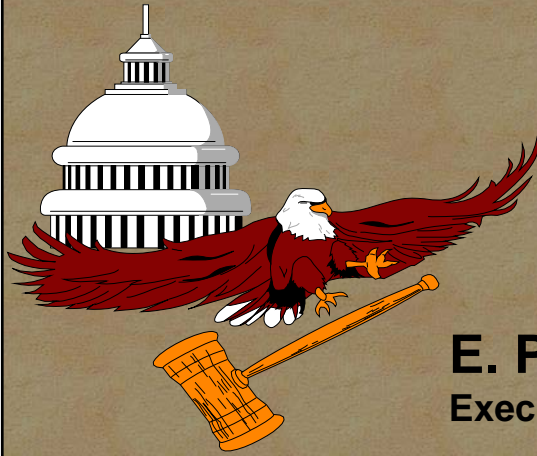


# 2013 Legislative Wrap-up

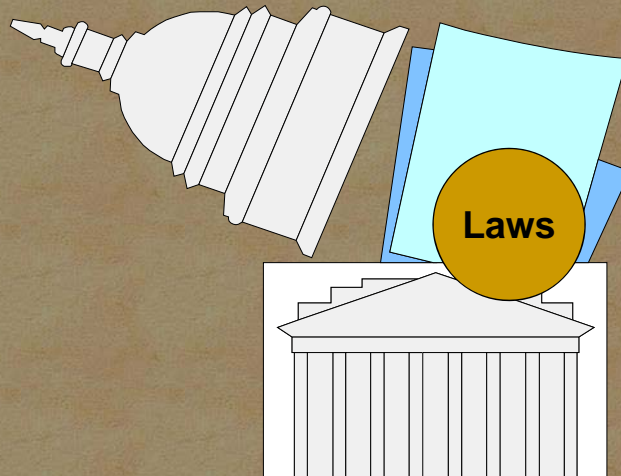


**E. Pete Adams**  
Executive Director, LDAA



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# The 2013 Regular Legislative Session



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# Quality Control?

- **>900 Bills Filed**
- **>250 bills of interest**
- **8 weeks**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## MISSION STATEMENT

To improve Louisiana's justice system and the office of District Attorney by enhancing the effectiveness and professionalism of Louisiana's district attorneys and their staffs through education, legislative involvement, liaison, and information sharing.



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## **LDA A Summary: 1975-2012**

- Amended Constitution – Juveniles; Asset Forfeiture; and Victims Rights
- Re-wrote most of Criminal Code – Code of Criminal Procedure; Evidence Code
- Created Revenues for DAs – Worthless Check Fees; Court Costs; etc.
- DA Salaries – \$20K - \$50K
- ADA Salaries – \$11.5K - \$45K
- 165 Additional ADAs just since 1994



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## **2013 Legislative Criminal Law Wrap-up Report:**

- Package Bills
- Crimes / Definitions
- Procedure
- Sentencing/ Penalties
- Sex and Abuse
- Juveniles
- Civil



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## 2013 Legislative Criminal Law Wrap-up Report:

### ■ To View The Acts

1. Go to [WWW.LEGIS.STATE.LA.US](http://WWW.LEGIS.STATE.LA.US)
2. Scroll down to “Bill Search”
3. Under “HB”, scroll down to “ACTS”
4. Type in the Act #



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## [WWW.LEGIS.STATE.LA.US](http://WWW.LEGIS.STATE.LA.US)

### ■ Bill Search:

1. Select a session.
2. View a specific instrument.
3. View a list of instruments by legislator.
4. View instruments referred to a specific committee.



