

Report of
the
Louisiana
Sentencing
Commission

January 1

2014

Report to the Governor and the Legislature by the Louisiana Sentencing Commission in fulfillment of R.S. 15:321I. This report contains the recommendations of the Commission for the 2013 and 2014 Terms.

Bi-Annual
Report

Louisiana Sentencing Commission

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Recommendations of the Louisiana Sentencing Commission for the 2013 and 2014 Terms

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Chapter 1

Introduction

Brief History

Act 158 of the 1987 Regular Session of the Louisiana Legislature established the Sentencing Commission. The commission's original focus was to develop Felony Sentencing Guidelines that ensured similarly situated offenders were treated similarly and that the penalties imposed were proportionate to the crime committed. The guidelines were to be developed by the Sentencing Commission, subject to oversight by the House Committee on the Administration of Criminal Justice and Senate Committee on the Judiciary "C," and promulgated under the Administrative Procedures Act, as part of the Louisiana Administrative Code.

During the 2008 Regular Session of the Louisiana Legislature, two bills were passed that essentially restructured the Louisiana Sentencing Commission. Act 916 reduced the size and redefined the voting membership of the commission. Act 629 redefined the responsibilities of the commission. Generally speaking, Act 629 broadened the research mandate of the Louisiana Sentencing Commission, and refocused its efforts with a greater emphasis on outcomes rather than the act of sentencing itself. The new research mandates not only require an examination of the statutes and policies related to sentencing but also as to how those provisions and other laws relate to the use of correctional programming designed to facilitate offender re-entry. They also aim to reduce recidivism and to evaluate these sentencing structures within the context of the resulting outcomes.

Current Statutory Mandate and Report

The Louisiana Sentencing Commission is required by R.S. 15:321 (I) to report every two years, presenting its work to the Governor, the chairman of the House Committee on the Administration of Criminal Justice, the chairman of the House Committee on the Judiciary and the Senate Committees on the Judiciary B and C. The initial report of the Commission was submitted on March 1, 2010. To fulfill its statutory requirement, the commission respectfully submits this, the second report of the Louisiana Sentencing Commission, to the Governor and Legislature.

The present report is the product of two years of effort without funding or external financial support. It could not have been accomplished without many man-hours graciously contributed by its members as well as numerous prosecutors, members of the defense bar, the Louisiana Public Defenders Office, judges, law enforcement officials, corrections staff and Sheriffs. Special mention is due to several organizations which have contributed time and resources to this effort, for which the Commission owes a deep debt of gratitude. These include:

Louisiana Department of Public Safety and Correction

Louisiana Commission on Law Enforcement and the Administration of Criminal Justice

Louisiana Fifth Circuit Court of Appeal

Louisiana Association of Chiefs of Police

Louisiana Sheriffs' Association

Louisiana District Attorneys' Association

Louisiana District Court Judges Association

Louisiana Judicial College

PEW Center on the States

VERA Institute of Justice

as well as other organizations and individuals too numerous to mention. Please note that inclusion on this list does not in any way constitute an endorsement by the organizations named of any particular recommendation of the Commission or of the recommendations as a whole.

The business model adopted by the Commission is to work closely in conjunction with everyone involved in the criminal justice system so that reform can be made as a community effort rather than recommendations from an isolated body. The Commission also determined that, to the extent possible, its recommendations would be data driven and based on “best practices” from around the nation, modified to fit the unique environment of the Louisiana Criminal Justice System. Even then, the recommendations are to be “vetted” through our criminal justice partners before final consideration.

Commission Profile

The Louisiana Sentencing Commission was created under the jurisdiction of the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice within the Office of the Governor.

Membership

The Commission is comprised of 20 members, 16 of which are voting members with the remaining 4 serving as non-voting members. The voting members are:

Legislative Members

- A member of the House of Representatives appointed by the Speaker of the House;

- The Chairman of the House Committee on the Administration of Criminal Justice;
- One member of the Senate appointed by the President of the Senate;
- The Chairman of the Senate Committee on the Judiciary C;

Members Appointed by the Governor

- One District Attorney;
- President of the Louisiana District Attorneys Association;
- The State Public Defender;
- One Attorney specializing in criminal defense;
- One Sheriff;
- President of the Louisiana Sheriffs' Association;
- President of the Louisiana Association of Clerks of Court;
- One Judge of the Court of Appeals;
- Three District Court Judges having criminal experience, at least one of which must be active;
- One member selected from a list of three nominees submitted by the Louisiana Chamber of Commerce;
- One Louisiana citizen who is not an attorney, nor formally associated with the criminal justice system, and who is a victim of a felony crime, from a list of three names submitted by Victims and Citizens Against Crime, Inc.

*Daniel, Louis R.	District Court Judge, 19 th JDC
*Dorsey, Yvonne	Senator
*Dugas, David	Defense Bar
*Dixon, James T., Jr.	State Public Defender
*Graffeo, Mark	Clerk of Court, President of the Louisiana Association of Clerks of Court
*Guidry, Greg G.	Associate Justice, Supreme Court of Louisiana
Joseph, Cheney C., Jr.	Law Institute
*Kostelka, Robert	Chairman, Senate Committee on the Judiciary C
Le Blanc, James M.	Secretary, Department of Public Safety and Corrections
*Lopinto, Joseph P., III	Chairman, House Committee on Criminal Justice
Vacant	Professional
*McCallum, Jay B.	District Judge, 3 rd JDC
*McDonald, James Michael	Judge, 1 st Circuit Court of Appeal
Mehrtens, Robert	LCLE
*Moreno, Helena	Member of the House
*White, Laurie	Judge, Orleans Criminal District Court

The Commission is now fully established and is proceeding with the tasks assigned to it under R.S. 15:321. During this two year period, the Commission focused on analyzing of sentencing outcomes with a view toward examining ways in which evidence based practices might be incorporated into Louisiana's sentencing structure. This effort is undertaken in conjunction with the Louisiana Department of Corrections at the state level, and the Sheriffs of Louisiana who operate the local correctional systems. Significant efforts are currently underway within both state and local corrections to improve correctional outcomes. The work of the Louisiana Sentencing Commission will complement these efforts and will be carried out in cooperation with the state and local correctional authorities.

Beginning with the 2012 Term and continuing with additional refinements the Sentencing Commission formalized the process utilized to develop its recommendations. The Commission is divided into committees that cover the major points in the sentencing process. These committees meet and identify issues for examination for the upcoming term. The issues are then assigned to teams, composed of Commission members and subject matter experts that work on very specific areas. Issues are further refined by the teams and the basic research conducted. After due consideration and examination of the available evidence, the teams report their recommendations to the full committees. The committees then review the recommendations and the evidence, and if the recommendation looks promising, it is passed to the full Commission. The Commission then further refines the recommendations based on the evidence and the expertise of the members and advisory members, and if the recommendation shows promise, the Commission sends it for vetting through our criminal justice partners, which include the Louisiana Association of Chiefs of Police, the Louisiana Sheriffs' Association, the Louisiana District Attorneys' Association, the District Court Judges Association, state and local Correctional officials, and various victims groups among others. The purpose of the vetting process is to determine whether or not the proposals have merit when viewed from the perspective of those directly impacted by them, and to further refine those recommendations by eliminating elements that may have unintended consequences, and crafting them to best fit within the framework of actual practice. After the vetting process, the recommendations are further refined by the committees and presented to the full Commission for final action. This process is utilized to ensure that the Commission

considers all available evidence and receives comment from as many view points as possible prior to final consideration.

Chapter II

2013 Term

The 2013 Term of the Louisiana Sentencing Commission was a period of monitoring the implementation of past recommendations, making adjustments to improve performance, and consideration of long term issues relating to the reduction of recidivism and reducing costs while improving public safety. The Commission reorganized its working committees to cover the term's research agenda, covering the major areas of responsibility. The committees were further subdivided into teams to address specific issues and projects. As the Sentencing Commission operates with no budget, the process relied heavily on the volunteer efforts of Advisory Members representing every aspect of the Louisiana Criminal Justice System. These individuals, along with the members of the Commission, and staff from the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice, the Louisiana Department of Corrections, and the Fifth Circuit Court of Appeal accomplished most of the work reflected in the recommendations. Substantial technical assistance was received from the PEW Center on the States' Public Safety Performance Project and, through their good offices, the VERA Institute for Justice's Center on Sentencing and Corrections.

Also during this term, the Commission was selected by the Bureau of Justice Assistance of the U.S. Department of Justice to participate in the Justice Reinvestment initiative. Participation in this project results in the receipt of a limited amount of funding which is used to devise data-driven approaches to criminal justice reform designed to generate cost savings that can be reinvested in high-performing public safety strategies. The Vera Institute of Justice is the technical assistance provider for the project.

Areas of Concentration

During the 2013 Term, the Louisiana Sentencing Commission examined the implementation of the prior recommendations of the Commission that were

adopted as law or policy as well as the position of current law relative to how it affected public safety and the operation of the criminal justice system. The first effort focused on two general areas, the operation of problem solving courts and supporting correctional programming, and electronic monitoring/home incarceration. The second effort focused on identifying the large scale factors that drive the Louisiana correctional system and their effect on recidivism. Generally, the Commission was examining ways to:

- Ensure available prison space for violent and high-risk offenders
- Increase offender accountability and reduce recidivism
- Improve the transparency of the system for victims and all other parties to a criminal conviction
- Improve Louisiana's taxpayers' return on its investment in the correctional system by increasing efficacy and reducing recidivism

The first step was to examine the data related to the sentencing and correction of felony offenders in the state. In examining the correctional population and associated costs, it was determined that a more careful examination of how the system dealt with drug offenders would prove beneficial.

Focus Issues

Issues related to the Prior Recommendations

First Issue: During the 2011 Term, the Commission examined the issue of electronic monitoring and determined that additional information was needed before any recommendations could be made. The Commission sought and received authority for the Department of Public Safety and Corrections to collect basic information relative to the implementation of electronic monitoring in the state. Despite efforts to collect the necessary data, the information was slow in coming. This work was continued through the present Term.

The Response: During the 2012 Term, the Commission received a study resolution (HCR 113) to further examine the issue, and redoubled efforts were made to collect the necessary data. The Commission submitted its report on the data

received to the Legislature for the 2013 Regular Session. A copy of the report is contained in Appendix A.

The Result: In conducting the analysis of the available data, the Commission made the following findings.

- There is a population of offenders who would benefit from a sentence to home incarceration with electronic monitoring. Generally, this would be an appropriate option for the consideration of the Court for offenders who were sentenced to imprisonment for a fixed term of years when the sentence was suspendable, who were not convicted of a crime of violence as defined in R.S. 14:2 (B) or a sex crime as defined in R.S. 15:541, and have a low risk score on a validated risk assessment instrument. It should be used in conjunction with supervision that includes, where appropriate, a treatment component. It should not be utilized for offenders where the first sentence of choice is probation, unless the Court finds specific reasons for doing so. There is also a second population where the use of such technology may be appropriate: Offenders under probation, parole, or other supervision status that are in danger of recidivism due to their failure to follow the conditions of their release. Beyond these general statements, the Commission cannot make more specific recommendations without additional data.
- The District Attorney should be a significant participant in both the design and execution of any screening process for the use of such technology at sentencing.
- The Commission is making efforts to strengthen the data collection mechanism.
- The Commission is developing basic standards for home incarceration based on best practices and the experiences of other southern states.
- Based on the additional data collection and the development of basic standards, the Commission is working on future recommendations for the structuring of home incarceration as a viable option at sentencing and supervision on a statewide basis.

Second Issue: The successful model of the Drug Courts in Louisiana has given rise to consideration of expanding the use of problem solving courts in general when it

could be accomplished in a cost effective and effective manner. During the 2013 Term the Commission made two significant efforts in this regard.

The Response 1: During the 2013 Regular Session, legislation was developed by the Honorable Joseph Lopinto, Chairman of the House Committee on the Administration of Criminal Justice and member of the Sentencing Commission, to create a special provision within the Drug Court statute for Sobriety Courts. Several such courts were already in operation in the state and had proven successful in reducing recidivism among OWI offenders. Representative Lopinto's proposal would create a statutory framework through which local jurisdictions choosing to establish Sobriety Courts could do so. The Commission endorsed his efforts.

The Result: The proposal developed in HB 424 became ACT 388 of the 2013 Regular Session, permitting OWI (R.S. 14:98) offenders to be sentenced through a drug court model and made adjustments to the administrative proceedings accordingly.

The Response 2: A second area where problem solving courts and specialized programming was deemed appropriate is mental health. The criminal justice system is experiencing an increase in the number of defendants presenting serious mental illness, a subset of which includes individuals whose involvement in the criminal justice system is largely due to an underlying mental health issue. Working with the Louisiana Department of Health and Hospitals, Office of Behavioral Health, the Commission sponsored a Community Mental Health Program in the Lafayette area on a pilot basis. This was accomplished without additional funding from the state, except for the Medicaid support for which the offenders qualified. This program involved assessment, referral, and some treatment components furnished by the Lafayette Parish Sheriff's Office, an extension of the Drug Court section of the 15th JDC to accommodate mental health court, and treatment services provided through the Office of Behavioral Health and its contractors. The Louisiana Department of Corrections provided significant assistance through the assignment of specialized caseloads within the Division of Probation and Parole, as well as support from the Department's Reentry and Medical Services sections. Generally the design involved the mental health screening of arrestees at booking or as soon thereafter as practical. Then offenders

could be referred to mental health court in much the same manner as for Drug Court, or receive treatment while in jail, or community based treatment where appropriate in conjunction with supervision or other programming. The plan also called for the referral of persons returning to the Lafayette area from state prison, who had mental health issues. This would be accomplished by transferring the offender from the prison to the jail facility at an appropriate point prior to their release date so that programming could begin. A grant was obtained to support an evaluation of the program by the LSU School of Social Work.

Issues reported from the field

Four issues came to the Commission from specific concerns encountered by criminal justice agencies in performing their functions: The process of bail and pretrial release, fines and fees associated with the criminal justice process, the complexity and structure of the Operating a Vehicle while Intoxicated (R.S. 14:98) statute, and the increasing the information available to the Court at time of sentencing.

First Issue: The proper structuring of pretrial status is of high importance to the proper functioning of the Courts as well as public safety. Louisiana has a complex network of statutes governing bail and pretrial release. Some jurisdictions have reported difficulty in collecting bail when forfeited, and others had adopted a robust system of pretrial services designed to reduce pretrial incarceration while reducing failure to appear. These issues were addressed separately.

The Response: Relative to the structure of bail, a workgroup was formed under the Front End Committee to deal with bail reform, led by representatives from bail collection units within two major District Attorneys' Offices. After much study, the workgroup developed a comprehensive set of recommendations to revamp the legal structures relating to bail and bond for pretrial release. These recommendations were adopted by the Commission and forwarded to the Legislature for consideration.

The Result: Due to the complexity of the issue and the nature of the recommendations, this matter was referred by the Legislature to the Louisiana Law

Institute for further study and recommendations. The Commission is continuing to work on these issues in partnership with representatives from the bail industry, so that future recommendations can be developed which cause the least possible disruption to the system.

The Response: Relative to the provision of pretrial services, the Commission examined the structure of the pretrial services unit currently in operation in New Orleans. The Commission developed a set of permissive standards that could be utilized by local jurisdictions seeking to establish such services in their area. The goal of the standards was to provide for a level of uniformity in line with best practices as pretrial services developed across the state.

The Result: No statutory framework for the development of pretrial services was adopted; however, the basic standards remain for jurisdictions seeking to develop such a program in their area for their general guidance.

Second Issue: Louisiana currently has a large and complex network of fines and fees associated with various aspects of the criminal justice process. There is concern in the criminal justice community on two fronts. First, the amount of fines and fees associated with conviction and the level to which they are suspended due to the inability of the defendant to pay. Second, the collection of fines and fees that are ordered by the Court is not currently tracked on a comprehensive basis.

The Response: The Commission undertook a study of the fines and fees currently applicable under Louisiana law. The primary recommendation of the work group after surveying the fines, fees, and costs collection process around the state was to recommend that the Supreme Court, through its Judicial Council, consider the adoption and maintenance of a unified fines, fees, and costs database to serve as a common reference point for all courts. A secondary recommendation was that each district court considers examining ways to implement systems to assess collection rates as a function of the amount assessed of each individual defendant relative to the amount collected from each defendant. A survey was conducted by the Division of Probation and Parole of fines, fees and court costs to provide a factual basis for future consideration of the issue. A prototype database was also developed for consideration in the development of a future system to track fines, fees, and their collection. A copy of the report is available in Appendix B.

