

# CHAPTER 20: GETTING OUT EARLY—CONDITIONAL AND EARLY RELEASE

## A. INTRODUCTION

This Chapter focuses on conditional and early release in the state of Louisiana. Chapter 35 of *A Jailhouse Lawyer's Manual (JLM)* also discusses conditional and early release for prisoners, but that chapter deals mostly with New York laws. If you are looking for what your rights are in the state of Louisiana, you should focus on this Chapter. This Chapter reviews the different ways (other than parole) that you can be released before serving your maximum, or full sentence in Louisiana. For information on parole, see Chapter 21 of the *Louisiana State Supplement*.

Part B of this Chapter discusses Louisiana sentencing structure and procedure. This Section provides general information and definitions to help you understand your sentence. Part C discusses probation and probation programs, which delay your sentence before you serve any time in prison. Part D discusses early release programs in Louisiana that may allow you to be released before you have served your full sentence. This includes early release for good behavior, Transitional Work Programs, and substance abuse conditional release programs. Part E discusses commutations, which will shorten the length of your sentence, and pardons.

## B. LOUISIANA SENTENCING STRUCTURE

### 1. Sentencing Procedure

A sentence is the penalty given to you by the court after you are found to be guilty.<sup>1</sup> Your sentence must be announced orally, or read aloud, in open court and recorded by the court.<sup>2</sup> This sentence must be clearly pronounced on each count, or each crime, of which you were convicted.<sup>3</sup> For example, if you were convicted of one count of battery and one count of burglary, the court must announce a sentence for each of the two counts.

Your attorney must be present during your sentencing hearing, but he or she does not have to be present when your sentence is announced.<sup>4</sup> If your attorney was not present during your sentencing hearing, the court must remand, or send your case back to court, for resentencing.<sup>5</sup>

While the judge must consider certain guidelines, he or she has the freedom to ignore the guidelines and give you any sentence that is within the legal limit for your crime.<sup>6</sup>

### 2. Challenging Your Sentence

There are several ways to challenge a sentence given to you by the Louisiana courts. Your sentence must be based on a valid and sufficient statute.<sup>7</sup> Your sentence must also be based on a valid verdict (in cases where the jury decides you are guilty), judgment (in cases where the judge decides you are guilty), or plea (when you agree to plead guilty).<sup>8</sup> You may challenge your sentence by challenging the constitutionality of the statute. If a statute is unconstitutional, your sentence is invalid.<sup>9</sup> In Louisiana, the “statute” includes local ordinances.<sup>10</sup>

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<sup>1</sup> LA. CODE CRIM. PROC. ANN. art. 871(A) (2017).

<sup>2</sup> LA. CODE CRIM. PROC. ANN. art. 871(A) (2017).

<sup>3</sup> *State v. Davis*, 581 So. 2d 1013, 1013 (La. App. 3 Cir. 1991).

<sup>4</sup> *State v. Williams*, 374 So. 2d 1215, 1217 (La. 1979); *State v. Hughes*, 129 So. 637, 638 (La. 1930).

<sup>5</sup> *State v. Williams*, 374 So. 2d 1215, 1217 (La. 1979).

<sup>6</sup> *State v. Smith*, 93-0402, p. 3 (La. 7/5/94); 639 So. 2d 237, 240; *State v. Nelson*, 95-1202, p. 11 (La. App. 1 Cir. 4/30/96); 674 So. 2d 329, 336.

<sup>7</sup> LA. CODE CRIM. PROC. ANN. art. 872(1) (2017).

<sup>8</sup> LA. CODE CRIM. PROC. ANN. art. 872(3) (2017).

<sup>9</sup> *State v. Rawls*, 161 La. 628, 630, 109 So. 146, 146–147 (La. 1926).

<sup>10</sup> LA. CODE CRIM. PROC. ANN. art. 872 cmt. b (2017).

You may also challenge your sentence by arguing that the verdict, judgment, or plea of guilty was not valid or sufficient. For example, a valid sentence cannot be based on a verdict that is not responsive to the indictment.<sup>11</sup> Also, the verdict must contain findings that are essential to punishment. This is especially true in all cases where the degree of guilt depends on a decision between different levels of crime, for example, theft, simple arson, and simple criminal damage to property.<sup>12</sup>

You may also challenge your sentence by arguing that the length of your sentence is excessive, or too much, for the crime. For a sentence to be excessive, the Court of Appeal must find that penalty is so grossly disproportionate (unbalanced or out of proportion) to the severity of crime that it shocks the sense of justice, or that the sentence does not benefit any acceptable goals and is nothing more than giving needless pain and suffering.<sup>13</sup> However, because the judge has a lot of freedom to decide what your sentence is, if the length of your sentence was within the legal limits, it is very unlikely to be excessive.<sup>14</sup>

### 3. Concurrent and Consecutive Sentences

If you are convicted of two or more offenses, you will receive a sentence for each offense. You may either serve these sentences at the same time or one after the other. Sentences are called “concurrent” when you serve two or more sentences at the same time. For example, if you were sentenced to five years for one count, and five years for another count, and you served them concurrently, you would be serving five years total. On the other hand, if you served them consecutively, you would serve one after another, for a total of ten years.