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# **Package Bills:**



- **HB 152 – Miller  
(Act 239)**
- **HB 371 -  
Discovery  
(Act 250)**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# **Act 239 - Miller:**



- 1. Sentencing Hearing**
- 2. All Relevant Aggravating and Mitigating Circumstances**
- 3. If To Be Eligible:**
  - a. Serve 35 Years**
  - b. Meet Other Criteria**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Act 250 - Discovery



- 1. Defense Requests**
- 2. Statements and Reports**
- 3. Reciprocal**
- 4. Witness Safety**
- 5. Brady Trumps**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Crimes/Definitions



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG



# Crimes / Definitions:



***Act 400 - Weapons  
on School Property***

***Act 401- Concealed  
Permit Information***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Crimes / Definitions:



***Act 7- Schedule I Drugs***

***Act 8 - Drug  
Compounds***

***Act 381- Precious Metal  
Payments***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Crimes / Definitions:



***Act 260 - Forced  
Abortion***

***Act 144 -  
Racketeering***

***Act 59 - Bombs***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Crimes / Definitions:



***Act 288 - Contraband in  
Penal Facilities***

***Act 90 - Fraudulent  
Representation of a  
Veteran-Owned  
Business***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG



# Crimes / Definitions:



***Act 289 - Domestic Abuse Battery-Burning***

***Act 290 - Battery of Correctional Employee***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Crimes / Definitions:



***Act 62 - Social Networking While Driving***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Procedure



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## Procedure:



- ◆ ***Act 402 - Concealed Handgun Permits***
- ◆ ***Act 398 - Possession and Transfer of Firearms***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# Procedure:



- ◆ ***Act 261 - Release on Recognizance***
- ◆ ***Act 251 - PCR***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Procedure:



- ◆ ***Act 6 - Time Limitations***
- ◆ ***Act 403 - Reporting judicial proceedings re: firearms possession***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Procedure:



- ◆ ***Act 29 - Veterans Services***
- ◆ ***Act 343 - Jury Waiver***
- ◆ ***Act 346 - Mental Health Courts\****



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Procedure:



- ◆ ***Act 429 - Victims of Human Trafficking***
- ◆ ***Act 347 - 22<sup>nd</sup> JD Risk Assessment***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Procedure:



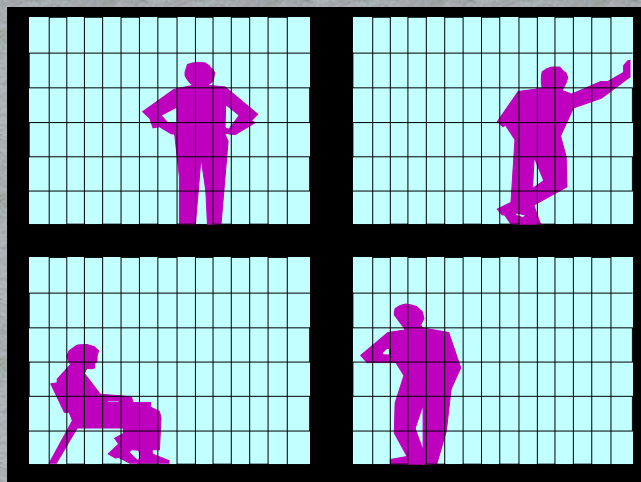
- ◆ **Act 225 - Child Abuse Investigations**
- ◆ **Act 217 - Insurance Dept. Fraud Division**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

## Penalties & Sentences



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

## Penalties / Sentences:



- ◆ **Act 183 –  
Treatment and  
Rehab Credits**
- ◆ **Act 83 - Underage  
Prostitution**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

## Penalties / Sentences:



- ◆ **Act 388 - DWI / Drug  
Court**
- ◆ **Act 389 - Drug  
Treatment**
- ◆ **Act 52 - Work Release  
Labor**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG



# Sex and Abuse:



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# Sex and Abuse:



***Act 132 - Out of  
State Registrants***

***Act 284 – Carnal  
Knowledge  
Petitions***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# Sex and Abuse:



## **Act 408 - Registrant Reporting / Petition for Relief**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Juvenile



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# Juveniles



- ◆ **Act 214 - At Risk Youth Database**
- ◆ **Act 352 - Juvenile Gun Court Probation**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# CIVIL



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# CIVIL:



- ◆ ***Act 137 - School Bus Driver Removal***
- ◆ ***Act 416 - Consent Agenda for Public Meetings***
- ◆ ***Act 383 - Election Code***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# CIVIL:



- ◆ ***Act 50 - School Crisis Response Plans***
- ◆ ***Act 286 - Student Prayer gatherings***
- ◆ ***Act 336 - Local Fiscal Administrators***



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# CIVIL:



- ◆ **Act 267 - Meeting Notice For Tax Matters**
- ◆ **Act 374 - Equal Pay for Women**
- ◆ **Act 363 - Video Broadcast of Meetings**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# KILLED:



- ◆ **HB 154 - “Aiding and Abetting”**
- ◆ **HB 497 - Domestic Battery “Duncan”**
- ◆ **FINS**

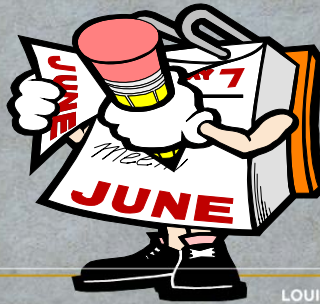


LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# 2014 Session:

- March 10 - June 2
  - General (Open) Session



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# NEXT YEAR?

- Another Deficit?
- More Sentencing Reform?
- Juror Notes and Charges?



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG



# Next Year?



- ◆ **HB 103 - Marijuana**
- ◆ **HB 367 -  
Pre-Trial Release**
- ◆ **SB 112 - Expungements**
- ◆ **SB 179 - Bail**
- ◆ **SB 227- FINS “Reform”**



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

## MISSION STATEMENT

To improve Louisiana’s justice system and the office of District Attorney by enhancing the effectiveness and professionalism of Louisiana’s district attorneys and their staffs through education, legislative involvement, liaison, and information sharing.



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143

(225) 343-0171 • WWW.LDAA.ORG

# MISSION STATEMENT

To improve Louisiana's justice system  
and the office of District Attorney by  
enhancing the effectiveness and  
professionalism of Louisiana's district  
attorneys and their staffs through  
education, legislative involvement,  
liaison, and information sharing.



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

## 2013 Legislative Criminal Law Wrap-up Report:

### ■ To View The Acts

1. go to: [WWW.LEGIS.STATE.LA.US](http://WWW.LEGIS.STATE.LA.US)
2. Scroll down to “Bill Search”
3. Under “HB”, scroll down to  
“ACTS”
4. Type in the Act #



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# LDAA Web Page

■ [www.LDAA.org](http://www.LDAA.org)



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG

# THAT'S ALL FOLKS!



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION  
1645 NICHOLSON DRIVE • BATON ROUGE, LA 70802-8143  
(225) 343-0171 • WWW.LDAA.ORG



## Why Do This?

- Since the Legislature approved a compromise Evidence Code (25 yrs.), LACDL has been pushing for discovery “reform”
  - Specifically a Louisiana version of the Federal “Jencks Act”.
- LDAA defeats every time, but.....
- By 2011, they came within a vote or two of gaining the support of the Louisiana Law Institute
  - LLI comprised mostly of civil attorneys and LACDL members—prosecutors vastly outnumbered

## Why Do This?

- More Recently:

1. National and local attention to Mike Nifong, Federal prosecutor misconduct in the Ted Stevens case, John Thompson and The Innocence Project's narrative on "Prosecutor Accountability".
2. The SCOTUS diatribe against prosecutors in the Juan Smith case.
3. Increased pressure on ODC to hold prosecutors accountable for alleged increase of Brady violations.

## Why Do This?

- Within the past couple of years:

- HB 1070 of 2012- Jencks on steroids; Way beyond Brady / Kyles / DR 3.8.; Dog and pony show...
- LDAA defeats, but.....
- An informal survey of LDAA member offices showed > 80% practice "Open File" discovery.
- In early 2013, Texas becomes the 49<sup>th</sup> state to adopt discovery of witness statements in criminal cases. Like England, we stood alone....



