

Louisiana State Bar Association Criminal Justice Committee Meeting

Monday, May 7, 2018 – Noon – 1:30PM
LSBA Bar Center, 601 St. Charles Ave., New Orleans, LA 70130

Participants:

Graham Bosworth (Co-Chair),
E. Pete Adams, Louisiana District Attorneys Association
Jarrett Ambeau, The Ambeau Law Firm, LLC
Charles Ballay, Louisiana District Attorneys Association
Stephanie Beaugh, LA Appleseed
John Burkhart, Southern Poverty Law Center
Andy Casanave, Public Defenders Office Calcasieu Parish
Chris Cox, Jefferson Parish District Attorney's Office
Adam Crepelle, Pelican Institute
Jay Dixon, Louisiana Board of Public Defenders
Mark Dumaine, East Baton Rouge District Attorney's Office
Jennifer Eagan, LA Supreme Court
Daniel Erspamer, Pelican Institute & Smart on Crime
Jean Faria, Louisiana Board of Public Defenders
Alanah Odoms Hebert, LA Supreme Court
Meghan Garvey, Orleans Public Defenders Office
Mithun Kamath, Attorney at Law
Michael Morales, St. Bernard District Attorney's Office
Jee Park, Innocence Project of New Orleans
Jonathan Rhodes, Louisiana Civil Justice Center
Jonathan Varnado, Vera Institute
Adrienne Wheeler, Justice and Accountability Center of Louisiana
Robert White, Plaquemines Parish District Attorney's Office
Sharonda Williams, Fishman Haygood Phelps Walmsley Willis & Swanson, LLP
Jon Wool, Vera Institute

LSBA Staff

Monte Mollere, Louisiana State Bar Association
Amy Duncan, Louisiana State Bar Association

Minutes

I. Welcome and Introductions

II. Legislative Updates

- a. Daniel Erspamer, *The Pelican Institute*
 - i. Daniel is CEO of the Pelican Institute, but also here on behalf of the Smart on Crime Steering Committee and partners at Right on Crime. Approach

coming into this legislative session is to protect the criminal justice reforms that were passed last legislative session and to clean up any laws that need attention. Also, listening to the people who are applying the new laws like prosecutors and sheriffs. Legislative items that these groups are focused on include:

1. S.B. 389 by Senator Claitor – Earned Compliance credit and probation. This gives more teeth to judges for those who do need to return to prison for violations of probation or parole.
2. S.B. 495 by Senator Martiny – Felony parole and adds misdemeanor notification to DOC and this bill delays reforms that were put into place. The TIGER assessment tool would be given more time to be developed.
3. H.B. 622 by Rep. Magee – Delays implementation of restitution and fines and fees reforms that were passed last year.
4. Bills to clean up drug classifications by Rep. Marino
5. H.B. 676 by Rep. Marino to delay child support modification for noncustodial incarcerated parents.
6. Supportive of Eye-witness identification legislation by Sen. Wesley Bishop and the unanimous juries by Sen. Morrell

b. John Burkhardt, *Louisianans for Prison Alternatives*

- i. John is with the Southern Poverty Law Center and through SPLC he organizes a coalition called Louisianans for Prison Alternatives. The coalition is not affiliated with any particular political party and was created last year. Their efforts this year will focus on completing the Criminal Justice Reform package. The entire set of recommendations that were approved by the Justice Reinvestment Task Force should be passed into law this session. In addition to this approach, LPA tried to ensure that what was passed wasn't rolled back.
 1. SB 269 extended parole eligibility to people serving life sentences. This bill did not pass
 2. HB 355 to remove nonviolent offenses from being enhance-able under the habitual offender statute. This did not pass
 3. HB 526 and HB 115
- ii. Total savings predicted is 16 million. Until the money can be reinvested, the criminal justice system has not changed. The Justice Reinvestment Council will meet to discuss the savings and reinvestment plan.
- iii. Jennifer Eagan shared information about the grant reinvestment process. Initial allocations may be made to the five largest parishes, including Orleans, Jefferson, East Baton Rouge, St. Tammany, and Caddo. The funding will go mainly to rehabilitative services.

