

Overview:

Criminal Justice Committee Brings Together Stakeholders on Key Issues

By William L. Kline and Amy E. Duncan

Since its creation in 2006, the Louisiana State Bar Association's Criminal Justice Committee¹ has brought together criminal justice stakeholders within the legal profession, representing all sides, to address critical issues facing the criminal justice community.

Today the committee, composed of 48 members,² is specifically focused on: 1) recognizing and addressing issues affecting the Louisiana criminal justice system; 2) providing a forum for discussion; and 3) working with stakeholders to develop programs and solutions for the fair and effective administration of justice. In the past, the committee has focused on issues ranging from capital defense guidelines to sentencing reform and juvenile justice.

Each year, the committee hosts a summit to discuss issues like the ones mentioned above. Recommendations from the summits in years past include implementing a uniform fine and cost assessment worksheet, improving access to the expungement process, and eliminating and/or reducing mandatory minimums for nonviolent offenses. In 2014, the committee also proposed legislation to study a state general fund for criminal justice in Louisiana.

More recently, the committee narrowly focused on addressing three key issues: 1) increasing access to relevant information, such as agency financial

reporting and resources for private attorneys appointed to criminal cases; 2) reducing incarceration and recidivism rates; and 3) justice reinvestment initiatives to improve the funding system.

Last year, in response to the first issue, the committee launched a new criminal justice webpage³ that includes a resource center for private attorneys who have been appointed to represent criminal defendants⁴ and a criminal justice data repository to increase transparency of financial information associated with the defense and prosecution of criminal cases across the state.⁵

A Subcommittee on Over-Incarceration, chaired by Mercedes H. Montagnes and Kline was established to address the second issue. The members of the subcommittee focused their efforts on exploring methods of reducing incarceration rates through pre-trial reform. Additionally, subcommittee members began working with Re-Entry Court Judges — Judge Scott U. Schlegel, 24th Judicial District Court, and Judge William J. (Rusty) Knight, 22nd Judicial District Court — who have implemented programs designed to reduce recidivism through re-entry initiatives and to improve support for the participants.

The Subcommittee to Support Legislative Activities, chaired by Jonathan M. Rhodes, was formed to study the third issue of developing a more unified, stable and statewide funding structure

for the effective administration of the criminal justice system.

These three issues are discussed in greater detail in the articles on pages 276, 277 and 278.

FOOTNOTES

1. Formerly the Right to Counsel Committee from 2006-09.
2. For a list of all committee members, go to: <https://www.lsba.org/CJC/CJCCommitteeRoster.aspx>.
3. <https://www.lsba.org/cjc/default.aspx>.
4. <https://www.lsba.org/CJC/CJCResourceCenterIntro.aspx>.
5. <https://www.lsba.org/CJC/DataRepositoryIntro.aspx>.

William L. Kline, general counsel for the Louisiana Department of Public Safety and Corrections, is a member and former vice chair of the Louisiana State Bar Association's Criminal Justice Committee. (wkline@doc.la.gov; 504 Mayflower St., Baton Rouge LA 70802-6419)

Amy E. Duncan is the Louisiana State Bar Association's Access to Justice training and projects counsel. She is the statewide coordinator of legal training and education for Louisiana's legal services providers and works closely with the Access to Justice Commission's Modest Means Committee, the Legal Innovators for Tomorrow (LIFT) Program, the Criminal Justice Committee and Louisiana's pro bono organizations. (amy.duncan@lsba.org; 601 St. Charles Ave., New Orleans, LA 70130-3404).



Pretrial Detention Reform as a Jail Population Reduction Strategy

By Mercedes H. Montagnes and Royce I. Duplessis

This year, the Louisiana State Bar Association Criminal Justice Committee's Subcommittee on Over-Incarceration is addressing the issue of reducing incarceration through pretrial reform.

The subcommittee identified pretrial incarceration as a problem in several respects. First, the subcommittee noted inconsistent approaches to pretrial incarceration for low-level offenses. Second, the subcommittee noted that the system tends to favor pretrial bond, without an evaluation of whether an individual has the ability to pay, or the use of a risk assessment tool to evaluate an individual's likelihood to appear in court. Finally, the subcommittee became concerned about the dramatic impact that short-term incarceration can have on someone's life.

