

**Minutes of the Louisiana Sentencing Commission
DOC Headquarters, Building 1
504 Mayflower, Baton Rouge, LA 70802
10:00 a.m. March 4, 2011**

The meeting was called to order Chairman Ricky Babin at 10:07 a.m.

Members Present

Honorable Ricky Babin, Chairman
Ms. Jean Faria, State Public Defender
Honorable Ricky Wicker, Judge, 5th Circuit Court of Appeal (Proxy for Justice Guidry)
Mr. Cheney Joseph
Mr. James LeBlanc, Secretary of Department of Corrections
Representative Joseph P. Lopinto, III
Ms. Mary Manhein, LSU Forensic Sciences
Honorable Jules Edwards, Judge, 15th Judicial District Court (Proxy for Honorable Jay B. McCallum)
Honorable Michael McDonald, Judge, 1st Circuit Court of Appeal
Mr. Carle Jackson, LCLE (Proxy for Mr. Robert Mehrtens, LCLE)
Mr. John DiGiulio, Louisiana Public Defender (Proxy for Mr. Joseph Montgomery (Resigned))
Honorable Ricky Babin, District Attorney, 23rd Judicial District (Proxy for Honorable Charles A. Riddle, District Attorney)
Representative Joseph Lopinto, III (Proxy for Representative Ernest Wooten)

Advisory Members Present

1. Attorneys
2. Department of Corrections
 - a. Ms. Melissa Callahan, DOC
 - b. Mr. Darryl Campbell, DOC
 - c. Mr. Rhett Covington, DOC
 - d. Ms. Traci DiBenedetto, DOC
 - e. Ms. Angela Griffin, DOC
 - f. Ms. Melanie Gueho, Information Services, DOC
 - g. Mr. William L. Kline, DOC
 - h. Ms. Pam Laborde, DOC
 - i. Ms. Mariana Leger, DOC
 - j. Mr. Barry Matheny, DOC/P&P
 - k. Ms. Genie Powers, Director, P&P
 - l. Ms. Sheryl Ranatza, Deputy Secretary, DOC
 - m. Ms. Jan Rodrigue, DOC/P&P
 - n. Ms. Debbie Rutledge, Deputy General Counsel, DOC
 - o. Mr. Gerald Starks, DOC/P&P
 - p. Ms. Angela Whittaker
2. Judiciary
3. Louisiana Clerks of Court Association
4. Louisiana District Attorneys' Association

5. Louisiana Sheriffs' Association
6. Louisiana State Police
7. State Public Defender's Office
 - a. Mr. Erik Stilling
 - b. Mr. Sean Williams
8. Supreme Court of Louisiana
 - a. Mr. Scott Griffith

Guests

Mr. James F. Austin, PhD, President JFA Institute
 Ms. Judy Benitez, Louisiana Foundation Against Sexual Assault
 Mr. Cloyce Clark, Office of Executive Counsel, Governor's Office
 Mr. Bobby Constantino, VERA Institute of Justice
 Ms. Linda Duscoe, CURE
 Ms. Linda G. Fieldsjo, LA CURE/Catholic Charities
 Ms. Kelly Fogleman, Louisiana House of Representative, Criminal Justice Committee (By Phone)
Mr. Henry L. Goines, Retired Classification Manager, DOC
 Mr. Carlos Harvin, Lafayette Workforce Investment Board
 Mr. Richard Jerome, Pew Charitable Trust
 Mr. Greg Riley, Louisiana House of Representative, Criminal Justice Committee (By Phone)
 Mr. Michael Woodruff, VERA
 Mr. Checo W. Yancy, LA CURE/Re-entry

Staff

Mr. Carle Jackson, Criminal Justice Policy Advisor, LCLE
 Ms. Sandra Laborie, 5th Circuit Court of Appeal
 Ms. Sonya Lars, SAC Director, LCLE

I. Welcome and Introductions

Honorable Ricky Babin, District Attorney, 23rd Judicial District, Chairman

- A. Roll Call – Ms. Sonya Lars
There was a quorum present.
- B. The Commission recognized the resignations of the Honorable C.E. “Conn” Regan and Mr. Joseph L. Montgomery.
- C. Introduction of Presenters - Honorable Ricky Babin
 1. The Commission recognized Richard Jerome (Pew Charitable Trusts), Bobby Constantino (VERA) and Dr. James Austin (JFA Institute).
 2. The Commission also recognized the first time attendance of Judy Benitez of the Louisiana Foundation Against Sexual Assault, which is a victims group.