III. Criminal Justice Updates

- a. Jean Faria, *Louisiana Public Defender Board*
 - i. LPDB is at static funding. The primary sources of funding the indigent defense system are down including traffic tickets and fees. Revenues

generated for district defenders are down as well. Death penalty capacity was discussed. There is no additional funding to expert witness fund as a result of the change in the funding formula. Portions of the system are failing because of chronic underfunding. The public defender offices are grossly underfunded going through restrictions of services and still trying to meet the LA Rules of Professional Conduct.

- b. **Charles J. Ballay, *Louisiana District Attorneys Association*** and District Attorney for the 25th JDC
 - i. Charles Ballay represents the LDAA as vice chair and he serves as the District Attorney for the 25th JDC. The DAs offices are 20% less funded than in the past. LDAA hopes to get funding restored this session or during the special session.
 - ii. SB 389 is a compromise bill. When probation time was cut on nonviolent non-sex offense matters, it created a problem in drug court. In drug court, the programs go beyond that time period. Adjustments and amendments needed to be made and this is one of them.
 - iii. The earned income compliance credit was an issue for LDAA, which someone would be getting credit for time out on probation yet they violated it. This will be determined by the judge.
 - iv. Effective date of raised age with juvenile matters is an issue regarding funding. This is being worked on at the moment to determine when the raised age will be effective.
 - v. Reducing prison population has been a focus by the LDAA, DOC and other partners for years.
 - vi. LDAA did not take a position on the unanimous jury bill. Pete Adams interjected that this bill should be further studied. After a meeting with LDAA, there was not a consensus to continue opposing. LDAA then decided to take no position and agreed that individual DAs may express their own views.

IV. Initiatives

- a. Subcommittee on LA Bail Report – Graham Bosworth and Jon Wool - Members of a subcommittee have been working on a report on the LA Bail system. The first draft of that report was distributed to the Committee members for feedback.
 - i. Jean Faria – She likes the report in that it is doing what other states criminogenic factors that are frequently overlooked. Poor people cannot get out of jail because they cannot afford bail. Relationships and inability to travel and poverty affect whether someone will appear or not. The levels of bail are just not appropriate for poor people. Looking at a system that works well, the Federal system releases people on their own recognizance and this is something we should look at. There is a presumption for release and not a conflict related presumption toward bail funding. As a public defender who receives funding from bail, I think it is a conflict of interest.

- ii. Jennifer Eagan asked whether the report addresses the issues with commercial bail bondsmen. Meghan responded that after discussing this, the subcommittee decided they would focus on the way things function now and the way we over rely on commercial bail bond rather than focusing specifically on that industry. The industry grew out of the system and not the other way around. So rather than maligning a specific industry the group decided to address the issues and how the system works. The narrative then develops on its own that if we move towards risk assessment and away from commercial bail, we won't have the issues mentioned in the paper. Jean Faria mentioned the lobbying strength of the commercial bail bondsmen. Graham said the report discusses how the current system has allowed the growth of commercial bail. The group mentioned the system often creates a disparate impact.
- iii. Charles Ballay suggested technology can help a lot in determining who is in jail and for how long, if systems are added that prevent oversight. This puts the problem in focus in front of who has to make the decision. He suggests this as a way of doing things to make the system work better and not offend anybody.
- iv. Mark Dumaine said the authors should be applauded because it is a very comprehensive document that came across as written in one voice. The aspirations are fairly reasonable. Mark agrees that the consensus is not to disparage the commercial bail bonds men. The recommendations can mitigate the impact if you put in a risk assessment tool and other items. He suggested a focus on indigency causes an omission in the report as the recommendations do not examine the non-indigency screening process in Louisiana. The federal system does this very thoroughly up front in an affidavit form. The sooner that people are identified as indigent and the sooner you can identify bail practices to meet the needs of the indigent, then many issues go away. A lesser concern reflected nationally is a voice against preset bonds. The dangers with being against preset bonds is that that is often the fastest way for someone to get a bond. In Baton Rouge, it is set individually and it is a lengthy process. In other places where bond is preset, the process is much faster and you don't have to wait 48 hours for the judge to release. He suggests adding an indigency hearing or screening process so preset bonds.
- v. Jean added that one place this is difficult is in rural jurisdictions where a lot of places do not have court, but once a month, not meeting certain requirements. Folks are not getting in for any kind of bail hearing at all in about 27 parishes. Jean suggests that a procedure should be recommended that applies to all parishes to address variation in practice.
- vi. Jarrett Ambeau suggests adding a section on the manner in which we receive information from law enforcement. He is unable to receive information needed in time to try to get a bond set within the 48 hour period. Jarrett said his parish has one motion day a month. Without an arrest warrant or affidavit of probable cause, he suggests there should be a law that requires the information to be given to the defense attorney.