At the annual Criminal Justice Summit, the subcommittee invited judges to talk about initiatives they have undertaken to decrease the amount of pretrial detention in their own courts. Speaker Judge (Ret.) W. Ross Foote announced the start of a pilot program in Shreveport City Court, requiring the release on one's own recognizance for misdemeanor charges, except for enumerated offenses. This program will serve as a way to immediately reduce incarceration rates in Shreveport city jails. The new policy is also meant to require a judicial determination in the setting of bond for those arrested for the enumerated offenses, such as domestic abuse battery and aggravated assault.

The subcommittee also heard from

Rachel Logvin from the Pretrial Justice Initiative who spoke on the national trending away from pretrial detention. She gave a compelling presentation about the high costs borne, by both the individual and the state, with over-incarceration. She met with representatives from the Louisiana Supreme Court to discuss methods for approaching pretrial detention reform.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson similarly recognizes pretrial reform as a key method to reducing Louisiana's notoriously high incarceration rate, particularly through the use of data-driven, objective risk assessments. After extensively researching national best practices, the overwhelming data supports the use of evidence-based risk assessments to assist judges with their pretrial decision-making.

This pretrial reform effort is not solely for the purpose of reducing the jail population, but, more importantly, for achieving greater public safety. In furtherance of this objective, the Louisiana Supreme Court has been working closely with the City of New Orleans to develop a district-court-operated pretrial services pilot program. This pilot program is modeled after the Louisiana Supreme Court Drug Court Program which funds and monitors 50 drug courts across Louisiana. The anticipated start date is Jan. 1, 2017, whereby Orleans Parish Criminal District Court will operate New Orleans Pretrial Services, under program and fiscal standards established by the Louisiana Supreme Court, to promote accountability

and best practices. Thereafter, the Louisiana Supreme Court plans to expand the use of pretrial services statewide.

Vera Institute of Justice, which developed a pretrial services program in 2012, also collects and analyzes pretrial detention and other incarceration data for the City of New Orleans. In its 2016 First Quarterly Report, Vera reported that the majority of people in jail on March 2, 2016, were not serving a sentence, but awaiting adjudication.¹ Additionally, of those held in jail assessed for risk, 48 percent were found to present a low or low-moderate risk.² This demonstrates the importance of pretrial detention reform initiatives in Louisiana.

FOOTNOTES

1. Mathilde Laisne, et. al., Vera Institute of Justice, New Orleans Jail Population First Quarterly Report, January-March 2016 (August 2016).

2. *Id.*

Mercedes H. Montagnes is chair of the Louisiana State Bar Association Criminal Justice Committee. (mercedesm@thejustice-center.org; 636 Baronne St., New Orleans, LA 70113)



Royce I. Duplessis is the Louisiana Supreme Court Special Counsel for Research and Development. (rduplessis@lasc.org; 400 Royal St., New Orleans, LA 70130)



Louisiana's Re-Entry Court: An Alternative Sentencing Program that Begins with Lessons from "Lifers"

By Judge Scott U. Schlegel

“Without successful re-entry into the community, recidivism is likely to occur, causing detrimental effects to public safety, communities, families, taxpayers, and ex-offenders. Offender re-entry is a crime prevention strategy, which serves to reduce crime and the number of crime victims and ultimately ensures opportunities for safer communities. Successful re-entry is also a cost-saving measure to state and local criminal justice systems.” La. R.S. 15:1199.2(I)(J).

Louisiana has the highest incarceration rate in the United States with revocations making up 59 percent of prison admissions.¹ Regardless of your opinion about sentencing (“lock ‘em up & throw away the key” vs. “no one deserves jail”), offenders sentenced to jail will be released back to our communities unless they receive a life sentence without the benefit of probation, parole or suspension of sentence. In fact, it is estimated that approximately 18,000 people were released from prison in 2015 and that releases now outpace admissions, according to a recent report released by The Pew Charitable Trusts.² Thus, it is our responsibility to do everything within our power to ensure that those returning to our communities are prepared for the challenges ahead. If we do not, the cycle of recidivism will continue, our state budgets will continue to soar, and crime rates will skyrocket, causing more pain to victims and their families. As a former prosecutor and victim of violent crime myself, I understand the real cost of crime.