## Define “Open File”- survey

- Copies of Police Reports
- Recordings & reports of witness statements
- Copies or lists of physical evidence
- Notable exceptions to the pattern:
  1. Capital litigation in some jurisdictions
  2. Orleans and EBR—due to witness safety issues

## “NO” to Jencks

- As the only state NOT to provide witness statements, saying no to the legislature was becoming harder and harder.....
- Problematic Jencks definitions:
  - Included Grand Jury testimony
  - Included statements made by a witness not written or recorded but which he “otherwise approves or adopts”



## August 2012- April 2013

- Negotiations with LACDL
- More than 16 drafts forwarded to ADA Board / LDAA Board / Posted on Website
- Comments requested
- Reports at every Board meeting
- Smaller Negotiating Team
- Proposed final draft rejected by LDAA Board and later draft approved for filing.

## Negotiations: Traps & Consensus

1. Federal Jencks has pitfalls:
  - “or otherwise adopts or approves” is 90% of jurisprudence for federal Jencks
  - Law Enforcement and other reports of federal agencies arguably covered by federal definition
  - Federal jurisprudence includes diaries, drawings, investigator’s interview notes, letters with questionable provenance, and even memos by AUSA’s concerning witness interviews
2. LACDL wanted to adopt “in toto”

## Negotiations: Traps & Consensus

1. Attempted consensus on what most DA's Offices in the State were doing
2. No codification of 3.8.
3. Witness Safety?
4. Experts-no more hiding behind "my expert didn't write a report"

## Drafting LEGISLATION:

- Months of negotiation between small LDAA contingent and ranking members of LACDL
- Clearly some LDAA members concerned , but LDAA Board approved final version.
- Some radical LACDL members concerned, but did not oppose.

## Meat of the New Statute

- All motions must now be in writing, whether by state or defense
  - *TRAP*—defense attorney may not file written motion knowing that doing so at the last minute will result in a continuance or risk ineffective assistance claim on appeal
  - *Trap*- A written motion triggers the right to reciprocal discovery, but other side must file written motion to get.

## Our 716 vs. Jencks Act

- **What is the Jencks Act?**
- **Add info here on the differences**

## 716- Defendant Statements

- Defendant Statement - No Change
- What is a statement? Add La. jurisprudence
- 716 (A) -Requires disclosure of defendant's statements as well as authorization to copy or reproduce.

## 716- Co- Defendant Statements

- 716 (B) –inform of existence of co-defendant's statements or confession intended to be offered in case-in-chief.
  - Expands Current Law
  - Limits to “Case in Chief”

## 716 C- Defendant/Co-Defendant Oral Statements

- 716 C- inform (disclose?) of substance of oral statements of defendant or co-defendants made in response to interrogation by officers intended to be offered in case-in-chief.
  - Expands law
  - See previous Art 721

## 716 D- Witness Statements

- 716(D)—state must now disclose and authorize copy of witness statements intended to be offered in case-in-chief.
- All New –
  - Avoids Jencks Pitfalls –“Otherwise Makes or Adopts”
  - “Recorded, Written, or Signed”

## 716- Witness Statements

1. GJ Recording – Not Required (716E)
2. GJ Transcript – Not Discoverable, But..\*
3. No “witness list requirement” (716F)
4. Not “Known to State”

## 716- Witness Statements

1. Notice timing requirement – Prior to Opening\*
2. Notice exemption- Not Applicable to Pre-trial Motions
3. No intention to change 15:440 Et. Seq. or requirements therein ( video of protected persons)\*  
general / specific



## 717- Criminal Records, Inducements

- Codifies Current Law-“The record of arrests and convictions”
  - NCIC Contract Issue:
    - Only notification—due to federal regulations
  - Pending Prosecutions
  - Criminal History of witnesses, added in 2010, retained much to dismay of some offices

## 717- Criminal Records , Inducements

- Questions:
  1. Expungements?
  2. Pardons?  
(existing law unchanged)

## 717- Criminal Records , Inducements

- Limitation : only witnesses in “case in chief” covered
- **What is an “inducement?” Case Law??**
- “Inducements” paragraph (B) arguably expanded-
  - Any Witness
  - Also any offer

## 717- Criminal Records , Inducements

- Provisions for rebuttal witnesses in (C)
  - Prior to swearing
  - CYA
- Note that protections of 729.7 apply to 717 disclosure

## 718- Documents, Etc.

- Provides limitation and expansion of prior law
  - The *expansion* is that law enforcement reports must now be disclosed (subject to 729.7 protection)
  - *See case law for definition of Law Enforcement Reports*

## 718- Documents, Etc.

- Provides limitation and expansion of prior law
  - Limitation* is that only documents and tangible objects intended for use during *case in chief* must be disclosed.

