

Louisiana State Bar Association Criminal Justice Committee Meeting

Tuesday, May 16, 2017 - 9:30 AM – 11:00 AM
Bar Center, 601 St. Charles Ave., New Orleans, LA 70130

Minutes

Attendees:

Mercedes Montagnes (Co –Chair), Promise of Justice Initiative
Jarrett Ambeau, Attorney at Law
R. Christopher Cox, Jefferson Parish District Attorney’s Office
Megan Garvey, Louisiana Center for Children’s Rights
Burton Guidry, Burton Guidry & Associates
Alanah Odoms Hebert, Louisiana Supreme Court
Paul Hurd, Attorney at Law
Mithun Kamath, Orleans District Attorney’s Office
Billy Kline, Department of Public Safety and Corrections
Veronica Lam, Court Watch NOLA
Simone Levine, Court Watch NOLA
Jee Park, Innocence Project New Orleans
Jonathan Rhodes, Louisiana Civil Justice Center
Charlie Raymond, Attorney at Law
Sherry Watters, O’Byron & Schnabel, APLC
Adrienne Wheeler, Justice and Accountability Center of Louisiana
Jon Wool, Vera Institute New Orleans

I. Welcome & Introductions –

Wanted to have a meeting now to continue continuity of the Criminal Justice Committee initiatives. Purpose of this meeting is for us to think about next year and what it will look like as a committee, i.e., what our goals will be. To that end, we’ve asked everyone to submit proposals and those that did will discuss this at the end of the meeting. Before we do that, we wanted to recap what happened this year. Some of this is ongoing as the JRTF bills make their way through the legislature. We are joined by Alanah Odoms Hebert who will talk about that work.

II. Recap of the Year (Mercedes Montagnes)

This year we were able to propose a resolution that was adopted by the 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 and able to educate our members about that ongoing effort. It was a good productive year. We hope people felt like it was an inclusive process. I will turn it over to Alanah Odoms Hebert, Deputy General Counsel and Spec. Counsel to Chief Justice Johnson, to discuss where the JRTF bills stand with the legislature. Thank you for joining us Alanah.

III. Legislative Update (Alanah Odoms Hebert)

- From the Justice Reinvestment Task Force recommendations, 10 bills have been making their way through the House. The bills have only moved through the Senate to date. Today we will be seeing movement on the larger bills. SB 220, 221 and 139 will be heard on the senate floor today with some major amendments.
- The focus of the JRTF is to analyze the drivers of Louisiana prison population and try to address those drivers and propose some research and evidence based solutions to those issues. As many of you know, Attorney General Jeff Sessions has signaled to federal prosecutors that they will be moving back to harsh sentences for drug offenses and reinstating mandatory minimums, essentially going back on what many feel is well accepted and settled research about how to best address drug addiction. Interestingly, folks felt at the federal level that it is now up to states to address issues with criminal justice reform and implement best research in the field on how to reduce recidivism and provide services with mental health and drug addiction. Remain in community and do well. Charge this body with understanding the fight to continue whatever justice reinvestment reforms do not get passed, it is up to us to address these things. We've seen some significant amendments to Senate bills 220, 221, and 139. HB will be heard tomorrow.
 - SB 16 Sen. Claitor (juvenile life without parole): passed favorably out of Administration of Criminal Justice, with amendments: Members of the Task Force discussed recommendation of parole eligibility under this bill to be set at 25 years both retroactive and perspective, but official Task Force recommendation was set at 30 years. Amendment sets at 25. LDAA wants to carve out first degree murder and have the ability to make a determination after indictment that they would be able to file for Miller hearing. Miller hearing are estimated to cost 50,000 or so. 1st degree murder life without parole sought in 100% and in about 75% of cases judges came back with life without parole sentence.
 - SB 139 Sen. Martiny (probation & parole changes): special ordered for Tuesday on the Senate floor – looking at evidence based practices and what works to reduce recidivism. LDAA and Sheriffs took strong position that they would not support reform that included violent offenders. Majority recommendations will not be addressed in legislation this year. Question to the committee: How do we start to address incarceration for folks serving the longest sentences? 1 in 3 return in three years. Reforms need to look at longest serving sentences. Consolidate eligibility for parole future prisoners convicted of nonviolent offenses serving 25% of their sentence and extend eligibility to those with two or more prior felony convictions. This is an important change that will result in considerable decrease in current incarceration rate. Streamline parole hearings in cases where inmate has not been compliant or victim requests hearing.
 - Changes with regard to good time release incentives for current and future prisoner convicted of nonviolent offenses to authorize good time release at 35% of sentence served.
 - Consolidate parole and good time laws for future prisoners convicted of violent offense excluding those with prior serious violent offense convictions setting the eligibility for discretionary parole at 65% of sentence served and eligibility for good time release at 75% of time served.
 - Focus community supervision resources on those with the highest risk to recidivate. Established earned compliance credit. Improve swift and certain sanctions to ensure we are instituting alternatives to incarceration when possible. Unifying practices for persons on probation or parole to reduce discrepancies.

