affidavit and resolution are filed. Provides for a period of time, not to exceed 45 days, in which the possessor takes possession of the property and repairs such property.

Provides that all ad valorem taxes, interest, and penalties due and payable shall be paid in full, and provides that possessor's rights shall be terminated for failure to comply with these requirements.

Prohibits the possessor from demolishing the immovable property without authority from the municipality.

Provides that the possessor shall not be held liable for a cause of action pertaining to the immovable property except causes of actions pursuant to C.Cr.P. Art. 3651. Further provides that the possessor

shall not be held criminally responsible for trespass or demolition of the immovable property.

Provides for reimbursement to the possessor in the event the owner is successful in bringing a real action pursuant to C.Cr.P. Art. 3651. Further provides that possessor shall earn and receive interest at the judicial interest rate as provided by R.S. 13:4202.

Provides that no recorded mortgage privilege, lien, or judgment encumbering the subject property shall be extinguished or impaired by the accrual of acquisitive prescription and any holder of a mortgage, privilege, lien, or judgment, encumbering the subject property may enforce its rights through foreclosure, including the seizure and sale of the property as though acquisitive prescription had not accrued.

Provides for certain procedures and requirements in determining the cost or value of doing certain types of work on the immovable property, for reimbursement purposes. Further provides that monies owed to possessor shall be secured by a first privilege lien, which shall be inferior to previously recorded mortgages, privileges, liens, and judgments.

Effective upon signature of governor (May 30, 2018).

Act No. 419 (SB 497) by Sen. Cortez

Authorizes the expropriation by a declaration of taking of property needed for the construction, repair, or enhancement of drainage, roads, or bridges by the city of Lafayette and the parish of Lafayette.

Successions

Act No. 122 (HB 173) by Rep. Garofalo

Provides that an action by a successor of a decedent not recognized in a judgment of possession against a third person who acquired an interest in immovable property by onerous title is prescribed in two years from the *rendering* of the judgment of possession, rather than the *finality* of the judgment of possession.

Provides that an action against an independent succession representative claiming defective legal procedure or noncompliance with the law in the alienation, encumbrance, or lease of movable or immovable property is prescribed two years from the making of the alienation, encumbrance, or lease.

Act No. 422 (SB 543) by Sen. Lambert

Increases the value of small successions for which court costs shall be one-half the cost of larger successions from \$75,000 to \$125,000.

Act No. 302 (HB 234) by Rep. Edmonds

Increases from \$10,000 to \$20,000 the amount a federally insured depository institution may pay the surviving spouse of a deceased depositor.

Deletes prior law with respect to a judicial determination concerning an inheritance tax and deletes the requirement of a federally insured depository institution to notify the collector of revenue of the release of funds to the surviving spouse.

Act No. 167 (HB 497) by Rep. Pearson

Provides definitions for "broker or securities firm", "joint securities or brokerage account", "security", and "securities or brokerage account".

Provides that upon the death of a joint securities or brokerage account holder and with the authorization and direction of the surviving account holder, a broker or securities firm may sell or transfer securities held in the account not to exceed 50% of the value of each security held in the joint securities account. The value of the securities shall be determined as of the date of the death of the decedent.

Provides that the surviving account holder has the right to withdraw the funds or assets; however, the right of withdrawal shall terminate upon written notice of the appointment of an executor or administrator of the estate of the decedent being delivered to the broker or securities firm.

Exempts from liability a broker who pays the surviving spouse in accordance with these provisions, and provides that these provisions shall not prohibit any right of forced heirship or the collation or collection of funds due to any spouse, heir, legatee, creditor, or other person having rights or claims to funds of the deceased account holder.

These provisions of shall not be applicable upon delivery to the broker or securities firm of a written notice of a petition for the divorce of the account holders and final settlement of the community property has been filed and is pending at the time of the death of the account holder.

Child and Spousal Support

Act No. 265 (HB 125) by Rep. Jefferson

Creates a presumption of entitlement to final periodic support if a divorce is granted on fault-based grounds or the court finds that a party or a child of one of the spouses is a victim of domestic abuse.

Provides for the termination of interim spousal support six months after the judgment of divorce in all cases.

Clarifies that both interim and final support awards may be modified and terminated. Further

clarifies that such support may be extinguished upon remarriage, death, or cohabitation.

Repeals law providing that the failure to bring an action for divorce or support under domestic abuse grounds does not affect the rights of parties to seek other remedies provided by law.

