

**Minutes of the Louisiana Sentencing Commission
Department of Corrections Headquarters, Building 1
504 Mayflower, Baton Rouge, LA 70802
December 19, 2013
1:00 p.m.**

The meeting was called to order by Honorable Ricky Babin, Chairman, at 1:05

Members Present

Honorable Ricky Babin, Chairman
Honorable Charles Ballay (by phone)
Mr. Dale Simoneaux (proxy for Sherriff Mike Cazes)
Honorable Louis Daniel
Honorable Patricia Smith (proxy for Honorable Yvonne Dorsey-Colomb)
Mr. John DiGiulio (proxy for Mr. David Dugas)
Mr. James T. Dixon
Honorable Fredricka Wicker (proxy for Honorable Greg Guidry)
Ms. Debbie Hudnall
Mr. Joseph Baiamonte (proxy for Mr. Cheney Joseph)
Secretary Jimmy LeBlanc
Secretary Jimmy LeBlanc (proxy for Honorable Joseph Lopinto)
Honorable Michael McDonald
Mr. Rustin Legendre (proxy for Mr. Robert Mehrtens)
Honorable Helena Moreno
Honorable Helena Moreno (proxy for Honorable Laurie White)

Committee and Advisory Members

Mr. Scott Brandt, ALBU
Mr. Darryl Campbell, DOC
Mrs. Ann Carmon, 5th Circuit Court of Appeal
Mr. Rhett Covington, DOC
Mr. Frank DiFulco, LASC
Ms. Tracy DiBenedetto, DOC
Ms. Linda LaLa Duscoe, Cure
Mr. Robb Farmer, ALBU
Ms. Christine Fuido, Orleans Parish DA
Ms. Melanie Gueho, DOC
Honorable Hans Liljeberg, 5th Circuit Court of Appeal
Mr. Carle Jackson, LCLE
Mr. William L. Kline, DOC
Sandra Laborie, 5th Circuit Court of Appeal
Dr. Mary Livers, OJJ
Edward McCaulliffe, Orleans Parish DA
Ms. Genie Powers, DOC/P&P
Honorable Carla Sigler, Calcasieu Parish DA
Ms. Sara Sullivan, VERA
Mrs. Jennifer Watson, LCLE
Ms. Angela Whittaker, DOC

Guests

Diana Dorroh, Together BR
Sheila Feigley
Lauren Galik, Reason Foundation
Tawanda Green, CAPARC
Sean Hamilton, OJJ
Gerald Jackson, LA CURE
Kaitlin Kall, VERA
Jerry LeDoux, LA Parole Board
George Mills, Cenikor
Martha Morgan, OJJ
Honorable Scott Schlegel, 24th JDC
George Steimel, LA LDL
Bobby Thompson, Together BR
Carole Turner, CAPRC
Rachel Veal, CAPARC
Ms. Lydia Williams, CAPARC
Checo Yancy, CAPARC

I. Welcome and Introductions

Honorable Ricky Babin, Chairman

Honorable Ricky Babin, Chairman, welcomed special guest Lauren Galik from the Reason Foundation.

II. Approval of Minutes

Honorable Ricky Babin, Chairman

Motion by Mr. John DiGiulio; seconded by Mr. Dale Simoneaux. The motion passed without objection.

Honorable Ricky Babin, Chairman, motioned to reorganize meeting agenda to take Front End and Release Mechanisms Committee reports first. The motion passed without objection

III. Reports and Proposed Recommendations from Committees

Honorable Ricky Babin, Chairman

A. Front End Committee

Honorable Ricky Wicker

i. Theft statute – no report

ii. Drug Law Revision

a Marijuana – no report

b Other drug statutes - Honorable Rick Swartz, 22nd JDC, presented a report on possible proposal. The proposal was passed favorable through committee.

1. Amend L.S.A. R.S. 40:967 to remove benefit restrictions for some provisions and to delete weight penalties for amounts less than 200 grams.
2. Amend L.S.A. R.S. 40:981.4 relating to Drug Traffic loitering as the statute was declared unconstitutional by the Louisiana Supreme Court in 1998.
3. Amend L.S.A. R.S. 40:983 to add an additional penalty provision creating a misdemeanor class for first time offenders who purchase or transport supplies for the operation of a clandestine lab.

Honorable Patricia Smith asked if there were differences on how cocaine compares to marijuana. Honorable Swartz answered marijuana is an offense that is possible to result in probation. Cocaine is not.

Mr. John DiGiulio motioned to approve and send to the Governor for vetting. Seconded by Mr. James T. Dixon. No objections.

c Drug court/ Specialty court –
Honorable Carla Sigler

1. The first proposal involves deleting the prohibition against placing defendants with a prior felony conviction as listed in LSA-R.S. 14:2(B) into a Drug Court program. The provision reads as follows:
The defendant cannot have any prior felony convictions for any offenses defined as crimes of violence in R.S. 14:2(B)

Deletion of this section in its entirety is designed to give greater discretion to judges, prosecutors, and attorneys to place currently ineligible candidates into Drug Court Programs.

2. The second proposal would allow offenders charged with domestic violence to be considered for Court participation. The provision currently reads as follows:
The crime before the court cannot be a crime of violence as defined by R.S. 14:2(B) including domestic violence.

The suggested change deletes the provision “including domestic violence”

Mr. John DiGiulio motioned to approve (with the caveat proposed by Honorable Helena Moreno for victim approval) and send to the Governor for vetting. Seconded by Honorable Patricia Smith.

iii. Safety Valve Sentencing Tool

This proposal would provide sentencing judges with discretion to depart from mandatory minimum sentences for non-violent offenders who meet specified criteria.

Draft Model Legislation by ALEC
{Section 2.} Sentencing.

