



"Just a Talking Crime":

A policy brief in support of the repeal of Louisiana's Solicitation of a Crime Against Nature (SCAN) Statute

Louisiana defines solicitation of a Crime Against Nature ("SCAN") as offering or agreeing to have oral or anal sex for money. In other words, the Crime Against Nature law punishes prostitution when it involves oral or anal sex. This can be confusing, because there is a separate law prohibiting prostitution, which prohibits any offer or agreement to engage in any kind of sex for money, including vaginal, oral and anal sex.

This is not an insignificant redundancy. These two different crimes have vastly disparate consequences – up until August 2010, a first conviction of SCAN was a felony, and prostitution was not. A second or subsequent conviction of SCAN still carries much harsher penalties than a second or subsequent conviction of prostitution, including mandatory registration as a sex offender for a period of at least 15 years, and in cases of more than two convictions, a lifetime.

Louisiana is the only state in the country which requires registration as a sex offender upon conviction of a mere offer to engage in sexual conduct for compensation.

Law enforcement officers have complete discretion as to who and when to charge with SCAN, and who and when to charge with prostitution.

That one decision can change the entire course of someone's life.

The requirement that people convicted of SCAN register as sex offenders has become a modern-day scarlet letter, branding people as predators for merely offering certain sexual acts – oral and anal sex, which are generally associated with homosexuality - in exchange for compensation.

"It's like the scarlet letter. I am trying to put that in my past - but it's not gonna be in my past because it's in my present, and it's going to be my future for the next 13 years."

A side-by-side comparison: SCAN and Prostitution

	La. R.S. § 89.2. SCAN	La. R.S. § 82. Prostitution
What does it say?	SCAN is the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.	Prostitution is the solicitation by one person of another with the intent to engage in indiscriminate sexual intercourse with the latter for compensation.
Punishment for a 1st offense?	Up to 6 months imprisonment, fine of up to \$500, or both.	Up to 6 months imprisonment, fine of up to \$500, or both.
Punishment for a 2nd offense?	Up to 5 years imprisonment, with or without hard labor, fine of up to \$2,000, or both.	Up to 2 years imprisonment, with or without hard labor, fine from \$250 to \$2,000, or both.
Sex offender registration required?	Yes. Second and subsequent convictions require registration as a sex offender.	No. No person convicted of prostitution is EVER required to register as a sex offender.

"I was raped and used many times myself, and I never hurt anyone —why am I on the registry as a sex offender?"

Many people convicted of SCAN have struggled with addiction, dire poverty, homelessness, lack of living wage jobs, employment discrimination based on race, gender, or sexuality, and rejection by their families and communities. Subjecting them to sex offender registration represents an unconstitutionally cruel burden for Louisianans who have committed no crime of violence, and no crime involving children.

Note: The information contained in this document does not necessarily reflect any of the conclusions, evidence or arguments that will be presented by plaintiffs in the lawsuit *Doe v. Jindal* in the Eastern District Court of Louisiana.

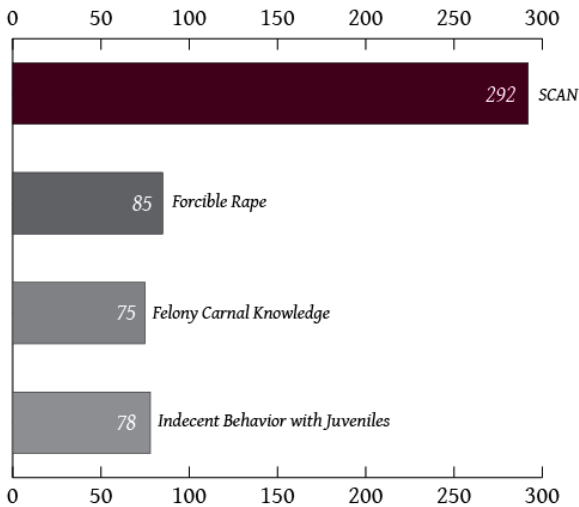
A Step in the Right Direction, But Not Far Enough...

