

**Minutes of the Louisiana Sentencing Commission
DOC Headquarters, Building 1
504 Mayflower, Baton Rouge, LA 70802
10:00 a.m. January 26, 2011**

The meeting was called to order Chairman Ricky Babin at 10:09 a.m.

Members Present

Honorable Ricky Babin,
Mr. Rob Kazik (Proxy for Lynda Van Davis)
Ms. Jean Faria, State Public Defender
Honorable Ricky Wicker, Judge, 5th Circuit (Proxy for Justice Guidry)
Mr. Cheney Joseph
Ms. Debbie Hudnall, Louisiana Clerks Association (Clerks Representative in process)
Mr. Jimmy LeBlanc, Secretary of Corrections
Representative Joseph P. Lopinto, III
Ms. Mary Manhein, LSU Forensic Sciences
Honorable Jay B. McCallum
Honorable Michael McDonald
Mr. Robert Mehrtens, Louisiana Commission on Law Enforcement
Mr. Joseph L. Montgomery
Honorable Charles A. Riddle
Representative Helena Moreno (Proxy for Representative Ernest Wooten)

Advisory Members Present

1. Attorneys
 - a. Jim Boren
2. Department of Corrections
 - a. Henry L. Goines, Classification Manager, DOC
 - b. Melanie Gueho, Information Services, DOC
 - c. William L. Kline, DOC
 - d. Pam Laborde, DOC
 - e. Genie Powers, Director, P&P
 - f. Sheryl Ranatza, Deputy Secretary, DOC
 - g. Debbie Rutledge, Deputy General Counsel, DOC
 - h. Phyllis Sheridan, Regional Director, P&P
 - i. Angela Whittaker
3. Judiciary
4. Louisiana Clerks of Court Association
5. Louisiana District Attorneys' Association
 - a. Dale Polozola
 - b. Hugo Holland, Caddo Parish District Attorney's Office
6. Louisiana Sheriffs' Association
7. Louisiana State Police
 - a. Captain Leland Falcon
8. State Public Defender's Office
 - a. John DiGiulio

9. Supreme Court of Louisiana
 - a. Virginia Williams
 - b. Scott Griffith
 - c. Norm Gobert

Guests

Bobby Constantino, VERA Institute of Justice

Linda Duscoe, CURE

Kelly Fogleman, Louisiana House of Representative, Criminal Justice Committee

Richard Jerome, Pew Charitable Trust

Greg Riley, Louisiana House of Representative, Criminal Justice Committee

Staff

Carle Jackson, Criminal Justice Policy Advisor, LCLE

Sandra Laborie, 5th Circuit Court

Sonya Lars, SAC Director, LCLE

- I. Welcome and Introductions – Honorable Ricky Babin
 - A. Chairman Babin recognized Richard Jerome of Pew Charitable Trusts and Bobby Constantino of the Vera Institute of Justice.
 - B. Roll Call—Ms. Sonya Lars
 1. Judge Wicker stated that Judge Conn Regan placed his letter of resignation in the mail on 1/26/11.
 - C. Quorum with 15 of 21 members or their proxies present.
- II. Approval Minutes – Honorable Ricky Babin
 - A. Moved by Judge Fredericka Wicker
 - B. Second by Ms. Jean Faria
- III. Sentencing Commission Operations – Honorable Ricky Babin
 - A. Letter to All Board Members

Chairman Babin informed the members that a letter had been mailed to all members to remind them of the importance of the Commission’s work and the expectations for participation from all members. The letter requested a proxy for each member that will be well versed in all that the Commission is working toward accomplishing. The letter also suggested that for those members that could not participate regularly nor provide a proxy that they contact him.
 - B. The proxy forms are available from Carle Jackson.
 - C. Proposal Review Process – The committees will make presentations today for proposed legislative recommendations. The next step is the vet the information with all of the constituents of the sentencing process for their input and comment.
 - D. Chairman Babin also informed the group of the partnership with Vera and Pew that was announced by the Governor Jindal in a recent press conference. This allows these nonprofit organizations to provide technical support and research to aid the Sentencing Commission’s work.