- SB 220 Sen. President Alario (sentencing changes): Initial goal was to revise drug penalties to target longer sentences on higher-level drug offenses and consolidate laws on property crimes and raise the value threshold for felony. Task Force aimed to moving threshold from \$750 up to \$1500, but new amendment to move down to 1000. Many other states that have higher thresholds with some as high as 2500 for felony theft. It will consolidate some laws. With drug offenses, implementing a scale to lower sentences for low weight simple possession offenses and scaling penalties for commercial offenses according to the weight. LA does not base penalties in weight like other states do. LDAA and Governor's office have agreed to remove certain crimes from violent crimes list, for example, mingling harmful substances, intentional exposure to the AIDS virus, and others. Lower mandatory minimum possession by a move mandatory min down from 10 to 5 years. Hoped to implement felony class system, but not met with support from LDAA. Too much of a change too quickly, so there will be a Task Force to study the Task Force to study felony class system and bring before the legislature in 2018 an evaluation of what felony class system should look like. Comprised of three members public defenders, 3 members of LDAA, and supreme court appointees
- SB 221 Sen. President Alario (habitual offender changes): special ordered for Tuesday on the Senate floor habitual offender is the large piece of 221, significant changes that will be important, more work to be done as we know that this bill, only used disproportionately in certain parishes forcing folks to pled in a way they may not normally because of the threat of the sentences under this law. SB 221 tailor cleansing period to the severity of prior crime. Some cleansing periods reduced for nonviolent crimes from 10 years to 5 years. Calculation begins on the termination of offender's supervisor period. Reducing minimum penalties. Lower minimum sentence to lower max sentence on fourth from life to two times max penalty. Significant. Finally, the new law purports to codify judicial discretion providing opportunity for judges to adjust unfair sentences when necessary.
- House Bills focusing on barriers to successful reentry will be heard on Wednesday, May 17th.
 - HB 116 Rep. Dwight (victim notification/registration): likely to be heard in Administration of Criminal Justice on Wednesday
 - HB 177 Rep. Moreno (SNAP benefits): passed favorably out of Health and Welfare on Wednesday
 - HB 249 Rep. Magee (fees & fines changes): likely to be heard in Administration of Criminal Justice on Wednesday. There has been some pushback here. Although Judges are not opposed to holding the indigency hearing up front, they are opposed to determining indigency on whether or not person is provided with an indigent defender. Judges argue that everyone is given an indigent defender and there should be more objective criteria to establish someone is indigent. Amendments to focus on this potentially, but keep in mind bill has not been heard.
 - HB 426 Rep. Marino (child support): passed favorably out of Civil Law on Tuesday, now as HB 680 due to a substitute bill
 - HB 489 Rep. Leger (reinvestment and data collection): likely to be heard in Administration of Criminal Justice on Wednesday
- JRI did not address pretrial reform. This is a huge part of what can be done by the state to reduce incarceration rate. 60% of folks are detained pretrial. Most folks who are low risk and who pose low risk of committing crime again should be in community and not in prison. Removing someone from their community even for three days has a huge impact on their life, missing school, work, not paying bills, and even increasing criminogenic behavior because you're placing people with others that have committed more serious crimes and perhaps have anti-social behavioral thinking

and relationships. Walt Leger has filed HB 489 that talks about reinvesting to reduce recidivism, invest in mental health and substance abuse programs.

- Charlie Raymond asked about putting a member from of the LSBA and members of the public on the Task Force to study the Task Force. Alanah thinks it would be prudent to have someone from the bar on the committee. Alanah will bring that recommendation to the Chief. Charlie also suggested getting the District attorney involvement early in the process is important to avoid opposition and increase consensus before bills are filed.

