

State of Louisiana

OFFICE OF THE GOVERNOR DRUG POLICY

Dr. Chaunda Mitchell Director, Drug Policy & Executive Director, Diversity and Inclusion

> Kristy Miller Assistant Director

DRUG POLICY BOARD July 8, 2021; 10:00 AM - 12:00 PM Virtual Meeting held on Zoom

AGENDA

Call to Order

Dr. Chaunda Mitchell, Director of the Governor's Office of Drug Policy and Chair of the Drug Policy Board, called the meeting to order at 10:06 am.

Welcome and Introductions

Chaunda welcomed everyone. For the sake of time, Chaunda asked Kristy to introduce Voting and Of-Counsel members while stakeholders and members of the public were encouraged to type their names in the chat window to denote their attendance. After introductions, she announced that there were 15 members present so quorum was achieved. A list of all members and stakeholders who attended the virtual meeting is included at the end of this document.

Old Business

Review and approve minutes from previous meeting

Chaunda asked everyone to refer to the minutes that were emailed prior to the meeting. Kristy Miller, Assistant Director of the Office of Drug Policy, put the minutes up on the screen. Chaunda acknowledged the comprehensiveness of the minutes and then asked if there were any edits or amendments to be made. Hearing none, Remy Starns made a motion to approve the minutes. Chris Alderman seconded the motion. Vote by voice was made. All who were present agreed with the motion. None disagreed. None abstained.

New Business

Update: Outcome of drug policy-related bills for 2021

Chaunda asked Kristy to conduct a brief report on the outcome of drug policy-related bills from the 2021 legislative session. Kristy referenced that a spreadsheet with the list of all bills and their outcomes was provided to members and stakeholders via email prior to the meeting and that she would highlight the outcomes of a few bills that were of most significant importance to the Board.

Kristy began her report by noting that there were 41 legislative instruments that were tracked this year, House Bills – 27, House Resolutions – 6, Senate Bills – 7, and Senate Resolutions – 1. She noted that this is less than the previous year, but that this year's session was focused on fiscal issues so legislative members had fewer opportunities to file non-fiscal bills. First, Kristy spoke about two sets of bills – one set by Representative Newell and the second set by Representative Nelson – which would have, collectively across either set, legalized the use and commercialized the sale of marijuana for

recreational purposes. She described the outcome of each set of bills. Next, Kristy spoke about HR 1 which called for the House Committee on Criminal Justice to establish a subcommittee to study the impacts of legalizing cannabis in Louisiana. The Drug Policy Board was listed as one of the entities to be included on the study committee so Chaunda and Kristy will keep everyone updated on that study's progress. Kristy moved on to review HB 652 which was passed by the legislature and signed by the Governor which removed criminal penalties for a first conviction of marijuana when the offender possesses 14 grams or less. Kristy shared Governor Edwards' statement explaining his rationale for signing the bill which, in part, clarifies that this is not a "decriminalization" bill as many have labeled it, but is considered a measured and compassionate approach to addressing persistent injustices in the criminal justice system as it relates to minor level, non-violent crimes. The final bill related to marijuana that Kristy explained was HB 391 which authorized the recommendation of medical marijuana in raw or crude form. This bill easily passed the legislature and was signed by the Governor as well.

Moving on, Kristy spoke about some tobacco bills, particularly HB 473 which raised the minimum age for the prohibition of the distribution or sale of tobacco, alternative nicotine products, or vapor products from persons under the age of 18 to those under the age of 21. The passage of this bill put Louisiana law in line with recent federal law changes which increased the age of tobacco purchased from 18 to 21.

Next, Kristy spoke about HB 633 which was an omnibus ignition interlock bill which would have done a number of things to deter impaired driving to include changing the driver's license restriction threshold from a BAC of .20% to .15%; defining high-risk impaired driving and increasing driver's license suspension time to 2 years (1st conviction) and 4 years (2nd conviction); requiring cameras on ignition interlock devices and establishing new calibration standards for devices; requiring new certification requirements for devices, technicians, and service centers; mandating additional rules and regulations; providing an economic hardship allowance for additional offenders encompassed by the reduced BAC levels; requiring electronic reporting by vendors, to LSP, OMV, court; and creating a complaints process and administrative hearing process. Kristy explained that these changes are based on the latest "best practices" promoted by national highway safety professional organizations. She concluded by outlining some of concerns by others that resulted in the bill being stalled in the legislature.

