

Louisiana State Bar Association Criminal Justice Committee Meeting

Friday, August 11, 2017 - 10:00 AM – 11:30 AM
Bar Center, 601 St. Charles Ave., New Orleans, LA 70130

Meeting Minutes

Participants:

Co-Chair Graham Bosworth, Law Offices of Graham Bosworth
E. Pete Adams, Louisiana District Attorneys' Association
Jarrett Ambeau, Public Defender at 23rd JDC and Criminal Defense Counsel
Charles Ballay, District Attorney Plaquemines Parish
Richard Bourke, Louisiana Capital Assistance Project
Christopher Bowman, Orleans Parish District Attorney's Office
Christopher Cox, Jefferson Parish District Attorney's Office
Jennifer Eagan, Louisiana Supreme Court
Hon. Jules Edwards, 15th Judicial District Court
Paul Fleming, Jefferson Parish Public Defenders Office
Jody Fortunato, Jefferson Parish District Attorney's Office
Meghan Garvey, Louisiana Center for Children's Rights
Paul Hurd, Attorney at Law
Mithun Kamath, Orleans DAs Office
Simone Levine, Court Watch NOLA
Hillar Moore, DA East Baton Rouge Parish
Michael Morales, St. Bernard Parish District Attorney's Office
Jonathan Rhodes, Louisiana Civil Justice Center
D. Nicole Sheppard, Attorney at Law and Adjunct Professor at SULC and Dillard
University Sierra Thompson, Orleans Public Defenders
Sherry Waters, Louisiana Appellate Project
Adrienne Wheeler, Justice and Accountability Center of Louisiana
Robert White, Plaquemines Parish District Attorney's Office
Jon Wool, Vera Institute

LSBA Staff:

Amy Duncan

I. Welcome and Introductions

- Graham Bosworth welcomed current and new members. Purpose of the meeting is to decide what initiative(s) the committee will focus on until the end of the bar year (June 30, 2018). Introductions on the phone and around the room were made.

II. Recap of Previous Year

- Graham provided a recap of the Committee's accomplishments for the previous bar year. The Committee proposed a resolution that was adopted by the LSBA House of Delegates. LSBA president Darrel Papillion presented the Resolution before the Justice Reinvestment Task Force. The committee also hosted a CLE in March with members from the Justice Reinvestment Task Force to educate LSBA members about that ongoing effort.

III. Initiative Proposals & Decisions

- Graham discussed the guidelines for the proposal presentation and decision-making process. The goal of this meeting is to present and discuss initiatives that members will vote on for the Committee to focus on this year. The proposals listed in the materials were already presented at the last meeting and will be briefly discussed here today. If anyone has additional proposals they would like to make, we will have limited time to discuss. Here are some things to consider when deciding on proposals:
 - i. The initiative can be accomplished or significant progress can be made within a one year timeline
 - ii. A concrete outcome or result from the initiative is clear and, again, doable within the one year timeframe
 - iii. The initiative is a criminal justice issue for which we can design a summit around
 - iv. The issue the initiative focuses on is not a divisive one if a resolution is required or this proposal is to go before the legislative committee.
- Proposal #1 – Jon Wool on Proposal #1 by Jon Wool: Committee or partner organization create a **report about bail reform** moving towards risk-based approach to pretrial detention/release. Report would include:
 - i. Current state of the law, focusing on recent challenges and rulings
 - ii. Recent legislation and new court rules in key states and perhaps some localities
 - i. Recommendations for at least the basic end goals of future legislative and court rule changes for LA, including if possible recommendations for how to get to those changes
- Discussion:
 - i. Jon Wool discussed the need for the state of Louisiana to rethink the money bail system. He believes that although this may have been a divisive issue in the past, it is not as divisive today and it may be a good time to take this issue up. The ABA recently filed an Amicus Brief in Harris County Texas Case before the 5th Cir. to determine if the county's bail system is unconstitutional when a person is being detained purely based on his or her inability to afford bail. A preliminary injunction was granted. As many know, in the federal system money bail is used, but never as a means to detain someone only because of their inability to pay. A risk assessment tool is used to determine someone's risk of re-offending if released during pretrial. A study could pave the way for legislative or judicial rule changes in Louisiana in the long-term, not short-term, possibly in 2019.