IV. Initiative Proposals for Upcoming Year (Group Discussion led by Mercedes)

- a. Initiatives Proposed: Bail Reform (**Jon Wool**); Treatment of Victims (**Simone Levine**); Revise La. Code Crim. P. art. 701 (**Jarrett Ambeau**); Monitoring JRI; ICE Detainer; Expungement; DV updates; and Re-Entry Courts (**Jonathan Rhodes**)

i. **Jon Wool – Proposes focusing on Bail Reform in Louisiana**

1. Nationally there have been a series of legislative and otherwise movements that are changing the way we think about pretrial detention through the use of money bail in the states. This has been the law in the federal system for decades, i.e., you cannot detain a person because of their inability to pay money bail. It is typically based on risk and cannot hold someone without a risk assessment being performed.
2. States like New Mexico have pushed, through a ballot initiative, two things:
 - a. Preventive detention an option
 - b. Requiring no person be detained because of inability to pay
3. On January 1st, New Jersey completely changed pre-trial system by statute. Now NJ judges are unable to hold people because of inability to pay. Out of 10,000 bail set only 8 were financial. Governor Chris Christie supported this change.
4. Maryland and California are also moving in this direction.
5. *Ultimate proposal is legislative change and/or report.* Judges inhibited in what they are allowed to do under statute. Judges prohibited from using discretion regarding bail. Proposing judicial discretion by statute. Making mandatory ROR restrictions merely presumptive. HB 81 amendment, with proposal to have 10% cash deposit refundable (not principled approach, i.e., money should not be the determinant, but it would go a long way to mitigate the problem). Maybe proposed product is a report on best practices and what other states are doing.

ii. **Simone Levine – Proposes Treatment of Victims**

1. Court Watch NOLA published annual report (available at <http://www.courtwatchnola.org/wp-content/uploads/2014/04/2016-CDC-Report.pdf>) relating to victims being incarcerated on material witness warrants. Louisiana state law requires that a victim be considered before sentencing. Look at how often victims were publicly considered by judges and prosecutors in the court.
2. Proposing today to take a look at victim rights this year, specifically as it relates to material witness warrants. Six victims in 2016 who were arrested for failure to prosecute. 15 material witness warrants issues on behalf of witnesses, although report focuses on victims.

3. Before issuing the report, Court Watch NOLA spoke to prosecutors all over the country as well as Association of Prosecuting Attorneys to find out what they were doing. Louisiana is an exception to the rule of using material witness warrants. The offices they spoke to were found to issue the warrants, if they did, in felony cases, whereas in Orleans parish it was found to do so misdemeanor cases as well.
 4. Houston and Brooklyn do not use material witness warrants in any jurisdiction. In Brooklyn, the previous DA did away with them when they found it led to unreliable testimony. In Nassau County, they detain victims in Hotel rooms for comfort and safety sake.
 5. There has also been discussion about subpoenas issues by district attorney offices that were not signed by judges. Simone thinks this is important issue to address, although not addressed in the report. Shooting rate and murder rate has increased in 2016-2017, but clearance rate has gone down for murders.
 6. DA in Houston TX arrested rape crime victim for failure to prosecute. The victim was hurt while in lockup. After incarceration, she was forced to testify in open court and had a mental breakdown on the stand. She was unable to provide testimony. As a result, there was an uproar of the practice. The DA apologized for doing this, but was voted out of office. The DA who came into office promised she would never incarcerate victims on material witness warrants. Kim Ogg, the new DA, is pushing legislation in Texas called [Jenny's law, SB 291](#) gives court-appointed attorney and requires public hearing within certain time period to witnesses or victim.
 7. There is case law in Louisiana that does not allow for a court-appointed attorney for victims. The result is if victim or witness arrested they have no idea why in many cases.
 8. Simone proposes studying possibility looking at legislation similar to city council resolution passed recently that recommends domestic violence victims and victims of sexual assault no longer be eligible for material warrants. Second, look at types of resources available to victims in Baton Rouge.
- iii. **Jarrett Ambeau – Consider article 701 of the code of criminal procedure**, time frames relative to date of arrest and filing of bill of information or bill of indictment. In 23rd JDC, there was an issue with this last year. He had a client who had been shifted back and forth between divisions and sat in jail for 153 days on a felony destruction of property, broke a window in a car. He had not been billed. There were 60 people sitting in jail in Ascension parish not being billed within 60 day time limit. The news got involved and there was a lot of pushback initially. District Public Defender, Ricky Babin, has made some significant changes in his office to effect change in this area. The whole system has been revamped in how communication occurs. Because of Jarrett's experiences in parishes surrounding Baton Rouge, he realizes this is happening all over. People are languishing and sitting in jail.
1. Two cases on this: State v. State v. Varmell, 539 So.2d 45, whereby a defendant should be released from the bail obligation if prosecution is not instituted within time limits set in the statute. State v. Wallace, 25 So.2d 720, in 2009 reviewed a similar issue to Varmell, and decided it was a

constitutional issue and people who are arrested in which no probable cause found within 48 hours are released on their own recognizance.