If you are convicted of two or more offenses based on the same act, transaction, or plan, you will serve your sentences concurrently unless the court clearly tells you that all or some of your sentences will be served consecutively.<sup>15</sup>

Sentences of imprisonment that do not come from the same act, transaction, or plan will usually be served consecutively unless the court clearly says that all or some will be served concurrently.<sup>16</sup> For example, if you stole a car one day and forged a check a month later for unrelated reasons, it will be unlikely that the two crimes came from the same act or plan.

The sentencing judge has the authority to impose either concurrent or consecutive sentences.<sup>17</sup> This means that the judge may impose concurrent sentences even if the offenses took place at different times, or the judge may impose consecutive sentences even though the offenses took place at the same time.

The judge may consider many factors when deciding whether to impose concurrent or consecutive sentences. The judge may consider your criminal history, the dangerousness of your crime, the harm done to the victims, whether you pose an unusual risk of danger to the public, the potential for your rehabilitation, and whether you received a benefit from a plea bargain.<sup>18</sup> The more dangerous your crime was, the more likely it is for the judge to give you a consecutive sentence.

If the judge is in any way unclear or ambiguous as to whether multiple sentences will be served concurrently or consecutively, the general rule is that if the sentences are for offenses arising out of the same act or out of related criminal conduct, they will be served concurrently because it is likely that the

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<sup>11</sup> State v. Robertson, 111 La. 809, 811, 35 So. 916, 916–917 (La. 1904); State v. Gendusa, 190 La. 422, 429, 182 So. 559, 561 (La. 1938).

<sup>12</sup> LA. CODE CRIM. PROC. ANN. art. 872 cmt. d (2017).

<sup>13</sup> State v. Taylor, 95-179, p. 10 (La. App. 3 Cir. 10/4/95); 663 So. 2d 336, 343; see LA. CONST. art. I, § 20.

<sup>14</sup> State v. Nelson, 95-1202, pp. 11–12 (La. App. 1 Cir. 4/30/96); 674 So. 2d 329, 336.

<sup>15</sup> LA. CODE CRIM. PROC. ANN. art. 883 (2017).

<sup>16</sup> LA. CODE CRIM. PROC. ANN. art. 883 (2017).

<sup>17</sup> LA. CODE CRIM. PROC. ANN. art. 883 (2017).

<sup>18</sup> State v. Banks, 48-868, p. 17 (La. App. 2 Cir. 2/26/14); 134 So. 3d 1235, 1246.

judge would have given concurrent sentences.<sup>19</sup> If the convictions are for offenses that did not arise out of the same or related criminal conduct, the sentences will be served consecutively.<sup>20</sup>

### C. PROBATION

If you are on probation it means that your sentence has been suspended, or delayed, and you have been placed under supervision, instead of serving time.<sup>21</sup> After you have been sentenced, the judge may decide to suspend or defer your sentence. Both suspension and deferral will delay your sentence, but if your sentence has been deferred, your conviction and sentence may be thrown out after you complete your period of probation.<sup>22</sup> Unlike parole, you may not have to spend any time in custody because your sentence has been suspended or deferred by the judge. You must not be convicted of another crime while on probation.<sup>23</sup>

Conditions of your probation may include requirements such as reporting to the probation officer, not owning or possessing firearms, and performing community service work.<sup>24</sup> If you violate any of the conditions of your probation, there may be an arrest and a hearing, where the judge may decide to let you off with a warning, or add more conditions to your probation.<sup>25</sup> The judge may also decide to revoke (take back) your probation, which would result in you having to serve your sentence in prison.<sup>26</sup>

#### 1. Misdemeanor Cases

If you have been convicted of a misdemeanor that is not criminal neglect of family, or stalking, the court may suspend all or part of your sentence and place you on probation.<sup>27</sup> Your probation may be unsupervised probation or supervised probation.<sup>28</sup> Your probation period should be for a period of two years or shorter.<sup>29</sup> The period of the suspended sentence and probation may be longer than the sentence imposed, but it may not be longer than two years.<sup>30</sup> The term of the probationary period cannot exceed one year if your sentence is less than 90 days.<sup>31</sup>

