

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

I. Welcome and Introductions

The meeting was called to order Chairman Ricky Babin at 10:18 a.m. with 11 of 21 members present. Three arrived during the course of the meeting.

Members Present

Honorable Ricky Babin,
Mr. Robert Barkerding
Honorable Louis Daniel
Ms. Jean Faria, State Public Defender
Honorable Ricky Wicker, Judge, 5th Circuit (Proxy for Honorable Greg Guidry)
Ms. Debbie Hudnall, Louisiana Clerks Association
Mr. Cheney Joseph, Louisiana Law Institute
Mr. Jimmy LeBlanc, Secretary of Corrections
Representative Joseph P. Lopinto, III
Ms. Mary Manhein, LSU Forensic Sciences
Honorable Jules Edwards (Proxy for Honorable Jay B. McCallum)
Honorable Michael McDonald
Mr. Robert Mehrstens, Louisiana Commission on Law Enforcement
Honorable Charles A. Riddle

Advisory Members Present

1. Attorneys
 - a. Jim Boren
2. Department of Corrections
 - a. Darryl Campbell, DOC
 - b. Gerri Garon, DOC/P&P
 - c. Whalen Gibbs, DOC
 - d. Angela Griffin, DOC
 - e. Susan Griffin, DOC
 - f. Melanie Gueho, Information Services, DOC
 - g. William L. Kline, DOC
 - h. Pam Laborde, DOC
 - i. Genie Powers, Director, P&P
 - j. Sheryl Ranatza, Deputy Secretary, DOC
 - k. Jan Rodrigue, DOC/P&P
 - l. Phyllis Sheridan, Regional Director, P&P
 - m. Dr. Raman Singh
 - n. Angela Whittaker

3. Judiciary
4. Louisiana Clerks of Court Association
5. Louisiana District Attorneys' Association
6. Louisiana Sheriffs' Association
7. Louisiana State Police
8. State Public Defender's Office
 - a. John DiGiulio
9. Supreme Court of Louisiana
 - a. Scott Griffith

Guests

Cloyce Clark, Governor's Office

Bobby Constantino, VERA Institute of Justice

Sheila Feigley, Crime Victims Service Bureau

Kelly Fogleman, Louisiana House of Representative, Criminal Justice Committee

Henry L. Goins, Retired Classification Manager, DOC

Richard Jerome, Pew Charitable Trust

Greg Riley, Louisiana House of Representative, Criminal Justice Committee

Alexis Schuler, Pew Charitable Trust

George Steimel, Louisiana Criminal Defense Lawyers

Rebecca Tublitz, VERA Institute of Justice

Staff

Carle Jackson, Criminal Justice Policy Advisor, LCLE

Sonya Lars, SAC Director, LCLE

- II. Approval of Minutes
 - Moved by Jean Faria
 - Second by Mary Manheim

- III. Orientation and Recap – Honorable Ricky Babin
 - A. Hold for further Vetting
 1. Crimes of Violence 890.1
 2. Parole Eligibility
 3. Medical Parole
 4. Diminution of Sentence
 - B. Approved for Submission
 1. Parole Board Duties and Operations
 2. Membership of the Board of Pardons
 3. Home Incarceration
 4. Administrative Sanctions
 - C. Held for 2012 Recommendations
 1. Policy Impact Statement

- IV. Framing the Issues – compiled by James F. Austin, PhD. President JFA Institute and Presented by Richard Jerome of Pew Charitable Trusts

- A. Projections relative to Commission Proposals
 - 1. Proposals from the last meeting were updated based on the discussions by the LSC with a prospective application to be applied to future offenders after August 11, 2011.
 - a. Moving the guidelines for diminution of sentence to one place in the statutes will assist judges, prosecutors and the defense bar in being able to explain the outcome of sentencing to all parties during the sentencing process accurately.
 - b. Reducing the number of possible variables in the calculations also cleans up the sentencing calculation process by moving from 35 days for 30 to 1 ½ days per each day served for computation of parole eligibility.
 - c. Up to 1,800 nonviolent offenders could be impacted by the proposed changes in diminution rules.
 - d. Administrative Sanctions from other states can be provided to show how it impacts revocations. Arizona made changes in 2007. South Carolina began using risk and needs assessment in 2010 that were at 8%. These are recent changes in states that are moving in this direction so the data available is limited. Pew has worked with Kentucky to track their risk and needs assessment data.
 - e. Judge Edwards commented that the ability to give the parolee and accurate account of sanctions that will be applied either by the P&P or the judge. Speed is very important.