2. Propose to push that the language in 701 (a) that says a person not billed within the time limit relative to the crime and to whether or not they're incarcerated shall be released and then add the phrase "on their own recognizance." Same phrase as 230.2 but because that phrase is not in 701 a, Varmell came down in 1989 and since then pushback from judges to not release people or re-arrest them and put back in jail. Jarrett is concerned with how this is being applied to people charged with petty crimes. People arrested for property crimes, and petty property crimes. One client, charged with property damage to a car estimated to be \$230 sat in jail for 59 days before billed and then for another 45 days before arraigned. When they figured out he was charged with a misdemeanor, he was sent to parish court and eventually walked out of jail.

iv. Jonathan Rhodes – Proposes to place a few items as initiatives on the Committee's radar

1. **Monitoring Justice Reinvestment** – This may be the best opportunity within a generation to reduce recidivism, increase public safety and control doc costs. He suggests reporting on outcomes, how are they working, and looking at JRI stuff in terms of implementation.
2. **ICE detainees** – local law enforcement, DA's, defense will face. Maybe an outcome from that could be a training on best practices or CLE for attorneys.
3. **Expungement Reform** – Five years ago the committee worked on this with law institute to revising expungement laws. After traveling around the state and speaking with the mayor of Alexandria who has a workforce development program but having trouble getting people with criminal convictions jobs because they can't get expungements, Jonathan realizes how important this is.
 - a. Adrienne Wheeler– In 2014 there was a revision to expungement law. The purpose was to streamline the entire process. Northern Louisiana was charging a certain rate for filing different from Southern Louisiana. You also had some filing in criminal court and others in civil. The new law was designed to streamline the process. The cost is not exactly uniform. Problems still exist today. For instance, in certain courts, pro se filers will not be helped unless they have an attorney. JAC has developed a Pro Se packet for various regions, but filing requirements are sometimes different. There are still opportunities to streamline forms in different parishes. DAs in some parishes don't allow fee waivers even though it is dictated by law. In 2014, JAC was pushing for automatic expungements. There was pushback because of use of various databases by each court. This would be a possible issue to address, looking at unifying the court filing systems. Also, look at reducing filing fee from \$550 to \$0.
4. **Domestic Violence Updates** – DV laws have seen updates so may want to keep an eye on any movement here so practitioners know what is going on.
5. **Re-Entry Court** – Different groups already working on this, but maybe Criminal Justice Committee could help support the work of the groups.

One area of struggle is finding funding to expand the Re-Entry Court programs.

- b. Open Discussion – Mercedes asked for feedback from everyone with keeping in mind the time limitations for the committee and what seems accomplishable within a year timeframe. She emphasized that these initiatives will be provided to the incoming bar president for approval and recommendations as well as bar leadership. Mercedes requests that the committee members establish what stakeholders would need to be at the table to get the initiative(s) chosen passed.
 - i. Meg Garvey supports the bail reform proposal and possibility of doing some kind of study on this so that when and if it is considered by the legislature there will not be a need to create a study resolution. Maybe the committee can propose a formal study resolution on bail reform.
 - ii. Simone Levine suggests looking at each topic as a committee and not subcommittee so all expertise remains focused on one issue.
 - iii. Paul Hurd, a civil lawyer, likes the idea of bail reform. However, thinks it challenging without bringing concrete examples of what other states have done to reform pretrial without reducing public safety.
 - iv. Adrienne requested that we consider exactly what is required of the committee for each proposal made. For instance, bail reform would potentially be an entire campaign, whereas the Right to a Speedy trial would potentially be a bill that gets filed and passed.
 - v. Charlie Raymond recalled working on expungement as a big project that took a long time to get the changes made. He predicts bail reform and expungement would take a lot of effort and man power to put something coherent together. He thinks 701 issue is much easier. This would be a resolution that would go to bar governance and possibly presented to legislature next year.
 - vi. In terms of necessary stakeholders, Jon Wool suggests getting collaborative group including those with resources and researchers. He is not anticipating that this committee be the face of bail reform.
 - vii. Simone stated that various experts and prosecutors who would be willing to speak to the committee about treatment of victims. Also, trauma experts.
 - viii. Next steps will be to put together a brief description of each proposal, the stakeholders needed to be involved, and the actual product that would come as a result of taking on these resolutions. Speak to bar leadership and then move forward with the proposal at the next meeting.
 - ix. Jonathan suggests the summit as a possible way to bring consensus on the issue of bail reform. Jarrett says we need the district attorneys at the table to discuss the amendments to 701.
 - x. Charlie Raymond emphasized that the committee will be brining on new members next year and suggest we gather this information to show them when and if they get appointed.

- V. 2018 Criminal Justice Summit Planning – Capstone piece in March 2018. January and June is when resolutions must go before bar governance.

- VI. Next Meeting – August 11, 2017 at 10am with new members.

- VII. Adjourn