IV. Framing the Issues – Bobby Constantino and Richard Jerome

A. New Baseline Prison Population Projections written by James F. Austin, PhD, President JFA Institute

1. Mr. Constantino gave the Power Point presentation provided by Dr. Austin on the data received from the Louisiana Department of Corrections. (See the attached presentations.)
2. House Bill 359 will impact the numbers of parolees in coming years.
3. The data indicated that 23% of the admissions to prison are for technical violations.
4. Members of the Commission questioned some of the conclusions drawn from the data. Members of the DOC staff commented that the data did not include several key modifiers.
5. The research team was requested to drill down into the data to determine more about the offenders themselves beyond the current crime of conviction.

B. Prisons Population Drivers written by Bobby Constantino, Senior Program Associate, Vera Institute of Justice (See the attached report.)

1. Incomplete data appears to indicate a drop in technical violations in 2010.
2. Schedule II Drug offenses revocations comprise 15% of the stock populations followed by 9% for armed robbery.
3. Of the top 20 offenses for the stock population, 9 of them are non-violent offenses.
4. Ten of the top 20 carry a mandatory minimum.
5. Chaney Joseph asked if there is any way to identify what is included in waiver. Genie Powers stated that the files would have to be reviewed individually to find out what generated a waiver.
6. Judge Wicker requested greater detail on the non-violent offenses and drug offenses.

C. Proposals Relative to Population Drivers by Richard Jerome, Project Manager, Public Safety Performance Project, Pew Center on the States

1. Evidenced Based Practices are already being used by DOC.
2. Low risk offenders often leave incarceration with new criminogenic factors and traits than when they arrived, necessitating an assessment at the time they leave prison.
3. Measuring the outcomes in recidivisms and revocations is important to the continued success of any reform effort.
4. Reviewing target interventions to determine who succeeds/fails, when failure occurs, how failure occurs (new crime, new technical violations, etc...), and reviewing the data to determine why.
5. Introducing the risk assessment tools (such as DOC's LARNA) for state inmates held in the local facilities.

6. Risk Principle would cause more focus to be placed on the high-risk offenders to reduce recidivism. Data from other states indicate:
 - a. The major work should occur during the first six to eighteen months after release of the offender.
 - b. The focus should be on the front end of the process.
 - c. The level of supervision should be revisited every six months.
7. Challenges that continue include:
 - a. Currently there us a high level of incarceration and low level of probation in Louisiana compared with other states.
 - b. Low availability of treatment and interventions is a problem.
 - c. Also, legal and other barriers limit access to the community based options.
 - d. Swift and certain sanctions have a greater impact, but cost is a serious consideration in making such sanctions available. A successful example of such a program is the Hawaii Opportunity Probation with Enforcement (HOPE) Program.
 - e. Placing offenders who have proven by their conduct that have done well on supervision on administrative rather than active supervision is an option that has real promise.

V. Report of the Statutory Revision Committee: Workgroup 1 Front End Review of Recommendations – Mr. Carle Jackson

A. Crimes of Violence C.Cr.P. Art. 890.1

1. The enumerated “crimes of violence” in R.S. 14:2(b) were examined with a view toward identifying those that cover a range of conduct that includes very violent and much less violent behavior. In these cases it was decided that allowing the prosecutor greater discretion, as he is closest to the actual facts of the case as well as the background of the offender might be in order. Such a procedure would ensure that violent offenders receive the full effect of the enhancements that inhere upon conviction for a crime of violence, while the less violent could be treated appropriately based on the facts of the case and the characteristics of the offender.
2. In the proposal those offenses necessarily of a very violent nature and all sex crimes will automatically receive the full sanctions as in present law.
3. The remaining offenses would be sentenced in the regular manner for the offense and only treated as a “crime of violence” offender for purposes of the sentence enhancements upon the recommendation of the District Attorney and the concurrence of the Judge.