In 2010, Louisiana lawmakers took a step in the right direction, passing legislation that equalized the penalties for a *first* SCAN offense with those for prostitution. It was a move many hailed as the beginning of the end of Louisiana’s 200-year history of harsh and discriminatory punishment for engaging in certain kinds of sex acts over others.² “There is no logic in that,” Orleans Parish Criminal District Court Chief Magistrate Gerard Hansen testified in support of changing the law.

Yet today 538 men and women, including transgender women, remain on Louisiana’s sex offender registry as a result of prior SCAN convictions. Every day more are added as a result of the law’s continuing requirement that people convicted of SCAN more than once register as sex offenders.

There is still no logic in punishing SCAN more harshly than prostitution, or requiring people convicted of SCAN to register as sex offenders on a second or subsequent conviction. Representative Walt Leger III of New Orleans, a former assistant district attorney, has said SCAN is merely a “crime of words.”³ People can be required to register as sex offenders solely because they *offered* or *agreed* to engage in certain sexual conduct for compensation - regardless of whether they actually did anything. As Judge Hansen says, SCAN is “just a talking crime.” It involves no harm to children, no use of force, coercion, weapons or lack of consent. In fact, it involves no actual conduct at all.⁴

Number of People Registered as Sex Offenders by Conviction Type in Orleans Parish



“You couldn’t pay me to hurt a child – the false impression that I hurt children is what bothers me the most. People don’t see other ways people get on the registry.”

People required to register as sex offenders solely because of non-violent SCAN convictions make up 36% of the sex offender registry in Orleans Parish. This is a tremendous waste of state resources, and actually undermines the state’s purpose of monitoring individuals who present a danger to others.⁵

The time to correct this injustice is now.

- 1. Repeal the Solicitation of a Crime Against Nature Statute, LSA-R.S. 14:89.2.** The punishment for SCAN is harsh and discriminatory, a costly burden to the state, and unnecessary for public safety.
- 2. Abolish Registry Requirements for Individuals Currently on the Registry Whose Only Registerable Offense is SCAN.** The heavy burden of registry requirements further marginalize people already struggling with addiction, poverty, and discrimination, imposing costly notification fees and adversely affecting employment and housing opportunities.
- 3. Expunge All State Records Labeling Individuals Whose Only Registerable Offense is Crime Against Nature by Solicitation as Sex Offenders.** If records are not retroactively expunged, people with SCAN convictions will continue to be barred from domestic violence shelters and other crucial services.

² 2010 La. Sess. Law Serv. Act 882 (S.B. 381).

³ Anderson, Ed. “House votes to make soliciting crime against nature a misdemeanor on first offense,” *The Times-Picayune*. June 18, 2010.

⁴ Louisiana State Sex Offender and Child Predator Registry: OffenderWatch Systems. Feb. 9, 2011.

⁵ *Ibid.*

Repeal LSA-R.S. 14:89.2 – “Solicitation of a Crime against Nature”

R.S. 14:89.2 should be repealed because it is:

- Unfair, ineffective, and prevents people from being able to build productive lives;
- Discriminatorily enforced and rooted in discrimination;
- Unnecessary because the conduct punished is already covered by the prostitution law.

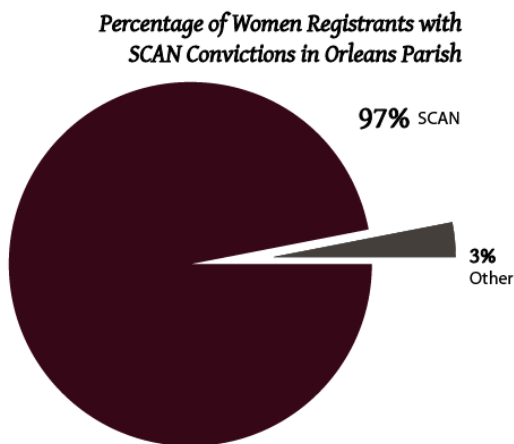
“There are children getting raped every day, but you want to go after me, and go after the transsexuals out there. It just vex my spirit.”