(A) Notwithstanding any other provision of law, when sentencing a person convicted of a violation for which there is a mandatory minimum sentence, but which did not:

(1) Include the use, attempted use or threatened use of serious physical force by the defendant against another person or result in the serious physical injury of another person by the defendant; or

(2) Involve any sexual contact offense by the defendant against a minor (other than an offense involving sexual conduct where the victim was at least 13 years old and the offender was not more than four years older than the victim and the sexual conduct was consensual);

(B) The court may depart from the applicable mandatory minimum sentence if the court finds substantial and compelling reasons on the record that, in giving due regard to the nature of the crime, history and character of the defendant and his or her chances of successful rehabilitation that:

(1) Imposition of the mandatory minimum would result in substantial injustice to the defendant;

(2) The mandatory minimum sentence is not necessary for the protection of the public.

Honorable Helena Moreno voiced concern on “sexual contact”. Honorable Ricky Wicker clarified this is a draft only, and does intend keep the language.

**Mr. John DiGiulio motioned to approve and send to the Governor for vetting. Seconded by Honorable Patricia Smith. Opposed by Honorable Ricky Babin, Chairman, and Honorable Charles Ballay.
Moved to send to governor for vetting with 2 oppositions.**

- iv. Team 3 - DWI Statute Revision – no report
- v. Team 4 - Sentencing Workbook – no report
- vi. Proposed Revision of Cash Bond –

Mr. Edward McAuliffe, Orleans Parish DA

A proposed revision of Cash Bond Percent Deposit was amended to include the following:

C.Cr.P. art 324 Cash Bond

A. (3) Each Judicial District, by written rule of the Court and with the consent of the District Attorney, may alter the percentage amount of bail to be deposited with the officer authorized to accept the bond and authorize the officer to charge an administrative fee, not to exceed twenty-five dollars, for processing the bond.

Honorable Ricky Wicker noted this proposal is not part of the bail bond rewrite. However, it allows another option for repayment to be available, jurisdiction by jurisdiction. Mr. Robb Farmer and Mr. Scott Brandt representing the Association of Louisiana Bail Underwriters brought up the issue that defendants don't return to court. Honorable Helena Moreno inquired if this would put local bail bondsmen out of business. Honorable Ricky Wicker answered it is a possible hurdle for the bond industry, but only in parishes where it is enacted. Mr. Edward McAuliffe added this proposition is option for individual jurisdictions to adopt. Honorable Moreno advised the group that the bail bond subject as a whole, when discussed in the house as Revision to the Bail Bond statute, was decided not to be revisited by the legislature.

Mr. James T. Dixon motioned to approve and send to the Governor for vetting. Seconded by Honorable Ricky Wicker. VOTE TAKEN BY HONORABLE RICKY BABIN, CHAIRMAN, BY SHOW OF HANDS. 6 FOR, 4 OPPOSED. MOTION PASSES.

B. Release Mechanisms Committee

Honorable Hans Liljeberg

Team iii. Crimes of Violence/Mandatory Minimum -Headed by Carle Jackson

Mr. John Vining

This amendment would make offenders convicted of a 1st Crime of Violence eligible for parole after serving 65%; those convicted of a 2nd Crime of Violence would now be eligible for parole at 75%. Current law required that each of these serve 85% before hitting parole eligibility.

Mr. John DiGiulio motioned to approve and send to the Governor for vetting with amendment that armed robbers added be back in (suggested by Honorable Helena Moreno). Seconded by Honorable Ricky Wicker. Opposed by Honorable Charles Ballay, Honorable Louis Daniel, and Honorable Michael McDonald.

III. Report of the Reason Foundation

Ms. Lauren Galik, Reason Foundation

Ms. Galik presented on the study "Smart on Sentencing, Smart on Crime". The Pelican Institute is working with the Texas Public Policy Foundation on developing set of criminal justice reforms. The report addresses mandatory

minimums, and determining sentencing rules in Louisiana. In sum, some rules are tougher than necessary, particularly for non-violent criminals, and reforming these sentences may be financially sound.

IV. Report on Vetting Status
Honorable Ricky Wicker

The Governor has permitted the Commission to continue to move forward on all recommendations passed last month. Honorable Wicker noted this is not to say he is passing recommendations, only that the Commission may continue to work on proposed issues.

V. Reports and Proposed Recommendations from Committees (continued)
Honorable Ricky Babin, Chairman

C. Re-Entry and Evidence Based Corrections
Mr. Rhett Covington

The committee is exploring legislation on tax incentives. A quorum was not present at today's committee meeting.

Team ii. Substance Abuse - Kerry Lintini, Rob Reardon are exploring best practices regarding abuse of prescription drugs.

D. Research and Technology Committee – No report
Mr. Frank DiFulco
Ms. Melanie Gueho

VI. Justice Reinvestment Initiative
Ms. Sara Sullivan

JRI Model

Ms. Sullivan reviewed the JRI model with the Commission. Louisiana requested and BJA approved \$299,463.50 of funding assistance for phase II. These funds will be utilized for the following purposes:

JRI Coordinator

- Project management
- Cross-agency coordination
- Contract management
- Reporting

Administrative Sanctions

- Training needs assessment
- Statewide training
- Regional trainings

Discretionary Waivers of Mandatory Minimum Sentences

- Impact Projections
- Trainings
- District Attorneys
- Judges
- Defense Attorneys

Home Incarceration

- Develop standards for home incarceration providers

Next Steps

- Select consultants
- Execute Contracts
- Hire JRI Coordinator

Honorable Ricky Wicker requested a progress report in April.

VII. Other business

VIII. Honorable Helena Moreno motioned to adjourn. Seconded by Mr. John DiGiulio. No objections. The meeting was adjourned at 2:30 p.m.