II. Approval of Minutes

- A. Moved by Ms. Jean Faria and second by Honorable Ricky Wicker.
- B. The minutes were approved unanimous vote.

III. Orientation

- A. The presentations today are still not the final versions of the proposed legislation. Several major groups gave feedback on the proposed legislation. Their comments will be discussed as the reports are given.
- B. Vetting Activities
 - 1. Judge Wicker presented to the Judicial College. There were questions about how administrative sanctions would work.
 - Main concern was the loss of judicial discretion.
 - Judge Edwards commented that a few judges stated they would not use the administrative sanctions in the courts but also were opposed to others judges using it in their districts, as they saw it as an erosion of judicial authority. They did not want Probation and Parole officers to have that much control.
- C. The Victims groups that heard the presentation received it favorably.
- D. Secretary LeBlanc and Carle Jackson met with the Louisiana Sheriff's Association. There were no major issues raised by LSA. They discussed the 25% parole eligibility. They are also concerned about the use of home incarceration.
- E. Ms. Faria reported that the Defense Bar was concerned about right to counsel issues related to administrative sanctions. Basically, they would like to be involved with the Department of Corrections develops the policy governing the program.
- F. The Clerk of Court in the 23rd JDC did not see how any of the changes would impact the Clerks in anyway.

IV. Framing the Issues

- A. Prison Population Drivers (New Data)

Mr. Bobby Constantino, Senior Program Associate, Vera Institute of Justice
This data was reported in February without the modifiers that give more specific information. The VERA staff has analyzed the changes that have occurred as new data has been received.

 - 1. Carle Jackson requested that data that is offender as well as offense based be included in future data analysis by VERA staff.
 - 2. Jean Faria asked if other states track revocations and new convictions. Richard Jerome responded that most other states are like Louisiana and have a difficult time knowing in every instance when a revocation involved new charges.
 - 3. Currently the way data is captured there is no way to disaggregate technical violations relative to possible pending charges.
 - 4. Judge Wicker commented that getting the best picture of the percentage of revocations that are true revocations for technical reasons. Genie Powers informed the group that Probation and Parole's new case managements system will track Probationers revocations in greater detail in the future.
 - 5. Secretary LeBlanc questioned the number of violent offenders on parole.

B. New Baseline Prison Population Projections

Mr. James F. Austin, President JFA Institute

Projections never come true because legislation is constantly changing which impacts the projected numbers.

1. A simulation model was used to make the projections based on what is occurring in the system now.
2. Demographics of males age 15-39 are used because they are the ones that are processed through the system most frequently. This sector of the population is expected to grow by 3% over the next few years.
3. The crime rate in Louisiana from 1960 through 2009 has shown a decrease.
4. New York has reduced their prison size by 20 - 25% and their crime rate has followed suit.
5. UCR was the source for the arrest data used in the study. Arrest rates per capita have also declined.
6. Part of this may be due to Baby Boomers reaching the age where they are slowing down and not getting involved in the criminal justice system.
7. Lifers are a large portion of the prisoners in Louisiana. There is currently a stacking effect in play. The Lifers do not leave and more inmates are being added daily which causes the size of the stock population to increase. Approximately 150 Lifers are added annually with only 40 Lifers dying each year for a net gain of 110 annually.
8. Improving probation and parole outcomes will greatly assist in reducing the stacking effect related to revocations.
9. The Parole Board is not releasing a large volume of inmates, which means the majority of offenders are released by diminution of sentence.
10. Act 792 has a moderate impact on length of stay for inmates. The credits from this Act average about 12 months for most inmates. Judge Edwards commented that some are concerned that this is not also extended to Probationers. Genie Powers commented that judges have the ability to give a credit for time successfully under supervision, but they must state it in the sentencing record.
11. The inmate population projection for Louisiana has the prison population remaining fairly stable. The population could be reduced by 4,000 to 4,500 by making some of the suggested changes; parole eligibility date, diminution of time through various credits, Good Time for inmates and Probationers, etc.
12. A matrix system is used in other states to assist in determining parole eligibility. It works in conjunction with a risk assessment. It is impressed upon the inmate that if they are a low risk for revocation they are at a high risk of being paroled earlier. Clear guidelines assist the Parole Board and the inmate to know what to expect and what the rules are for early release. Judge Edwards commented on the accountability that the Parole Board would feel due to the stipulation of an Annual Report, which serves as a report card on their actions for the year.