Then, Kristy spoke about opioids which had only two instruments, one of which was a Senate resolution to urge the Louisiana Department of Health to study and report on options regarding reimbursements for non-opioid pain treatment and opioid alternatives in the Louisiana Medicaid program.

With that, Kristy concluded her briefing. Chaunda then opened the floor for comments and questions by attendees. Lisa Freeman expressed her thanks for the briefing and stated that her office had also been tracking many of the same bills since they had such important impact on highway safety. She particularly pointed out that the recreational marijuana bills could have major negative impact for her agency and many others, thus she has been engaging with her counterparts in other states as well as national organizations to identify resources, data, and other information to help educate decision makers on the harms of marijuana legalization. One colleague, Dr. Darrin Grondel, Vice President of Traffic Safety and Government Relations at the Foundation for Advancing Alcohol Responsibility at Responsibility.org has offered to provide direct and indirect support based on his experiences in Washington State.

Judge Scott Schlegel asked for some clarification of the charge of the Drug Policy Board as it relates to legislative instruments. As a new member, he wanted to ensure he understood fully what the relationship and responsibilities are between the Board, the legislature, the Governor, and policy advisors. For example, he wanted to know whether the Board has the responsibility to take positions on certain legislation and even to provide testimony, either positional or for information only, directly to

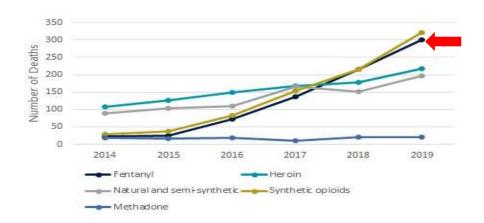
legislators. In particular, he participated in a study committee that resulted in the development of SB 145 which provided for mandatory drug testing, screening, and assessment for certain offenders to allow for participation in drug and specialty courts and provided for expansion of the drug and specialty courts program. Thus, he was disappointed to see that this bill was vetoed by the Governor after passing with significant support through the legislature. Chaunda thanked Judge Schlegel for his question and commended his desire to see the Drug Policy Board actively engage in the policymaking process. In regards to the Board's roles and responsibilities, she stated that she was planning to have that very discussion in the context of discussing the 2022 policy agenda, so she asked if he would be willing to hold that question for a moment until we got to that point of the agenda. Scott agreed that was an acceptable action.

Tabletop discussions

With that, Chaunda segued into the tabletop discussions portion of New Business. As an introduction to this section, she explained our office observed a much more concerted effort by Drug Policy Board members to engage in their own education and advocacy efforts prior to and during the legislative session as well as encouraging the Board as a whole to do so. She commended those members for their activism, but also explained the challenges of trying to establish policy positions and communicate nuanced information and data to legislators as well as the Governor and his policy and legislative affairs teams while the session was in progress. Thus, she thought it would be a more fruitful exercise to engage the Drug Policy Board in a series of discussions about specific policy issues prior to the next session so the Board could collectively establish some parameters and positions on those topics they were most interested. This would also allow the group to determine how engaged they want to be on the "advocacy" spectrum as it relates to specific legislation or policy directions. Chaunda explained that this would be the first of several discussions on a variety of policy/legislative issues prior to the start of the 2022 legislative session. She concluded her introduction by explaining that the Drug Policy Board could decide to develop its own policy agenda for 2022. She turned the discussion over to Kristy to address the first two discussion topics and then committed to delve further into the process for setting a 2022 policy agenda.

Chaunda turned the presentation over to Kristy to discuss the first of the three tabletop discussion topics - Opioid overdose prevention strategies, particularly encouraging drug checking with fentanyl test strips (FTS). Kristy delved into a brief introduction to fentanyl test strips which is considered to be an opioid overdose prevention strategy which falls into the tertiary prevention category where the strategies are focused on acute health control and serious injury or death prevention. So, admittedly, these strategies are focused on keeping someone from experiencing serious injury or death due to current drug use. With that in mind, Kristy shifted to talking about the three major waves of opioid overdoses nationally, in which the current wave is due to fentanyl. From 1999–2019, nearly 500,000 people died from an overdose involving any opioid, including prescription and illicit opioids. This rise in deaths can be outlined in 3 waves. First wave: began in 1990s with increased prescribing of opioids. Overdose deaths involving prescription opioids (natural, semi-synthetic opioids, and methadone) increased since at least 1999. Second wave: began in 2010, with rapid increases in overdose deaths involving heroin. Third wave: began in 2013, with significant increases in overdose deaths involving synthetic opioids, particularly those with illicitly manufactured fentanyl.