The Result: The study and recommendations were transmitted to the Supreme Court of Louisiana for its consideration and any action the Court may deem appropriate.

Third Issue: Louisiana's current law relative to Operating a Vehicle while Intoxicated (R.S. 14:98 and related statutes) is both lengthy and complex. Because of its arrangement, the statute is difficult to utilize in application to specific cases.

The Response: The Commission developed a workgroup to examine this issue under the Front End Committee, working in conjunction with representatives from the Highway Safety Traffic Commission and various victims groups including Mothers Against Drunk Driving. The goal was to reorganize the statute to make it simpler to implement without making significant modifications to the penalty structure. Where modifications were recommended to the penalty structure, it was done for purposes of consistency.

The Result: Recommendations were made to the 2013 Regular Session for the restructuring of the OWI statutes; however, due to the complexity and length of the proposal, and that the 2013 Regular Session was a budget session, it was recommended that it be considered the following year where more time was available for due consideration.

Fourth Issue: Judges from the 22nd JDC indicated a desire to include the results of a scientifically valid risk assessment instrument among the information available to and considered by the Court at the time of sentencing. Risk Assessment has proven beneficial in the operation of the state's correctional system, where it is utilized by the Department of Corrections for both institutional and supervision populations in determining security and treatment needs, and as a consideration in Parole. The use of risk assessment at sentencing is a more difficult matter, but has been accomplished in some states, particularly Virginia. From the outset it was clear that risk assessment could never be determinative in sentencing, but could only be additional information considered by the Court along with other salient sentencing factors.

The Response: After consultation with the judges of the 22nd JDC the Commission decided to recommend the adoption of risk assessment at the sentencing stage of the criminal justice process on a pilot basis in that JDC. It was further

recommended that the results obtained from the pilot effort be evaluated with respect to both public safety and the effect on recidivism.

The Result: The recommendation proposed by the 22nd JDC was adopted in the 2013 Regular Session and became ACT 347 of 2013.

Issues related to specific statutes

The Commission was requested to study issues with two specific statutes: Attempted Theft [R.S. 14:27 D (2) (c) (i)] and Simple Escape from a work release facility [R.S. 14:110 B (1)].

First Issue: When revisions were made to R.S. 14:67 relative to valuation in determining penalty and felony status, a corresponding change was not made for attempt. The result of this was a more serious penalty for attempted theft of more than \$300 but less than \$500 than the underlying completed offense.

The Response: The Commission recommended that R.S. 27 D (2) (c) (i) be modified to reflect the valuation contained in the underlying statute.

The Result: The recommendation was considered by the Legislature, resulting in the adoption of ACT 240 of the 2013 Regular Session.

Second Issue: Simple escape is generally considered a serious offense as it often involves danger to correctional personnel in the attempt. As such the penalty was made to run consecutive to any other sentence. The specific situation relative to inmates in a work release program typically involves a “walk off” or failure to return, and does not involve risk to correctional staff. At the request of the Sheriffs operating work release programs, the Commission examined this issue.

The Response: After due consideration of the factors involved in the offense, the Commission recommended that this specific version of simple escape not be automatically made consecutive, but left within the discretion of the Court based on the facts of the case.

The Result: The Legislature considered the recommendation of the Commission, and approved HB 349 which became ACT 152 of the 2013 Regular Session.

Issues related to sentencing and release of drug offenders

The Issue: There is much discussion both in Louisiana and the nation as to the most effective way to deal with drug offenders. Drug offenders account for a significant portion of the persons sentenced to prison each year. Historically about 35% of Louisiana's prison admissions each year are drug offenders (33% in 2012 representing 5,924 individuals). The average sentence of incarceration in 2012 for this population was 4.69 years (through September 2012). Some areas of the state have Drug Court programs while others do not. In some of the areas that do have Drug Court programs the number of persons who can be admitted is limited by the available resources. Drug Court programs in Louisiana have an excellent record in preventing recidivism. The issue then is how to expand the availability of Drug Court programs in the state or failing that how to make effective drug treatment more readily available to the Courts as a sentencing option. A second and related issue is how to provide drug treatment services to persons currently incarcerated in a more cost effective manner.

The Response: The Commission studied the issue and recommended the creation of a network of drug treatment services through the Louisiana Department of Corrections within existing resources, and making that network available to the Courts as a sentencing option, under appropriate circumstances. The preservation of public safety was of paramount concern in these deliberations. The Commission realized that not all drug offenders are simply drug offenders, but have other serious criminal conduct in their past. For this reason, persons having prior convictions for Crimes of Violence or Sexual Offenses would not be eligible. The option would only be available to persons being sentenced for drug possession charges or possession with intent to distribute charges when the amount of controlled dangerous substances is small. Further, in placing an individual defendant in such a program, the District Attorney should give approval prior to any such consideration, in much the same way as the prosecutor serves the role as

“gate keeper” for the Drug Court programs. Finally, if all of the foregoing conditions are met, the Court would need to make certain specific findings:

- The defendant suffers from an addiction to a controlled dangerous substance;
- The defendant is likely to respond to the substance abuse probation program;
- The available substance abuse probation program is appropriate to meet the needs of the defendant;
- The defendant does not pose a threat to the community, and it is in the best interest of justice to provide the defendant with treatment as opposed to incarceration or other sanctions.

These findings would be supported by a professional evaluation, performed by an authorized evaluator utilizing standardized testing and evaluation procedures that have proven validity, prior to the actual use of the sentencing option. The cost of the evaluation, testing and treatment should be borne by the defendant, or if indigent, suitable public service work be performed.

In order to protect the integrity of the Drug Court programs, the Commission recommended that a defendant not be eligible for this program if the individual has participated in or declined participation in a Drug Court program. This recommendation was to prevent defendants from deciding which program to enter based on a perceived advantage.

In addition to this substance abuse probation program available to the Court, the Commission further recommended a substance abuse conditional release program for those already incarcerated. As with the probation program, the Commission recommended that the offender meet certain specific requirements for eligibility:

- The offender is willing to participate in the program;
- The offender has been convicted and is serving a sentence for a first or second offense of possession or possession with the intent to distribute a controlled dangerous substance;
- The offender has no convictions for a Crime of Violence or a Sexual Offense as defined by law;
- The offender has not previously been release pursuant to this program;

- The offender has served at least two years in actual physical custody and is within one year of his release date.

As with the probation program, the eligible offender should be evaluated for both substance abuse as well as mental health issues prior to any final determination. In this case the determination is made by the Secretary of Public Safety and Corrections, who, like the court is required to consider a number of factors including:

- The danger the offender poses to the community or to a specific individual;
 - Any gang involvement of the offender while in custody;
 - The offender's custody classification;
 - Risk of violence;
 - Availability of sufficient supervision resources to appropriately manage the particular offender.
- A suitable release plan for the offender;
 - Aftercare plan;
 - Availability of appropriate treatment;
 - Opportunities for employment;
 - An approved residence plan;

If the Secretary determines that the offender is a suitable candidate for the program, the offender must successfully complete a residential substance abuse program of sixty to one hundred twenty days in facility that meets the criteria of the Department and is appropriate for his risk/needs assessment as determined by the validated assessment tool in use by the Department. If the offender fails to successfully complete the program, he is returned to prison for the remainder of his sentence. If the offender successfully completes the program he may be released on intensive supervision, including random drug and alcohol testing, and if deemed necessary by the Secretary electronic monitoring.

The Result: The Legislature considered the recommendation and approved HB 442 which became ACT 389 of the 2013 Regular Session.

Result of the Recommendations of the 2013 Term

The recommendations of the 2013 Term of the Louisiana Sentencing Commission were communicated to the Governor and members of the legislature. As a result, all of the recommendations were converted into bills for consideration during the 2013 Regular Session. After due deliberation, the legislature deferred some and refined other of the recommendations, passing five bills related to the recommendations of the 2013 Term of the Louisiana Sentencing Commission. The resulting ACTs are appended to this report (Appendix C).

HB 189	Attempted Theft	ACT 240
HB 349	Simple Escape	ACT 152
HB 367	Pretrial Services	Deferred
HB 424	Sobriety Courts	ACT 388
HB 442	Drug Treatment Probation and release	ACT 389
SB 94	Risk Assessment at Sentencing (pilot)	ACT 347
SB 179	Bail Reform	Deferred
		Study Resolution to the Louisiana Law Institute

Chapter III

2014 Term

The 2014 Term continued the work of the previous Terms and addressed some of the long range issues previously identified and referred back to the Commission to further study.

Areas of Concentration

During the 2014 Term, the Louisiana Sentencing Commission continued its examination of the operation of the network of law and policy governing sentencing practices in the state and how they affect the operations of the correctional system. This term's effort focused on examining the impact of minimum mandatory sentence provisions on the effectiveness of the criminal justice system, streamlining the system to make more resources available for the job of correction and protecting public safety, and expanding the use of promising approaches to the issue of re-entry. Specifically, the Commission is exploring ways to:

- Allow appropriate discretion within the criminal justice system to permit sentences more responsive to the facts of individual cases
- Eliminate unnecessary expenditures through consolidation and streamlining of services allowing for greater investment toward the primary job of correction
- Expand the use of promising re-entry strategies to reduce recidivism
- Initiate work on long range strategies to improve offender outcomes

Focus Issues

Issues related to the Sentencing Process

First Issue: The growth of minimum mandatory provisions and the need for discretion in the sentencing process. During the 2011 Term, the Commission identified the number of minimum mandatory sentencing provisions in the law as a major factor in the growth of the Louisiana prison population. It was noted that these provisions while very appropriate in certain types of crimes, may overly restrict the flexibility of the system in dealing with specific cases arising under other statutes. Minimum mandatory sentencing provisions are those where the statute specifies a minimum term of incarceration and provides that the sentence is to be imposed without benefit of probation, parole, or suspension of sentence. In some instances the facts of the case do not justify such a penalty or the nature of the offender is such that a longer term of imprisonment is needed, but with the possibility of examining case at some point to see what progress the offender has made toward reformation. In the latter instance the longer term of imprisonment is available should the offender not prove responsive to correction, but the option exists to allow non-violent, non-sex offense, and non-habitual offenders the possibility of serving the remaining term on supervision. The longer period of supervision increases the likelihood of successful re-entry when accompanied by appropriate programming faithfully executed. This also allows the Department of Corrections to utilize its incarceration capacity for the high-risk, violent and predatory offenders while freeing additional resources to build the capacity for successful re-entry and the reduction of recidivism.

In the 2012 Term, the Commission recommended allowing minimum mandatory penalties to be waived in whole or in part as part of a pre or post sentence agreement. The procedure excluded Crimes of Violence or Sexual Offenses as defined by law. Because the ability to waive minimum mandatory provisions is subject to an agreement, the District Attorney, Defense, and the Court must concur in doing so.

During the 2014 Term, the Commission examined the possibility of expanding the eligible offenses to include those crimes of violence that are not elementally violent, but can be violent depending on the facts of a particular case. The Commission also reviewed a proposal adopted in Georgia that permits the Court to waive minimum mandatory penalties in whole or in part under certain conditions.

The Response 1: The Front End and Release Mechanisms workgroups were assigned to work on this issue together as it involves both sentencing and release. The group was tasked with 1) identify how other states have addressed the issue of putting limited discretion with the prosecutor and sentencing court without sacrificing their minimum mandatory structures and their effect on offender outcomes; and 2) reviewing the complex set of issues involved with those closest to the cases and the victims to determine whether such changes would fit within the realities of the Louisiana criminal justice system and serve to improve outcomes. As the numbers of minimum mandatory sentencing provisions have increased over time in a large number of states, some have developed ways to restore an appropriate level of discretion to the system without harm to the intent of the original statutes. Pennsylvania and New Jersey both had unique solutions. In Pennsylvania, under certain of their minimum mandatory provisions the prosecution is required to provide notice in the accusatory instrument that the state intends to proceed under the minimum mandatory provisions of the statute. If no such notice is given, the court is relieved from the mandatory provisions in sentencing in that specific case. New Jersey took a different approach by allowing the prosecutor under certain circumstances to waive the minimum mandatory provisions as part of a plea agreement or a post-conviction agreement. The two workgroups then met with representatives of the District Attorneys and Sheriffs to perform a statute by statute review in an effort to determine which, if any, of Louisiana's minimum mandatory provisions could be improved by the restoration of discretion in specific types of cases and how that discretion may best be structured. Both groups thought a limited return of discretion would be of benefit in certain types of cases and that it would best result would be derived from the New Jersey model. This model would give the prosecutor additional tools to work with in obtaining an appropriate plea or information for the prosecution on more serious offenders. It is logical to place the discretion with the prosecutor in the first instance as it is the prosecutor who is most familiar with the facts of the case, the criminal characteristics of the offender, and knows first-hand the views of the victim and the impact of the crime. This is the reasoning that gave rise to the recommendation made during the 2012 Term.

The resulting recommendation would allow the waiver of a minimum mandatory penalty or benefit restriction in whole or in part subject to a pre or post sentence

agreement. This recommendation was limited to those offenses that had not been designated as a Crime of Violence in R.S. 14:2 (B), defined in Part 2, Subparts A, A-1, or A-2 of Title 14 of the Louisiana Revised Statutes, punishable by a sentence of life imprisonment without benefit of parole, probation or suspension of sentence, or a sex offense as defined in R.S. 15:541. The issue for consideration during this Term was allowing those offenses in R.S. 13:2(B) that are not elementally violent to be eligible for consideration for waiver.

The Result 1: After a detailed examination of the statutes, the Commission decided to recommend allowing offenses listed in R.S. 14:2(B) as Crimes of Violence to be considered for waiver provided the District Attorney, Defense, and the Court agree, except for the following elementally violent offenses:

- R.S. 14:28.1 Solicitation for murder
- R.S. 14: 30 First degree murder
- R.S. 14:30.1 Second degree murder
- R.S. 14:31 Manslaughter
- R.S. 14:34.6 Disarming of a peace officer
- R.S. 14: 34.7 Aggravated second degree battery
- R.S. 14:37.1 Assault by drive by shooting
- R.S. 14:37.4 Aggravated assault with a firearm
- R.S. 14:42 Aggravated rape
- R.S. 14: 42.1 Forcible rape
- R.S. 14:43 Simple rape
- R.S. 14:43.1 Sexual battery
- R.S.14: 43.2 Second degree sexual battery
- R.S. 14: 43.5 Intentional exposure to AIDS
- R.S. 14: 44 Aggravated kidnapping

- R.S. 14: 44.1 Second degree kidnapping
- R.S. 14:46.2 Human trafficking
- R.S.14:46.3 Trafficking of children for sexual purposes
- R.S.14:51 Aggravated arson
- R.S. 14:62.8 Home invasion
- R.S. 14:64 Armed robbery
- R.S. 14:64.4 Second degree robbery
- R.S. 14: 64.3 Armed robbery-use of firearm
- R.S. 14:64.2 Carjacking
- R.S. 14:78.1 Aggravated incest
- R.S. 14:93.2.3 Second degree cruelty to a juvenile
- R.S.14:128.1 Terrorism

The remainder of the offenses listed in R.S. 14:2(B) would be eligible for consideration. The other limitations in the original proposal would remain intact.

Response 2: The Commission was also asked to examine a second approach to the issue of minimum mandatory penalties that is similar to what is found in portions of Federal Law, and specifically examining the Georgia statute recently passed in that state to address the same issue of allowing appropriate flexibility in the process to be more responsive to the facts of a particular case. The major difference between this recommendation and the preceding one is that here the decision to waive the minimum mandatory penalty in whole or in part is made by the Court, subject to certain specific findings as opposed to pursuant to a pre or post sentence agreement.

Result 2: The Commission approved a recommendation that consideration be given to a modification whereby the Court may sentence a defendant convicted of an offense subject to a minimum mandatory penalty or benefit restriction, to a lesser penalty if the Court finds by substantial and compelling reasons on the record that

the imposition of the sentence provided in the penalty provisions for the offense would result in substantial injustice to the defendant, and the defendant would not pose a threat to public safety. In making this determination, the Court should consider the nature of the offense, the criminal history and character of the defendant, and the likelihood of successful rehabilitation. Such authority should not be extended to a defendant who has been convicted of a crime of violence or a sexual offense as defined by law, or who has a prior conviction for the same or similar offense during the ten year period prior to the offense giving rise to the current conviction, or when the conviction involves the intentional use of a firearm in a manner that causes physical injury, or in cases where the defendant is the leader or central figure in a continuing criminal enterprise.