R.S. 14:89.2 is Unfair and Ineffective

- There is no rational basis for punishing soliciting oral or anal sex for compensation more harshly than soliciting other forms of sex for money;
- There is no public safety rationale for this law. It does not serve the stated purpose of the sex offender registry – to protect Louisiana’s children – to require people who have not been convicted of any crime involving a child, force, coercion, weapons, or lack of consent to register as sex offenders;
- Most of the people on the sex offender registry exclusively as a result of a conviction of solicitation of a crime against nature are women.

R.S. 14:89.2 is discriminatorily enforced

- Police and prosecutors are given complete discretion as to whether to charge a person with solicitation of crime against nature or prostitution. This gives them unfettered power to decide whether someone will face a heavier sentence and mandatory registration as a sex offender.

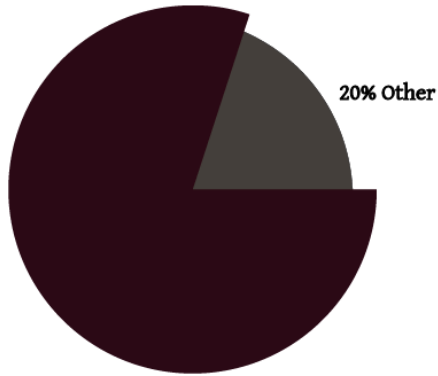


Louisiana State Sex Offender and Child Predator Registry: OffenderWatch Systems. Feb. 10, 2011.

- As a result, the most vulnerable and marginalized people are being targeted for SCAN charges, which carry much heavier penalties and mandatory sex offender registration.
- Individuals required to register as sex offenders solely as a result of SCAN convictions are predominantly poor African American women who have been on the streets and struggled with addiction, trauma, and homelessness, along with gay men and transgender women of color.
- 97% of women required to register as sex offenders are mandated to do so because of a SCAN conviction.

**Percentage of Registrants with SCAN Convictions
by Race in Orleans Parish**

79% African American



Louisiana State Sex Offender and Child Predator Registry: OffenderWatch Systems. Feb. 10, 2011.

- 80% of individuals who are registered as sex offenders due to a SCAN conviction are African American.

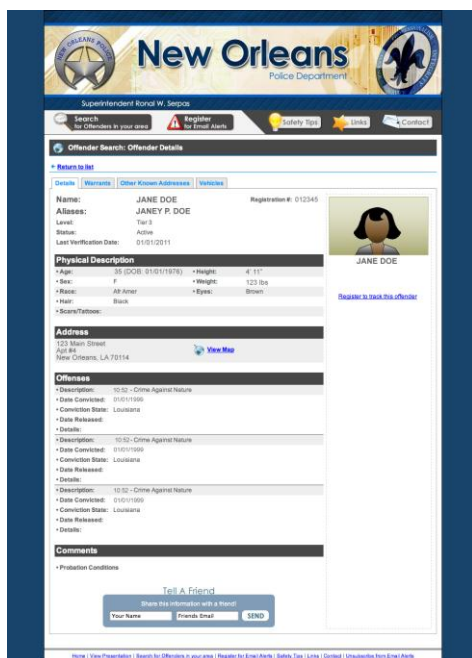
The particularly harsh penalties for soliciting oral and anal sex under the SCAN statute are a relic of the prejudice attached to acts associated with homosexuality. The Supreme Court in *Lawrence v. Texas* made it clear that mere moral disapproval of one form of sex over another cannot form the basis for harsher punishment.⁶ Louisiana already has a law to punish prostitution, which covers the exact same conduct. The people mandated by law to register as sex offenders by virtue of a conviction of solicitation of a Crime Against Nature pose no threat to anyone.

R.S. 14:89.2 should be repealed because it prevents people from rebuilding productive lives

Mandating that individuals convicted only of SCAN register as sex offenders in many cases prevents them from being able to access desperately needed services such as shelter, housing, and drug treatment, as well as employment and education, despite the fact that they have committed no crime of violence.

“I’m just trying to start living a productive live, loving myself for who I am, a woman with potential.”

“The word just grabs people, there’s no time to explain, you don’t get a chance”



“It’s very embarrassing if you are trying to find a job. People won’t hire you if you’re Black, gay, trans, and then now you got this on your license too?”

