



**Louisiana Felony Class System Task Force  
Report and Recommendations  
February 1, 2018**

## **Members of the Louisiana Felony Class System Task Force**

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We thank the following individuals for their indispensable support of the Task Force and its work:  
**Kenn Barnes** and **Alanah Hebert**, Louisiana Supreme Court  
**Natalie Laborde** and **Marilee Andrews**, Louisiana Department of Public Safety and Corrections  
**Sarah Omojola**, Southern Poverty Law Center

## **A. Background**

In its March 2017 Report and Recommendations, the Louisiana Justice Reinvestment Task Force (hereinafter, “JRTF”) recommended, among other things, that the State “implement a felony class system to eliminate inconsistencies in sentencing in release.” (See JRTF Report and Recommendations, at 32). In particular, the Report noted that the State currently sets out unique penalties for each of its over 600 felony offenses, a “haphazard and unwieldy system of individual penalties [which] imposes disparate sentences for similar crimes.” (*Id.*) In addition to carrying individual terms of imprisonment, each offense has distinct restrictions on whether certain portions of a sentence can be served on probation or under parole supervision. In light of these concerns, “Lawyers, judges, crime victims, and families of incarcerated people have expressed that the state’s inconsistent and confusing sentencing and release laws make it needlessly difficult to predict how much time a person will spend in prison.” (*Id.*)

In response, the JRTF specifically recommended, in pertinent part:

- Creating a felony class system, as reflected in a recommended classification table which essentially used current statutory sentencing ranges as a measure of each offense’s severity;
- Establishing intent language that would encourage future legislatures to classify new offenses or penalties within the newly-created felony class system; and
- Expanding and simplifying eligibility to various measures of converting sentences to community supervision.

Other than addressing on a limited number of aspects of Recommendation #3, the 2017 Session did not result in legislation adopting these recommendations. Instead, the State authorized a mechanism for further study of the topic, *i.e.*, the Louisiana Felony Class System Task Force (hereinafter, the “Task Force”).

## **B. Task Force – Purpose and Meetings**

As articulated in Act 281, enacted on June 20, 2017, the Louisiana Legislature found that

It is in the best interest of the public to have, to the greatest extent possible, a clear, regular, and simple sentencing system, whereby nearly every felony offense falls into a class, with sentencing to be imposed by designated class, to ensure consistency across crime of similar severity and greater transparency for victims, defendants, and criminal justice practitioners.

To that end, the Act established the Task Force, with the expressed purpose of studying, evaluating, and developing “a recommendation for a felony class system to the legislature before the 2018 Regular Session.”

Chief Justice Johnson called the Task Force’s first public meeting on September 15, 2017. During that meeting, Kenneth A. Polite and Representative Joseph A. Marino were elected as the Task Force’s Chair and Vice-Chair, respectively.

From November 2017 through January 2018, the Task Force conducted five additional public meetings. (Minutes of all six meetings are attached as Exhibit A). Using the JRTF’s recommended classifications as its foundation, the Task Force members divided into three subcommittees to facilitate thorough discussion of specific statutory provisions, specifically: offenses whose currently sentencing maximums would be reduced under the JRTF’s recommendation; offenses that were enacted or significantly revised during the 2017 Session, and as a result, did not receive any JRTF recommended class; and offenses that the JRTF recommended to be unclassified and retain their current statutory sentencing ranges.

**C. Recommendations**

Based on the collective experience and deliberation of its members, The Task Force (with some objection) recommends the following:

- **Recommendation #1** – adopt a felony class system in accordance with the table below, and linking each felony class to eligibility criteria for prison alternatives, hard labor requirements, and jury size. A full listing of offenses and their class designations are provided as Exhibit B. The Task Force’s recommendation includes several material adjustments from the JRTF Report, specifically, two additional classes, primarily to accommodate the classification of offenses that were adopted or revised during the 2017 Session. For comparison sake, Exhibit B includes columns reflecting the recommendations of the Task Force and the JRTF (where available) for each offense;