- B. Phyllis Sheridan asked what happens when individual statute has mandatory minimum with specific provisions? In such cases the offender would be sentenced in accordance with the applicable law.

VI. Report of the Statutory Revision Committee Workgroup 2 - Release Mechanisms - Honorable Fredericka Wicker

- A. Team 1 Administrative Sanctions – Honorable Jules Edwards in absentia by the Honorable Wicker
1. Since we have data in the criminological literature that swift and sure sanctions are more effective than merely severe sanctions delivered at a later date the team decided to consider developing immediate administrative sanctions that demonstrate cause and effect to the offender.
 2. Draft legislation that will allow the Probation and Parole officers to immediately sanction offenders for technical violations up to 10 days in jail for one technical violation. This could be extended up to 60 days for more than one technical violation. As the application of these sanctions occur without appearance before the court, the Judge must agree to their use for cases in his court, and may place restrictions on such use for a particular offender even if he makes it generally applicable.
 3. The rules governing the use of administrative sanctions will be written by the Probation and Parole staff to outline the authority of the P&P officers.
 4. Questions from the Commission included:
 - a. Will attorneys receive notification?
 - b. What about ‘right to counsel’ during an administrative sanction?
 - c. Does this impact due process?
- B. Team 2 Parole and Pardons – Sheryl Ranatza
1. The Risk Review Panel had costs that outweighed the expected savings.
 2. Revision of RS 15.574.7 is proposed to allow the use of Administrative sanctions in cases of technical violation of Parole.
 3. Modify RS 15.575.1 and RS 15.575.2 to allow Warden or Deputy Warden of the institution where the offender was housed to serve as ex-officio members of the Pardon Board. The experience of such a non-voting member and their knowledge of the specific offender would greatly enhance the information available to the Pardon Board in making their decisions.
 4. Change the timing of Parole Eligibility for the non-violent, non-sex offender and non-habitual inmates by modifying RS 15.575.4 to allow consideration of first and second offenders at 25% of sentence and third offenders at 50%. This change would not release an offender, but only make him eligible for consideration by the Board of Parole.
 5. Enhance information available to the Parole Board by introducing the risk assessment tools (LARNA I& II) for use in the pardon process.
 - a. Secretary LeBlanc is already working with the local facilities to implement the LARNA tool.
 6. Assist the Parole Board by:
 - a. Modification of the composition, experience requirements and the functions of the Board;
 - b. Prepare recommendations for Parole Board composition for the 2012 legislative session;
 - c. Provide ongoing training for Parole Board members 8 hours of annual training from the National Institute of Corrections and the American Probation and Parole Association. (RS 15.574.2 & RS 15.574.4)

- d. Require the use of the assessment tool in the decision making process.
 - e. And the development and submission of an Annual Report to the legislature and the DOC. (RS 15.574.4)
7. Questions
- a. Pay Sheriffs for jail sanctions?
 - b. Right to counsel?
8. Judge Wicker added that all parties have to be in agreement in using the administrative sanctions.
- a. Jim Boren asked, “How often does a private defender show up at a revocation hearing?”
 - b. Public defenders could be inundated by the number of times the offender could be called back into the process.
 - c. Richard Jerome commented that this proposal allows the offender an option to choose the sanctions or to go back before the judge.
- C. Team 3 Medical Parole – Representative Joseph Lopinto
- 1. Impacts 70-80 current inmates at a cost of \$80,000 to \$100,000 per inmate. (Excludes 1st and 2nd degree murder)
 - 2. There is a state run secure nursing home willing to take the current medical parolees.
 - 3. The infirmaries at Angola and Hunt are both full. If we do not act it may be necessary to build additional medical facilities within the prisons.
 - 4. The problem of very sick inmates requiring nursing home type care is likely to increase in the future due to the demographics of the inmate population and length of sentence.
 - 5. If the offender’s condition improves he would be returned to prison.
 - 6. An offender placed on parole in a secure nursing facility outside of prison is eligible for Medicare/Medicaid.
- D. Team 4 Home Incarceration – Rhett Covington reported by Genie Powers
- 1. Recommendations:
 - a. Instead of the legislation saying ‘sentenced to home incarceration’ the committee suggested changing it to ‘placed on home incarceration’.
 - b. Require the providers of home incarceration technology to report annually to the Department of Corrections indicating who was placed with them, the level and type of supervision received, and the service provider’s qualifications for offering this service. This information will allow this committee to better assess the use of home incarceration in the state and develop appropriate recommendations in the future.
 - 2. Issues:
 - a. There are many providers for home incarceration but no data available.
 - b. No governing body regulates providers of home incarceration.
 - c. DOC has not been given an accurate listing and number of those sentenced to home incarceration.