In Louisiana, we have seen much the same thing. According to data reported by the Louisiana Opioid Data and Surveillance System at the Louisiana Department of Health, deaths involving fentanyl – usually a fentanyl-laced drug – have increased by 1400% since 2014. Fentanyl in Louisiana causes more deaths than heroin and more deaths than prescription opioids.



While Kristy was presenting Rebecca Nugent with the LA State Police Crime Lab provided the following data in the chat window, 55% of oxycodone, hydrocodone and alprazolam tablets tested at our lab in 2021 are counterfeit. Dr. Joe Kanter, State Medical Officer for the LA Department of Health, asked Rebecca, "do you know about what percentage of street heroin that is tested contains fentanyl these days?" Rebecca responded that when we (LSP) see heroin in powder substances or in counterfeit tablets, fentanyl is present 100% of the time. However, we are now seeing where there is no heroin and only fentanyl." Then, Rebecca proceeded to run some data while the presentation continued and eventually reported the following in the chat window, "Year to date 2021, the drug unit has reported heroin 716 times and fentanyl and analogues 590 times. In 2020, the drug unit reported heroin 1363 times and fentanyl and analogues 569 times, so you can see we have surpassed 2020 fentanyl numbers in 2021 already."

With this background information for context, Kristy proceeded to describe what fentanyl test strips actually are. They use the same technology as an at-home pregnancy test because they were originally developed to detect fentanyl in urine. Because of their ease of use, they have been used off-label to detect fentanyl in drug samples before consumption. They are 96-100% accurate in detecting the presence of fentanyl, and can detect at least 10 fentanyl analogs. FTS are pretty cost effective at an average of \$1 per strip.

So, how do FTS support opioid overdose prevention efforts? The distribution of FTS will allow individuals to detect whether the drugs they are using are laced with the powerful synthetic opioid. Knowing whether fentanyl is present in the drug they are about to use will help prevent unintentional overdoses. The strips are viewed as a useful engagement tool to foster discussions with people who use drugs. They can be delivered and utilized with minimal instruction. Local and state officials say FTS is a harm reduction tool that can be used with other resources, including steering users to treatment, health care, housing, and other social service programs. A main obstacle to getting FTS into the hands of those who need them most are state laws concerning the use and possession of drug paraphernalia. In most states, drug paraphernalia is defined as "testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances," or a minor variant of this language. Although these laws are not generally enforced with regard to the use or possession of FTS, the risk of criminal penalties may deter people and

organizations that might otherwise be willing and able to distribute FTS as part of harm reduction services.

Kristy shifted to discussing why this is so relevant to the Drug Policy Board and the State of Louisiana. Thirty-two (32) states have drug paraphernalia laws that include controlled substances testing equipment, including Louisiana, However, even among those states, some make allowances for FTS. For example, N. Carolina, N. Dakota, and Vermont: have other laws that specifically allow FTS. Rhode Island: amended their Good Samaritan to allow for distribution of FTS. 3 states and DC: specifically exclude FTS from the definition of "drug paraphernalia". 4 states: do not include testing equipment in the definition. Alaska: does not have a definition for "drug paraphernalia". 10 states: have bills pending in their state legislatures that would exclude FTS from the definition of "drug paraphernalia". Using federal funding to purchase fentanyl test strips was not allowed until 2021. In April, the federal government removed restrictions to allow federal grantees the flexibility to use grant dollars to purchase FTS. Now, federal grantees such as state and local health departments, state substance abuse agencies, and community-based organizations and health systems can use federal funds to purchase fentanyl test strips.

Kristy concluded this presentation by providing the specific language from Louisiana's law that prohibits the purchase, distribution, and use of FTS. It is Louisiana Revised Statute 40:1023 which states it is currently illegal to possess, purchase or distribute items that are used for the purpose of testing for the presence of illicit drugs. In her final statement, Kristy shared that the New Orleans City Council recently decriminalized the sale and possession of FTS which has paved the way for local governments as well as non-profit organizations to include them in their harm reduction efforts.