The court may also suspend, reduce, or amend a misdemeanor sentence after you have started to serve your sentence.<sup>32</sup> If your case is drug-related and your case has been assigned to the drug division probation program,<sup>33</sup> the court may place you on probation for a period of eight years or less if the court determines that successful completion of the program may require that the period of probation should be longer than the two-year limit.<sup>34</sup> Similarly, if your case is assigned to an established driving while intoxicated court or sobriety court program certified by the Louisiana Supreme Court Drug Court Office, the National Highway Traffic Safety Administration, or the Louisiana Highway Safety Commission, the court may place you on probation for any period of not more than eight years.<sup>35</sup>

If your sentence has been deferred by the court, and the court finds at the end of the period of deferral that you have not been convicted of any other offense during the period of the deferred sentence, and that no criminal charge is pending against you, the court may set the conviction aside and dismiss the

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<sup>19</sup> Official Revision Comment, LA. CODE CRIM. PROC. ANN. art. 883 (2017).

<sup>20</sup> LA. CODE CRIM. PROC. ANN. art. 883 (2017).

<sup>21</sup> LA. CODE CRIM. PROC. ANN. art. 893 (2017); LA. CODE CRIM. PROC. ANN. art. 894 (2017).

<sup>22</sup> LA. CODE CRIM. PROC. ANN. art. 894(B)(1) (2017).

<sup>23</sup> LA. CODE CRIM. PROC. ANN. art. 894 cmt. a (2017).

<sup>24</sup> LA. CODE CRIM. PROC. ANN. art. 895(A) (2017).

<sup>25</sup> LA. CODE CRIM. PROC. ANN. art. 899(A) (2017); LA. CODE CRIM. PROC. ANN. art. 900(A) (2017).

<sup>26</sup> LA. CODE CRIM. PROC. ANN. art. 900(A)(5)(a) (2017) (effective November 1, 2017).

<sup>27</sup> LA. CODE CRIM. PROC. ANN. art. 894(A)(1) (2017).

<sup>28</sup> LA. CODE CRIM. PROC. ANN. art. 894(A)(1) (2017).

<sup>29</sup> LA. CODE CRIM. PROC. ANN. art. 894(A)(1) (2017).

<sup>30</sup> LA. CODE CRIM. PROC. ANN. art. 894 cmt. c (2017); *State v. Pontiff*, 490 So. 2d 414, 416 (La. App. 5 Cir. 1986).

<sup>31</sup> *State v. Parker*, 423 So. 2d 1121, 1123 (La. 1982).

<sup>32</sup> LA. CODE CRIM. PROC. ANN. art. 894(A)(4) (2017).

<sup>33</sup> LA. REV. STAT. ANN. § 13:5304 (2017).

<sup>34</sup> LA. CODE CRIM. PROC. ANN. art. 894(A)(6) (2017).

<sup>35</sup> LA. CODE CRIM. PROC. ANN. art. 894(A)(7) (2017).

prosecution.<sup>36</sup> The dismissal of the prosecution will have the same effect as an acquittal (meaning that you were not found guilty), but the conviction may be considered as a prior offense and you may be later charged as a multiple offender.<sup>37</sup> This type of dismissal can only happen to you once during a five-year period. However, if you have been convicted for operating a vehicle while intoxicated, dismissal may happen only once during a ten-year period.<sup>38</sup>

## 2. Felony Cases

If you have been convicted of a noncapital felony (any felony that cannot be punished by death) for the first or second time, the court may suspend your sentence and place you on probation under supervision.<sup>39</sup> The court may suspend all or a part of your sentence.<sup>40</sup> The period of probation may not be more than three years.<sup>41</sup> If it is your third conviction, the court may be able to suspend your sentence if the court decides that it is in your best interests and the best interests of the public, and the district attorney consents. The court will also consider if it otherwise could have been suspended if it was your second conviction, a violation of the Uniform Controlled Dangerous Substances Law, or a conviction for driving while intoxicated.<sup>42</sup> In that case, the court will impose additional requirements such as participation in certain programs.<sup>43</sup> Such suspension may also be granted for a fourth conviction if such suspension was not offered to you for your prior convictions of operating a vehicle while intoxicated.<sup>44</sup> The court may not suspend your sentence after you have already started serving your sentence.<sup>45</sup>