Issues related to specific statutory formulations

The Commission examined two specific areas relative to their statutory formulation. The first is the OWI statutes, where the goal was to simplify the statutory scheme so that it will be easier for the Court to apply without making recommendations that would significantly modify the penalties. This was largely a task of reorganization, with only minor recommendations for penalty adjustments to make the statute more consistent. The second area is the Theft statutes. In this case the objective was to create more categories so that very large thefts could be handled more appropriately, and to provide more precise limits for lower dollar value thefts. Also, theft statutes that are substantially similar to the general theft statute as regards penalty and elements, and are seldom if ever used were identified for elimination so as to simplify the overall scheme.

Issue 1- The primary issue related to the OWI statute is the length and complexity of the statute itself, making it difficult for the Court to find all of the applicable provisions for a particular case. The issue, then, is largely a matter of organization and separation to improve the application of the law by making it more accessible.

Response 1- The Front End committee convened a workgroup to address the OWI issue in conjunction with the Highway Safety Commission, Mothers Against Drunk Driving, OWI prosecutors, and Judges representing the City courts where most OWI offenses are tried. The lengthy and complex statute currently in effect did not lend itself to a reduction in size and still retain the highly granular

provisions desired. The workgroup focused its attention on reorganizing the existing statutory provisions, making it easier for the Courts and prosecutors to apply the law. The workgroup also considered a range of minor revisions to the penalties associated with various aspects of the statute, in a general effort toward consistency within the statute.

Result 1- The workgroup recommended for consideration a complete rewrite of the existing statutes, that primarily reorganized the statute into a more coherent structure, and some minor changes in the penalties for the purpose of consistency and logical flow—i.e. the penalties for subsequent offenses should be more serious than the penalties for the previous offenses. Generally, the recommendations for consideration adopted were:

14:98 would become a definitional section including the OWI definition and other definitions such as the child endangerment law, definition of “prior convictions”, loss of vehicle, probation and parole violations and an explanation of the general statutory sentencing structure. Penalties and other issues would be moved to separate statutes in a common sense fashion as follows:

14:98.1 penalties for first offense

14:98.2 penalties for second offense

14:98.3 penalties for third offense

14:98.4 penalties for fourth and subsequent offenses

14:98.5 special provisions and definitions such as substance abuse programs, home incarceration, interlock device, and community service

14:98.6 underage driving under the influence

14:98.7 unlawful refusals to submit to chemical tests

14:98.8 operating a vehicle while under suspension for certain offenses;

Minor amendments to penalties:

First offense penalty –

- Current alternative to default sentence: The offender shall spend two days in jail or participate in four eight hour days of community service.
- Recommended alternative to default sentence language for consideration: The offender shall serve 48 hours in jail or participate in 32 hours of community service.

Second offense penalty-

- Current alternative to default sentence: the offender shall serve 15 days in jail and participate in court approved substance abuse program and driver improvement program or perform thirty 8 hour days of court approved community service.
- Recommended alternative to default sentence language for consideration: the offender shall serve 15 days in jail without benefit and perform 240 hours of court approved community service.
- Current law-requires that if 2nd arrest is within 1 year of first, the penalty is 30 days in jail
- Recommendation for consideration: adds substance abuse program requirement to the term of imprisonment.

Second and subsequent offenses

- Calculation of prior offenses in determining level of current OWI:
 - Current law includes vehicular homicide, vehicular negligent injuring as prior offenses (both include alcohol content as an element of the offense)
 - Recommended alternative for consideration: adds 3rd degree feticide as a prior offense (3rd degree feticide requires a .08 blood alcohol level)

Third and Fourth Convictions

- Calculation of good time while on probation and parole
 - Current law for 3rd and 4th offenses requires that any offender must serve a portion of the sentence incarcerated. This means that the offender will be released on good time parole. This period is followed by a period of probation which the offender serves, in part or whole, by way of home incarceration.
 - Recommendation for consideration: will clarify that good time parole and probation will run concurrently once the offender is released from incarceration on good time parole and begins probation.

- Increased mandatory minimum sentences
 - Current law
 - 3rd offense mandatory minimum sentence: 1 year
 - 4th offense mandatory minimum sentence: 2 years
 - Recommendation
 - 3rd offense mandatory minimum sentence: 2 years
 - 4th offense mandatory minimum sentence: 3 years

Underage OWI

- Recommended consideration of enhancing the penalty for first offense
 - Current law: fine up to \$250.00 and 8 hours of substance abuse program; no judicial authority to place offender on probation or to order other sentence conditions.
 - Recommendation: add jail sentence of 10 days to 3 months (no mandatory minimum) which may be suspended and defendant placed on

probation. (Note: this is the same penalty as reckless operation of a motor vehicle)

Issue 2: Louisiana law provides a general value graded theft statute at R.S. 14:67. The law also provides 28 additional categories of thefts, some of which have never been prosecuted. Many of the specialized statutes contain the same criminal elements and penalties as those found in the general statute. Some also provided additional guidance relative to the calculation of valuation that has now been settled in jurisprudence. This situation adds complexity to the law that may not be necessary if the statutes are not used. A second issue that arises under the theft statute is that the current law provides for only three graduations of penalty based on the value of what was taken. The highest level penalty is currently for thefts of \$1,500 or more. In recent times, cases have arisen, especially in the area of industrial theft, where the value of what is taken is significantly greater than \$1,500.

The Response 2: A workgroup was created under the Front End Committee of the Commission to examine these issues. Generally, the workgroup was charged with identifying those specialized theft statutes that did not add substantially to the ability of the general theft statute to appropriately apply to the situations contemplated, and to determine which of the specialized statutes were seldom, if ever, prosecuted. The workgroup was also charged with examining the penalties available for theft, to ensure that large thefts could be properly accommodated within the existing scheme. The workgroup proceeded to identify a group of statutes that are not currently utilized and add little to the general law on theft. These statutes were recommended for repeal, with the prosecution for the criminal acts covered by them to be conducted under the general theft statute. A second group of statutes was also identified that were seldom prosecuted, but may have importance for other reasons. This group of statutes was recommended for further study and consultation with industry prior to making any specific recommendations. Finally, the workgroup examined the penalty structure in current law recommending adjustments. The adjustments at the lower end were to account for the increased dollar value of goods in the current economy, and the recommended movement of higher value thefts to other categories. The adjustments at the higher end (those over the existing \$1,500 threshold) were recommended to ensure adequate penalties for crimes involving large dollar

amounts. The recommendation was to expand the current the current three levels in the current general theft statute to six.

The Result 2: The Commission recommended consideration of the repeal of eleven specialized theft statutes: theft of livestock, animals, crawfish, timber, alligators, fraudulent acquisition of an automobile, fuel, used building component, utility property, copper in a religious building, and copper or metal, and subsume them under the existing general theft statute (R.S. 14:67). The Commission also recommended consideration of the expansion from three to six value graded categories of theft as follows:

Value	Level	Imprisonment	Fine
Under \$1,000	Misdemeanor	Not more than six months	Not more than \$2,000
\$1,000 to less than \$5,000	Felony	Not more than three years	Not more than \$10,000
\$5,000 to less than \$10,000	Felony	Not more than five years	Not more than \$15,000
\$10,000 to less than \$50,000	Felony	Not more than ten years	Not more than \$25,000
\$50,000 to less than \$100,000	Felony	Not more than fifteen years	Not more than \$50,000
\$100,000 or more	Felony	At hard labor not less than two nor more than twenty-five years The first two years without benefit of probation, parole or suspension of sentence	Not more than \$100,000

Issues related to the Controlled Dangerous Substances Law

From the beginning, the Commission has studied the state's controlled dangerous substances law. The issues involved are both complex and significant. First of all, violations of the drug laws constitute a significant proportion of persons convicted

and sentenced to prison each year at a considerable cost to the taxpayer. Unfortunately, this does not appear to have a dramatic effect on the use of illegal drugs. Second, illegal drug use is also related to a significant number of negative social consequences, including both violent and non-violent street crimes, as well as medical costs and heavy impacts on families and children. Third, many if not most drug offenders have other offenses in addition to the drug charges. This creates a complex situation relative to drug policy. The Commission is actively examining these issues and has decided to move slowly and deliberately in this area, making drug law reform a long range objective.

Three specific issues were taken up during the 2014 Term relative to the Controlled Dangerous Substances law: the structure of the laws relating to Schedule II drugs (R.S. 40:967) as it relates to benefit restrictions and weight enhancements; the law relating to supplies for clandestine drug laboratories (R.S. 40:983); and the statute creating the crime of drug traffic loitering.

Issue 1: The statutes covering the penalties for schedule II drugs contains a number of specialized provisions that create distinctions that in some cases remove the discretion of the Court in sentencing. Drug offenses are placed into schedules on the premise that certain groups of drugs are similar in their negative effects on society. Penalties are then graded within the schedule based on the specific criminal conduct involved. Over time, a number of specialized provisions have been created to deal with specific problems arising at that time. The issue with further restricting the flexibility of the court is that drug offenses and drug offenders present very different sets of circumstances within a particular case which the court can no longer accommodate.

Response 1: The Front End Committee of the Commission was tasked with the examination of this issue. The workgroup formed for this purpose included judges, prosecutors, and narcotics enforcement officials from around the state, as well as representatives of the treatment and corrections communities. The workgroup considered the statutory scheme, both as a general scheme and how that scheme relates to the reality of drug crimes and drug offenders. Consideration was also given to reducing the complexity of the statute and uniformity of the sentencing of offenders similarly situated, as well as providing sufficient flexibility for the

Courts to tailor properly individualized sentences based on the facts of the specific case and the nature of the offender.

Result 2-After consideration of the Committee’s work, the Commission recommended that consideration be given to: Amending R.S. 40:967 to remove benefit restrictions for some provisions and to delete weight penalties for amounts less than 200 grams. Specifically, it was recommended that it be considered that current law be modified in the following manner:

- Current law: 40:967 A. Manufacture; distribution: the statute draws a distinction between amphetamines, methamphetamines, cocaine, crack, and cocaine derivatives and pentazocine and other schedule II drugs relative to penalty. The current sentence for Schedule II is 2 to 30 years except for the specifically delineated drugs. As to the specially delineated drugs the sentence is without benefit of parole, probation, or suspension of sentence. The delineated drugs also vary as to available sentence.

Current Law

Manufacture; distribution Schedule II R.S. 40:967 Penalties

Substance	Imprisonment	Fine	Benefit Restriction
General Schedule II	Not less than 2 or more than 20 years	Up to \$50,000	None
Schedule II except for delineated drugs (R.S. 40:967 B (5))	Not more than 10 years	Up to \$15,000	None
Pentazocine	Not less than 2 or more than 10 years	Up to \$15,000	First two years without benefit of parole, probation or suspension
Amphetamine or methamphetamine	Not less than 10 or more than 30 years	Up to \$500,000	First ten years without benefit of parole, probation or suspension
Production or Manufacture of Cocaine, cocaine	Not less than 10 or more than 30 years	Up to \$500,000	First ten years without benefit of parole, probation

base or a mixture or substance containing cocaine or its analogues, or oxycodone, or methadone			or suspension
Distribution of Cocaine, cocaine base or a mixture or substance containing cocaine or its analogues, or oxycodone, or methadone	Not less than 2 or more than 30 years	Up to \$50,000	First two years without benefit of parole, probation or suspension
Any of the Substances in Schedule II where a child 12 years of age or younger is present in the inhabited dwelling [Child Endangerment Law—enhances minimum sentence and creates a minimum mandatory]]	Changes all minimum sentences to 15 years	No enhancement above statutory fine	First fifteen years without benefit of parole, probation or suspension

- Recommendation: Consider the elimination of the benefit restrictions for the specifically delineated drugs contained in Schedule II, making them on a level with the general statute covering the Schedule.
- Recommendation: Consider the elimination of the special statute for Pentazocine, and subsume it under the general provisions for Schedule II.

- Recommendation: Consider the modification of the Child Endangerment Law to reduce the minimum mandatory term to 10 years.

Possession

Substance	Imprisonment	Fine	Benefit Restriction
General Schedule II	Not less than 2 or more than 20 years	Up to \$50,000	None
Schedule II except for delineated drugs (R.S. 40:967 C (2))	Not more than 5 years	Up to \$5,000	None
Pentazocine	Not less than 2 or more than 5 years	Up to \$5,000	None
Amphetamine or methamphetamine or substance containing a detectable amount of amphetamine or methamphetamine or its analogues 28 grams to 200 grams	Not less than 5 or more than 30 years	Not less than \$50,000 to \$150,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first five years without benefit of probation, parole or suspension
200 grams to 400 grams- amphetamine etc.	Not less than 10 years or more than 30 years	Not less than \$150,000 to \$350,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first ten years without benefit of probation, parole

			or suspension
400 grams or more-amphetamine etc.	Not less than 15 or more than 30 years	Not less than \$250,000 to \$600,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first fifteen years without benefit of probation, parole or suspension
Cocaine, cocaine or substance containing a detectable amount of cocaine or its analogues 28 grams to 200 grams	Not less than 5 or more than 30 years	Not less than \$50,000 to \$150,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first five years without benefit of probation, parole or suspension
200 grams to 400 grams-cocaine etc.	Not less than 10 or more than 30 years	Not less than \$100,000 to \$300,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first ten years without benefit of probation, parole or suspension
400 grams or more-cocaine etc.	Not less than 15 or more than 30 years	Not less than \$250,000 to \$600,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or

			withheld, the first fifteen years without benefit of probation, parole or suspension
Gama hydroxybutyric acid or a mixture containing a detectable amount of gamma hydroxybutyric acid 28 grams to 200 grams— hydroxybutyric acid etc.	Not less than 5 or more than 30 years	Not less than \$50,000 to \$150,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first five years without benefit of probation, parole or suspension
200 grams to 400 grams- hydroxybutyric acid etc.	Not less than 10 or more than 30 years	Not less than \$100,000 to \$300,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first ten years without benefit of probation, parole or suspension
400 or more grams- hydroxybutyric acid etc.	Not less than 15 or more than 30 years	Not less than \$250,000 to \$600,000	The adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, the first fifteen years without benefit of probation, parole or suspension

- Recommendation: Consider the elimination of the special section for Pentazocine.
- Recommendation: Consider the elimination of the sentence enhancements for delineated drugs in Schedule II for possession of less than 200 grams.

Issue 2- The operation of clandestine drug laboratories (R.S. 40:983) is a significant health and life safety issue as well as a serious criminal issue in Louisiana. The current law properly reflects the seriousness of the problem. However, many of the offenders engaged in the purchase or transportation of supplies for such laboratories are very low level functionaries, who can be easily replaced by the criminal enterprise.

*Response 2-*The Front End Committee examined this issue with regard to the statutory structure, and the nature of the offender typically convicted for this conduct. Committee suggested that a distinction between those who purchase and transport supplies for the operation of such labs, and the persons actually operating them would be a useful addition to the statute. The current penalty for the violation of the statute is a term of imprisonment of not less than five nor more than fifteen years at hard labor. This means the low level functionaries are treated the same under the law as the persons actually manufacturing the substance or creating and/or operating the laboratory. The Committee also realized that such a distinction could degrade enforcement efforts in this area if the lower level functionaries were always treated in a less severe manner, as that would not be sufficient to persuade them to seek other employment. The Committee recommended to the Commission that a misdemeanor offense be created for those whose sole involvement in the purchase or transportation of raw materials, and then only in the case of a first offender.

*Result 2-*The Commission adopted the report of the Committee and recommends that consideration be given to amending R.S. 40:983 to create a misdemeanor classification of the offense for first time offenders who only purchase or transport supplies for the operation of a clandestine laboratory.

Issue 3- The crime of Drug Statutes-Drug Traffic Loitering (R.S. 40:981.4) was held unconstitutional by the Supreme Court of Louisiana in 1998.

Response 3-The Front End Committee considered the situation relative to R.S. 40:981.4 in conjunction with narcotics enforcement officers. This statute prohibits “remaining in public in a manner and under circumstances manifesting the purpose to engage in unlawful conduct in violation of title 40. It has been found unconstitutional by the Louisiana Supreme Court and consideration should be given to its repeal.