## 719- Expert Reports

- In Writing
- Provides requirements for content of expert reports akin to federal rules although not as strict or all-encompassing
  - *Note requirements on state if expert report not in writing, or if it does not contain statutorily required information*

## 719- Reports

- *“List of materials”- C.E. Art 702 / 703*
- *What about mid-trial decision?*
  - *Enforcement unchanged*
- *Traps:*
  - *Troopers; Crime Lab; Crime Scene; DRE; Etc.*
  - *Create Ahead*

## **720- Other Crimes**

- In Writing-
- Updated to include 412.2 notice in addition to 404(B) Notice.

## **721- Co-Conspirators**

- 721 is Largely superfluous due to amendment to 716.
- Co-Defendant

## 722- Co-Defendants

- 722 expanded
  - Any written or recorded statement of a co-defendant must be provided whether inculpatory or not
  - Begs the question—What is a co-defendant?

## 722- Co-Defendants

- 722 expanded
  - Co-Conspirators?
  - Begs the question—What is a co-defendant?



## 723- Non-Discoverable / Always Discoverable

- **NOT-**
  - work product of DA
  - Any items containing mental impressions of any state attorney or investigator. (New)
- **ALWAYS-**
  - **NOTE THAT BRADY/KYLES\* TRUMPS ALL THESE RULES, PER 723(B)**

## Reciprocal: Documents

- 724 expanded
  - Now includes, like 716, requirement to “disclose” in addition to allow to examine or copy
  - Includes not just disclosure to the state, but to any expert working with the state

## Reciprocal: Documents

- Note: No “Written Motion”
- Don’t Rely on This

## 725-Defense Experts

- Requirement of written motion by DA
- Disclosure to state or to expert working for state.
- (*See State v Franklin*) - Directly to Expert

## 725-Defense Experts

- Same requirements as state expert
  - Report must contain specific information
  - If no report, or if report deficient, defense attorney must supply the information
  - Note: We get something!
  - Enforceable?
  - See 729.5 (existing law on enforcing discovery provisions)

## 725.1- Defense Statements

- If defense gets OUR witness statements....
- We have a right to THEIR witness statements. (note: “Motion”)

## **725.1- Defense Statements**

- We all know this definition will result in NO “written or recorded” statements being taken from defense witnesses
- Note exemptions: ( applicable to State and Defense) concession to capital defense bar
- Note : Arts 726 & 727 remain unchanged

## **728- Defense: Not Discoverable**

- Expansion of current 728
- Mirrors protected state information in the new 723

## 729.7- Witness Safety

- All new law-“Witness protection provision”
- Orleans and EBR were genesis of this provision
- LACDL insisted on reciprocal protections for defense witnesses— laughable but will certainly be abused by them

## 729.7- Witness Safety

1. Objection to deletion or excision must be in writing
2. Ex parte prima facie showing carries burden
3. See (B) for due process protections of excised portions of statement
4. Automatic stay of disclosure per (C) if judge rules against excising party
5. (D) Rules of evidence not applicable

## 729.7- Witness Safety

### • Questions:

1. Can you omit all statements of a witness if disclosure of any would reveal his identity?
2. What if endangered witness statements are Brady material?

## Act 250 of 2013:

1. Document all of your training:
  - Brady Guide and / or Office Policy
  - Act 250
2. Document what you disclose\* (Make part of the record).
3. Document what you do not disclose and why.



## **Act 250 of 2013:**

- **Goals:**

1. Fairer, more efficient disposition of cases.
2. Reduction of appellate reversals.
3. Reduction of misconduct allegations / findings.