The court may also defer part or all of your sentence if you have been convicted of a noncapital felony (any felony that cannot be punished by death) for the first time.<sup>46</sup> If your sentence is deferred, you will be placed on probation under the supervision of the division of probation and parole.<sup>47</sup> Your sentence cannot be deferred for certain offenses, for example, if your conviction is for an offense or attempted offense that was violent or sexual, or for a violation of the Uniform Controlled Dangerous Substances Law punishable by a term of imprisonment of more than five years.<sup>48</sup>

If the court finds at the conclusion of the probationary period that your probation has been satisfactory, the court may set the conviction aside and dismiss the prosecution.<sup>49</sup> You will have to file a motion in order for the court to dismiss the prosecution.<sup>50</sup> Like misdemeanor cases, the dismissal of the prosecution will have the same effect as an acquittal (meaning that you were not found guilty). The conviction may be considered as a prior offense and you may be later charged as a multiple offender.<sup>51</sup>

## 3. Job Intervention Program

Under a job intervention program you will enter a guilty plea, but your sentence will be suspended or deferred. You will be placed on probation under the conditions of the job intervention program ordered by the court.<sup>52</sup> If you complete the job intervention program, and successfully complete

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<sup>36</sup> LA. CODE CRIM. PROC. ANN. art. 894(B)(1) (2017).

<sup>37</sup> LA. CODE CRIM. PROC. ANN. art. 894(B)(2) (2017).

<sup>38</sup> LA. CODE CRIM. PROC. ANN. art. 894(B)(2) (2017).

<sup>39</sup> LA. CODE CRIM. PROC. ANN. art. 893(A)(1)(a) (2017) (effective November 1, 2017).

<sup>40</sup> LA. CODE CRIM. PROC. ANN. art. 893(A)(1)(a) (2017) (effective November 1, 2017).

<sup>41</sup> LA. CODE CRIM. PROC. ANN. art. 893(A)(1)(a) (2017) (effective November 1, 2017).

<sup>42</sup> LA. CODE CRIM. PROC. ANN. art. 893(B) (2017) (effective November 1, 2017).

<sup>43</sup> LA. CODE CRIM. PROC. ANN. art. 893(B)(1)(b) (2017) (effective November 1, 2017).

<sup>44</sup> LA. CODE CRIM. PROC. ANN. art. 893(B)(1) (2017) (effective November 1, 2017).

<sup>45</sup> LA. CODE CRIM. PROC. ANN. art. 893(D) (2017).

<sup>46</sup> LA. CODE CRIM. PROC. ANN. art. 893(E)(1)(a) (2017).

<sup>47</sup> LA. CODE CRIM. PROC. ANN. art. 893(E)(1)(a) (2017).

<sup>48</sup> LA. CODE CRIM. PROC. ANN. art. 893(E)(1)(b) (2017); LA. STAT. ANN. § 14:2 (2017).

<sup>49</sup> LA. CODE CRIM. PROC. ANN. art. 893(E)(2) (2017).

<sup>50</sup> LA. CODE CRIM. PROC. ANN. art. 893 (2017).

<sup>51</sup> LA. CODE CRIM. PROC. ANN. art. 893 (2017).

<sup>52</sup> LA. STAT. ANN. § 15:571.44 (2017).

all other requirements of your court-ordered probation, your conviction may be set aside and the prosecution dismissed.<sup>53</sup>

You have the right to be represented by counsel at any court hearing relating to the job intervention program.<sup>54</sup> You will be represented by counsel during the negotiations to decide whether you are eligible to participate in the program. You will also be represented by your counsel at the time of the execution (a hearing where the court approves of the terms agreed upon by both parties) of the probation agreement, and at any hearing that will revoke, or take away, your probation and discharge you from the program, unless the court finds and the record shows that you have waived your right to counsel.<sup>55</sup>

In order to be eligible for a job intervention program, the crime you were charged for cannot be a crime of violence, domestic abuse, simple burglary of an inhabited dwelling, aggravated kidnapping of a child, or operating a vehicle while intoxicated that resulted in death.<sup>56</sup> You cannot have other criminal proceedings accusing you of a crime of violence pending against you.<sup>57</sup> The district attorney may propose that you be screened for eligibility as a participant in the job intervention program to the court if you are a first time offender, and your sentence may be suspended.<sup>58</sup> When the court receives the proposal, the court will advise you that you may be eligible for a court-authorized job intervention program.<sup>59</sup>

#### 4. Substance Abuse Probation Program

The substance abuse probation program provides substance abuse counseling and treatment for defendants sentenced to substance abuse probation.<sup>60</sup> Under this option, the court will suspend your sentence and order you to participate in a substance abuse probation program.<sup>61</sup> The district attorney must agree that you should be sentenced to a substance abuse probation program and the court must find all of the following:

- 1) You suffer from an addiction to a controlled dangerous substance;
- 2) You are likely to respond positively to the substance abuse probation program;
- 3) The available substance abuse probation program is appropriate to meet your needs; and
- 4) You do not pose a threat to the community, and it is in the best interests of justice to provide you with treatment as opposed to imprisonment or other sanctions.<sup>62</sup>

If you violate any condition of your probation: you, the treatment supervisor, the probation officer, the district attorney, or the court, may file a motion to revoke your probation. If you would benefit from an adjustment to the probation or treatment program, you, the treatment supervisor, the probation officer, the district attorney, or the court, may file a motion to modify the terms and conditions of the probation.<sup>63</sup>

### D. EARLY RELEASE

#### 1. Good Time

If you have been convicted of a felony, you may be able to shorten your sentence through “good time.” You can earn good time through good behavior and performance of work or self-improvement activities, or both.<sup>64</sup>

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<sup>53</sup> LA. STAT. ANN. § 15:571.44 (2017).

<sup>54</sup> LA. STAT. ANN. § 15:571.44 (2017).

<sup>55</sup> LA. STAT. ANN. § 15:571.44 (2017).

<sup>56</sup> LA. STAT. ANN. § 15:571.44 (2017).

<sup>57</sup> LA. STAT. ANN. § 15:571.44 (2017).

<sup>58</sup> LA. STAT. ANN. § 15:571.43 (2017).

<sup>59</sup> LA. STAT. ANN. § 15:571.43 (2017).

<sup>60</sup> LA. CODE CRIM. PROC. ANN. art. 903 (2017).

<sup>61</sup> LA. CODE CRIM. PROC. ANN. art. 903.2 (2017).

<sup>62</sup> LA. CODE CRIM. PROC. ANN. art. 903.2 (2017).

<sup>63</sup> LA. CODE CRIM. PROC. ANN. art. 903.2 (2017).

<sup>64</sup> LA. REV. STAT. ANN. § 15:571.3 (2017).

### a. Earning Good Time

Every prisoner is eligible to earn good time, unless you have been convicted for a sexual offense or convicted for a second-time crime of violence.<sup>65</sup> If you have been convicted of a misdemeanor, good time is available to you only if you have been sentenced to a parish prison for one year or more.<sup>66</sup>

Your sentence will be reduced at a rate of thirty days for every thirty days that you were in custody, or held in prison.<sup>67</sup> For example, if you spent thirty days in prison, you could earn thirty days of good time credit and be released thirty days early. If you were convicted for the first time of a crime of violence, your sentence will be shortened at the rate of three days for every seventeen days in actual custody, including time spent in custody with good behavior before being sentenced for the particular sentence.<sup>68</sup> This means that if you were convicted for the first time of a crime of violence and you were in prison for thirty-four days, you could only earn six days of good time.

You can also earn good time instead of incentive wages if you have been convicted of a felony.<sup>69</sup> If you are serving a life sentence, the reduction will be applied if and when your life sentence is reduced to a certain number of years. The amount of reduction received instead of incentive wages will be one and a half days for every day in custody.<sup>70</sup> This means that if you are receiving good time instead of incentive wages, your sentence can be reduced by ninety days if you spent sixty days in prison. You cannot earn good time under this rule if you are serving a sentence for the conviction of a sex crime, or a crime of violence.<sup>71</sup>

The secretary of the Department of Public Safety and Corrections decides whether you have earned your good time credit.<sup>72</sup> The secretary is the only one who exercises freedom in assessment of good time credit. The secretary also establishes rules and procedures and determines whether you have earned good time.<sup>73</sup> The trial judge has no freedom to decide your eligibility for good time credit.<sup>74</sup>

### b. Losing Good Time

There are several ways in which you can forfeit, or lose, your good time credit. If you escape from any correctional facility, you may lose your good time credit. If you do not report to work or do not return from work under a work program, you may lose all good time credits.<sup>75</sup> If you violate terms of your parole and are returned to the custody of the department, you will lose all good time credits.<sup>76</sup> If you commit battery (meaning use of force or violence<sup>77</sup>) against an employee, or worker of the Department of Public Safety and Corrections or any police officer, you may forfeit the good time credit already earned or credits on the portion of the sentence you were serving prior to committing the battery of the employee, up to a maximum of one hundred eighty days.<sup>78</sup>

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<sup>65</sup> LA. REV. STAT. ANN. § 15:571.3 (2017).

<sup>66</sup> Op. Atty. Gen., No. 77-1236, April 24, 1978.

<sup>67</sup> LA. REV. STAT. ANN. § 15:571.3 (2017).