- vii. Meghan Garvey talked about reaching out to different districts across the state to understand the process for setting bond. Themes of this were: 1) overreliance of commercial surety bonds, 2) lack of respect for right to counsel, and 3) delay in being able to respond.
- viii. Jonathan Rhodes asked about creating a manageable plan for the aspirations section so that the items can be implemented. Jean suggests that the committee come to a consensus as to what they would like to see happen, whether it be a presumption of release and increase use of processes as Charles mentioned then go to the HOD to become the policy of the LSBA.
- ix. Jee asked Meg if she spoke to any DAs when collecting this information. Meg said only Chief Defenders. Meg mentioned that there are Sheriffs in certain parishes who are losing money by keeping people in jail pretrial who cannot afford bail. These Sheriffs are wanting to reduce the populations and in some cases work with judges to get people released. Jee expressed the need for other stakeholders to come on board and think this is a problem to make headway for change. For instance, what is the LDJA's position, LDAA's, and Sheriffs association?
- x. Jay Dixon – For bond your natural allies are the sheriffs and the municipal court parish because they are the one's bearing the costs. Jay has spoken to individuals who were not aware of the costs associated. Clearly training is needed. Judges are the other hand do not incur costs when setting bond, but will have a problem if they let someone off ROR and he or she reoffends. Judges must work with the municipalities and police juries. Judges need a program. Jean mentioned the Arnold Foundation's PSA tool as a possibility. Mark Dumaine in EBR is in support of bringing the PSA tool to Baton Rouge. Charles Ballay said they would be in support of a program that has been tested with proof to back it.
- xi. Jennifer Eagan mentioned the use of videoconference in rural parishes for setting hearings. She suggests including a column in Meg's analysis to identify judges using video court and electronic signing. Mark said they've had electronic warrant issuing for two years, but none of the judges want to use it. Charles said the 25th JDC does use it.
- xii. Next steps – send any comments or feedback to the subcommittee. This version needs to be condensed into a 20-30 page report.

b. Justice Reinvestment – Jonathan Rhodes

- i. The Committee hosted a statewide summit on Justice Reinvestment. The question now is how do we follow through and make sure the goals that have been set out are achieved. The Committee formed a group to monitor what is happening, specifically the data produced by DOC and the grant application process. Next steps is to review and analyze data with LPA, ROC, and Pelican Institute.

ii. LDJA/DOC Liaison Committee Resources – Jennifer Eagan

1. LDJA received a grant to help judges implement JRI laws. The first phase is to create written documents and educational materials. Two videos have been completed and are posted on the LDJA website. After this session, the other videos will be recorded. Jennifer mentioned that Alanah Odoms Hebert proposed a judicial leadership retreat to pull together judges that would be leaders in JRI to spread culture within the judiciary. LDJA/DOC Committee conducts open meetings and Jennifer encouraged folks on the Committee to attend. The next meeting is in September in Jefferson.

V. Open Discussion – Jean suggested members of the Committee look at how we fund criminal justice system in toto.

VI. Next Meeting – Wednesday, August 8, 2018 at Noon (tentative)

VII. Adjourn

- Include federal system as an example of what works (Jean Faria)
- Consider presumption for release rather than a conflict related presumption toward bail funding (Jean Faria)
- Discuss how technology can help in determining who is in jail and for how long (Charles Ballay)
- Focus on indigency and screening process for indigency (the federal system does this well) (Mark Dumaine)
- Address variations in practices among all parishes (Jean Faria)
- Request information from law enforcement in a timely manner within the first 48 hours (Jarrett Ambeau)
- Getting a collective voice from LDJA and LDAA in the research by parish (Jee Park)
- Educating various parishes on the costs associated with the bail system (Jay Dixon)
- Use of video court and electronic signing in rural parishes (Jennifer Eagan)