Act No. 166 (HB 490) by Rep. Gregory Miller

In the context of family and child support programs, provides that the "reasonable cost" for health insurance premiums for a minor child as it relates to the gross income of the parent applies to adding a child to an existing policy, the cost of acquiring a separate policy, or the difference between a single and a family policy.

Allows a court to order a noncustodial parent to pay cash medical support when a minor child has no healthcare coverage, is covered by public health insurance, or is covered by private health insurance but there remains a need for additional funds to cover the child's healthcare costs.

Provides that cash medical support shall not exceed 3% of the noncustodial parent's gross income rather than 5%, and provides that cash medical support is in lieu of requiring the parent to pay reimbursement for extraordinary medical expenses.

Effective upon signature of governor (May 15, 2018).

Act No. 373 (SB 288) by Sen. Perry

Revises procedure for commencement of child support enforcement actions to be in compliance with federal law, 42 U.S.C. 666, and provides for redirection of support payments.

Provides that the Dept. of Children and Family Services (DCFS) is authorized to receive and disburse support payments made on behalf of each child who is a recipient of public assistance, and is authorized to administratively change the payee of a support order to the department.

Provides that DCFS shall give notice of such change to the obligee and the obligor and shall file a copy of such notice with the court by which the order was issued or last registered.

Repeals law providing that in cases receiving support enforcement services from DCFS, upon motion of the district attorney or the department, a support order shall be transferred to the appropriate court which was enforcing the support order prior to its transfer to the department.

Effective October 1, 2018.

Act No. 379 (SB 330) by Sen. Colomb

Provides that a child support obligation shall not be modified unless there is a material change in circumstances that is substantial and continuing.

Grants the court discretion to modify a child support obligation without or without a 25% variation between the current support obligation.

Provides that in the best interest of the child judicial review shall be called upon by either party or DCFS. Further provides that the court may modify a child support award every three years if the existing award differs from the previous award.

Effective upon signature of governor (May 20, 2018).

Act No. 136 (HB 576) by Rep. Marino

Act No. 264 of the 2017 R.S. provides relative to child support obligations, procedures for the temporary modification or suspension of child support orders, notice requirements, defense for contempt of the failure to comply with a child support order due to incarceration, and rule-making authority for the Dept. of Children and Family Services.

The provisions of Act No. 264 of the 2017 R.S. become effective on Jan. 1, 2019.

Retains all of the substantive provisions of Act No. 264 except for changing the effective date as follows:

- (1) The provisions of Sections 1 through 7 of Act No. 264 become effective on Aug. 1, 2019, instead of Jan. 1, 2019, except as provided in (2) and (3) below.
- (2) The provisions of R.S. 9:315.11, relative to voluntary unemployment or underemployment, as amended and reenacted by Act No. 264, become effective on Aug. 1, 2018, instead of Jan. 1, 2019.
- (3) Repeals the rule-making authority provided to DCFS in Act No. 264 (R.S. 9:311.1(J)), and provides for such rule-making authority in new law to be effective upon signature of the governor.

Effective upon signature of governor (May 11, 2018).

Custody and Visitation

Act No. 412 (SB 291) by Sen. Barrow

Provides that in awarding custody, the court shall consider all of the following factors to determine the best interest of a child:

- (1) The potential for the child to be abused which shall be the primary consideration.
- (2) The history of substance abuse, violence, and criminal activity of the parties.

- (3) The history of family violence, sexual abuse, or domestic violence of the parties.
- (4) The mental and physical health of each party.
- (5) Willingness and ability to facilitate and encourage a close and continuing relationship with the child except when objectively substantial evidence has caused a party to have reasonable concerns.

Provides that in determining an award of custody or visitation in cases involving a history of family violence or domestic violence including sexual abuse, the court may consider whether a party has sought relief. Provides that the court may only find a history of committing family violence if the court finds that one incident has resulted in serious bodily injury or finds more than one incident of family violence.

Restricts visitations for a parent who has subjected a child, stepchild or other household member to a history of family violence or has willingly permitted abuse to his or her children or stepchildren despite the ability to prevent it. Further provides that the court may allow supervised visitations by an abusive parent upon their completion of a court monitored domestic abuse intervention program by the abusive parent.

Provides that the court shall prohibit visitations and contact between a sexually abusive parent and a child until the parent has completed a treatment program designed for sexual abusers since the last incident of domestic violence or family abuse.