<sup>68</sup> LA. REV. STAT. ANN. § 15:571.3 (2017).

<sup>69</sup> LA. REV. STAT. ANN. § 15:571.3 (2017).

<sup>70</sup> LA. REV. STAT. ANN. § 15:571.3 (2017).

<sup>71</sup> A crime of violence as defined in LA. STAT. ANN. § 14:2 (2017) or a sex offense as defined in LA. REV. STAT. ANN. § 15:541 (2017).

<sup>72</sup> LA. REV. STAT. ANN. § 15:571.4 (2017).

<sup>73</sup> Jackson v. Phelps, 506 So. 2d 515, 517 (La. App. 1 Cir. 1987), writ denied sub nom., State ex rel. Jackson v. Phelps, 508 So. 2d 829 (La. 1987); LA. STAT. ANN. § 15:571.4 (1987).

<sup>74</sup> Jackson v. Phelps, 506 So. 2d 515, 517 (La. App. 1st Cir. 1987), writ denied sub nom., State ex rel. Jackson v. Phelps, 508 So. 2d 829 (La. 1987).

<sup>75</sup> LA. REV. STAT. ANN. § 15:571.4 (2017).

<sup>76</sup> LA. REV. STAT. ANN. § 15:571.4 (2017).

<sup>77</sup> LA. REV. STAT. ANN. § 14:33 (2017).

<sup>78</sup> LA. REV. STAT. ANN. § 15:571.4 (2017).

If you are released because of good time (good behavior), you will be released as if you were released on parole.<sup>79</sup> Before you are released, you will be issued a certificate of parole that outlines the conditions of parole.<sup>80</sup> These conditions will be explained to you and you will have to agree to these conditions in writing before you are released.<sup>81</sup> When you are released you will be supervised in the same way and to the same extent as if you were released on parole.<sup>82</sup> The supervision will last for the remainder of the original full term of sentence that you were given by the court.<sup>83</sup> If you violate a condition given to you by the parole committee, the committee will proceed in the same manner as it would to revoke parole to determine if the release upon diminution, or reduction, of sentence should be revoked.<sup>84</sup> For more information on these procedures, see Chapter 21 of the *Louisiana State Supplement*.

## 2. Transitional Work Programs (TWP)

You may also shorten your sentence by participating in a Transitional Work Program, formerly known as a work release program. If you participate in the Transitional Work Program, you will be required to work at an approved job, and return to the facility when you are not working.<sup>85</sup> A full list of Transitional Work Programs and their contact information is available on the Louisiana Department of Corrections Website.<sup>86</sup> In general you will be eligible for the “Transitional Work Program” up to three years before your release date.<sup>87</sup> If you have been convicted of “forcible or second degree rape”, “aggravated arson”, “armed robbery”, “attempted murder”, “attempted armed robbery”, or sentenced as a “habitual offender”, you will be eligible to participate in a work release program only during the last six months of your term.<sup>88</sup> If you have served a minimum of fifteen years under the department or the sheriff for these crimes, you will only be eligible to participate in a work release program during the last twelve months of your term.<sup>89</sup> If you have been sentenced to imprisonment at hard labor you will be eligible at any time during your sentence.<sup>90</sup> If you have questions about your eligibility for the “Transitional Work Program”, you should write to the Warden of your facility.<sup>91</sup> If you violate the conditions defined by the department, your work release privileges may be taken away.<sup>92</sup> If you fail to report to work or return from work, it will be considered an escape, which is a separate offense. In this case, you may lose your work release privileges.<sup>93</sup>

## 3. Substance Abuse Conditional Release

The “Substance Abuse Conditional Release Program” provides substance abuse treatment and education for offenders and also links them with services in the community upon release.<sup>94</sup> In order to qualify for this program, you must be willing to participate in the program and your sentence must be for a first or second offense possession or “possession with the intent to distribute a controlled dangerous

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<sup>79</sup> LA. REV. STAT. ANN. § 15:571.5 (2017).

<sup>80</sup> LA. REV. STAT. ANN. § 15:571.5 (2017).

<sup>81</sup> LA. REV. STAT. ANN. § 15:571.5 (2017).

<sup>82</sup> LA. REV. STAT. ANN. § 15:571.5 (2017).

<sup>83</sup> LA. REV. STAT. ANN. § 15:571.5 (2017).

<sup>84</sup> LA. REV. STAT. ANN. § 15:571.5 (2017).

<sup>85</sup> Transitional Work Program, Louisiana Department of Public Safety and Corrections, *available at* <http://doc.louisiana.gov/transitional-work-program> (last visited Jan. 22, 2018).