- d. Fees need to be regulated to assist in supporting other agencies that most step in to assist in home incarceration.

E. Team 5 Good Time/Uniform Sentencing Order/Parole Eligibility Date

1. Good Time and Parole eligibility dates: The team reviewed the complex law currently relating to good time and directly affects release date calculations. It was determined that the current scheme is so complex that no one involved at the court level (defense counsel, prosecutor, or judge) can accurately determine good time, and consequently the minimum amount of time an offender will serve prior to release on supervision. This has implications for both how counsel advises his client and what the prosecutor can tell the victim. The team's conclusion is that the current tangle of provisions dealing with good time need to be simplified so that everyone can know the minimum amount of time to be served. The same issue exists with parole eligibility dates. Some indicators of the problem are:
 - a. DOC deals with 500 lawsuits annually with half of them relating to Good Time compensation.
 - b. Errors in the goodtime calculations can affect 53% to 60% of the sentence in regular cases.
2. These issues led the team to conclude that a simplified good time statute would improve the efficiency and effectiveness of the system. The proposal essentially has two sections: one, good time rules that apply to most offenders, and two special provisions for violent and sexual offenders.
3. A related issue that the team considered was how much time an offender was under supervision before mandatory release from supervision. Parole officers need sufficient time to assess the offender, how he is reacting to his return to the community, and his conduct. Sufficient time is also required to provide the type of programming that will improve the chances that the offender will not reoffend. Currently:
 - a. First time Crimes of Violence offenders currently serve 85% of sentence prior to eligibility for parole or good time release. This means that the violent offender is only supervised a short period of time prior to release from supervision. Sometimes mandatory release from supervision occurs before the probation/parole officer has a good notion of how the offender is going to do or has time to provide the services necessary to help prevent reoffending.
 - b. Second time crimes of violence offenders and sex offenders do not get good time and are released into the community without any supervision. This proposal would allow for increased time under supervision, improving the chances of successful re-entry and the prevention of recidivism.
4. The proposed changes simplify Jail Credit, Good Time and Parole Eligibility Dates. This will solve issue of overdue inmate release but not broken plea agreements.
5. Questions raised by the Commission
 - a. How will this apply to current inmates?

- i. The new Good Time begins in July 1, 2012 giving DOC time to recalculate.
 - ii. The new rate is prospective not retrospective.
- b. What is the impact on the offender if he gets the earned program credit? The result is 22 days per year per offender at max rate.
- c. How will the proposal impact present inmates? They will be released 22 days sooner for the remainder of their sentence after 7/1/12. Melanie Gueho is already working on the changes on the system.
- d. The sentences is not affected. Rather it means that some offenders are on supervision longer than they are incarcerated and will be paying supervision fees instead of adding to the expenses of DOC. This will add to the existing caseload of the probation and parole officers, as they will get the inmate sooner and supervising him for a longer period of time. In order to overcome this issue, it will be necessary to place resources where they have the greatest impact—during the first three years after release, continuing only in those cases where it is required. Other cases not requiring such programming could be considered for placement on administrative supervision. In any event, if an offender commits technical violations or a new crime, he can be revoked and returned to prison for his full term.
- e. What about parole. Parole Eligibility does not mean automatic release. Most offenders are released on Good Time before they are considered for parole.
- f. The proposal gives all of the particulars on Good Time, who is eligible to receive Good Time, how you get revoked, forfeiture of Good Time and the punishment for escape or escape attempts.
- g. How does the proposal affect restoration of good time? There is restoration of Good Time for an offender that has been disciplinary free for a minimum of two years of up to 540 days. This gives the opportunity to get them out on supervision. This will be reduced to 270 days for the new Good Time rate.