13. Billy Kline reminded everyone that we have determinant sentencing and this fact limits what we can do.

V. Report of the Statutory Revision Committee: Workgroup 1
Carle Jackson, LCLE

- A. Over the years the list of crimes of violence has expanded from 13 to 44 enumerated offenses. Some of the newly added offenses cover a range of conduct from very violent to relatively less violent behavior. The proposed revision of C.Cr.P. 890.1 would retain those offenses where the enumerated crimes cover very violent conduct and sex based offenses, while allowing the prosecutor discretion based on the actual conduct and history of the defendant to decide whether or not to invoke the enhancements that are currently automatic for such offenses.
 1. Greg Riley asked what happens if the judge does not state that the crime is one of violence? Carle Jackson responded that C.Cr.P. 890.1A will designate the mandatory as automatic whereas the variable offenses must be articulated as violent based on the recommendation of the District Attorney or they would not receive the enhancements that go along with a conviction for a crime of violence. Greg Riley commented that would allow the offender to serve less than 85% of the sentence if it is determined by the prosecutor that the enhancements should not be invoked.
 2. Cheney Joseph commented that silence by the court works to the offenders benefit with regard to the length of time that will actually be served.
 3. Billy Kline commented that when future changes are made to RS 14:2(B) that the legislator would have to make the call of whether it is a variable or mandatory violent crime. Carle Jackson responded that the designation will be determined by what is listed in C.Cr.P. Art 890.1, which is where crimes of violence are defined as mandatory or variable.

VI. Report of the Statutory Revision Committee: Workgroup 2
Honorable Fredericka Wicker

- A. C.Cr.P Article 899.1 Administrative Sanctions for Technical Violations
 1. Judge Wicker reported that Administrative Sanctions remain the same as reported at the March 4th meeting. This would allow at the prosecutors, judges and defense attorney to allow the Probation and Parole officers to impose immediate sanctions for technical violations according to rules and regulations to be drafted by DOC.
 2. Jean Faria stated that the Public Defenders would like to be included in formulating the rules and guidelines.
- B. RS 235 - Board of Pardons Membership
 1. Adds the warden an ex-officio non-voting member of the Pardon Board.

- C. RS 236 - Parole Board Duties and Operations
 - 1. The Board shall use evidenced based practices and utilize the results of a risk assessment instrument (e.g. LARNA).
 - 2. Requires the Board to report to the DOC annually of practices and outcomes of the Board.
 - 3. They must have training annually to keep their skills sets up to date.
- C. RS 237 - Parole Eligibility
 - 1. First or second felony offense shall be eligible for parole consideration upon serving 25% of the sentence. Third offenders are eligible for parole consideration at 50% of their sentence. An offender with a fourth or further offense is not eligible for parole.
 - 2. This would not apply to those convicted as a crime of violence, a sex offense or sentenced as a habitual offender.
 - 3. There was a discussion of combining RS 237 and C.Cr.P. 890.1 together to get around having the two bills refer to one another prior to knowing if either of them will be passed by the legislature.
 - 4. This one needs to be cleaned up and revised.
- D. RS 238 - Medical Parole
 - 1. Inmates who area terminally ill, permanently incapacitated or an inmate with an extraordinary health condition can be paroled to a secure nursing facility but can never be released. If their health improves they must return to prison to complete their sentence. The decision as to who actually receives such parole is determination made by the Parole Board on a case-by-case basis.
 - 2. The Sheriff's are concerned about the 2/3's vote by the Parole Board relative to Medical Parole and suggested a unanimous decision.
- E. RS 239 - Home Incarceration Supervision of Providers by DPS&C
 - 1. This bill provides for mandatory reporting to DOC of persons placed on home incarceration. This will permit the necessary research to determine what the parameters are for home incarceration, who provides the service, the guidelines used for monitoring offenders, define and regulate the data collected, and establish DOC as the supervising agency of the program. The purpose of this proposal is to gain a basic picture of home incarceration as it is currently used in the state. This is a necessary first step toward the development of policy in this area.
 - 2. Providers would be required to submit standard information on the offenders and a description of the home incarceration services provided to the DOC.
 - a. The Sheriffs' are concerned about judicial referrals to private companies as part of Judicial Diversion programs. They also requested tracking of this option be included. These programs are similar to work release programs but offered by a private company. It is a diversion program that is generally pre-trial.