<sup>86</sup> To access the list from the home page, click on Reentry Initiatives, and then click on Transitional Work Program. Reentry Programming, *available at* <http://doc.louisiana.gov/reentry-programming> (last visited Jan. 22, 2018).

<sup>87</sup> Frequently Asked Questions, Louisiana Department of Public Safety and Corrections, *available at* <http://doc.louisiana.gov/reentry-programming> (last visited Jan. 22, 2018).

<sup>88</sup> LA. STAT. ANN. § 15:711 (2017).

<sup>89</sup> LA. STAT. ANN. § 15:711 (2017).

<sup>90</sup> LA. STAT. ANN. § 15:1111 (2017).

<sup>91</sup> Frequently Asked Questions, Louisiana Department of Public Safety and Corrections, *available at* <http://doc.louisiana.gov/frequently-asked-questions/> (last visited Jan. 22, 2018).

<sup>92</sup> LA. STAT. ANN. § 15:1111 (2017).

<sup>93</sup> LA. STAT. ANN. § 15:1111 (2017).

<sup>94</sup> Substance Abuse Treatment, Louisiana Department of Public Safety and Corrections, *available at* <http://www.doc.la.gov/pages/reentry-initiatives/substance-abuse-treatment/> (last visited Jan. 22, 2018).

substance”.<sup>95</sup> You cannot have a conviction for a violent or sexual offense.<sup>96</sup> If you have previously been released because of this program, you are not eligible to participate again.<sup>97</sup> You must have served at least two years in actual physical custody and must currently be within one year of your projected release date.<sup>98</sup>

If you meet these criteria, you will be required to undergo an “addiction disorder assessment” and a “mental health screening” which will be reviewed by the secretary of the Department of Public Safety and Corrections. The secretary will consider this in determining your ability to participate in the treatment program.<sup>99</sup> The secretary will look at these factors:

- 1) Your involvement in any gang activity while imprisoned;
- 2) Your “custody classification”, determined by the department;
- 3) The risk of violence associated with your release; and
- 4) The availability of enough supervision resources.<sup>100</sup>

The secretary will also consider whether you have a proper release plan.<sup>101</sup> In evaluating the release plan, the secretary will consider all of the following:

- 1) Plans for rehab;
- 2) Availability of community-based “chemical dependency treatment”;
- 3) Opportunities for gainful employment; and
- 4) An approved residence plan.<sup>102</sup>

## E. COMMUTATION AND PARDONS

Commutations (changing the length of your sentence) and pardons (except automatic pardons) are both granted by the governor. Once the governor receives a recommendation from the Board of Pardons, the governor may commute your sentence, grant you a pardon, and settle (or take back) any fines or forfeitures that were given to you.<sup>103</sup> A commutation will only change the length of your sentence, but a pardon will also restore the rights that were taken away from you because of your conviction.

### 1. Commutation

A commutation granted by the governor may shorten your sentence, for example, from a life sentence to twenty years. In order to qualify for a commutation, you need a written recommendation from two of the following: (1) the lieutenant governor, (2) the attorney general, or (3) the presiding judge of the court where you were convicted.<sup>104</sup> The office of the lieutenant governor can be contacted at (225) 342-7009. You can also write to:

Office of Lieutenant Governor Billy Nungesser  
1051 North Third Street  
Baton Rouge, Louisiana 70802<sup>105</sup>

The office of the attorney general can be reached at (225) 326-6200, or you can write to:

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<sup>95</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>96</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>97</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>98</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>99</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>100</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>101</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>102</sup> LA. STAT. ANN. § 15:574.62 (2017).

<sup>103</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>104</sup> Gaillard v. Cronvich, 269 So. 2d 231, 232 (La. 1972).

<sup>105</sup> Office of Lieutenant Governor, Contacting the Office of the Lieutenant Governor, *available at* <http://www.crt.state.la.us/lt-governor/contact/index> (last visited Jan. 22, 2018).

Office of the Attorney General, Criminal Division  
1885 North 3rd St.  
Baton Rouge, LA 70802<sup>106</sup>

Once the recommendations are received, the governor has unlimited freedom to commute your sentence.<sup>107</sup>

## 2. Pardons

A governor's pardon releases you from all the penalties of your conviction, and also restores your rights to the status of innocence (not guilty) you held before you were convicted.<sup>108</sup> If your offense has been pardoned, it may not count against you later for "multiple offender proceedings," unless it was an automatic pardon.<sup>109</sup>