Issues relating to the length of time a person convicted of a Crime of Violence (R.S. 14:2 (B)) must spend in actual incarceration prior to Parole Consideration or Good Time release

The Issue-The Crimes of Violence statute has its origins in the Federal Violent Crime Control and Law Enforcement Act of 1994. Specifically, this act made available funding to the states for prison construction provided the states passed legislation requiring that persons convicted of a crime of violence serve at least 85% of his sentence in actual confinement. Louisiana responded by adopting the necessary law, requiring a person convicted of a Crime of Violence to serve 85% of the sentence imposed in actual custody before parole consideration or goodtime release. The offenses deemed to be crimes of violence for this purpose are delineated in R.S. 14:2(B). Initially, the only offenses included were elementally violent (i.e. the elements of the crime involve conduct that is necessarily of a violent nature). The list in the statute has since grown to 44 offenses, and includes violations of laws that cover a wide range of actual conduct from the very violent to conduct not involving physical violence or severe emotional trauma. The issue then is not whether or not a particular statute on the list is violent, but rather whether or not a particular case involving the statute includes elements of violence.

The Response: The Release Mechanisms Committee of the Commission undertook the task of examining the offenses contained in the Crimes of Violence statute and developing options that would ensure the application of the release restrictions where appropriate, and allowing flexibility to the Court in other cases. The statutes were sorted into two groups—those elementally violent or involved severe emotional trauma by their nature, and those which could be violent or involve severe emotional trauma. The Committee recommended that those in the first category always be sentenced as a crime of violence based on the offense of conviction, and those in the second category be sentenced as a crime of violence

when do so is supported by the facts of a particular case. It was further recommended that the District Attorney be the person to make that decision for cases arising under in the second classification. This would need to be done in a manner that does not create the necessity of a contradictory hearing, further burdening the process.

*The Result-*The Commission adopted the Committee's recommendation, dividing the current crimes of violence into two groups for the purpose of calculating the release date of the offender. The first group would always serve the 85% of the sentence imposed in actual custody. The second group would serve the 85% of the sentence in actual custody provided the District Attorney gives notice at any point in the process prior to adjudication, that this case is subject to the provisions relative to the manner in which the sentence is served. In essence, if a defendant was convicted of the second type of crime, and the District Attorney does not give notice, that defendant would be released according the applicable law. If the District Attorney does give notice, the defendant must serve the full 85% of the sentence imposed in actual confinement. This recommendation does not relieve any of the restrictions relative to goodtime or parole eligibility contained in the underlying statute or general statutes governing parole and goodtime, except for the specific limitations of a crime of violence.

*The Recommendation-*The Commission adopted the recommendation of the Committee that consideration be given to enacting a provision in the Code of Criminal Procedure dealing with the sentence conditions for crimes of violence) which addresses the crimes listed in La. R.S. 14:2(B) (crimes of violence), creating a group of offenses which shall be mandatorily sentenced with the applicable sentence conditions and a group of offenses which will be so sentenced depending upon the nature of the particular offense as determined by the District Attorney. Crimes which are inherently violent such as murder, rape and armed robbery shall always be sentenced with the applicable crimes of violence sentencing conditions. Other crimes which are not inherently violent by their very nature but which may be committed in a violent manner in the particular case will be sentenced with the applicable sentencing crimes of violence conditions if so indicated by the district attorney. The offenses which it is recommended that consideration be given to being a crime of violence under any and all circumstances include:

R.S. 14:28.1 Solicitation for murder
R.S. 14: 30 First degree murder
R.S. 14:30.1 Second degree murder
R.S. 14:31 Manslaughter
R.S. 14:34.6 Disarming of a peace officer;
R.S. 14: 34.7 Aggravated second degree battery
R.S. 14:37.1 Assault by drive by shooting
R.S. 14:37.4 Aggravated assault with a firearm
R.S. 14:42 Aggravated rape
R.S. 14: 42.1 Forcible rape
R.S. 14:43 Simple rape
R.S. 14:43.1 Sexual battery
R.S.14: 43.2 Second degree sexual battery
R.S. 14: 43.5 Intentional exposure to AIDS
R.S. 14: 44 Aggravated kidnapping
R.S. 14: 44.1 Second degree kidnapping
R.S. 14:46.2 Human trafficking
R.S.14:46.3 Trafficking of children for sexual purposes
R.S.14:51 Aggravated arson
R.S. 14:62.8 Home invasion
R.S. 14:64 Armed robbery
R.S. 14:64.4 Second degree robbery
R.S. 14: 64.3 Armed robbery-use of firearm

R.S. 14:64.2 Carjacking

R.S. 14:78.1 Aggravated incest

R.S. 14:93.2.3 Second degree cruelty to a juvenile

R.S.14:128.1 Terrorism

All other offenses delineated in R.S. 14:2(B) would be considered a crime of violence for purposes of release date calculation under the provisions dealing with crimes of violence only if the District Attorney decides they should be and due notice given.

Issues relating to problem solving courts

Problem solving courts are specialized courts or divisions of court that deal with cases of a specialized type and that treat populations of offenders with special needs. Such courts have proven highly effective when the design is faithfully executed. The best examples are the Drug Courts operating under the Supreme Court of Louisiana's Drug Court Program. Generally speaking, Louisiana currently has four types of problem solving courts: Drug Courts, Sobriety Courts (a subspecies of Drug Court), Mental Health Courts, and Reentry Courts. During the 2014 Term, the Commission was asked to examine the eligibility requirements for participation in the Drug Court, the expansion of Reentry Courts to additional Judicial Districts, and the possibility of Veterans' Courts.

Issue 1- Louisiana law currently prohibits persons having prior convictions for the violation of a statute delineated in R.S. 14:2(B), Crimes of Violence or currently accused of a crime of domestic violence.

Response 1- The Release Mechanisms committee in conjunction with the Louisiana Supreme Court's Drug Court Program studied the issue of eligibility for Drug Court. The workgroup found that some persons with previous convictions for a Crime of Violence may be a good candidate for participation in Drug Court depending on the current status of the defendant and the nature of the prior criminal record. Since the District Attorney serves as the "gate keeper" for admission into Drug Court, the workgroup concluded that adequate safeguards were in place to ensure that inappropriate defendants would not be referred to the

program. Further, the Court must agree to any applicant after the prosecutor makes the initial recommendation.

Result 1-The Commission accepted the report of the Committee and recommended that consideration be given to revising the Drug Court statute, R.S. 13:5304, to delete the prohibition against placing offenders with prior felony convictions for crimes listed in R.S. 14:2(B) into a drug court program; further to permit offenders charged with domestic violence to be considered for Drug Court participation, providing all of this remains subject to the district attorney's gatekeeping role.

Issue 2-Reentry Courts are currently authorized for the Orleans Criminal District Court, the 22nd Judicial District Court, the 19th Judicial District Court, and the 11th Judicial District Court. The reason for limiting the courts authorized to operate a reentry court is the limit on available resources to faithfully execute the program. The reentry court program was first set up in Orleans Parish. The program involves the partnership between the judge in the authorized JDC and Department of Corrections. It is an intense program wherein, in cases in which a young offender is currently charged with a non-violent crime, but displays risk factors strongly associated with repeat offending, the judge sentences the offender to a term at the department of corrections with a specification of reentry court. The offender is placed into a very intense prison based program located at Angola wherein the offender receives both education and job skills training along with social mentoring and behavioral modification. At the time the Department of Corrections determines that the offender is ready to return to society on an intensive parole program with treatment, the court resentences the offender to intensive parole supervision. Upon reentry into the community the court maintains frequent contact with the offender, remaining involved in job placement, reentry programming, appropriate specialized treatment as appropriate, etc. Thus far, the reentry courts operating in Louisiana have been successful in reducing recidivism and lowering the costs associated with longer terms of imprisonment.

Response 2-The Release Mechanisms Committee took up the task of examining the issue of expanding the authorization of reentry courts to additional jurisdictions. Given the success of the program, the only real question was whether or not the Department of Corrections had the resources available to accommodate the expansion and still faithfully execute the program.

Result 2-The Commission accepted the report of the Committee and recommended the expansion of authorization for reentry courts in the following courts which had indicated an interest and a commitment to faithfully implement the program:

24th Judicial District Court

15th Judicial District Court

Issue 3-Veterans' Courts have been gaining in popularity in the United States, as their effectiveness has become proven. Veterans who enter the criminal justice system are a special population due to the various issues experienced by them related to their military service that differentiates them as a group from other offenders. These special Courts assist veterans charged with non-violent crimes who are struggling with addiction, mental illness or co-occurring disorders and come in contact with the criminal justice system. In much the same way as with Drug Courts, participants come before judges on a regular basis, receive support and guidance from veteran mentors, are supervised by specialized probation officers and receive treatment and support from the Veterans Administration to address underlying problems often caused by post-traumatic stress disorders.

Response 3-The Release Mechanisms Committee working with the Louisiana Department of Veterans' Affairs studied this issue in great detail. By identifying veterans early in the criminal justice process, it is possible to draw upon the resources of the Veterans' Administration to provide necessary services at little or no cost to the state. The structure of the program and the presence of mentors who are themselves veterans are keys to making a positive change in the lives of our returning veterans who have come into contact with the criminal justice system. The Committee, then, recommended the authorization of Veterans Courts on a voluntary basis statewide.

The Result3-The Commission recommends consideration of the creation of a Veteran's Court Program Treatment Act, which will permit a Veteran's Treatment Court Program in Louisiana trial courts. The program would follow the model of the Drug Court Program currently in statute, with additional provisions tailored to interfacing with the Veteran's Administration. The district attorney should remain the role of gatekeeper.

Issues relating to strengthening the Parole Committee

During the 2014 Term the Commission was requested to review possible adjustments to the Parole Committee necessary for the Committee to expand its use of best practices in parole decision making by becoming certified by the American Correctional Association.

Issue-The American Correctional Association has issued best practices and standards for the operation of Parole Boards in order to improve the parole process. If a state adopts these standards, it can apply for American Correctional Association certification. Such certification represents the highest standards of parole board operations.

Issue-Louisiana has made great strides in the improvement of the parole process in the past three years. The Parole Committee would like to attain American Correctional Association certification, recognizing it as among the nation's best.

Response-The Release Mechanisms Committee worked with the Parole Committee and the Department of Corrections in identifying the changes necessary to the statutory structure of the parole process in Louisiana to meet the certification requirements of the American Correctional Association.

Result-The Commission adopted the report of the committee and recommends consideration of the following changes to the statutes governing the Parole Committee:

- Staggered terms for Parole Committee members ensuring a level of continuity for the process;
- Requiring each member, not holding office ex officio, to possess at least a bachelor's degree from an accredited college or university or an equivalent level of education;
- Training required of voting members of the Parole Committee should be developed in compliance with the guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association;
- The topics covered in training should include an emphasis on
 - Data driven decision making

- Evidence based practices
- Stakeholder collaboration
- Recidivism reduction
- Provide for the modification of conditions for parole from any disciplinary action to a major disciplinary offense;
- Address prerelease programming.

Issues related to parole

Issue 1-Currently, eligibility for parole is determined on the entirety of an offender's record of criminal conviction, without regard to when the convictions occurred.

Response 1-The Release Mechanisms Committee examined the impact on the system of allowing parole eligibility for persons convicted multiple times, but where those convictions are significantly in the past to warrant an examination of the offender for the possibility of release. The Committee adopted a cautious approach to this issue, deciding to utilize the cleansing period currently in place under the use of the habitual offender statute (R.S. 15:529.1) as that standard is already accepted as drawing the temporal line of what may be considered in judging a defendant to be an habitual offender requiring additional incarceration.

Result 1-The Commission adopted the report of the Committee and recommends consideration of a parole cleansing period that would allow third and subsequent offenders under the current method of calculation method, if otherwise eligible for Parole, be considered second offenders provided:

If the offender has completed the full term of the sentenced imposed for the prior offense and more than ten years has elapsed between that offense and the date of commission of the next offense, the prior offense would not be used in calculating prior record for purposes of parole consideration.

Issue 2-The Commission was requested to examine ways to improve the granting of medical parole.

Response 2-The Release Mechanisms committee in conjunction with the medical services program of the Department of Corrections examined the issue of medical

parole. Generally, a major problem in medical parole was placing medical staff in the position of making security and public safety decisions in addition to the medical decisions. The committee decided to recommend that the medical staff only be asked to make medical decisions, leaving the public safety and security considerations to the secretary. Further, the medical decisions should be made more precise by adopting the definitions currently in use by the Social Security Administration, which utilizes very specific objective criteria. Only once the medical and security decisions have been made will the case be referred to the Parole Committee for consideration in the line with the normal parole process, including providing for the victim and the District Attorney to make presentation relative to the case before any decision is made. It was also decided that the District Attorney when provided notice of a Medical Parole hearing, be advised as to the precise medical condition, and criteria used to determine the qualifying referral for Medical Parole consideration.

Result 2-The Commission adopted the committee report and recommended consideration of the following revisions to the existing Medical Parole procedure:

- Current: Current Louisiana Law Regarding Medical Parole Granted by Parole Board (1990)

DOC must refer the offender to the Parole Board, but may not refer an offender who is awaiting execution, has a contagious disease, or is serving time for first or second degree murder.

An offender is eligible for medical parole if DOC determines that because of an existing medical or physical condition the offender is: so permanently and irreversibly physically incapacitated such that he does not constitute a danger to himself or to society; or is irreversibly terminally ill, and because of his condition he does not constitute a danger to himself or to society.

- Consider revising the Governing Medical Criteria regarding consideration for Medical Parole by:

- Revise the Definitions of “permanently incapacitated” and terminally ill inmate” to better medically define incapacitation and reduced life expectancy by adopting a uniform and specific standard;
- Statutorily reallocate the determination of the risk to public safety to the Secretary of Corrections for recommendation and the Parole Committee for determination after a hearing rather than the Medical Professional.
- Limit the prohibition on infectious diseases for inmates who are otherwise eligible for medical parole consideration to only those which are “actively infectious”.
- Parole is for the remainder of the offender’s sentence, and supervision consists of medical evaluations at intervals determined by the Parole Board.
- Continuation on Medical Parole status should be conditional on the defendant’s medical situation;
- Existing statutory prohibitions against Medical Parole relative to murder should remain in place.

The net effect of these recommendations should be to reduce the costs currently borne by the state for infirm inmates by shifting the financial responsibility to Medicaid or other funding source, in a manner consistent with public safety and security.

Issues relating to pretrial release

Issue-During the 2013 Term the Commission recommended a complex revision to the statutes dealing with bail and bond for pretrial release in response to issues with the existing system from the field. This work has been referred to the Louisiana Law Institute for further consideration. In the 2014 Term, the Commission was requested to review the narrow issue of a statute authorizing local jurisdictions in the state permitting a cash bond option to commercial bail bonds. The issue was raised by a few jurisdictions that have experienced significant difficulty in collecting on forfeited commercial bail bonds. The issue does not arise in most of the state, but where it occurs it creates significant difficulty for the local criminal justice system.

Response-The Release Mechanisms committee undertook the examination of this issue and allowed for commercial surety industry representation. A cash deposit bail system has been successfully implemented in St. Charles and St. John Parishes. Other parishes have, experiencing difficulty with the commercial bail process have expressed serious interest in such a system to resolve particular local issues. Parishes which have successfully maintained a commercial surety system should not be affected since the cash deposit bail system requires significant effort on the part of the jurisdiction. The Committee recommended a permissive authorization requiring the concurrence of the criminal justice system agencies primarily affected, and modeled after the system currently in place in two parishes.

The Result-The Commission adopted the committees report and recommends consideration of a permissive cash deposit bail system that can be adopted for those jurisdictions experiences serious issues in this area. Any such permissive statute, if adopted, should require the concurrence of the criminal justice agencies primarily affected. The Commission also recognizes the need for and benefits of a robust commercial surety system, and offers this recommendation as a solution for those areas of the state where the commercial system is insufficient or problematic. As the recommendation contemplates consideration of a permissive system, it only provides an option for local jurisdictions, so that it is available to them if they need and choose to utilize it.

Issues related to notice in cases of appeal

Issue-During previous terms the Commission worked with the Louisiana Supreme Court in the development of a written, uniform sentencing order. In the process of this work, it became apparent that the Clerk of the District Court was not receiving notice of a decree by an appellate court affecting a sentence or sentence calculation.