V. Report of the Statutory Revision Committee: Workgroup 1 – Honorable Ricky Babin
 A. Crimes of Violence C.Cr.P. 890.1

- 1. LDAA objects to the current form of this bill. They request a year to review the far reaching impact of this type of legislation.
- 2. Judge Wicker suggested that the rewrite of the legislation be fast tracked to have input from all parties and vet the proposed bill by fall 2011. The DA’s present felt that the LDAA would be willing to assist in this effort.

VI. Report of the Statutory Revision Committee: Workgroup 2 – Honorable Fredericka Wicker (Items deferred until the discussion of ‘Adoption of Proposals’ later in the meeting.)

- A. Goodtime
 - 1. LSA agrees with all of the proposed legislation
 - 2. The LDAA wants to revisit several of the proposals to develop alternative language.
- B. Parole
 - 1. Eligibility
 - 2. Medical Parole

VII. Open Discussion and Comment – Honorable Ricky Babin

- A. Judge Wicker advised that interns will be available through the Fifth Circuit Court of Appeal this summer to assist with research.

- B. Chairman Babin thanked the Commission members and all of the advisory members for their input, hard work and dedication to this process. He also recognized the contributions of the legislative staff, Pew Charitable Trusts,
- C. John DiGuilio informed the group that Judge Wicker will be receiving the Judge of the Year Award from the Louisiana Bar Association on April 8, 2011.
- D. Judge Wicker suggested that we set an ‘Aspiration Plan’ for the Sentencing Commission for 2012 to be developed and in place by fall of 2011. Pre-planning our goals will make it easier on the District Judges and all involved in terms of scheduling. Representative Lopinto endorsed this idea since legislative authors can be in short supply unless they are secured in advance.

IX. Adoption of Proposals – Honorable Ricky Babin

A. Medical Parole HB 238 §F

- 1. Charles Riddle states the DA want to know the specific location of medical parolees. Secretary LeBlanc stated that the Nursing Home Association is willing to take the parolees that are released on medical parole. Representative Lopinto and Secretary LeBlanc reminded that medical parole is supervised parole while they still have the same health issues. If their health improves, their parole is revoked and they are returned to prison as recorded in paragraph F. Changed ‘discover’ to ‘determines’ to fortify the language. Secretary LeBlanc reminded the group that parolees must meet certain conditions to remain on parole. The wording will be changed to state the parolee will be revoked if it is determined that they no longer meet the parole conditions will be immediately taken into custody as their parole is being rescinded. The Parole Board shall place an emphasis on the medical condition of the parolee as reported by the medical staff of DOC.
- 2. Whalen Gibbs advised the group that a medical parole is ‘rescinded’ as opposed to ‘revoked’ if the parolee regains their health. This is already in statute.
- 3. Charles Riddle asked how their location will be monitored.

Moved by Judge Edwards

Second by Jean Faria

To accept the changes discussed to submit as possible legislation for Medical Parole.

Approved

B. NIH Study and Terminal Illness - § B(2)

- 1. Our language states two year study but NIH’s study was for a five year study.
- 2. Dr. Singh there is no medical definition for terminally ill. Traditionally has been understood as less than six month life expectancy. Michigan no longer uses the phrase ‘terminally ill’ but uses the phrase ‘reduced life expectancy due to advanced illness’. Dr. Singh advises his staff to look at the entire picture when providing a risk assessment to the Parole Board: offense, medical condition, institutional conduct, time served, etc. A

validated risk assessment tool will help in making this determination if the offender is a low risk offender.