⁶ *Lawrence v. Texas*, 539 U.S. 558 (2003).

Abolish registry requirements for current Solicitation of Crime Against Nature registrants

Repealing LSA-R.S. 14:89.2 is not enough. Currently over 538 of women and men, including transgender women are on the registry, many for the rest of their lives, solely because of SCAN convictions.⁷ Access to everything from shelter and housing to employment to drug treatment and domestic violence services is affected by this status.

A person who has only been convicted of solicitation of Crime Against Nature must:

- Carry state ID emblazoned with the words “SEX OFFENDER” in bright orange capital letters.
- Pay \$60 a year. Failure to pay the annual registration fee may result in up to 6 months in prison, a fine of up to \$500, or both.
- Pay between \$250 to \$750 to print and mail postcards to neighbors every time they move, notifying them of the registrant’s name, description, address, and the fact that they have a SCAN conviction.
- Publish their name, and the fact that they were convicted of SCAN, in the newspaper.
- Appear on the sex offender website.

“This has forced me to live in poverty, be on food stamps and welfare, I’ve never done that before.”



“Because my picture and address are up on the internet with my charge, a guy once came by my brother’s house looking for sex.”

Failure to do any one of these things is a separate offense that can result in a sentence of between 2 and 10 years in prison, with or without hard labor, a fine of up to \$1,000, or both.

“I had to pay \$500 for postcards. I asked my probation officer: where am I supposed to get that kind of money when I just got out of jail? What are you telling me, I gotta go turn tricks?”

“When you mail those cards it’s so humiliating, people kill you for that.”

⁷ Louisiana State Sex Offender and Child Predator Registry: OffenderWatch Systems. Feb. 9, 2011.

There is a growing trend across the country toward recognizing that harsh penalties for people engaged in prostitution drastically decrease rather than increase the options available to them.

Cheri is a 43 year-old mother of 3 who has a secret everyone in the neighborhood knows. When Cheri was young and unemployed, she offered an undercover officer oral sex for money. Today, decades later, she’s required to register as a sex offender. Cheri cannot even enroll her children at day care without having to face the shame and embarrassment of presenting I.D. branding her as a “SEX OFFENDER” in big, orange letters.

Rather than address harms associated with prostitution, harsh criminal penalties against people struggling to survive increase vulnerability to violence, and perpetuate involvement in the sex trades by creating a revolving door into the criminal justice system, thereby foreclosing access to housing, services, treatment and employment.

The Center for Constitutional Rights (CCR), police misconduct attorney and organizer Andrea J. Ritchie, and the Loyola University New Orleans College of Law, Law Clinic have filed a federal civil rights lawsuit in the United States District Court Eastern District of Louisiana on behalf of nine anonymous plaintiffs challenging the constitutionality of the harsh penalties imposed by Louisiana’s solicitation of a Crime against Nature statute.

The Louisiana Legislature should take the initiative and bring Louisiana’s laws in line with the rest of the country by repealing the SCAN statute and removing the registration requirement for people with past SCAN convictions, and avoid a lengthy lawsuit that could tarnish Louisiana’s name.

Michael is a gay man who was kicked out of his home and has been on the streets since he was 13. Ten years ago he offered an undercover officer oral sex for \$50. Now, even though he only has one SCAN conviction, he still has to register as a sex offender. Michael has applied for dozens of jobs and has been turned down for all of them. One application in particular looked promising, but, when his potential employer found out that he was registered as a sex offender, she just said that it wasn’t going to “work out.”



Women With A Vision

Women With A Vision
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Women With a Vision (WWAV) New Orleans promotes wellness and disease prevention for women and their families living at or below the poverty line through health education, early intervention strategies, and referrals to appropriate community resources. WWAV employs outreach workers that are from the communities they serve and who are committed to providing HIV/AIDS prevention education, counseling and testing services, substance abuse resources, health fairs, focus groups, and education on a range of women’s health needs, including reproductive and sexual health, cervical and breast cancer, and safer sex practices.