- ii. Hillar Moore agrees that around the country bail reform has been undertaken. A few years ago, Louisiana tried to overhaul the bail system, but it came with some serious opposition by the bail industry to the point of stopping the reform. He asked Jon on the risk assessment portion, whether he would be focusing on the cost of creating a risk assessment tool? He suggested that collateral consequences resulting from implementing of a risk assessment tool should also be studied. Data on pretrial services and the cost and risk of releasing someone during pretrial would need to be collected. Jon Wool responded by saying limited resources would prevent in depth analysis. Charles Ballay stated that he would like to see objective evidence and data collected to guide the committee to make educated decisions about what reforms are needed. Need more reliable data that would show that bonds set for certain crimes are either too high or too low, to support recommendations.
 - iii. Judge Edwards stated that developments in this state are bringing to bear on this issue. Having a goal of developing legislation this year is ambitious, but a lot of things that can be done to collect the information. He raised an issue in which debtor's prison suits were filed, the alleged facts of which incorrect, such as it is not possible for someone to be released from prison without posting monetary bond, which is not true. There are risk needs screening instruments available that are free. High needs and high risk in a community with no services required by individual, should be considered in the bond amount set. If someone is low risk/low needs, then they only need a phone call reminder of upcoming court appearance. If they fail to show, then arrest them for not coming to court and set bond amount based on new information. This information should be gathered together to disseminate, such as collecting practices of every jurisdiction in the state, including rehabilitative services available in each jurisdiction. Gather information and make available in this report. Chris Bowman asks what organization that Jon envisions would be involved in this project. Jon responded that partners should include judges, Supreme Court, DAs, and defense bar. And possibly universities to look at the data.
- Proposal #3 by Jarrett Ambeau: Committee to focus on **re-write of the last paragraph of La. C.Cr.P. art 701(B)** to cover the instance of a subsequent billing, and stating clearly the intent to have a hearing to determine good cause nonetheless would serve to protect citizen's rights under the law. Reason for proposal:
 - iii. La. C.Cr.P. art. 701(B) currently states that, "Failure to institute prosecution as provided in Sub-paragraph (1) shall result in release of the defendant if, after contradictory hearing with the district attorney, just cause for the failure is not shown." State v. Varmall, 539 So.2d 45 (La. 1989), seems to contradict this affirmative statement by holding that once the person is billed, even if after the time limits and without a hearing to determine 'just cause', the accused no longer has a right to release.

- Discussion:
 - i. Jarrett Ambeau stated that it seems to me that this singular case violates the speedy trial right articulated in La. C.Cr.P. art 701(B), and in turn the intent of the Legislature in preserving the Constitutional speedy trial rights of defendants. Some courts follow State v. Varmell and allow the prosecution to file a bill no matter how much time has passed. Other courts at 61 days, will not allow prosecutors to file a bill and will release after a hearing. Jarrett suggests that the language in 230.1 and State v. Wallace could help rewrite 701(b)(2) to give the accused the right to a substantive hearing relative to their release. A hearing relative to good cause for not being able to bill someone within the time period is sufficient within the gatekeeping ability. There is a real and appreciable injury to incarcerated people without being billed or able to challenge their arrest. They end up sitting in jail for 90 days with loss of life, jobs, cars, homes, etc.
 - ii. Jennifer Eagan asked if this might be an educational issue. Jarrett said the language in some of the cases leads to the confusion in Varmell case so not necessarily an education issue, but more of a legislative issue.
 - iii. Robert White asked if Jarrett is suggesting that if a Bill of Information is not filed within the current 701 timeframe that the bill of information can never be filed. Jarrett said no, after 60 days there would be a hearing in which the person may be released on his or her own recognizance relative to a failure to show good cause why the bill has not been filed. The prosecution would still be able to file after the 60 days if the person is released. 701b2 includes last paragraph that says prosecution is not prejudiced. The accused should be given the right to a good faith showing. Currently what happens is after 60 days passes, when a motion to release is filed under 701, the prosecution files a bill and at that point the motion under 701 is made moot by State v. Varmell. Asking that 701 be rewritten in a way that a filing of a bill does not withdraw the accused speedy trial rights under art. 701.
 - iv. Michael Morales stated that good cause is very strictly construed in 701. Anything outside control of the state, outside of natural disaster. He asked if Jarrett would be willing to open good cause to include more reasons. Jarrett said yes.
- Simone Levine and Jonathan Rhodes Proposed Combining their initiatives - Proposal #2 & #4
 - i. Proposal #4 is to monitor the Justice Reinvestment Laws
 - ii. Proposal #2 is to **study the treatment of violence and sex crime victims** to support evidence-based prosecution. Specifically, to examine:
 1. The practice of arresting victims under material witness warrant provisions
 2. Alternative approaches used by prosecutors in other jurisdictions
 3. The Deprivation of the right to counsel for any similarly situated victims

4. The amount of resources available to victims and requirements for obtaining such

- Discussion:

- i. Jonathan Rhodes suggests monitoring and continuing to review the justice reinvestment package legislation passed last session. Under this proposal, the committee would work with the Task Force to monitor legislation as it is being implemented, how it progresses including successes and challenges, and what other reforms may be needed to improve the criminal justice system. A significant amount of savings is going to be reinvested into victims' services, which is why he suggests including Simone's po. Proposing CLE training for practitioners and report/ resources provided by committee.
- ii. Simone Levine discussed Proposal #2 and that the cost savings from the reinvestment bills are going to be put into Re-entry services, community alternatives to incarceration, and victims' services. Notification system needed for victims. There are issues with material witness warrants that need to be addressed. Court Watch Nola reported on provision in code allowing for witnesses and victims to be arrested if they fail to testify.
- iii. Michael Morales stated material witness bond issue is separate from the Justice Reinvestment laws. Because this is a proposal to change the current law rather than monitor what we just passed, it should not be included in this proposal. Simone said this is not true, the proposal would be to study the law. By consolidating with JR laws, the committee can work to increase resources for victims in some of these laws.
- iv. Paul Hurd suggests resources made available from Reinvestment that could help prosecutors get victims to come forward because they are more protected. The interface with existing law should make it eligible to be reviewed under this proposal.
- v. Pete Adams supported Morales point. Hillar would like to stick with the monitor of justice reinvestment laws as the initiative, but believes that while the new laws are being monitored the other initiatives are likely to be addressed also. Sticking with this JRI is in line with the work of this committee and the resolution passed by the LSBA earlier this year.
- vi. Jennifer said that the LA Supreme Court is looking at regional trainings for the judiciary. They are looking at other states with similar reforms passed and what their training programs looked like. Alaska was found to have the most effective trainings by incorporating prosecutors, sheriffs, defense attorneys, public defenders, and other stakeholders in the criminal justice system. LASC is working on this.

- Proposal #5 by Jonathan Rhodes and Adrienne Wheeler: Expungement Working Group to report on impact of recent expungement reform. The group would propose recommendations based on findings and possibly propose resolution and/or new legislation be considered.

- i. When monitoring JRI, Jonathan thought about the success in bi-partisanship of law institute in 2013 when the expungement laws were passed. Why not monitor those laws also?

- ii. Adrienne Wheeler said that there are 2 to 3 issues that would be served well by a working group within the Committee. The first is costs. Costs of expungement are extraordinarily high. There is a need to bring costs of expungement down (LA one of the highest in the country). 2- Expungement process is not as simple as it should be, specifically with a focus on pro se litigants. Uniform application should also be a focus.
- No other proposals were presented at this time.
- Graham stated that this committee is most effective when what it takes on something narrowly focused and achievable. Some proposals are very ambitious. In the past when ambitious proposals are taken on, there is a lot of discussion without results. The process - we will take the vote electronically via email after the meeting. The decision will need to go through bar leadership for final approval before the committee begins working on the initiative. What we take on should be achievable and not just. Feel free to comment in your vote.
- Charles Ballay from the 25th suggests that with the JR reforms and cost savings allocation, it is important to focus on getting a better data collection system. If that was proposed this could relate to a lot of the other initiatives. We should look at what the Task Force is going to do and take on part of that assignment, such as develop metrics and guidelines by which the Justice reinvestment laws are monitored as well as the cost savings portion.

IV. Justice Reinvestment Laws Practitioners' Guide (Terry Schuster, Pew)

- Terry Schuster with Pew joined the call to discuss the effect of the new laws and the Practitioners' Guide to the new laws provided by DOC. Terry stated that DOC and Supreme Court are the lead entities that are taking responsibility for implementation of the Justice Reinvestment laws. Both the courts and DOC must look at internal practices and decide what needs to be updated. Then do data collection and quality assurance monitoring. A set of reforms went into effect last week, specifically changes to sentencing laws, including drug and property, habitual offender law changes. In November is when probation and parole changes kick in. A year from now is when changes related to fines and fees and child support will go into effect. Technical assistance will be provided by Bureau of Justice Assistance partners with Pew to implement these changes.
- Terry says opportunity for a pooling of information and whether we are getting outcomes we thought we were going to get. LSBA in a good position to tap into court room practitioners. LSBA can notify attorneys that the sentencing guidelines have changes.
- Judge Edwards suggests DOC could be helpful if they would use this time to collect information regarding which people are being revoked and whether it is solely because they cannot pay money. Terry responded that the data collected was at felony level and very few instances when people were incarcerated solely because they could not pay fines and fees. However, data at misdemeanor level was not collected.

V. Adjourn