At this time, the floor was opened for comments from members and stakeholders. Judge Jules Edwards began with a suggestion that we should not lead with the suggestion that we are trying to change the law to be able to provide FTS for free, but rather that this is another opportunity for a free market exercise whereby pharmacies and health care facilities should be able to sell these products for a nominal fee. Perhaps, their sale could also be linked to some sort of screening and brief intervention engagement by a healthcare professional. Dr. Joe Kanter offered that he has colleagues who have been working on this issue in New Orleans, some of whom were the advocates working with the City Council to get FTS decriminalized. They are heartened by the effort, but expressed that it is way too soon to tell what impact FTS distribution will have on the overdose rates in New Orleans. He did caution that if we are at the point where close to 100% of the heroin on the street contains fentanyl, then users completely understand that. The strips can't tell how much, however. Users may continue to use even with a positive results from the test strip because they see it every time. This can negate any positive effect the strips would have. Cathy Childers followed up by posing a question in the chat about whether it is possible to evaluate the success in N.O. as a pilot project. She expressed that evaluation results would help with future legislative endeavors. Judge Edwards followed up on his earlier comments. He explained there will be pushback from the same people who are opposed to needle exchange programs, especially if we framed FTS in a similar vein. However, the framing of this as a "free market" exercise as pharmacies selling the product, then there may be some better digestion of this issue. Action item: Identify appropriate contacts in New Orleans to find out if there is a plan to evaluate changes to the law regarding access to fentanyl test strips.

The second tabletop discussion topic put forward focused on differentiating between plant marijuana and marijuana concentrates in Louisiana laws. Kristy began by providing some background information. Cannabis plants are covered by microscopic, hair-like compounds called trichomes. These outgrowths surround the budding marijuana flower and produce the plant's cannabinoids. Some of the most common types of cannabinoids are Tetrahydrocannabinolic Acid (THCA), Tetrahydrocannabinol (THC),

Cannabidolic Acid (CBDA), Cannabidiol (CBD), and Cannabinol (CBN). The cannabinoids you may be most familiar with are THC and CBD. THC is the main psychotropic ingredient in marijuana that produces the "high" sensation while CBD, by itself, does not cause a "high." Cannabis concentrates are processed to keep only the most desirable trichromes, while removing excess material and impurities. Consequently, concentrates contain very high THC levels. Concentrate textures have names like 710 (oil spelled backwards), shatter, budder, crumble, sugar, and crystalline. These textures are markedly different than the plant composition of marijuana. A cannabis concentrate can be consumed in a variety of ways, from sprinkling it on a bowl or adding it to a joint, to vaporizing them using a portable vape pen or dab rig (referred to as "dabbing").

To put some this issue into additional context, Rebecca Nugent offered that 14 grams of botanical marijuana is 28 to 42 dosage units (2-3 doses per gram) while 14 grams of concentrated THC is approximately 700 dosage units (approx. 20 doses per gram). Malcolm Broussard, Executive Director with the Board of Pharmacy, asked Rebecca whether she had any data about prevalence of concentrates. Rebecca responded with the following, "Year to date 126 marijuana concentrates have been reported. For 2020, 361 marijuana concentrates reported. For 2019, 366 marijuana concentrates reported. In 2018, 235 marijuana concentrates reported. So an increase in the past few years."

So, why is this relevant to the Drug Policy Board? Louisiana classifies both plant marijuana and THC, as Schedule I in the CDS. The statute defines marijuana as "including THC and derivatives thereof." The penalties for offenses involving THC and derivatives (i.e. concentrates) are the same as for plant marijuana. Treating plant marijuana and concentrates the same in possession laws is dangerous because these products contain very different levels of THC. Again, top shelf plant marijuana measures around 20% THC while a dab of marijuana concentrate will contain 2x the THC. In conclusion, the overall potency of 14 grams or less of a concentrate would be astronomical (and way more dangerous) compared to the potency of plant marijuana, and yet the recently passed HB 652 that was signed into law as Act 247 after the 2021 legislative session penalizes possession the same.