In 2010, Judge Arthur L. Hunter, Jr. and Judge Laurie A. White from Orleans Parish Criminal District Court devised a novel way to address the problem. They asked “lifers” in prison to assist with the rehabili-

tation of new prisoners. Carefully vetted lifers, who have transformed after years in prison and who now want to give back, have been selected as mentors. Through their actions behind bars, these mentors are able to help mold and change the hearts of those sentenced to the Offender Rehabilitation & Workforce Development Program (program) at the Louisiana State Penitentiary (Angola). The lifers also teach the men a trade, such as welding and automotive mechanics, so that when the men are released, they can earn a livable wage.

Currently, there are 13 jurisdictions in the State of Louisiana permitted to sentence offenders to the Re-Entry Court Program, and only non-violent, non-sex offenders who receive a sentence of 10 years or less may be considered. Once an offender reaches Angola after sentencing, the moral rehabilitation and vocational training takes a minimum of two years. If the offender successfully completes the program at Angola, he may petition the court to re-enter society. Upon re-entry, the returning citizen is placed on probation under the intensive supervision of a Re-Entry Court for five years, where he will continue to receive the services needed to succeed, including substance abuse treatment and counseling. The Department of Corrections also has recently expanded the Re-Entry Court Program to another prison so that women can participate.

Since September 2015, the Louisiana State Bar Association’s Criminal Justice Committee, stakeholders and advocates have been working together with Re-Entry Court Program judges to address some of the legal impediments participants in the Re-Entry Court Program face upon release. For instance, municipal attachments and driver’s license suspensions can prevent a participant from attaining gainful employ-

ment, housing and financial stability – outcomes the program is designed to support. This year, a collaborative project model, involving five programs in the Greater New Orleans area, will be launched to provide legal assistance to returning citizens of certain courts that will reduce the barriers faced. If successful, this model could be replicated and used by other courts to address the unmet legal needs of participants throughout the state.

Attorneys who are interested in volunteering in the program should email Amy E. Duncan at amy.duncan@lsba.org.

The Louisiana Supreme Court is committed to supporting alternative sentencing measures such as Re-Entry Courts. To this end, the Court has appointed District Court Judge William J. (Rusty) Knight to lead these efforts and to develop best practices throughout the state.

As one lifer mentor said, “We need to meet them at the gate.” And that’s exactly what is happening here in Louisiana! People from all walks of life are coming together to give those returning from Angola an opportunity to succeed, which in turn will make our communities safer and more financially secure.

FOOTNOTES

1. *Id.*

2. The Pew Charitable Trusts, *Louisiana Data Analysis Part 1: Prison Trends* Presentation (part of a three-series report on prison drivers for the Justice Reinvestment Task Force created under HCR 82 in 2015).

Hon. Scott U. Schlegel is a judge on the 24th Judicial District Court bench, Division D. (Ste. 5400, 200 Derbigny St., Gretna, LA 70053)



Justice Reinvestment Initiatives Might be Answer to Criminal Justice Funding Dilemma

By Carla S. Sigler and Jonathan M. Rhodes

Already dealing with staggering incarceration rates, and now faced with an unprecedented budget crisis, Louisiana's criminal justice system has found itself in a difficult dilemma. Although there is broad agreement that Louisiana should work to reduce its prison population, there is little or no funding to support alternatives to incarceration. At the same time, finding money to support these alternative programs is difficult when so much of our criminal justice funding is allocated for corrections costs. When taken together, these may seem like insurmountable problems. However, one strategy known as Justice Reinvestment Initiatives (JRI) might help us find our way out of the dilemma.