Response-The Front End Committee, working with the Clerks of Court Association and the Louisiana Supreme Court, discussed the need for notification of the District Court Clerks in those cases where a decree is issued changing the sentence or sentence calculation. The Committee recommended that a provision be added to existing law that would require the clerk of a court of appeal to provide notice to the Clerk of the District Court under such circumstances.

Result- The Commission adopted the report of the committee and recommends consideration of modifying C.Cr.P. art. 923 to require the Clerk of a Court of Appeal to notify the Clerk of the District Court and the Department of Corrections of a decree affecting a sentence or sentence calculation.

Future Directions

The Louisiana Sentencing Commission will begin work on its 2015 term at its meeting in March 2014. The major issue areas that are under consideration include: Problem Solving Courts (specialized courts that work within the framework of the trial court, such as Drug Courts, Re-Entry Courts, Veterans Courts, Mental Health Courts), evidence-based sentencing, education and its relationship to recidivism, mental health and its relationship to recidivism, re-entry programming, effective use of correctional and community resources, and the development of information sources to better inform public policy discussions relative to criminal justice and sentencing. The Louisiana Sentencing Commission remains committed to the development of data driven recommendations and the use of “best practices” as they apply to the Louisiana criminal justice system.

APPENDIX A

Report on Home Incarceration

**Response to HCR 113
2012 Regular Session**

Louisiana Sentencing Commission

April 6, 2013

**Honorable Ricky Babin, Chairman
District Attorney, 23rd Judicial District**

Contact: Carle L. Jackson

Louisiana Commission on Law Enforcement

225.342.1729

Summary and Findings

HCR 113 of the 2012 Regular Session directed the Louisiana Sentencing Commission to “study the feasibility of requiring an offender to serve his term of imprisonment through home incarceration with the use of electronic monitoring.” This report is submitted to fulfill of this legislative mandate.

The question posed in the resolution raises two distinct issues. First, is there a population of offenders who would benefit from a sentence to home incarceration with electronic monitoring? The Commission believes the answer to this question is yes in at least two instances which are detailed below. The second issues are whether the technology is available in the state, and are the services delivered in a consistent manner that ensures the protection of the public and the reduction of costs. The Commission believes additional data and study is required to answer this question. The details are provided below.

Is there a population of offenders who would benefit from a sentence to home incarceration with electronic monitoring?

First, certain offenders may be good candidates for such a program, namely those sentenced to imprisonment for a fixed term of years, who were not convicted of a crime of violence as defined in R.S. 14:2 (B) or a sex crime as defined in R.S. 15:541, and have low risk scores on the validated risk assessment instrument used by the Louisiana Department of Corrections,. In order to select those good candidates the partners in the criminal justice system will need to develop an appropriate screening process. The District Attorney is a significant participant in the both the design and execution of any screening process. Second, certain offenders under probation or parole supervision may also be good candidates for this program, namely those who are in danger of recidivism due to their failure to follow conditions of their home incarceration.

Home incarceration is an isolation and supervision tool that is appropriate for use with certain offender. Before making any specific recommendations, the Commission needs to study the issue of appropriate populations and proper mechanisms for the application of home incarceration to those populations, in order to assure the appropriate use of home

incarceration by producing cost effective supervision and behavior modification and reducing the cost of incarceration.

The second issues are whether the technology is available in the state, and are the services delivered in a consistent manner that ensures the protection of the public and the reduction of costs.

The Commission began consideration of this issue by asking three questions:

- 1) What is available in terms of home incarceration in Louisiana?
- 2) How is it used? and
- 3) What are the results?

During the 2011 Regular Session, C.Cr.P. Art. 894.2 (B) was enacted to require persons providing home incarceration services to report to the Louisiana Department of Corrections. The Department of Corrections established the data collection process and all courts and as many vendors as could be identified were properly notified of the requirement and the method to comply. The compliance levels were less than expected, so second notices were issued. Some improvement in compliance was observed; however, the data remains inadequate to support substantive recommendations at this time. From the data submitted, the Commission determined that a wide variety of services are available from a number of service providers; however, the variability of the types of service provided and technology employed and the Commission's inability to compel the production of records presents serious impediments to the collection and analysis of data under the provision of C.Cr.P. Art. 894.2 (B).

The Louisiana Sentencing Commission has examined the results of that data collection effort and makes the following findings:

1. Need to strengthen the data reporting mechanism: After a full year of data collection, few of the home incarceration providers have provided the required information. The Commission should study and make recommendations to improve data collection by attaching meaningful consequences for failure to report.
2. Need to develop basic standards for home incarceration based on best practices and the experiences of other southern states: What the limited data does reveal is that while home incarceration is used in Louisiana; it is currently subject to no statewide structure or standards. The Commission should study the best practices in home

incarceration and examine its utilization in other southern states to develop a set of basic standards that will encourage both uniformity and adequacy of service. It is premature to move beyond basic standards at this time as the data necessary to support more robust standards does not currently exist. The creation of basic structural and procedural standards that allow for necessary local variation, while providing an appropriate level of structure will provide dramatic improvements.

3. Additional study is required before developing recommendations that incorporate home incarceration as a statewide alternative. At the present time, the Commission does not have adequate data to determine the particular offenders that home incarceration is effective and appropriate for. While general populations can be identified at a theoretical level, the Commission needs more and better data to develop greater specificity as to the target populations and appropriate procedures to identify particular offenders for home incarceration and for which type of home incarceration.
4. The Commission should perform this work and submit a report and recommended standards to the Legislature and the Governor prior to the 2014 Regular Session.

The report details the results of the data available to the Commission at this time.

Louisiana Sentencing Commission

House Concurrent Resolution No. 113

The Louisiana Sentencing Commission was directed by House Concurrent Resolution No. 113 of the 2012 Regular Session to study the feasibility of requiring an offender to serve his term of imprisonment through home incarceration with the use of electronic monitoring and to report its findings to the legislature prior to the convening of the 2013 Regular Session of the Legislature of Louisiana.

Before the Commission could determine what legislative amendments were required, data was needed to assess the use of home incarceration services and/or electronic monitoring in the State of Louisiana in order to develop appropriate recommendations.

The Sentencing Commission discussions identified that there were issues with home incarceration regulations that needed to be addressed which included:

- There is an unknown number of providers for home incarceration supervision, electronic monitoring services, or both;
- There are no standards and no governing body regulating the providers of home incarceration supervision and/or electronic monitoring services;
- The number of offenders on home incarceration supervision and/or electronic monitoring was unknown unless they were on supervision with the Department of Public Safety and Corrections' Division of Probation and Parole (many offenders were not on supervised probation);
- Often the Department did not know the offender was on home incarceration supervision or electronic monitoring until they were revoked to the custody of the Department;
- The completion rate for those on home incarceration supervision or electronic monitoring was unknown;
- Fees for services provided were unknown and needed to be regulated for similar services.

As a result of those discussions, Act No. 168 of the 2011 Regular Session amended C.C.R.P. Art. 894.2 and requires providers of home incarceration supervision or electronic monitoring services to submit information electronically to the Department of Public Safety and Corrections on each client who receives such services as the result of a conviction on or after August 15, 2011. In response, the Department of Public Safety and Corrections created a web based database and provided access to the providers of home incarceration supervision and electronic monitoring services in Louisiana. This report includes data submitted by providers and was compiled for review by the Louisiana Sentencing Commission. After review, the Commission has determined that further action is needed. The information compiled is now submitted to the Louisiana Sentencing Commission for study, evaluation, and further action as needed.

In November 2011, a survey was compiled and distributed to providers thought to be offering services to Louisiana defendants. A database was set up by the Department of Public Safety and Corrections to compile data submitted by providers. Based on survey responses, a letter was sent to providers in December 2011 instructing them on how to access the database.

In April 2012, an issue arose regarding confidentiality of the client's information. Providers were concerned with their competitor's ability to access client information and possibly solicit business away from them. As a result, database access was amended to require providers to have a user name and password. With password restricted access, a provider can now only access their own client list. Additional correspondence was sent to judges on January 17, 2013, reminding them of Act No. 168 of the 2011 Regular Session and advising them that providers not listed on the Department of Public Safety and Corrections webpage shall not be utilized as they were not providing data for this project in accordance with the Act.

The data collected includes information submitted by 18 Providers and represents 3,107 entries made on clients who received Home Incarceration Supervision and/or Electronic Monitoring Services between August 15, 2011 and March 31, 2013. There are currently 929 cases currently being supervised and 2,178 closed cases reported within the specified time period.

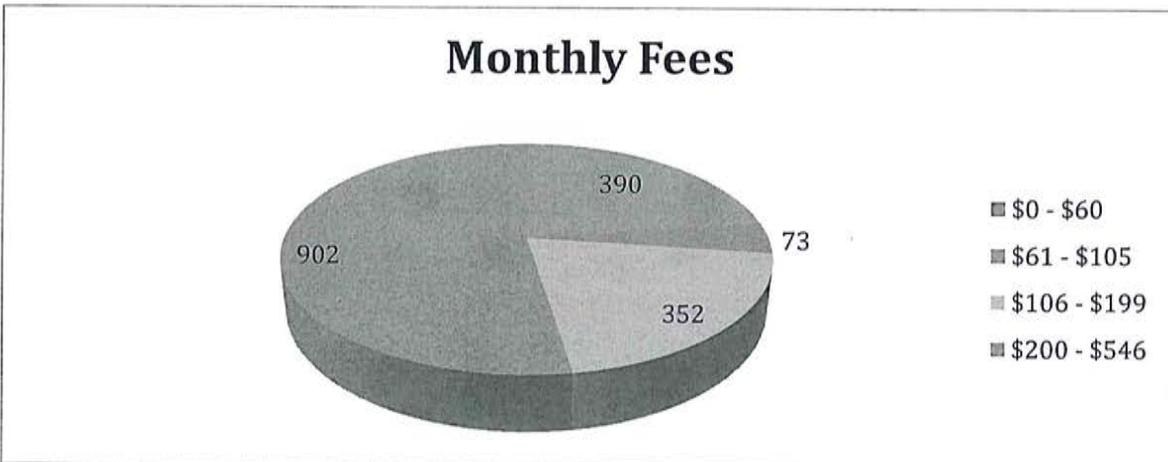
The data provided below is a compilation of the numbers as reported directly from the providers. The Commission has not undertaken the daunting task of verifying these numbers and the Commission makes no representation as to the validity of the reported information.

A breakdown of the data submitted and reviewed provides the following results:

- Number of providers 18
- Average number of offenders per provider 173
- Average set up fee \$53
- Average monthly cost per offender \$220
- Average number of days on supervision 206
- Average age of offender supervised 36.4 years

Number of offenders paying monthly fees by category:

- \$0 - \$60 per month 390
- \$61 - \$105 per month 73
- \$106 - \$199 per month 352
- \$200 - \$546 per month 902
- Monthly fee information not provided 1390
- TOTAL 3,107

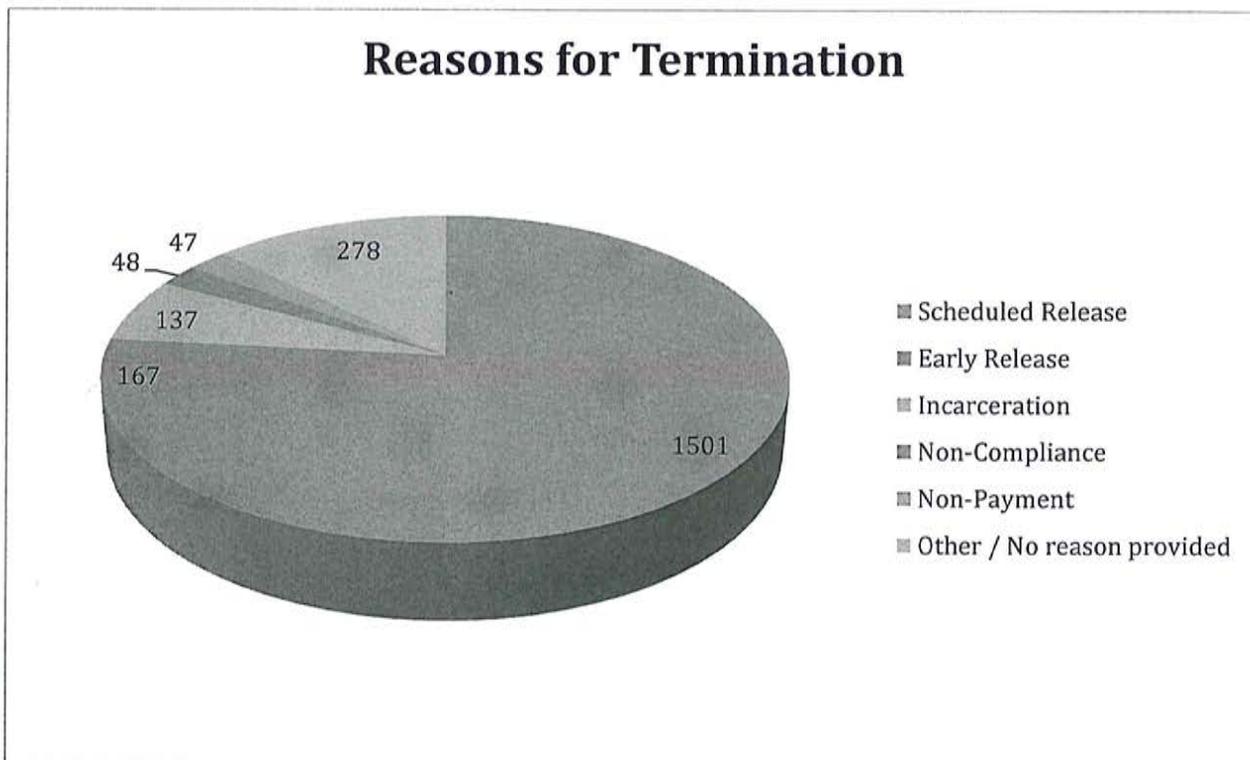


Number of offenders by type of monitoring:

• Home Incarceration Supervision	481
• Electronic Monitoring	1,162
• Other/ Not specified	1,464
TOTAL	3,107

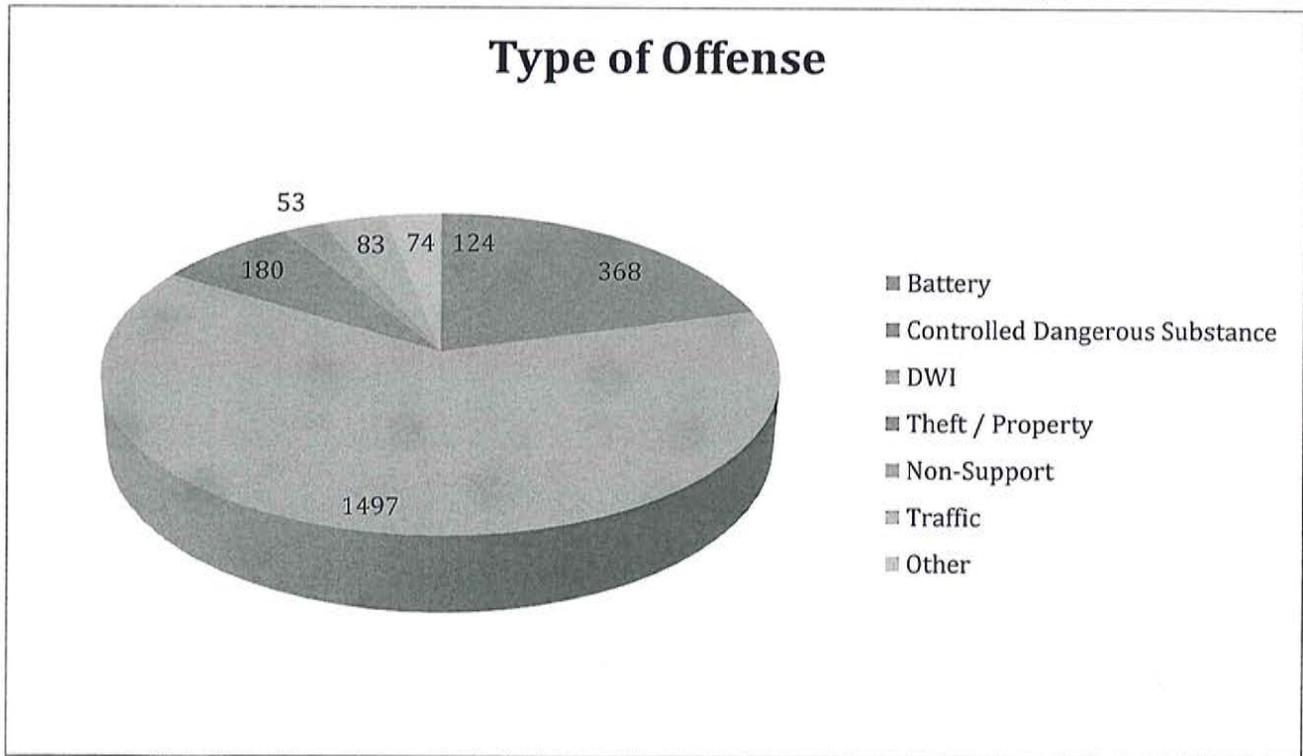
Reasons for termination:

• Scheduled Release:	1501
• Early Release:	167
• Incarceration:	137
• Non-Compliance:	48
• Non-Payment:	47
• Other / No reason stated	278
TOTAL	2,178



General Breakdown by Offense Types:

• Battery	109
• Controlled Dangerous Substance	364
• Drug Court Violations	4
• Disturbing the Peace	15
• Operating a vehicle while intoxicated	1497
• Felon in possession of firearm	3
• Harassment / Stalking	4
• Municipal Violations	13
• Negligent Homicide	3
• Non-support	53
• Sexual related offense	42
• Theft / Property Crimes	180
• Traffic	83
• Underage Drinking	2
• Information not provided	735
TOTAL	3,107



Providers in compliance with Act 168 as of March 31, 2013:

- 23rd Judicial District
- AIM
- Alternative Sentencing Solutions
- ATI, Inc (Alternatives to Incarceration)
- Criminal Justice Services – Baton Rouge
- Criminal Justice Services – South
- ETOH Monitoring
- Gretna PD Home Incarceration Program
- Jefferson Davis Sheriff's Office
- Lafayette Parish Sheriff's Office GPS Offender Tracking Program
- Lafourche Parish Sheriff's Office
- Louisiana Home Detention Services
- Ouachita Parish Sheriff's Office
- Sentinel Offender Services, LLC
- ShadowTrack Technologies, Inc.
- St. Landry Parish Sheriff's Office
- Superior Interlock Services
- TEEM Electronic Monitoring

An Ancillary Issue:

In the course of preparing this resolution, the commission encountered an additional issue with the language of the Home Incarceration statute. La. C.Cr.P. art. 894.2¹ is ambiguous as to whether Home Incarceration is a form of probation

¹ La. C.Cr.P. art. 894.2 – Home Incarceration; requirements

A. Notwithstanding any other provision of law to the contrary, a defendant may be placed on home incarceration under the following conditions:

(1) The defendant is eligible for probation or was convicted of a misdemeanor or a felony punishable with or without hard labor.

(2) In felony cases, either:

(a) The **Department of Public Safety and Corrections**, through the division of probation and parole, recommends home incarceration of the defendant and specific conditions of that home incarceration; or

(b) The **district attorney** recommends home incarceration.

(3) The court determines, after a **contradictory hearing**, that home incarceration of the defendant is **more suitable than imprisonment** or supervised probation without home incarceration and would serve the best

or an alternative to actual incarceration. The relevance of the distinction is evident in the context of sentencing provisions that prohibit parole or probation for a portion of the sentence. By way of illustration, La. C.Cr.P. art. 894.2 provides that a defendant convicted of a felony punishable with or without hard labor may be sentenced to home incarceration, provided that (1) either the District Attorney or Probation and Parole recommends home incarceration; and (2) the Court, after contradictory hearing, finds home incarceration more suitable than imprisonment. La. R.S. 14:98(D)² mandates that a DWI third offender serve the first year of his sentence without benefit of probation, parole, or suspension of sentence.

When read together, the ambiguity of La. C.Cr.P. 894.2 leaves unanswered the question of whether a DWI third offender may be sentenced to home incarceration as an alternative to actual incarceration, or if home incarceration is prohibited as a form of probation.

interests of justice. The court may order home incarceration either **in lieu of**, or in addition to, a term of **imprisonment**. When the court sentences a defendant, it may order the defendant to serve any portion of the sentence under home incarceration.

² La. R.S. 14:98(D). Operating a vehicle while intoxicated [3rd offense]

D. (1)(a) On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two thousand dollars. One year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment. If any portion of the sentence is suspended, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of time equal to the remainder of the sentence of imprisonment, which probation shall commence on the day after the offender's release from custody.

**HOUSE CONCURRENT RESOLUTION NO. 113
BY REPRESENTATIVE HARRISON
A CONCURRENT RESOLUTION**

To direct the Louisiana Sentencing Commission to study the feasibility of requiring an offender to serve his term of imprisonment through home incarceration with the use of electronic monitoring and to report its findings to the legislature prior to the convening of the 2013 Regular Session of the Legislature of Louisiana.

WHEREAS, according to a study by the PEW Center on the States, Louisiana has the highest incarceration rate in the United States; and

WHEREAS, with this high incarceration rate comes a high monetary cost that is borne by the taxpayers in Louisiana; and

WHEREAS, the mission of the Department of Public Safety and Corrections, corrections services, is to enhance public safety through the safe and secure incarceration of offenders, effective probation and parole supervision, and proven rehabilitative strategies that successfully reintegrate offenders into society, as well as assisting individuals and communities victimized by crime; and

WHEREAS, successful offender reentry and reintegration into the community is a matter of critical importance to the public's safety, but reentry is often unsuccessful due to the barriers offenders face including a lack of access to family and community support; and

WHEREAS, the ability of offenders to obtain employment and become productive members of their communities is essential to reducing recidivism rates and home incarceration with the option of electronic monitoring will allow the offender to successfully reenter society by maintaining ties to his family and community and offering him an opportunity to obtain employment; and

WHEREAS, home incarceration and electronic monitoring encourage successful offender reentry, which may serve to reduce crime and the number of crime victims, and ultimately ensure opportunities for safer communities; and

WHEREAS, home incarceration and electronic monitoring may also result in significant savings to state and local criminal justice systems; and

WHEREAS, it is necessary to research, study, and consider a number of factors before implementing mandatory home incarceration and electronic monitoring in lieu of traditional imprisonment, and those factors include but are not limited to determinations made with regard to the type of offender who may be ordered to serve his sentence through home incarceration, the cost and feasibility of implementing such a system, the impact on the Department of Public Safety and Corrections, sheriffs, local governing authorities, and the taxpayers of this state, and the potential impact of home incarceration on recidivism and an offender's ability to successfully reenter society.

THEREFORE, BE IT RESOLVED THAT the Louisiana Legislature does hereby direct the Louisiana Sentencing Commission to study the feasibility of requiring an offender to serve his term of imprisonment through home incarceration with the use of electronic monitoring and to report its findings to the legislature prior to the convening of the 2013 Regular Session of the Legislature of Louisiana.

APPENDIX B

Report on Court Costs and Fees

TEAM ONE FINAL REPORT
Louisiana Sentencing Commission
Front End Committee
Fines, Fees, and Court Costs
July 8, 2013

Team One Members

Jason Ard, Livingston Sheriff
Frank J Borne Jr, Jefferson Parish Clerk of Court
Mark Dumaine, 19th JDA (EBR) (Co-chair)
Darcy Griffin, Jefferson Parish Clerk of Court
Julie Kilborn, LPDB (Co-chair)
Hon. Ellen Shirer Kovach, 24th JDC
Hon. John J. Molaison, Jr., 24th JDC
Ronald Morse, Livingston Sheriff
Hon. William Morvant, 19th JDC
Gary Parker, Caddo Sheriff
Hon. Jimmie C Peters, La. 3rd Circuit Court of Appeal
Hon. J. Christopher Peters, 28th JDC
Debbie Rutledge, DOC
Carla Smith, Orleans Criminal Court
Elisa Stephens, 19th JDC
Keith Wilson, DOC

Executive Summary

Team One was chartered with examining four (4) potential areas for improvement in the collection of fines, fees, and costs by the courts. Their primary recommendation, after surveying fines, fees, and costs collection processes around the state, is that the Supreme Court, through its Judicial Council, should adopt and maintain a unified fines, fees, and costs database to serve as a common reference point for all courts. A secondary recommendation is that each district court should begin to examine ways to implement systems to assess collection rates as a function of the amount assessed of each individual defendant versus the amount collected from each individual defendant.

Team One Objectives

1. How are criminal fines, fees, and court costs collected and what is a successful collection rate?
2. What is the impact of criminal fines, fees, and court costs for successful probation/parole?
3. What are some system benefits achieved by eliminating, reducing, or unifying fines, fees, and court costs?
4. What are the needs for draft legislation?

Team One Recommendations

1. How are criminal fines, fees, and court costs collected and what is a successful collection rate?

Team One surveyed the collection processes of district courts and municipal courts. The actual collection process deviates significantly from parish to parish, although in most district courts, the actual payment of fines, fees, and court costs is received by the Sheriff and distributed to the many agencies by the Sheriff. This process is in conformance with R.S. 13:848.1 (2011):

The sheriff, clerk, marshal, or other agency or office whose duties include receiving court fines, fees, costs, assessments, and forfeitures for courts within their jurisdictions shall disburse all sums due on a monthly basis and shall provide an itemized detail of the sources of the sums.

As far as Team One could determine, no court system was able to report a "collection rate." The parish perhaps closest to achieving this goal may be Jefferson Parish where a collection office has been established. See <http://www.24jdc.us/collections.asp>. Some of the barriers to determining court collection rates are the lack of available information concerning the assessment of fines and fees actually imposed upon defendants. While some district courts can report what they have actually collected, few can account for collections at the level of the individual defendant. No court appears to measure what is actually collected against what was originally assessed.

TEAM ONE RECOMMENDATION: District Courts should each begin to develop systems that capture not only the actual amount of fines and costs collected from each defendant, but also the original amount assessed for each defendant. This would enable each court to develop an actual rate of collection and track improvements in this rate over time. No legislation is required to enact this recommendation.

2. What is the impact of criminal fines, fees, and court costs on successful probation/parole?

Keith Wilson, DOC/Probation and Parole, surveyed 21 Probation and Parole offices around the State to develop the attached spreadsheet. (Attachment 1). There appears to be little consistency in collection methodology by the offices and little concern expressed in this survey that this lack of consistency is affecting collection rates. Essentially judges and probation officers address a defendant's inability to pay on a case-by-case basis, terminating parole or probation supervision when, under the facts the case,

the defendant has shown a good faith effort to pay any costs owed or extending supervision when, in the opinion of the court, the defendant requires additional time to pay his court ordered costs.

TEAM ONE RECOMMENDATION: No conclusion can be drawn for the survey of court collection practices as impacting on probation and parole supervision, other than the courts seem satisfied with current practices.

3. What are some system benefits achieved by eliminating, reduction, or unifying fines, fees, and court costs?

Team One members collected fines and fees schedules and assessment forms from a variety of district and municipal courts. The variances between these forms have lead to Team One's recommendation to unify all state statute fines, fees, and costs in one place. At this point in time, there is no one place for a court administrator, clerk, or other person, including a citizen, to see what the legislature and the courts have authorized for collection. The absence of a single point of reference multiplies the work required by each court to develop and maintain its own system for the assessment of fines and fees. Team One was able to gather all known statutory fines, fees, and costs into a prototype web-based ("Goggle") database that could be maintained, exported, and imported by any user. (Attachment 2) Such a database could serve as a much needed point of reference by all courts. Team One did review the 275 statutes to assess the relatedness of each statute to funding court processes and determined that this tool could be used in such a fashion. Team One, however, did not believe that this team was the appropriate body to make formal recommendations concerning 'relatedness' when there is a Judicial Committee chartered to do such that would likely have its own recommendations. See R.S. 13:62 and the Judicial Council General Guidelines of the Standing Committee to Evaluate Requests for Court Costs and Fees. (http://www.lasc.org/la_judicial_entities/Judicial_Council/CourtCostGuidelines.pdf).

TEAM ONE RECOMMENDATION: The Judicial Council should adopt and maintain a single point of reference database of statutory fines, fees, and costs for use by all of the courts in the state. A similar example can be found at the website of the North Carolina Supreme Court at www.nccourts.org/Courts/Trial/Costs/Default.asp. Team One also noted that the Louisiana Supreme Court has exercised judicial supervision over fines, fees, and costs in at least two noteworthy decisions. In *Safety Net v. Segura*, 692 So.2d 1038, 96-1978 (La. 4/8/97), the Court held that a fee imposed on criminal proceedings to fund a family violence shelter was an unconstitutional tax as it was unrelated to the administration of justice. Also, in *State v. Lanclos*, 980 So.2d 643, 07-0082 (La. 4/8/08) the Court held that a traffic fee assessed for the benefit of the Greater New Orleans Expressway Commission was unconstitutional as "police salaries [and equipment are] too far attenuated from the 'administration of justice.'" *Id.* at 654.

4. What are the needs for draft legislation?

Team One did not identify any needs for draft legislation, given the cases and statutes referenced above.

Attachments

1. P&P survey of fees, fines, court costs
2. Prototype database of statutory fees, fines, and court costs.

P&P District	Parishes	Fees, Fines, Court Costs *	Collection	Collection Failures
Alexandria	Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides	fines, court costs, Indigent Defender Board, supervision fees, restitution, Crime Stoppers, LCLE, cost of prosecution	Rapides: IDB, court costs, and fines collected by SO. Supervision fees, LCLE and restitution by ALD. Avoyelles and Grant: All collected by ALD. LaSalle: court costs, fines, and restitution collected by SO. Supervision fees and LCLE collected by ALD. Catahoula and Concordia: Restitution collected by DA's Office. Fines and court costs collected by SO. Indigent Defender Board collects their fine. ALD collects supervision fees and LCLE.	Cases are allowed to expire with money owed in Rapides, Avoyelles, Catahoula, and Concordia. In LaSalle and Grant, cases are not allowed to expire with money owed. Restitution arrearages addressed with Court prior to expiration of case.
Amite	Livingston, St. Helena, Tangipahoa	fines, court costs, restitution, DARE fees, lab cleanup fees for SO, DA's victim's advocate, extradition fees, other DA fees, transcription fee for court reporter	AMD collects processing fees, supervision fees, restitution, and PSI fees. All other monies collected by the DA's Office or Sheriff's Office.	Each Judge decides on a case by case basis whether to hold the offender accountable for amount owed. Some revoke, others allow to expire, extend probation, use community service work, and other creative ways to address the non-payments. Some use 6 month reviews to stay on top of it.
Baton Rouge	East Baton Rouge (with exceptions)	court costs, supervision fees, restitution, Judicial Expense Fund, LCLE, Office of Public Defender, Victim's Reparation Fund, Extradition Fund, DA's Office fine for cost of prosecution, Chemical Breath Test fee	BRD collects all monies owed and disburses it to the various entities. Only several sections of court require return dates to pay fines, fees, and court costs in person.	Court will extend probation to grant extra time to pay fines, fees, restitution, and court costs or terminate unsat. They will only revoke (infrequently) for failure to pay restitution. Review hearings used to monitor payments throughout period of supervision.

Covington	St. Tammany, Washington	Judicial Expense Fund, D.E.E.P./LCLE fines, Public Defender Fund fine, St. Tammany Crime Lab fee, restitution, supervision fees, court costs	CVD collects the Judicial Expense Fund fine, the D.E.E.P./LCLE fines, restitution, supervision fees, and court costs/fines for Washington Parish. The Public Defender's Office collects its fine and the St. Tammany Parish Sheriff's Office collects their fines and court costs	Courts do allow cases to expire owing fines/fees.
Donaldsonville	Ascension, Assumption, St. James, St. John the Baptist	SO fine, court costs, indigent defender's fee, Louisiana Commission on Law Enforcement fine, restitution, supervision fees	DVD only collects supervision fees, restitution (Ascension, Assumption, St. James), and the LCLE fine (Ascension). SO in each parish collects SO fines. St. John the Baptist DA's Office collects restitution.	In St. John the Baptist, some judges hold monthly proof of payment hearings are held and those cases are not allowed to expire with money owed. Others allow cases to expire with money owed. The IDB has petitioned the Parole Board requesting unpaid fees. For other parishes, judges have allowed cases to close with money owed. It is up to the individual SOs to be diligent in collecting their fines.
East Jefferson	Jefferson (portion)	Collections Court	Collections Court	Collections Court
Feliciano	East Feliciano, West Feliciano	supervision fees, fines, court costs, IDB, SO narcotic's fund, off duty officer subpoenaed fee, restitution.	WBRD collects all monies which is sent to the SO for disbursement. Restitution is sent to victim directly.	Probation is extended to allow for payment. Judges will revoke for non-payment.