A recommendation by a standing subcommittee of the Drug Policy Board previously suggested that the board should work to make changes to Louisiana law so penalties for possession of plant marijuana is different (and expectedly less) than penalties for possession of marijuana concentrates. According to analysis, 32 states have some provision in their marijuana possession laws distinguishing marijuana concentrates from plant marijuana for this very reason (NORML, 2021). A pro public health approach would be to make changes to La. R.S. 40:964 (Louisiana Uniform Controlled Dangerous Substances Law) to differentiate between plant and concentrate of marijuana as well as Sections of La. R.S. 40:966 which would differentiate penalties for possession of small amounts of concentrates versus plant marijuana.

Judge Jules Edwards voiced his opinion that he is rabidly in favor of making the appropriate changes to state law to differentiate between plant marijuana and marijuana concentrates. Judge Scott Schlegel echoed Judge Edwards' statement. He expressed that people will get smarter, especially with the recent law changes and begin to get bolder with possessing concentrates and other products that contain fewer than 14 grams of THC. So, he stated, this goes back to his question posed at the beginning of the tabletop discussions section about the charge of the Drug Policy Board. So, for example, he asked about whether someone from the Drug Policy Board actually went to testify, and put in a red card or green card, on HB 652. Dr. Chaunda Mitchell responded that this is a good question. So for example, because the Drug Policy Board had not taken a position on this bill prior to the session, no one went to provide testimony. However, as the bill began to make movement, members of the Drug Policy Board tried to provide some information to the author and members of the committees hearing the bill. However, that wasn't as productive of an approach. Dr. Mitchell went further to describe some instances in which the Drug Policy Board did testify on bills presented in previous years.

So, as a segue to the third tabletop discussion topic related to the 2022 policy agenda, Dr. Mitchell shared that her intent is to get the Drug Policy Board to a place in which it is more clear about common policy positions. That way, it will be better situated to issue "red cards/green cards" or provide testimony once session starts. Dr. Mitchell stated that we know what issues are gaining traction and we can anticipate what is coming so we aren't caught off guard. Her opinion is that, once a bill is ready for final passage or reaches the Governor's desk, it is far too late to attempt a change or down vote. So, Chaunda stated that the charge of the Drug Policy Board is to be as proactive and directive as you want to be. We, as staff, do not want to make assumptions about taking action.

Judge Schlegel thanked Chaunda for her explanation. He posited that he thinks the DPB should, at a minimum, be more vocal. And, for the most important issues, we should take a position. Judge Edwards echoed Judge Schlegel's response. He, too, encouraged the members of the Drug Policy Board to take advantage of the scope and "cover" of the Board to establish positions on a variety of issues. In the chat window, Malcolm Broussard explained that to the extent that some of the board members are state employees, we may be restricted to white cards.

Chris Alderman offered an opinion on a recommendation the DPB could make as it relates to differentiating between plant and concentrate marijuana. If we just passed the bill this year for 14 grams of flower, and 14 grams of flower is equal to 40 dosage units (per Rebecca), then, if we do the math backwards, that would be equivalent to 2 grams of concentrate. So, if that could be a good place to start – you could have 14 grams of flower or 2 grams of concentrate to fall under the new law. Rachel Smith agreed with Chris that there is certainly precedent from other states to do this similar comparison. Some states do it by weight and some do it by concentrate amount; while other states exclude concentrates from the marijuana definition overall so no amount of concentrate would be covered under these new lesser penalties. To Judge Edwards, because potency is the biggest concern, then concentrate level should be the focus, not weight. However, Rachel reminded us that this raises major problems for the Crime Lab which does the majority of testing.

Rebecca Nugent stated that it costs the state \$266 to analyze one item of seized drugs, but that is also because state law does not currently require quantification. It only requires a positive result for presence. However, if we had a law that would require quantification, it would cost about \$3 million to purchase equipment and hire analysts. And, then the cost of quantification of THC would increase to \$600-\$700 per sample. So, unless the LSP Crime Lab can recoup these funds from court fines and fees, then it is fiscally irresponsible. DAs are usually only able to recoup about \$100 per testing so many have issued memos to stop sending samples for testing for exhibits that are less than 14 grams. If we want to go on a concentration base, we would have to find resources to dedicate to The LSP Crime Lab and the other seven labs in the state. If we go the weight route, the labs are currently set up for that right now.