If you are a first offender who has been convicted of a non-violent crime, or convicted of "aggravated battery," "second degree battery," "aggravated assault," "mingling harmful substances," "aggravated criminal damage to property," "purse snatching," "extortion," or "illegal use of weapons or dangerous instrumentalities," you will be pardoned automatically when you complete your sentence.<sup>110</sup> An automatic pardon does not require a recommendation of the Board of Pardons or any action by the governor.<sup>111</sup> These pardons do not have the same effect as a full pardon. They may be counted against you in "habitual offender proceedings."<sup>112</sup> Once you have been granted an automatic pardon, you cannot receive another automatic pardon.<sup>113</sup>

If it is not your first offense, you must apply for a pardon. You cannot apply for a pardon if you have not paid all of the court costs for your case.<sup>114</sup>

Pardons that are not automatic (for later offenses) will be screened and decided on a case-by-case basis.<sup>115</sup> If you have been convicted of a sex offense, or have been determined to be a "sexually violent predator" or a "child predator", however, you must still comply with the registration requirements.<sup>116</sup>

## 3. Application

There are no fees to apply for commutations or pardons in Louisiana.<sup>117</sup> In order to apply, you must fill out an application form that can be found on the Department of Public Safety and Correction's website.<sup>118</sup> If you cannot access the Board's website or the form itself, call the Board at (225) 342-5421 and you can have one mailed or emailed to you.<sup>119</sup> You can also write to:

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<sup>106</sup> Office of the Attorney General, "Contact us," State of Louisiana, *available at* <https://www.ag.state.la.us/Article.aspx?articleID=28&catID=0> (last visited Jan. 22, 2018).

<sup>107</sup> Gaillard v. Cronvich, 269 So. 2d 231, 232 (La. 1972).

<sup>108</sup> Malone v. Shyne, 2006-2190, p. 6, 18 (La. 9/13/06); 937 So. 2d 343, 349, 356.

<sup>109</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>110</sup> LA. CONST. art. 4, § 5; LA. REV. STAT. ANN. § 15:572 (2017).

<sup>111</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>112</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>113</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>114</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>115</sup> LA. PRAC. CRIM. TRIAL PRAC. § 29:2 (4th ed. 2017).

<sup>116</sup> LA. REV. STAT. ANN. § 15:572 (2017).

<sup>117</sup> "Contact Pardons and Parole," Louisiana Department of Public Safety and Corrections, *available at* <http://www.doc.la.gov/contact-pardons-and-parole> (last visited Jan. 22, 2018).

<sup>118</sup> Clemency Form, Louisiana Department of Public Safety and Corrections, *application available at* [http://doc.louisiana.gov/assets/themes/louisiana\\_department\\_of\\_corrections/assets/images/clemency-application-form-11-4-2016-a0d27b52e8783090fce7b0046e37a51d1b774ad9432f7af8ea7117a62f9edd40.pdf](http://doc.louisiana.gov/assets/themes/louisiana_department_of_corrections/assets/images/clemency-application-form-11-4-2016-a0d27b52e8783090fce7b0046e37a51d1b774ad9432f7af8ea7117a62f9edd40.pdf) (last visited Jan. 22, 2018).

<sup>119</sup> Louisiana Department of Public Safety and Corrections, "Contact Pardons and Parole," *available at* <http://www.doc.la.gov/contact-pardons-and-parole> (last visited Jan. 22, 2018).

Louisiana Board of Pardons  
P.O. Box 94304  
Baton Rouge, LA 70804-9304

You should also include on the back of the form, a brief description of the events surrounding your offense and a brief statement about the specific reason why clemency relief is requested.<sup>120</sup> In an application for a pardon, you should explain how your conviction has hurt you and your family. For example, you could explain how your conviction has stopped you from finding good housing and a job, or how your conviction has affected your social interactions.

#### F. CONCLUSION

Even after your sentence has been decided, there are still several options for you to shorten your time spent in prison. As you read this chapter, note what factors are taken into account when the court decides whether or not to grant you a reduced sentence. Learning about these options, and their rules and processes, is very important if you want to avoid spending time in prison.

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<sup>120</sup> Clemency Form, Louisiana Department of Public Safety and Corrections, *application available at* [http://doc.louisiana.gov/assets/themes/louisiana\\_department\\_of\\_corrections/assets/images/clemency-application-form-11-4-2016-a0d27b52e8783090fce7b0046e37a51d1b774ad9432f7af8ea7117a62f9edd40.pdf](http://doc.louisiana.gov/assets/themes/louisiana_department_of_corrections/assets/images/clemency-application-form-11-4-2016-a0d27b52e8783090fce7b0046e37a51d1b774ad9432f7af8ea7117a62f9edd40.pdf) (last visited Jan. 22, 2018).