TIMELINE: Louisiana’s Crime against Nature Statute and its Criminalization of Oral and Anal Sex.

1805—Louisiana’s first criminal code is enacted, including a provision criminalizing what was termed a “Crime against Nature,” defined as the “abominable and detestable Crime against Nature, committed with mankind or beast.” See 1805 Louisiana Acts chap. I, § 2. LA. REV. STAT. § 788.

1882—the Supreme Court of Louisiana rejected challenge to the Crime against Nature statute on the ground that it doesn’t clearly state what conduct is prohibited, stating: “The euphemism by which the law describes *peccatum illud horribile* [that horrible crime not to be named among Christians], does not, in our opinion, leave its meaning doubtful or obscure.” *State v. Williams*, 34 La. Ann. 87, 88 (1882).

1896—Louisiana amended its Crime against Nature statute to explicitly encompass oral sex. Acts of the State of Louisiana 1896, page 102, § 1, Act 69.

1913—In *State v. Long*, 133 La. 580 (1913), the Louisiana Supreme Court further clarified that the statute prohibited not only anal sex, but also oral sex, irrespective of consent, the sex of the participants, or their marital status.

1942—During a comprehensive revision of the Louisiana Criminal Code, the Crime against Nature statute was amended to read: “Crime against Nature is the unnatural carnal copulation by a human being with another of the same or opposite sex or with an animal [...]” See La. Crim. Stat. Ann. § 43:89 (1943).

In the last third of the twentieth century, sodomy laws began to specifically target homosexuality. These laws sought “to classify and penalize homosexuals as a subordinate class of citizens,” and sodomy and homosexuality became understood as synonymous. *Lawrence v. Texas*, 539 U.S. 558, 570 (2003).

1964—The Louisiana Supreme Court rejected a constitutional challenge to the statute in a case involving homosexual sex, stating that:

The phrase “unnatural carnal copulation” . . . [has] a well defined, well understood, and generally accepted meaning i.e., *any and all carnal copulation or sexual joining and coition that is devious and abnormal because it is contrary to the natural traits and/or instincts intended by nature, and therefore does not conform to the order ordained by nature.* To meet the test of constitutionality it is not necessary that the statute describe the *loathsome and disgusting details connected with each and every way in which “unnatural carnal copulation” may be accomplished.*

1966—The Louisiana Supreme Court held that the statute encompassed oral sex between two women. *State v. Young et al.*, 249 La. 1053 (1966).

1982 - Louisiana added provisions criminalizing solicitation of acts of oral and anal sex for compensation, and imposed much harsher penalties for this offense than existing provisions outlawing prostitution. A conviction of solicitation of a Crime against Nature – but not a prostitution conviction – requires registration as a sex offender. 1982 La. Acts page no. 1637; *see also* LA. REV. STAT. 14:89(A)(2). “Unnatural carnal copulation” extends only to oral and anal sex. This remains a criminal offense distinct from, and more harshly punished than, prostitution to this day.

2003—The United States Supreme Court decided *Lawrence v. Texas*, 539 U.S. 558 (2003), striking down a Texas sodomy statute and holding that a criminal statute that singles out oral and anal sex for criminal punishment “furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.” *Lawrence* at 525-26.

2005—In *State v. Thomas*, 891 So. 2d 1233 (2005), the Louisiana Supreme Court acknowledged that the subsection criminalizing oral and anal sex outright would not withstand a constitutional challenge under *Lawrence*.

August 2010 -- The legislature amended the Crime Against Nature statute to alter the penalties associated with solicitation of a Crime Against Nature for compensation.

In State. v. Thomas, Louisiana Supreme Court Chief Justice Calogero wrote that the potential five-year sentence for solicitation of a crime against nature “is so disproportionate to the severity of the crime as to be unconstitutionally excessive.”

Despite these amendments, the requirement that individuals convicted of SCAN must register as sex offenders remains in effect for second and subsequent convictions. As before, no one convicted of prostitution is required to register as a sex offender, no matter the number of convictions. Additionally, the amendment is not retroactive, and does not benefit those individuals with a single SCAN conviction who were convicted prior to August 2010.