So, in taking up the conversation again, Chaunda asked the group, "What are some of the things you would like to take positions on? What does the process need to look like for this group? How can be better prepared for the 2022 legislative session?" Chris Alderman asked if there is a way for the Drug Policy Board to meet immediately before session to discuss all the pre-filed legislative instruments. Chaunda responded that it is absolutely possible and would actually be advantageous if we want to take a more proactive approach. After some lengthy discussion, some conclusions were made that the Drug Policy Board is likely a "white card" organization, but could still provide advice and guidance that supports a clear position. Dr. Vincent Culotta offered that the Governor has proven to be a leader who respects science so it may be helpful to look at the medical and injury impacts of marijuana and provide that information to him as a way to support any recommendations.

In closing, Chaunda offered that we should proceed with our October meeting. By that time, Chaunda and Kristy will identify dates for the 2022 year including a meeting to occur immediately prior to the beginning of session. In the meantime, Chaunda and Kristy will connect with Dr. Culotta and Lisa Freeman to explore the possible medical and injury experts who can provide research and data to the Governor.

Other Business

Office of Drug Policy updates

There were no additional updates from the Office of Drug Policy.

Member agency updates

Dr. Janice Williams with the LA Department of Health announced that the Office of Public Health and the Office of Behavioral Health continue to work together to develop webinars on opioid prevention, education, treatment strategies. In addition, LDH is working to organize an Opioid Summit for 2022.

Public Comments

There were no public comments provided prior to the meeting. Upon calling for any comments from members of the public on the Zoom session, no comments were offered.

Upcoming Meetings

A list of upcoming meetings for all the board and commissions associated with the Office of Drug Policy was provided.

Adjournment

Chaunda announced that there was no additional business to address. With that, Barry Robinson made a motion to adjourn the meeting. Chris Alderman seconded the motion. By a live voice vote, all members approved the motion. The meeting was adjourned at 11:58 am.

MEETING ATTENDEES

VOTING MEMBERS

Member Agency	Appointee/Designee	In Attendance
Alcohol industry representative	Kody Thompson	Yes
Attorney General's Office	Chris Alderman	Yes
Board of Pharmacy	Malcolm Broussard	Yes
District Court Judge	Scott Schlegel	Yes
Federal agency with AOD ed/ treatment/prev responsibilities	Vacant	
Governor's Office of Drug Policy	Dr. Chaunda Mitchell	Yes
House member, Committee on Health and Welfare	Representative Bob Owen	Yes
Louisiana Commission on Alcohol and Other Drug Abuse	Vacant/Commission no longer exists	
Louisiana Commission on Law Enforcement	Linda Gautier	Yes
Louisiana Department of Children and Family Services	Vacant	
Louisiana Department of Education	Michael Comeaux	Yes
Louisiana Department of Health	Dr. Janice Williams	Yes
Louisiana Department of Public Safety and Corrections	Blake LeBlanc	Yes
Louisiana District Attorneys Association	Warren Montgomery	No
Louisiana Highway Safety Commission	Lisa Freeman	Yes
Louisiana Office of Alcohol & Tobacco Control	Ernest Legier	No
Louisiana Public Defenders Board	Remy Starns	Yes
Louisiana Sheriffs' Association	Shannon Dirmann	No
Louisiana State Police	Rebecca Nugent	Yes
National Guard	MSgt Amy Thomas (for Major Snowden)	Yes
Physician	Dr. Joseph Kanter	Yes
Private organization involved in substance abuse Prevention	Vacant	
Senate member, Committee on Health and Welfare	Senator Gerald Boudreaux	No

OF-COUNSEL MEMBERS

Member Agency	Appointee/Designee	In Attendance
LA State Board of Medical Examiners	Dr. Vincent Culotta	Yes
LA Department of Veteran's Affairs	Barry Robinson	Yes
Advisory Council on Heroin and Opioid Prevention and Education	Dr. Jim Hussey	Yes
Drug Enforcement Administration, NOLA Office	Brad Byerley	No
Gulf Coast High Intensity Drug Trafficking Area	Don Petty	Yes

STAFF

Kristy Miller, Governor's Office of Drug Policy

GUESTS

Sonia Armstrong, National Guard Leslie Freeman, LDH, Office of Behavioral Health Cathy Childers, Louisiana Highway Safety Commission and Co-Chair of Prevention Systems Cmte Dustin Danos, Attorney Generals' office Rachel Smith, LDAA Judge Jules Edwards, LHSC Shelley Edgerton, DOC