Justice reinvestment begins from the premise that the state can free up funds to support certain criminal justice reforms. After decades of tough sentencing laws, states like Louisiana have come to agree that certain alternatives to incarceration can actually improve public safety while reducing prison populations. Since any new money is unlikely to be found in the state's coffers, Louisiana needs to be creative in freeing up existing funds to support programs that can improve safety and reduce incarceration.

One way that many states have achieved this is by coming together to pass measures aimed at reducing incarceration rates for nonviolent offenders or to reduce the numbers incarcerated for technical probation violations. In a recent report, Louisiana's Legislative Auditor found that the state could save hundreds of millions of dollars over the years by finding alternatives to incarceration for nonviolent offenders.

The report identifies reforms such as reducing the use of mandatory minimum sentences and habitual offender laws, providing more rehabilitation services to inmates, offering pretrial diversion programs, and expanding drug courts as alternatives to incarceration for nonviolent offenders.¹

These measures reduce incarceration in the short term, resulting in cost savings that can then be reinvested into evidence-based programs that improve public safety and further reduce prison populations. Utilizing this strategy over the long term, states can see significant cost savings and reduced incarceration rates while improving public safety and ensuring the best use of taxpayer dollars. Simply put, justice reinvestment is a strategy to reform the system and improve outcomes with no new money needed. If this strategy sounds too good to be true, consider that to date at least 24 states have undertaken JRI that have significantly reduced incarceration rates and are estimated to save more than \$4 billion over 10 years.²

In fact, many southern States have led the way in these reforms. South Carolina launched JRI that have saved the state \$12.5 million while reducing incarceration rates by more than 8 percent, reducing recidivism by more than 3 percent and reducing probation revocations by 6 percent. Better still, South Carolina saw a 14 percent overall reduction in its crime rate during the same period, effectively improving public safety while saving money. Kentucky has projected that JRI will save the state \$422 million over 10 years and support an 18 percent reduction in its prison population. In just the first few years, one pretrial re-

form program alone has saved Kentucky roughly \$25 million, which can be reinvested in other cost-saving public safety programs. Similarly, North Carolina has passed JRI legislation that is projected to save the state more than \$560 million over 10 years and reduce incarceration rates by 13 percent. In just the first two years, their state has seen a nearly 6 percent reduction in incarceration rates.³

We can be proud that Louisiana has, at least to a small degree, been one of the early adopters of JRI. As is well known, Louisiana's prison population had doubled over the period from 1990 to 2010, resulting in the highest incarceration rate in the nation. In 2011 and 2012, Louisiana passed a series of JRI legislation that included enhancements to the use of good time and earned time credits and more effective probation and parole operations. According to the Louisiana Department of Public Safety and Corrections, these strategies have reduced Louisiana's prison population by 10.5 percent, which equates to a cumulative taxpayer savings of roughly \$38 million per year.⁴

Louisiana's JRI legislation resulted in important cost savings and lowered incarceration rates, but did not include a formal plan for reinvesting savings over the long term. To build on Louisiana's initial success, the Louisiana Legislature passed resolutions in 2015 to study funding and reinvestment for the criminal justice system. HCR 134 was a product of the LSBA's Criminal Justice Committee to study funding across the system, resulting in a recommendation to focus on JRI. HCR 82 created the Justice Reinvestment Commission to develop sentencing and corrections

policy recommendations. The Task Force is chaired by James LeBlanc, secretary of the Louisiana Department of Public Safety and Corrections, and is composed of at least 14 members with experience in criminal justice reform. Their task will be to identify strategies that can further improve public safety, reduce incarceration rates and conserve our limited public funds.

We can look to many of the existing programs in Louisiana for examples of success. In fact, our criminal justice system has found that sometimes the best justice reinvestment we can make is in the defendants themselves. This is particularly true when they are eligible for participation in an alternative treatment court, such as a Drug, DWI, Mental Health or Veterans Treatment Court. For career prosecutors charged with holding offenders accountable and protecting public safety, there is great interest in alternative programs that can effectively reduce recidivism and ultimately improve public safety. For example, the 14th Judicial District Adult Drug Treatment Court, formed in 2007, has effectively transformed once ordinary defendants into people filled with promise and the realistic expectation of better things for both them and their families.