3. The Commission agreed to remove the 24 month time frame for life expectancy.

Moved by Judge Wicker

Second by Judge Edwards

The wording in section B.3 for 24 month will be removed to allow keeping the NIH reference in conjunction with the phrase 'reduced life expectancy due to advanced illnesses.

Approved

C. Permanently Incapacitated inmate - -§ B(1)

1. Angela Whittaker alerted the group that the term 'terminally incapacitated' was not defined in the proposed legislation by DHH criteria for long term care facility or nursing home for terminally incapacitated.

Moved by Charles Riddle

Second by Judge Edwards

Change the wording in -§ B(1) to track that of DHH's in terms of eligibility in their risk assessment tool LOSAC.

Approved

D. Revision of -§ D

1. Judge Wicker suggested that the phrase 'medical emphasis' be changed to 'medical condition' in § D in the sentence "The board shall place an emphasis on the medical condition in determining whether medical parole shall be granted."

Moved Judge Wicker

Second by Judge Edwards

Approved

E. Approval of changes to HS 238

Moved Charles Riddle

Second Judge Wicker

HS 238 will be submitted to the legislature with the above changes.

Approved

F. HS 237

1. Kelly Fogelman alerted the group to drafting issues that would cause problems for this legislations intended goal. The following additional paragraphs will clean up the loopholes.
 - a. A(1)(a) Unless eligible at an earlier date and except as provided for in Subparagraph (b) of this Paragraph and Subsection B of this Section, a person, otherwise eligible for parole, convicted of a first felony offense shall be eligible for parole consideration upon serving thirty-three

and one-third percent of the sentence imposed. Upon conviction of a second felony offense, such person shall be eligible for parole consideration upon serving fifty percent of the sentence imposed. A person convicted of a third felony offense shall not be eligible for parole.

(b)(i) Notwithstanding the provisions of Subparagraph (a) of this Paragraph, a person, otherwise eligible for parole, convicted of a first or second felony offense shall be eligible for parole consideration upon serving twenty-five percent of the sentence imposed. Upon conviction of a third felony offense, such person shall be eligible for parole consideration upon serving fifty percent of the sentence imposed. A person convicted of a fourth or subsequent felony offense shall not be eligible for parole. The provisions of this Subparagraph shall not apply to any person who has been convicted of a crime of violence as defined in R.S. 14:2(B) has been convicted of a sex offense as defined in R.S. 15:541, has been sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise ineligible for parole.

(ii) Any person eligible for parole pursuant to the provisions of this Subparagraph shall not be eligible for parole pursuant to the provisions of Subparagraph (a) of this Paragraph.

(iii) Nothing in this Subparagraph shall prevent a person from reapplying for parole as provided by rules adopted in accordance with the Administrative Procedure Act.

Section 2. The provisions of this Act shall apply only to persons who are sentenced on or after August 15, 2011.

Moved by Judge Wicker

Second by Charles Riddle

The addition to HS237 as documented above will be submitted to the legislature.

Approved

G. Define Prospective

1. Chairman Babin stated that the DA's would be more comfortable with prospective being defined to mean future sentences and not current sentences.
2. Greg Riley explained that it would become effective for sentences handed down on or after August 15, 2011.

Moved by Lopinto

Second by Judge Edwards

Approved

H. Diminution of Sentence – HS 240

1. The changes that were made in §A(1) from 'three days' to 'one third of a day' and from 'seventeen days' to 'one day' need to revert back to the original language., thus eliminating the 85/75 rule.

2. All other strike outs will be removed from the amended bill.

Moved by Judge Wicker

Second by Representative Lopinto

It was moved to proceed with the legislation without the inclusion of the 85/75 language as shown above.

Approved

- I. Approval of Amended Diminution of Sentence

Moved by Judge Wicker

Second by Judge Edwards

Approved

- X. New Business – Honorable Ricky Babin

- XI. Discussion of Future Meetings - Honorable Ricky Babin
Friday, May 6, 2011, 10:00 a.m. at the DOC Headquarters

- XII. Adjourn – Honorable Ricky Babin

Moved by Representative Lopinto

Second by Judge Edwards

The meeting ended at 12:40 p.m.