Provides that no parent who has subjected a child, stepchild, or household member to sexual abuse shall have sole custody or joint custody.

Provides that a presumption of custody shall be overcome by successfully completing a treatment program designed for sexual abusers after the last instance of abuse.

Effective upon signature of governor (May 23, 2018).

Act No. 378 (SB 326) by Sen. Barrow

Provides that an implementation plan for a joint custody order shall provide for the responsibility of the parties to engage in continuous communication regarding the evacuation of the child, the location of the child, and an interim custody plan, if either party is required to evacuate the state with a minor child because of a declared emergency or disaster.

Effective upon signature of governor (May 20, 2018).

Act No. 383 (SB 366) by Sen. Ward

Provides that visitation rights may be granted to a grandparent or other relative pursuant to C.C. Art.

136 only if the parents are not married or living with another person or if the parents have filed for divorce. Provides that if the parents of a child are married and have not filed for divorce or they are living in concubinage, the provisions of R.S. 9:344 shall govern a determination of visitation by a grandparent or sibling.

Before granting visitation to a grandparent, other relative, or former stepparent or grandparent, C.C. Art. 136 requires a contradictory hearing to determine whether an attorney should be appointed to represent the child. In making such a visitation determination, in addition to factors already provided, the court shall consider a parent's constitutional right to make decisions for a child and a presumption of fitness when determining the best interest of the child. Removes the willingness of the relative to encourage a close relationship between the child and parent as a factor to be considered by the court.

Act No. 320 (HB 466) by Rep. Gisclair

Authorizes the court to grant a court appointed special advocate program (CASA) volunteer access to the home in which a child is placed and requires that CASA volunteers be allowed to attend all family team meetings as well as administrative review hearings related to the case, unless the parent objects.

Adds CASA program staff members and board of director members as individuals who may be screened by a court for any justifiable reports of abuse or neglect, if any such individuals have contact with children served by CASA.

Repeals law allowing information from investigations of reports of child abuse or neglect that are inconclusive to be disclosed to evaluate a CASA volunteer applicant, effective upon adoption of rules by the Dept. of Children and Family Services.

Paternity

Act No. 21 (HB 147) by Rep. Dwight

Provides that the husband or former husband of the mother of a child is not presumed to be the father of the child if the mother, presumed father, and biological father execute a three-party acknowledgment regarding the paternity of the child and a DNA test confirms the paternity of the biological father. Further provides that the person acknowledging that he is the biological father of the child is presumed to be the father if confirmed by a DNA test and the parties execute a three-party acknowledgment of paternity.

Provides a ten-year preemptive period from the day of the birth of the child and a one-year preemptive period from the day of the death of the child for the execution of this acknowledgment.

Provides for the surname of a child born to a married mother in cases involving a properly executed three-party acknowledgment and a DNA test confirming the paternity of the biological father.

Further directs the state registrar to record the biological father's information on the birth certificate of the child.

Provides for the amendment of a birth certificate upon the execution of a three-party acknowledgment and directs the state registrar to record the biological father's information on the birth certificate of the child.

Repeals law authorizing the amendment of a birth certificate of a child if the husband and the mother lived separate and apart for 180 days prior to conception and did not reconcile and the biological father is someone other than the husband of the mother.

Effective upon signature of governor (May 7, 2018).

Adoption

Act No. 562 (HB 643) by Rep. Edmonds

Provides that following the surrender of a child for adoption, the adoptive parents are required to file a preliminary estimate and accounting of fees and charges related to the adoption.

Requires that allowable expenses payable to the birth mother be made through an adoption agency or an adoption attorney or provided as a service by the Dept. of Children and Family Services (DCFS) and narrows the allowable expenses from reasonable to actual expenses.

Limits living expenses to the amount needed to maintain an adequate standard of living and includes an illustrative list of the types of living expenses. Provides that allowable living expenses shall not include vehicles, salary or wages, recreation or leisure activities, permanent housing, gifts, or other payments for the monetary gain of the mother and limits the total and cumulative allowable living expenses paid by all sources to \$7,500. Authorizes the court to approve additional expenses upon a finding that the expense is reasonable and necessary.

Allows prospective adoptive parents to seek reimbursement of expenses paid to a mother in anticipation of an adoption if the mother is not pregnant or if she is accepting payments from more than one prospective adoptive parent.