The Louisiana Supreme Court is firmly behind treatment courts and offers continued and critical funding and programmatic support for Drug Courts

and new DWI Courts. According to 2016 statistics published by the Louisiana Supreme Court Drug Court Program in Louisiana, today there are 30 Adult Drug Courts, 17 Juvenile Drug Courts and three Family Preservation Courts. Forty programs have been in operation 10 years or longer, demonstrating Louisiana's early commitment to treatment courts as a reinvestment in justice. Those same statistics show that 89.8 percent of 2012 graduates of Drug Court programs were free from additional convictions three years after they graduated, for a recidivism rate of just 10.2 percent, a remarkable feat given the national average of 77 percent of prisoners being rearrested within five years of their release from prison, an alarming statistic detailed by the Bureau of Justice Statistics in a September 2015 summary of recidivism rates of state prisoners. In treatment courts, the clients' educational and career goals are achieved along with sobriety, counseling helps them understand and correct the destructive drives that once fueled them, and within a matter of months, lives that once seemed invested only in crime become rich with promise. If we are serious about reducing both the need for incarceration and its rate, then we should invest more time and money in the very programs that achieve a renewed system of justice – treatment courts.

Balancing the need to hold offenders

accountable and protect public safety with the need to reduce incarceration rates, cut costs and develop successful rehabilitation programs will require some creativity and finesse. This is the work of the Justice Reinvestment Task Force and for all members of the criminal justice community to engage in if we are to see meaningful progress.

FOOTNOTES

1. [http://app.lla.state.la.us/PublicReports.nsf/0/DB26F2309F9783F2862580200077A2CD/\\$FILE/00010B73.pdf](http://app.lla.state.la.us/PublicReports.nsf/0/DB26F2309F9783F2862580200077A2CD/$FILE/00010B73.pdf).
2. <https://www.bja.gov/Publications/UI-JRI-ThinkingLocal.pdf>.
3. https://www.bja.gov/programs/justicereinvestment/success_stories.html.
4. http://www.theadvocate.com/baton_rouge/opinion/article_cc7afd9c-5b10-5a6b-aaa6-d4977bc04dde.html.

Carla S. Sigler is a Calcasieu Parish assistant district attorney. (csigler@cpdao.org; Ste. 800, 901 Lakeshore Dr., Lake Charles, LA 70601)

Jonathan M. Rhodes is executive director of the Louisiana Civil Justice Center, where his work focuses on providing legal assistance to vulnerable populations across Louisiana. He serves on several boards and committees, including the Access to Justice Commission's Self-Represented Litigation Subcommittee and the Louisiana State Bar Association's Criminal Justice Committee, and has participated in several commissions of the Louisiana Legislature, including the Louisiana State Law Institute Expungement Reform working group. (jonathan.rhodes@laciviljustice.org; 601 St. Charles Ave., New Orleans, LA 70130)

Update / Baton Rouge Bar Foundation

The Baton Rouge Bar Foundation has a number of programs designed to aid the underprivileged and to engage its attorney volunteers, such as the Capital Area Med-LAW Partnership (CAMP) and the Self-Help Resource Center.

CAMP's mission is to assist healthcare providers in improving health in low-income communities. Generally, providers can only treat and resolve health issues in a clinical setting but are unable to address their patients' social and environmental conditions. These conditions can often be detrimental to their patients' health and well-being. By integrating medical and legal services, the social and environmental conditions can be improved leading to better health and financial outcomes.

The Self-Help Resource Center provides forms (*e.g.*, petition for divorce, custody and child support modification) and notary services for low-income pro se litigants. The Center is located at the Family Court of East Baton Rouge on the fourth floor of the 19th JDC. Typically, law students are present with a Baton Rouge Bar Association staff member to assist the individuals with the completion of the forms. Also, an attorney volunteer is present to provide supervision and notary services. No legal advice is given at the Self-Help Resource Center, only general legal information.

—Cody C. Passman
Chair, Baton Rouge Bar Foundation Pro Bono Committee