B. Uniform Written Sentencing Order

- 1. The team also considered the development of a Uniform Written Sentencing Order. Currently, the commitment order (governed under C.Cr.P. Art. 892) and the Sentencing Minutes determine the sentence and dictate the time computation.
- 2. The Judicial College is also reviewing this issue.

VII. Report of the Research and Technology Committee – Review of the Recommendations – Mr. Robert Mehrrens

A. Determining the capacity to run projections and fiscal impact statements.

- 1. LCLE currently provides support to the LSC.
 - a. What are the future staffing needs to continue providing projections?

- b. What other costs may be incurred?
 - 2. Louisiana needs an integrated criminal justice information system.
 - a. The information needed is available at the agency operational level.
 - b. How will this database be funded?
 - 3. Add to the LSC legislation language that gives the Commission the authority to gather the necessary data to accurately project future trends.
 - a. Need data to support simulation modeling.
 - b. The LSC will make sure the data is scrambled so jurisdictions remain unnamed to get better overall participation from across the state.
 - 4. The team recommends that the Louisiana Sentencing Commission prior to it being presented to the legislation review all sentencing issues. This would make the LSC similar to the Law Institute in reducing the number of duplicate or similar laws.

VIII. Lunch Break (12:07 – 12:35)

IX. Report of the Re-Entry and Evidence Based Corrections Committee – Review of the Recommendations – Honorable Charles Riddle

- A. Re-Entry Centers are being opened around the state. This will increase the availability to more parolees.
- B. ID cards being issued in state facilities prior to release.
 - 1. Working on eliminating fees from DMV to the DOC.
 - 2. Reviewing logistics of getting the ID cards for those released from local jails.

X. Next Steps, Discussions of the Vetting Process & Assignment of Responsibilities – Honorable Ricky Babin

- A. These proposals will be presented to all pertinent groups in the vetting process by members of the Commission.
 - 1. LDAA – Ricky Babin and Charles Riddle
 - 2. Criminal Defense Attorneys Association – Jean Faria and Jim Boren
 - 3. LA Defense Bar Board of Governors – Jean Faria and Jim Boren
 - 4. LA Judges Association – Cheney Joseph & Fredericka Wicker
 - 5. Legislature – Joseph Lopinto
 - 6. LSA – Michael Ranatza
 - 7. Governors Office – Cloyce Clark
 - 8. Victims Group – David Kent
 - 9. Clerks of Court – Debbie Hudnall
 - 10. Chiefs of Police Association – Carle Jackson

XI. Proposals Recapitulation and Preliminary Vote – Honorable Ricky Babin

- A. The Commission Members concurred with proceeding with the vetting of the proposals.

XII. Other Business

- A. Richard Jerome made several announcements.
 - 1. Richard Jerome offered to assist with putting together a communication plan for the Sentencing Commission.
 - 2. Also suggested bringing in other crime victim experts to facilitate a round table on topics important to victims and their families.
 - 3. Offered contacts with other conservative groups interested in issues revolving around sentencing.
 - 4. Offered to provide a report of all of the statistics that have been presented by Vera Institute to date.

XIII. Time and Place of Next Meetings – Honorable Ricky Babin

- A. March 4, 2011 10:00 a.m. at DOC Headquarters, 504 Mayflower St., Baton Rouge, LA 70802.

XIV. Adjourn – Honorable Ricky Babin at 1:47

- A. Moved by Robert Mehrtens
- B. Second by Cheney Joseph