Requires that the adoption disclosure affidavit include supporting receipts or other documentation, the name and address of each recipient, the purpose of the payment, disclosure of other expenses paid by another agency or attorney, and the amount and date all payments were made.

Requires the affiant to certify that they understand that, in accordance with R.S. 14:286, making a false statement in any adoption disclosure affidavit with the intent to deceive and with knowledge that the statement is false is punishable by a fine of up to \$50,000, imprisonment with or without hard labor for not more than 10 years, or both.

Clarifies the elements of the crime of the sale of minor children and adds that it shall also be unlawful to make false statements on an adoption disclosure affidavit.

Miscellaneous

Act No. 276 (HB 747) by Rep. Emerson

Changes the delay to perform a marriage ceremony from 72-hours to 24-hours.

Act No. 245 (SB 456) by Sen. Johns

Removes the disposal of salt water or another waste substance from the list of activities that is not included in the definition of operations for purposes of the Louisiana Oil Well Lien Act.

Act No. 164 (HB 395) by Rep. Foil

Requires that the concurrence of the coroner for the filing of a petition for continuing tutorship be made in writing and provides that a decree restricting legal capacity may be contested in court for good cause.

Repeals an exception to the restriction on legal capacity for a person with intellectual disabilities over the age of eighteen, granting such person the legal capacity of a minor operating under emancipation conferring the power of administration.

Act No. 220 (SB 30) by Sen. Perry

Adds one member to the La. State Law Institute Council. Provides that the additional member will be a judge who is a member of the Louisiana City Court Judges Association appointed by the president of the association or his designee.

Effective upon signature of governor (May 15, 2018).

Act No. 145 (SB 92) by Sen. Ward

Provides that the secretary of state can administer the notary examination more than twice a year, and that all examination dates will be determined by the secretary of state.

Effective upon signature of governor (May 15, 2018).

Act No. 169 (HB 521) by Rep. Henry

Authorizes each coroner to designate one deputy or assistant per shift for each office location and appoint them as ex officio notaries public.

Provides that each deputy or assistant so designated may, in the parish which the coroner serves, administer oaths, take acknowledgments, and attest on affidavits, all within the official capacity of the coroner.

Provides procedures for the use of the official seal, requires the posting of bond, and prohibits compensation for the notarial services.

Authorizes the coroner to suspend or terminate an appointment, and provides that separation from employment shall automatically terminate the powers of the ex officio notary public.

SELECTED JUDICIARY COMMITTEE LEGISLATION

Act No. 433 (HB 469) by Rep. Smith

Provides that proceedings related to sexual assault protection orders be heard in any courts empowered to hear family or juvenile matters.

Act No. 453 (HB 187) by Rep. Marino

Authorizes the courts to control proceedings to ensure judicial efficiency and prohibits the use of restraints on children in court proceedings. The court does have the ability to use discretion in the use of restraints in delinquency proceedings if it is determined to be necessary.

Provides that if it is alleged that it is necessary to restrain a child, the child's attorney shall have the opportunity to object on the record, and if restraints are ordered, the court shall state the reasons therefore. Further authorizes the court to authorize the use of restraints when the conduct of the child during the hearing presents an imminent threat, risk of flight, or physical harm.

Does not apply when a child is in a detention center, when the child is in transport from a detention center to the courthouse, or when the child is held in the courthouse outside the room where the juvenile delinquency proceeding will occur.

Act No. 457 (HB 315) by Rep. Carpenter

Authorizes an increase in fees for all city marshals and constables fees. Fees were increased to \$30 for all matters that pertain to service or returns of all legal documents, execution of writs, newspaper advertisements, and executions of writs of possession or ejectment.

Orleans Parish and the cities of Natchitoches, Minden, Springhill, Franklin, Winnfield, Slidell, Bogalusa, Ruston, and Houma are not included in the fee increases, since those localities are covered by specific provisions of law.

This fee increase is contingent upon the recommendation by the Judicial Council in its 2019 report.

Act No. 466 (SB 38) by Sen. Bishop

Provides for any criminal justice entity conducting eyewitness testimony to use the La. Sheriff's Executive Management Institute ("LSEMI") model policy on eyewitness identification procedures by January 30, 2019.

Act No. 503 (HB 292) by Rep. Amedee

Requires the court to allow a witness who is either under 18 years of age or who has a developmental disability to have a facility dog, if available, accompany them while testifying in court. Authorizes the court to allow the use of facility dogs in cases involving all other witnesses.