<p>Jefferson</p>	<p>Jefferson (portion), Plaquemines, St. Bernard</p>	<p>Jefferson: Collections Court. Plaquemines: court costs, fines, supervision fees, restitution. St. Bernard: court costs, fines, supervision fees, restitution</p>	<p>Jefferson: Collections Court. Plaquemines: So collects fines and fees and the DA's Office collects restitution. St. Bernard: JPD collects on all accounts. Supervision fees collected by JPD.</p>	<p>Courts will not revoke based on non-payment of fines, fees, or court costs.</p>
<p>Lafayette</p>	<p>Acadia, Lafayette, Vermillion</p>	<p>Indigent Defender Board, SO fines, court costs, Drug Abuse Fund/LCLE, DA fees, Acadiana Crime Lab, restitution, supervision fees</p>	<p>LFD collects all of these monies, some for some parishes and not for others.</p>	<p>Some courts allow offenders' probation to expire or be terminated without all fines/fees paid. Others will not allow this to happen and will continually stay on the subject via review/revocation hearing until full amount is paid. Default jail time is used on occasion.</p>
<p>Lake Charles</p>	<p>Calcasieu, Cameron, Jefferson Davis</p>	<p>fines, court costs, restitution, supervision fees</p>	<p>Cameron and Jefferson Davis: LCD collects all monies. Calcasieu: SO collects fine and court costs (LCD sets up payment plan) and LCD collects supervision fees and restitution.</p>	<p>Courts allow probation terminated without total payment for fines/court costs/fees if no other significant violations exist. With restitution, Court will extend indefinitely to have offender pay.</p>
<p>Leesville</p>	<p>Beauregard, Vernon</p>	<p>SO fine, court costs, DA's Office prosecution fee, Public Defender fee, Criminal Court Fund, crime lab fees, restitution, DA Hot Check Fund, supervision fees</p>	<p>All money collected by LSD.</p>	<p>A large number of cases are held open via motion and order until payment is received. Some cases with restitution are put on indefinite probation and some extended until payment received. Other cases allowed to expire if little money owed.</p>

<p>Minden</p>	<p>Bienville, Claiborne, Jackson, Webster</p>	<p>court costs, supervision fees, restitution, Indigent Defender Board, DA fees, off duty witness fees, arresting agency fees</p>	<p>Jackson and Webster: MID collects court fine, court costs, DA fees, arresting agency fees (Jackson), IDB fees, supervision fees, restitution, and off duty witness fees (Webster). Claiborne and Bienville: MID only collects supervision fees, restitution, and IDB fees.</p>	<p>Claiborne and Bienville set an execution of sentence date for the payment of fines and court costs with a default jail time. If offender doesn't pay that day, gets jail time or warrant issued. The Court stays on the offender. Jackson will generally extend probation to give time to pay or give default jail time for any balance due at the end of supervision. Webster will either extend the period of supervision to allow time to pay or allow case to expire/terminate unsat if fines/fees not paid.</p>
<p>Monroe</p>	<p>Caldwell, Lincoln, Morehouse, Ouachita, Union</p>	<p>Ouachita: fines, court costs, Criminal Court Fund, Indigent Defender Fund, DARE, supervision fees, restitution. Morehouse: fines, court costs, Indigent Defender Board, Criminal Court Fund, LCLE fine, supervision fees, restitution. Union: fines, court costs, supervision fees, LCLE, DARE, Indigent Defender Board, Judicial District Clerk Fund, Crime Victims Reparation Fund, Crime Stoppers, cost of prosecution, cost of investigation, restitution. Lincoln: fines, court costs, Indigent Defender Board, Judicial Clerk Fund, Crime Victims Reparation Fund, LCLE, DARE, cost of prosecution, restitution, supervision fees. Caldwell: fines, court costs, Sheriff's Narcotic Education Board, DARE, drug court costs, restitution, supervision fees.</p>	<p>With the exception of Ouachita fines and court costs, MOD collects on all accounts. SO collects in Ouachita.</p>	<p>With the exception of Caldwell Parish, cases are either allowed to expire with arrearages or kept open by Rule until arrearage is paid, depending on the offender's ability to pay. Caldwell cases are not allowed to expire with monies owed.</p>

Natchitoches	Desoto, Natchitoches, Red River, Sabine, Winn	supervision fees, court costs, restitution, LCLE	NAD only collects supervision fees in Winn, Natchitoches (also LCLE collected), and Red River. DA collects restitution in most cases. All others collected by SO. In Desoto, court costs, fines, supervision fees, and restitution collected by NAD.	Failures addressed with court: some cases extended until monetary obligations are met and some terminated unsat., depending on offender and judge.
New Iberia	Iberia, St. Martin, St. Mary	Clerk of Court fee, Judicial Expense Fund, DA's Office Prosecution Fund, DA's Crime Lab fee, court costs, fines, St. Mary DARE, Drug Screen Fund, cost of investigation fee, Indigent Defender Board	All money collected by NID.	The Court does not allow cases to expire with monies owed. Review hearings are conducted throughout probation period to address progress. Case kept open at end to allow additional time to pay.
New Orleans	Orleans	Judicial Expense Fund, court costs, Indigent Defender Fund, supervision fees, restitution	NOD only collects supervision fees and some restitution if ordered by the Court.	Handled differently by various sections of Court. Some allowed to expire and some issue warrants or schedule a hearing and keep case open pending payment.
Shreveport	Bossier, Caddo	supervision fees, Indigent Defender Board fine, Sheriff's fees (Caddo only), Crime Stoppers (Shreveport only), restitution, Drug Court fee, Criminal Court Witness fee, DA's Office Hot Check fees, Infectious Disease fee, Transportation Fund, LCLE	SPD collects all with the following exceptions: Bossier Parish collects fines and court costs. Both District Attorney's Offices collect for hot checks and hot check fees.	Varies by Judge. Caddo wants all cases returned for court for revocation proceedings, but revocation generally doesn't happen without other violations. All other Judges take into consideration if the subject has made appropriate effort to pay and rule accordingly.

<p>Tallulah</p>	<p>East Carroll, Franklin, Madison, Richland, Tensas, West Carroll</p>	<p>court costs, supervision fees, restitution, Indigent Defender Board, cost of prosecution, notification fee, specific offense fines and fees</p>	<p>TLD only collects supervision fees and restitution. The SO collects the rest.</p>	<p>Usually the Sheriff's Office notifies the Court in regards to money arrearage and it is at the Courts discretion whether or not a revocation hearing is ordered.</p>
<p>Thibodaux</p>	<p>Lafourche, St. Charles, Terrebonne</p>	<p>court costs, supervision fees, LCLE, restitution, IDB, law clerk fee</p>	<p>Lafourche: THD collects supervision fees, restitution, and LCLE. Fines and court costs collected by SO. St. Charles: fine, court costs and restitution collected by the SO. THD collects supervision fees. Terrebonne: THD collects restitution and supervision fees. SO collects fines, court costs, IDB, and law clerk fee.</p>	<p>Lafourche: Court sets deadline to pay and bench warrant issued if not paid by then. For LCLE or restitution, rule is filed. St. Charles: Payments monitored by SO and non-payment is addressed in court. Terrebonne: Rule filed for non-payment. Judge may extend probation or terminate.</p>
<p>Ville Platte</p>	<p>Allen, Evangeline, St. Landry</p>	<p>SO fines, court costs, restitution, supervision fees</p>	<p>VPD collects all ordered fines/fees/court costs.</p>	<p>All delinquent accounts are brought before the appropriate court for collection but each Judge acts differently for non-payment. All Judges have allowed cases to expire owing fines/fees but not often for restitution.</p>
<p>West Baton Rouge</p>	<p>Iberville, East Baton Rouge (portion), Pointe Coupee, West Baton Rouge</p>	<p>restitution, supervision fees, fines, court costs, Judicial Expense Fund, Office of Public Defender fines, Coroner's Fund fines, LCLE</p>	<p>WBRD collects all monies which is then disbursed to the various entities.</p>	<p>Probation is extended to allow for payment. Judges will revoke for non-payment.</p>

* Supervision Fees includes
\$60 per month P&P
supervision fee, \$5 per month
sex offender technology fund
fee, \$60 P&P case processing
fee, and a 10% assessment fee.
Other fees include a \$150 PSI
fee that can be ordered by the
Court and a \$150 Interstate
Compact fee for cases
transferring out of state.

10/3/2012

APPENDIX C

Legislative Acts related to 2013 Term of the Louisiana Sentencing Commission

ACT No. 240

Regular Session, 2013

HOUSE BILL NO. 189

BY REPRESENTATIVE GAINES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 14:27(D)(2)(c)(i), relative to the attempt to commit theft; to amend the threshold amount of the taking relative to persons who attempt to commit the crime of theft; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:27(D)(2)(c)(i) is hereby amended and reenacted to read as follows:

§27. Attempt; penalties; attempt on peace officer; enhanced penalties

* * *

D. Whoever attempts to commit any crime shall be punished as follows:

* * *

(2)

* * *

(c)(i) If the offense so attempted is theft of an amount not less than three five hundred dollars nor more than five thousand dollars, he shall be fined not more than five hundred dollars, imprisoned for not more than one year, or both.

* * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 152

Regular Session, 2013

HOUSE BILL NO. 349

BY REPRESENTATIVE PRICE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 14:110(B)(1), relative to the crime of simple escape; to provide relative to simple escape by a participant in a work release program; to provide for sentencing for the crime of simple escape by participants in a work release program; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:110(B)(1) is hereby amended and reenacted to read as follows:

§110. Simple escape; aggravated escape

* * *

B.(1) A person who is participating in a work release program as defined in Paragraph ~~A(2)~~ (A)(2) of this Section and who commits the crime of simple escape shall may be imprisoned with or without hard labor for not less than six months nor more than one year and any such sentence shall not run concurrently with any other sentence.

* * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 388

Regular Session, 2013

HOUSE BILL NO. 424

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 13:5304(O), R.S. 14:98(D)(1)(a), (E)(1)(a), and (K)(3)(a), R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), (H)(3), and (I)(1)(a) and (b) and 668(A)(introductory paragraph) and to enact R.S. 14:98(D)(4) and (E)(5), relative to operating a vehicle while intoxicated; to provide relative to the eligibility for participation in a drug division probation program by persons convicted of a third or subsequent offense of operating a vehicle while intoxicated; to provide relative to the sentencing of persons convicted of a third or subsequent offense of operating a vehicle while intoxicated; to provide relative to driver's licenses; to extend the time period within which to request an administrative hearing regarding a driver's license suspension after an arrest for operating a vehicle while intoxicated; to provide with respect to installation of ignition interlock devices in motor vehicles owned by certain persons; to provide for procedures following revocation or denial of license; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:5304(O) is hereby amended and reenacted to read as follows:

§5304. The drug division probation program

* * *

O.(1) The provisions of Code of Criminal Procedure Article 893(A) and (D) which prohibit the court from suspending or deferring the imposition of sentences for violations of the Uniform Controlled Dangerous Substances Law or for violations of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to prosecutions in drug division probation programs as authorized by this Chapter.

1 thirty years, and at least three years of the sentence shall be imposed without benefit
2 of suspension of sentence, probation, or parole.

3 * * *

4 K.

5 * * *

6 (3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection
7 and R.S. 32:414(D)(1)(b), upon conviction of a third or subsequent offense of the
8 provisions of this Section, any motor vehicle, while being operated by the offender,
9 shall be equipped with a functioning ignition interlock device in accordance with the
10 provisions of R.S. 15:306. The ignition interlock device shall remain installed and
11 operative until the offender has completed the requirements of substance abuse
12 treatment and home incarceration, or, if applicable, the requirements of the drug
13 division probation program provided in R.S. 13:5301 et seq., under pursuant to the
14 provisions of Subsections D and E of this Section.

15 * * *

16 Section 3. R.S. 32:667(A)(2) and (3), (B)(introductory paragraph), (D)(1), (H)(3),
17 and (I)(1)(a) and (b) and 668(A)(introductory paragraph) are hereby amended and reenacted
18 to read as follows:

19 §667. Seizure of license; circumstances; temporary license

20 A. When a law enforcement officer places a person under arrest for a
21 violation of R.S. 14:98, R.S. 14:98.1, or a violation of a parish or municipal
22 ordinance that prohibits operating a vehicle while intoxicated, and the person either
23 refuses to submit to an approved chemical test for intoxication, or submits to such
24 test and such test results show a blood alcohol level of 0.08 percent or above by
25 weight or, if the person is under the age of twenty-one years, a blood alcohol level
26 of 0.02 percent or above by weight, the following procedures shall apply:

27 * * *

28 (2) The temporary receipt shall also provide and serve as notice to the person
29 that he has not more than ~~fifteen~~ thirty days from the date of arrest to make written

1 request to the Department of Public Safety and Corrections for an administrative
2 hearing in accordance with the provisions of R.S. 32:668.

3 (3) In a case where a person submits to an approved chemical test for
4 intoxication, but the results of the test are not immediately available, the law
5 enforcement officer shall comply with Paragraphs (1) and (2) of this Subsection, and
6 the person shall have fifteen thirty days from the date of arrest to make written
7 request for an administrative hearing. If after thirty days from the date of arrest the
8 test results have not been received or if the person was twenty-one years of age or
9 older on the date of arrest and the test results show a blood alcohol level of less than
10 0.08 percent by weight, then no hearing shall be held and the license shall be
11 returned without the payment of a reinstatement fee. If the person was under the age
12 of twenty-one years on the date of arrest and the test results show a blood alcohol
13 level of less than 0.02 percent by weight, then no hearing shall be held and the
14 license shall be returned without the payment of a reinstatement fee.

15 * * *

16 B. If such written request is not made by the end of the ~~fifteen-day~~ thirty-day
17 period, the person's license shall be suspended as follows:

18 * * *

19 D.(1) Upon receipt of a request for an administrative hearing, the
20 Department of Public Safety and Corrections shall issue a document extending the
21 temporary license, which shall remain in effect until the completion of administrative
22 suspension, revocation, or cancellation proceedings. The Department of Public
23 Safety and Corrections shall forward the record of the case to the division of
24 administrative law for a hearing within sixty days of the ~~date of arrest~~ receipt of the
25 written request for an administrative hearing.

26 H.

27 * * *

28 (3) Paragraph (1) of this Subsection shall not apply to a person who refuses
29 to submit to an approved chemical test upon a second or subsequent arrest for R.S.
30 14:98 or ~~14:98.1~~ 98.1, or a parish or municipal ordinance that prohibits driving a

1 motor vehicle while ~~operating a vehicle~~ intoxicated. However, this Paragraph shall
2 not apply if the second or subsequent arrest occurs more than ten years after the prior
3 arrest.

4 I.(1) In addition to any other provision of law, an ignition interlock device
5 shall be installed in any motor vehicle operated by any of the following persons
6 whose driver's license has been suspended in connection with the following
7 circumstances as a condition of the reinstatement of such person's driver's license:

8 (a) Any person who has refused to submit to an approved chemical test for
9 intoxication, after being requested to do so, for a second ~~violation~~ arrest of R.S.
10 14:98 or 98.1 or a parish or municipal ordinance that prohibits operating a vehicle
11 while intoxicated and whose driver's license has been suspended in accordance with
12 law.

13 (b) Any person who has submitted to an approved chemical test for
14 intoxication where the results indicate a blood alcohol level of 0.08 percent or above
15 and whose driver's license has been suspended in accordance with the law for a an
16 violation arrest occurring within five years of the first ~~violation~~ arrest.