- b. It was suggested that the wording be changed from “placed on” to “ordered to” which reflects the language more commonly used for a sentence.
 - c. Representative Lopinto advised that the inclusion of the Judicial Referral to the Diversion Program necessitates a name change of the bill.
 - 4. Judy Benitez asked about the current licensing, registration and background check requirements for private home incarceration programs.
 - 5. Judge Edwards commented that, in some cases, as a condition of bond or probation the monitoring companies might also provide housing and find jobs for the offenders. The monitoring company receives reimbursement from the offenders for all of these services.
- F. RS 240 - Diminution of Sentence – Good Time
 - 1. Consolidation of the statutes that provide diminution of sentence as found in C.Cr.P Article 880 for credit for prior custody and C.Cr.P Article 892(B) (1) (d) for the post-sentence statement by the sheriff with accompanying documents.
 - 2. Provides three classes of offenders with regard to diminution of sentence: those not eligible include sex offenders and second offense crime of violence, first felony offenders are eligible for 1 1/2 days for 1 day served and a first time crime of violence offenders are eligible to earn 1/3 day for every day served.
 - 3. Flat timers, including habitual offenders, which are not eligible for diminution of sentence, can earn credits through program participation and may receive a maximum of 240 days of goodtime if they avail themselves of the programs provided.
 - 4. This would be prospective starting on July 1, 2012 and those earning 85% now would not move to the new Good Time rates.

VII. Report of the Research and Technology Committee

Mr. Robert Mehrtens, Deputy Director, LCLE, Chairman of Research and Technology
Presented by Mr. Carle Jackson

- A. RS 321 J - Sentencing Commission Data Collection
 - 1. This would give the Commission the power to collect data from all relevant parties including juvenile and health records.
- B. RS 321K - Sentencing Commission Review of Legislation Prior to Submission
 - 1. Representative Lopinto shared that legislators would be more receptive to receiving fiscal notes from the Sentencing Commission on proposed legislation than having the Commission to review all sentencing related legislation before it could be filed. This would give the Legislature additional information relative to each proposal, including the Commissions analysis of legislation as well as providing an overview of the associated expenses, costs, benefits of the proposals.

2. Representative Lopinto suggested holding this legislation until 2012. He also suggested modifying the language to allow any member of the Legislature to request such a review, rather than having an automatic process.
3. DOC and LCLE currently provide fiscal notes on legislation as it is being developed.

VIII. Open Discussion and Comment

- A. See comments below.

IX. Adoption of Proposals.

All members agreed with each of the following motions:

- A. Hold for further Vetting
1. C.Cr.P. 890.1(A) Crimes of Violence
Moved: Judge Jules Edwards
Second: Representative Lopinto
 2. RS 237 Parole Eligibility
Moved: Representative Lopinto
Second: Judge Fredericka Wicker
 3. RS 238 Medical Parole
Moved: Representative Lopinto
Second: Judge Fredericka Wicker
 3. RS 240 Diminution of Sentence
Moved: Representative Lopinto
Second: Judge Fredericka Wicker
- B. Legislative Proposals Approved for Submission
1. RS 236 Parole Board Duties & Operations
Moved: Representative Lopinto with removal of C
Second: Ms. Jean Faria
 2. RS 235 Membership of the Board of Pardons
Moved: Chairman Ricky Babin
Second: Ms. Jean Faria
 3. RS 239 Home Incarceration change from “placed on” to “ordered to”
Moved: Representative Lopinto
Second: Judge Fredericka Wicker
 4. C.Cr.P. Article 899.1
Moved: Representative Lopinto
Second: Judge Fredericka Wicker
 5. RS 321 J Sentencing Commission (to receive data)
Moved: Representative Lopinto
Second: Judge Fredericka Wicker
- C. Legislative Proposals Held Over
1. RS 321 K Policy Impact Statements
Moved: Representative Lopinto
Second: Judge Jules Edwards

X. New Business
None

XI. Next Meeting
Carle Jackson was tasked to set a meeting at least 2 weeks prior to the April 15 Legislative Session. The special Session begins March 20, 2011.

XII. Adjournment
It was moved by Jean Faria and second by Judge Jules Edwards to conclude the meeting. All concurred. The meeting ended at 1:53.