Requires that notice is given to the court and provides for jury instructions regarding the role of the facility dog.

Defines "facility dog" as a dog that is certified and a graduate of an assistance dog organization that is accredited and is specially trained to provide emotional support to witnesses testifying in judicial proceedings without causing a distraction during the proceedings.

Act No. 543 (HB 286) by Rep. Mack

Requires state police, any local police department, or any sheriff's office to provide copies of crash reports upon request to any interested person and authorizes a fee for reports that exceed two pages to an amount not to exceed \$20. This amount is inclusive of all service fees and other charges. Additionally, state police is allowed to establish a lesser charge to be paid for electronic copies of crash reports and, once established, requires local police departments or sheriff's officers to charge that amount for electronic copies.

Act No. 706 (HB 899 Substitute for HB 235) by Rep. Hilferty

Requires the Louisiana Alcohol and Tobacco Commissioner (ATC) to distribute information through the Responsible Vendor Program. Requires the ATC to create and distribute an informational pamphlet that addresses methods of identifying and responding to rape, sexual assault, sexual harassment, and sex trafficking. Requires the ATC to update its responsible vendor handbook with the same data that is listed in the informational pamphlet.

Authorizes the informational pamphlet to be distributed to existing and newly hired bartenders, servers, and security personnel. Furthermore, this Act includes an immunity clause for bartenders, servers, and security personnel for reporting or failing to report any sexual assault, rape, sexual harassment, or sex trafficking incident. This immunity only extends to civil and administrative liability. The immunity protection does not extend to individuals who are considered to be a principal, conspirator, or an accessory after the fact to an offense involving a sexual assault, rape, sexual harassment, or sex trafficking incident.

Act No. 714 (HB 669) by Rep. Marcelle

Authorizes, instead of requires, the magistrate or judge to determine whether to suspend or place a hold on the renewal of the operator's license of the arrested person when they fail to appear in court.

CONSTITUTIONAL AMENDMENTS

NOVEMBER 2, 2018 BALLOT

Act No. 717 (SB 263) by Sen. Erdey

Adds an exception to the prohibition of loaning, pledging, or donating of funds, credit, property, or things of value of the state by permitting the use of public equipment and personnel by a political subdivision upon the request of another political subdivision for an activity or function which the requesting political subdivision is authorized to exercise.

Act No. 718 (SB 164) by Sen. Morrell

Provides that in a reassessment year, if the assessed value on residential property subject to the homestead exemption increases by greater than 50% of the amount of the property's assessed value in the previous year, the collector shall phase-in the additional tax liability resulting from the increase in the property's assessed value over a four-year period.

Act No. 719 (SB 31) by Sen. Appel

Prohibits the following persons from qualifying as a candidate for elective public office or holding elective public office or appointment of honor, trust, or profit in this state:

- (1) A person actually under an order of imprisonment for conviction of a felony.
- (2) A person convicted within this state of a felony or been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be a felon; who has exhausted all legal remedies; and who has not been pardoned either by the governor of this state or by the officer of the state, nation, government, or country having authority to pardon in the place where the person was convicted and sentenced.

Does not prohibit a person convicted of a felony from qualifying as a candidate for elective public office or holding elective public office or appointment if more than five years have elapsed since the completion of the original sentence for the conviction.

Act No. 720 (SB 59) by Sen. Cortez

Removes the authority to appropriate or dedicate monies in the Transportation Trust Fund to state police for traffic control purposes.

Act No. 721 (SB 163) by Sen. Perry

Extends to certain trusts the special assessment level currently available to homesteads of persons 65 or older if the settlors of the trust would otherwise qualify for the special assessment level.

Extends to certain trusts eligibility for an ad valorem tax exemption equal to \$7,500 of a property's assessed value for a military veteran with a 100% disability rating or their surviving spouse if the settlors of the trust would otherwise

qualify for the exemption.

Extends to certain trusts eligibility for a 100% ad valorem tax exemption for the surviving spouse of a person who died while performing their duty as a member of the U.S. armed forces or the La. National Guard, or as a state police, law enforcement, or fire protection officer, or as a volunteer firefighter, or as an emergency medical responder, technician, or paramedic if the settlors of the trust would otherwise qualify for the exemption.

Act No. 722 (SB 243) by Sen. Morrell

Proposes an amendment to the constitution that would require a unanimous jury vote in all felony cases, instead of a 10 out of 12 vote, for offenses committed on or after January 1, 2019.