17 * * *

18 §668. Procedure following revocation or denial of license; hearing; court review;
19 review of final order; restricted licenses

20 A. Upon suspending the license or permit to drive or nonresident operating
21 privilege of any person or upon determining that the issuance of a license or permit
22 shall be denied to the person, the Department of Public Safety and Corrections shall
23 immediately notify the person in writing and upon his request shall afford him an
24 opportunity for a hearing based upon the department's records or other evidence
25 admitted at the hearing, and in the same manner and under the same conditions as is
26 provided in R.S. 32:414 for notification and hearings in the case of suspension of
27 licenses, except that no law enforcement officer shall be compelled by such person
28 to appear or testify at such hearing and the there shall be a rebuttable presumption
29 that any inconsistencies in evidence submitted by the department and admitted at the
30 hearing shall be strictly construed in favor of the person regarding the revocation.

ACT No. 389

Regular Session, 2013

HOUSE BILL NO. 442

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

1
2 To amend and reenact R.S. 13:5304(B)(1)(a) and to enact Subpart 7 of Part II of Chapter 5
3 of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
4 15:574.61 and 574.62, to enact Code of Criminal Procedure Articles 903 through
5 903.3, and to repeal R.S. 13:5304(B)(10)(d) and (f), relative to sentencing of certain
6 offenders convicted of certain violations of the Uniform Controlled Dangerous
7 Substances Law; to authorize the development of a substance abuse probation
8 program within the Department of Public Safety and Corrections; to authorize the
9 Department of Public Safety and Corrections to enter into cooperative endeavors or
10 contracts to provide for substance abuse treatment programs; to provide for
11 eligibility for participation in the program; to provide for a court-ordered substance
12 abuse evaluation to determine suitability for participation in the program; to provide
13 for the suspension of certain criminal sentences and court-ordered participation in
14 the program; to provide for rulemaking; to provide for the payment of certain costs
15 by the defendant; to provide for alternative methods of payment of indigent
16 defendants; to enact the Substance Abuse Conditional Release Act; to provide for
17 substance abuse conditional release; to provide for parole supervision following
18 completion of the substance abuse conditional release program; to provide for the
19 duration of the substance abuse treatment program within the Department of Public
20 Safety and Corrections; to provide for eligibility for substance abuse conditional
21 release; to provide for an addiction disorder assessment and a mental health
22 screening to determine suitability for the program; to provide for criteria for removal

1 from participation in the program; to provide for the consequences of failure to
2 complete the substance abuse probation program or the substance abuse conditional
3 release program; to modify disqualification criteria for the drug division probation
4 program; to provide with respect to eligibility criteria for participation in the drug
5 division probation program; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Articles 903 through 903.3 are hereby
8 enacted to read as follows:

9 Art. 903. Substance abuse probation program; authorization

10 A. The secretary of the Department of Public Safety and Corrections is
11 authorized to establish a substance abuse probation program within the department.

12 B. The program shall provide substance abuse counseling and treatment for
13 defendants sentenced to substance abuse probation pursuant to the provisions of
14 Article 903.2 of this Code.

15 C. The department may enter into cooperative endeavors or contracts with
16 the Department of Health and Hospitals, training facilities, and service providers to
17 provide for substance abuse treatment and counseling for defendants participating
18 in the program.

19 D. The department shall adopt rules and guidelines as it deems necessary for
20 the administration and implementation of this program.

21 E. The provisions of this Article shall be implemented only to the extent that
22 funds are available within the department for this purpose and to the extent that is
23 consistent with available resources and appropriate classification criteria.

24 Article 903.1. Substance abuse probation program; eligibility

25 A. In order to be eligible for the substance abuse probation program, the
26 defendant shall not be excluded from participation pursuant to the provisions of
27 Paragraph B of this Article and shall be charged with any of the following offenses:

28 (1) Felony possession of a controlled dangerous substance as defined in R.S.
29 40:966(C), 967(C), 968(C), or 969(C).

1 (2) Except as provided in Subparagraph (3) of this Paragraph, possession
2 with intent to distribute a controlled dangerous substance as defined in R.S.
3 40:966(A), 967(A), 968(A), or 969(A) where the offense involves less than twenty-
4 eight grams of the controlled dangerous substance.

5 (3) Possession with intent to distribute marijuana or synthetic cannabinoids
6 as defined in R.S. 40:966(A) where the offense involves less than one pound of
7 marijuana or synthetic cannabinoids.

8 B. The provisions of this Article shall not apply to any defendant who has
9 been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as
10 defined in R.S. 15:541, or any defendant who has participated in or declined to
11 participate in a drug division probation program as provided for in R.S. 13:5301 et
12 seq.

13 Art. 903.2. Substance abuse probation; sentencing

14 A. Notwithstanding any other provision of law to the contrary, a court shall
15 suspend a sentence and order an eligible defendant to participate in a substance abuse
16 probation program provided by the department pursuant to Article 903 of this Code
17 if the district attorney agrees that the defendant should be sentenced to a substance
18 abuse probation and the court finds all of the following:

19 (1) The court has reason to believe that the defendant suffers from an
20 addiction to a controlled dangerous substance.

21 (2) The defendant is likely to respond to the substance abuse probation
22 program.

23 (3) The available substance abuse probation program is appropriate to meet
24 the needs of the defendant.

25 (4) The defendant does not pose a threat to the community, and it is in the
26 best interest of justice to provide the defendant with treatment as opposed to
27 incarceration or other sanctions.

28 B.(1) The court shall order the department to assign an authorized evaluator
29 to prepare a suitability report. The suitability report shall delineate the nature and
30 degree of the treatment necessary to address the defendant's drug or alcohol

1 dependency or addiction, the reasonable availability of such treatment, and the
2 defendant's appropriateness for the program. The district attorney and the
3 defendant's attorney shall have an opportunity to provide relevant information to the
4 evaluator to be included in the report.

5 (2) The authorized evaluator shall examine the defendant, using standardized
6 testing and evaluation procedures, and shall provide to the court and the district
7 attorney the results of the examination and evaluation along with its recommendation
8 as to whether the defendant is a suitable candidate for the substance abuse probation
9 program.

10 (3) If the court determines that the defendant should be enrolled in the
11 substance abuse probation program, the court shall suspend the execution of the
12 sentence and place the defendant on supervised probation under the terms and
13 conditions of the substance abuse probation program.

14 (4) The defendant shall be required to participate in alcohol and drug testing
15 at his own expense, unless the court determines that he is indigent. If the court
16 determines that the defendant is indigent, it may order the defendant to perform
17 supervised work for the benefit of the community in lieu of paying all or a part of the
18 costs related to the drug and alcohol testing. The work shall be performed for and
19 under the supervising authority of a parish, municipality, or other political
20 subdivision or agency of the state or a charitable organization that renders service to
21 the community or its residents.

22 C. If the judge fails to make all of the determinations provided for in
23 Paragraph A of this Article, or if the district attorney does not agree that the
24 defendant should be sentenced to substance abuse probation, the court shall impose
25 the appropriate sentence provided by law.

26 D.(1) If the defendant violates any condition of his probation or if the
27 defendant would benefit from an adjustment to the probation or treatment program,
28 the defendant, the treatment supervisor, the probation officer, the district attorney,
29 or the court, on its own motion, may file a motion to modify the terms and conditions

1 of the probation or file a motion to revoke the defendant's probation. After a
2 contradictory hearing on the motion, the court may do either of the following:

3 (a) Modify the conditions of probation, including ordering the defendant to
4 participate in a drug division probation program pursuant to R.S. 13:5301 et seq.

5 (b) Revoke the defendant's probation and execute the sentence.

6 (2) A defendant placed on probation pursuant to the provisions of this Article
7 shall be subject to the administrative sanctions provided for in Article 899.1 of this
8 Code.

9 (3) If the defendant's probation is revoked, the defendant shall be required
10 to serve the suspended sentence and shall receive credit for time served in any
11 correctional facility for commission of the crime as otherwise allowable by law.

12 E. The provisions of Article 893(A) and (E)(1)(b) of this Code which
13 prohibit the court from suspending or deferring the imposition of sentences for
14 violations of the Uniform Controlled Dangerous Substances Law or for violations
15 of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to defendants
16 who otherwise meet the eligibility criteria for substance abuse probation programs
17 as authorized by this Article.

18 F. The provisions of this Article shall not be construed to limit the authority
19 of the court to defer a sentence for a violation of the Uniform Controlled Dangerous
20 Substances Law as otherwise provided by law.

21 Art. 903.3. Substance abuse treatment program; cost

22 A. A defendant who is placed under the supervision of the substance abuse
23 probation program shall pay the cost of the treatment program to which he is
24 assigned and the cost of any additional supervision that may be required to the extent
25 of his financial resources as determined by the substance abuse treatment program.

26 B. If the defendant does not have the financial resources to pay all the related
27 costs of the probation program, the court may do either of the following:

28 (1) To the extent practicable, arrange for the defendant to be assigned to a
29 treatment program funded by the state or federal government.

1 (2) With the recommendation of the treatment program, order the defendant
2 to perform supervised work for the benefit of the community in lieu of paying all or
3 a part of the costs related to his treatment and supervision. The work shall be
4 performed for and under the supervising authority of a parish, municipality, or other
5 political subdivision or agency of the state or a charitable organization that renders
6 service to the community or its residents.

7 Section 2. Subpart 7 of Part II of Chapter 5 of Title 15 of the Louisiana Revised
8 Statutes of 1950, comprised of R.S. 15:574.61 and 574.62, is hereby enacted to read as
9 follows:

10 (7) SUBSTANCE ABUSE CONDITIONAL RELEASE

11 §574.61. Short title

12 This Subpart may be referred to and may be cited as the "Substance Abuse
13 Conditional Release Act".

14 §574.62. Substance abuse conditional release

15 A. The secretary of the Department of Public Safety and Corrections is
16 hereby authorized to release an offender sentenced to the custody of the department
17 to intense parole supervision as provided in R.S. 15:574.4.4, if the offender meets
18 certain requirements provided for in this Section and meets the requirements of any
19 rules or regulations adopted by the secretary in accordance with the provisions of this
20 Section.

21 B. An offender shall be eligible for conditional release pursuant to the
22 provisions of this Section if all of the following conditions are met:

23 (1) The offender is willing to participate in the program.

24 (2) The offender has been convicted and is serving a sentence for a first or
25 second offense possession or possession with the intent to distribute a controlled
26 dangerous substance as defined by Part X of Chapter 4 of Title 40 of the Louisiana
27 Revised Statutes of 1950.

28 (3) The offender has no convictions for a crime of violence as defined by
29 R.S. 14:2 or a sex offense as defined by R.S. 15:541.

- 1 (4) The offender has not previously been released pursuant to the provisions
2 of this Section.
- 3 (5) The offender has served at least two years in actual physical custody and
4 is within one year of his projected release date.
- 5 C.(1) If the offender meets the criteria set forth in Subsection B of this
6 Section, the offender shall be required to undergo an addiction disorder assessment
7 and a mental health screening which shall be reviewed by the secretary of the
8 department and considered by the secretary in determining the offender's suitability
9 to participate in the treatment program. In determining suitability the secretary shall
10 consider all of the following:
- 11 (a) Whether the offender's release may pose a danger to the general public
12 or to an individual. In making this determination, the secretary shall consider all of
13 the following:
- 14 (i) The offender's involvement in any gang activity during the offender's
15 term of imprisonment.
- 16 (ii) The offender's custody classification as defined by the department.
- 17 (iii) The risk of violence associated with the offender's release.
- 18 (iv) The availability of sufficient supervision resources as determined by the
19 secretary.
- 20 (b) Whether the offender has a suitable release plan. In evaluating the
21 release plan, the secretary shall consider all of the following:
- 22 (i) Plans for aftercare.
- 23 (ii) Availability of community-based chemical dependency treatment.
- 24 (iii) Opportunities for gainful employment.
- 25 (iv) An approved residence plan.
- 26 (2) If the offender meets the criteria set forth in Subsection B of this Section
27 and the secretary determines that the offender is suitable to participate in the
28 program, the offender shall be required to participate in an addiction disorder
29 treatment program within a facility approved by the department that meets the
30 standards adopted by the secretary or such other program as indicated by the

1 department's risk and needs assessment tool. The program shall last for not less than
2 sixty days nor more than one hundred twenty days.

3 D. The secretary may remove any offender from the program for any of the
4 following:

5 (1) The offender committed a violation of the rules of the program.

6 (2) The offender committed a criminal offense or violated the department
7 disciplinary rules while in the program.

8 (3) The offender presents a risk to himself or others.

9 E. If the offender fails to successfully complete the program or is removed
10 from the program pursuant to Subsection D of this Section, he shall be required to
11 serve the remainder of his sentence as originally imposed. The offender shall not
12 lose any good time earned during his participation in the program.

13 F. If the offender successfully completes the program, the secretary may
14 release the offender to intense parole supervision as provided in R.S. 15:574.4.4 and
15 subject the offender to certain additional conditions imposed by the secretary
16 pursuant to the provisions of this Section.

17 G. Prior to the offender's release pursuant to the provisions of this Section,
18 the offender shall sign a written agreement to comply with all requirements of R.S.
19 15:574.4.4, the requirements of this Section, and any other conditions imposed by
20 the secretary pursuant to the provisions of this Section.

21 H.(1) As a condition of the offender's release pursuant to the provisions of
22 this Section, the secretary shall require the offender to submit to random drug and
23 alcohol testing and electronic monitoring as determined to be necessary by the
24 secretary.

25 (2) If determined by the secretary to be necessary, the secretary may require
26 the offender to participate in further substance abuse treatment while on release
27 pursuant to the provisions of this Section. The offender shall be required to bear the
28 cost of such treatment.

29 (3) The secretary may impose any other conditions deemed necessary to
30 accomplish the goals of this Section.

SENATE BILL NO. 94

BY SENATOR NEVERS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To enact Chapter 1-B of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 15:325 through 327, relative to sentencing by courts and judicial procedure; to provide relative to the Twenty-Second Judicial District Court; to provide certain sentencing procedures and policies for such district court divisions; to provide for the development and use of an assessment tool and evaluation report for sentencing purposes; to provide certain terms, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 1-B of Title 15 of the Louisiana Revised Statutes of 1950, comprised of R.S. 15:325 through 327, is hereby enacted to read as follows:

Chapter 1-B. SENTENCING POLICY: USE OF RISK AND NEEDS

ASSESSMENT AND EVALUATION TOOL

§325. Twenty-Second Judicial District Court; sentencing policy

It is the sentencing policy of the Twenty-Second Judicial District Court that the primary objective of sentencing shall be to maintain public safety, hold offenders accountable, reduce recidivism and criminal behavior, and improve potential outcomes for those offenders who are sentenced. Reduction of recidivism and criminal behavior is a key measure of the performance of the criminal justice system.

1 §326. Administration of assessment tool and evaluation report

2 A. For purposes of this Chapter, after January 1, 2014, all criminal
3 divisions within the Twenty-Second Judicial District Court shall use a single
4 validated risk and needs assessment tool prior to sentencing an adult offender.

5 B. The assessment tool shall be administered at the time of arraignment
6 by trained and certified personnel within the court's misdemeanor probation
7 office. However, upon the court's own motion or by motion of defense counsel,
8 for good cause shown, the court may order the administration of a subsequent
9 assessment. An evaluation report shall be prepared based upon the findings of
10 the assessment tool.

11 C. The evaluation report shall be made available to the court and
12 defense counsel prior to the initial pretrial conference, but shall otherwise
13 remain confidential and kept as part of the record under court seal.

14 D. The district court shall develop policies and protocols no later than
15 January 1, 2014, regarding the administration and use of the assessment tool
16 and evaluation reports pursuant to this Chapter. These policies shall include
17 confidentiality periods, maintaining the integrity of the assessment tool,
18 training, and data collection and sharing among affected entities. The Twenty-
19 Second Judicial District Court is authorized to provide funding for any expenses
20 related to the administration and use of the assessment tool and evaluation
21 reports.

22 §327. Use of assessment tool and report

23 A. The validated risk and needs assessment tool and evaluation report
24 shall be utilized by the sentencing court at the pretrial stage when determining
25 an appropriate sentence, in order to evaluate the defendant's risk of committing
26 future offenses and to reduce the recidivism of the defendant. In determining
27 an appropriate sentence, the sentencing court shall consider the results of the
28 defendant's risk and needs assessment included in the evaluation report,
29 together with the likely impact of a possible sentence on the reduction of
30 potential future criminal behavior of the defendant.

1 B. The assessment tool and evaluation report may also be used to
2 determine eligibility or suitability of the defendant for any available specialty
3 court.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____