Felony Class	Sentencing Range	Offense Examples	Hard Labor	Ability to Suspend	Jury Type
Life	Life Sentence or Death Penalty	Murder I	With	None	12-person
A	10 to 40 yrs.	Molestation of a Juvenile	With	Minimum cannot be suspended	12-person
B	2 to 40 yrs.	First Degree Robbery	With	Minimum cannot be suspended for crimes of violence as delineated by La RS 14:2 or sex offenses pursuant La RS 15:541	12-person

Felony Class	Sentencing Range	Offense Examples	Hard Labor	Ability to Suspend	Jury Type
C	1 to 20 yrs.	Aggravated Arson	With	Minimum cannot be suspended for crimes of violence as delineated by La RS 14:2 or sex offenses pursuant La RS 15:541	12-person
D	No more than 10 yrs.	Simple Burglary	With or without	All	6-person
E	No more than 5 yrs.	Computer Fraud	With or without	All	6-person
F	No more than 2 yrs.	Unauthorized Use of a Motor Vehicle	With or without	All	6-person
Unclassified	Miscellaneous offenses with unchanged sentencing penalties	Trafficking of children	<i>Unchanged</i>		

- **Recommendation #2** – incorporate into any authorizing legislation an expression of intent that future legislatures should classify all future offenses or sentencing provisions consistent with the felony class system;
- **Recommendation #3** — develop an established, rather than ad hoc, body to periodically evaluate whether offenses remain properly classified in light of pertinent sentencing data and recidivism rates. This regular evaluation is particularly critical as to unclassified offenses, as it is the Task Force’s view that a significant and/or expanding group of unclassified offenses would erode the fundamental purpose of the felony class system itself; and
- **Recommendation #4** — encourage the Legislature and the Department of Corrections to simplify the State’s back-end sentencing regime. Indeed, all Task Force members agreed that simplifying the calculation of good time credit, probation, and parole eligibility — perhaps by adopting a flat percentage of time served across all offenses — would greatly improve the transparency and consistency of the criminal justice system.

A minority of members opposed the proposed felony class system, contending, among other things, that it would not provide clarity or transparency to the current felony sentencing regime.

Nevertheless, the majority of the Task Force reaffirms the Legislature’s conclusion that the recommended felony class system — which results in little to no change to the sentencing range of approximately 84% of all felony offenses — will improve our state’s criminal justice system.

To that end, we note that the Model Penal Code — as recommended by such legal stalwarts as the Honorable John Minor Wisdom of the Fifth Circuit Court of Appeals — was the first authoritative source to proclaim that “some system of legislative classification of offenses into a small number of categories is essential to rational thinking about the grading of crimes and the development of a principled system for the sentencing of offenders.” (See Model Penal Code Section 6.01 cmt, at 32) (attached as Exhibit C).

The lack of such an organized system leads to a criminal code much like Louisiana’s, that is, “an ad hoc collection of statutes enacted over a long period of time and influenced as to content and sanction more by the political pressures of the moment than by any coherent philosophy of sentencing.” (*Id.*) The costs of such a disorganized system are significant:

They necessarily inhibit rational thinking about the sentencing process, build a foundation of legislated disparity that is impossible to erase in the implementation of sentences, prevent the systematic achievement of any set of rational goals of sentencing, and make the task of sentencing reform impossible. Such a chaotic pattern hardly fosters public respect for the system, or provides a basis for engendering respect for law among potential and convicted offenders. As an approach to sentencing, a structure that has these features stands as an emphatic rejection of the normative values of reason and equality that ought to govern a system of justice.

(*Id.* at 36)

The Task Force takes objection with one portion of the Model Penal Code’s above reasoning: “the task of sentencing reform” may be difficult, but it is not impossible. The Model Penal Code was enacted in 1962, and most states of our Union followed its recommendation of adopting a felony class system between 25 and 50 years ago. Such a significant delay certainly has compounded many of the ills created by our State’s “chaotic pattern” of adopting hundreds of offenses, each with its own sentencing regime. And yet, the 2018 Session offers the opportunity for our State to create a felony class system, and thereby provide the foundation — the first of many measures — necessary to build transparency, predictability, “reason and equality” back into our system of justice.