

Justice Reinvestment Task Force, January 20th

Meeting Outline

- Introduction – Secretary LeBlanc
- Subgroup Progress Reports
 - Budget and Finance Subgroup: *Secretary LeBlanc*
 - Community Supervision Subgroup: *Senator Martiny*
 - Sentencing Subgroup: *Natalie LaBorde (for Representative Leger)*
- Report from Victim Roundtables
 - *Bob Wertz, Louisiana Commission on Law Enforcement*
- Report from Louisiana Chambers of Commerce (full list of chambers included on *Statement of Principles* document)
 - *Jason El-Koubi , One Acadiana*
 - *Ben Johnson , New Orleans Chamber*
- Report from Louisiana Center for Children’s Rights
 - *Jill Pasquarella, Louisiana Center for Children’s Rights,*
 - *Dr. Loretta Sonnier, Tulane University*

SUBGROUP PROGRESS REPORTS

Budget and Finance Subgroup: *Secretary LeBlanc*

Community Supervision Subgroup: *Senator Martiny*

Sentencing Subgroup: *Natalie LaBorde (for Representative Leger)*

BUDGET/FINANCE SUBGROUP

Budget / Finance – Goals

The group is developing policy recommendations to:

- Reinvest savings from sentencing and corrections reforms.
- Ensure legal financial obligations (fines, fees, restitution, court costs) hold offenders accountable without creating barriers to reentry.
- Expand and improve opportunities for inmates to earn and save money prior to release from prison.

Budget / Finance – Key Findings

- Corrections is the third-highest state expenditure behind education and health care.
- Louisiana has cut behavioral health resources in the community, and has a high portion of prisoners with behavioral health needs.
- There is minimal funding for programming and treatment in parish jails.
- There is a need for reinvestment into victims' services and victim-focused training for justice professionals.
- There is a lack of incentive funding for alternatives to prison.

Budget / Finance – Key Findings

- Average probationers are unable to fully pay legal financial obligations by end of probation term.
- Most plea agreements include legal financial obligations without a determination of the defendant's ability to pay.
- Penalties in Louisiana for failure to pay criminal justice debt can create barriers to reentry.
- No statutory guidance on ordering payment plans or debt forgiveness incentives.
- Lack of data collection on fines, fees, restitution, and court costs.

Budget / Finance – Policy Recommendations in Development

Reinvestment of savings

- Set a savings target for internal use by the Task Force
- Reinvest 50% of the dollars saved from sentencing and corrections reforms
- Reinvestment funds should be used to expand:
 - Prison alternatives
 - Victims' services
 - Programming in parish jails (graduated per diem)
- Shift funding for the least serious felonies from the state to the judicial districts
- Mandate data collection and track outcomes

Budget / Finance – Policy Recommendations in Development

Legal Financial Obligations – LFOs (fines, fees, restitution, court costs)

- Tailor LFOs to a person's ability to pay
- Modify penalties for failure to pay
- Suspend child support during incarceration
- Mandate data collection and track outcomes

Budget / Finance – Policy Recommendations in Development

Transitional Work Programs (TWPs)

- Increase take-home pay for TWP participants
- Expand eligibility period for TWPs
- Remove the incentive for jails to hold inmates who are eligible for transfer into a TWP

COMMUNITY CORRECTIONS SUBGROUP

Community Corrections – Goals

The group is developing policy recommendations to:

- Strengthen probation and parole by extending research-based programs and policies to more supervisees.
- Lower the high caseloads of probation and parole officers.
- Simplify the probation and parole system for officers, victims, supervisees, and officials.
- Create incentives for people on supervision to ensure compliance and improve success rates.

Community Corrections – Key Findings

- Louisiana has advanced research-based responses for people on parole and probation, but responses still rely heavily on incarceration and everyone is not eligible to receive them.
- No system-wide framework exists for incentives to keep supervisees compliant.
- Supervision resources are being stretched thin over long supervision terms.
- Among a sample of common nonviolent offenses, statutory eligibility for probation has dropped from 58% in 2010 to 49% in 2015.
- Reentry resources have grown thanks to DOC changes; statutory changes can help expand resources further.

Community Corrections – Policy Recommendations in Development

Strengthen Research-Based Responses to Supervision Violations

- Make all supervisees eligible to receive swift, certain, and proportional sanctions
- Match probation and parole practices in time served credits and eligibility for sanctions
- Align incarceration responses with research by lowering revocation periods

Community Corrections – Policy Recommendations in Development

Frontload Probation & Parole Resources

- Narrow probation terms to ensure resources are focused on the first few days, weeks, and months of supervision
- Establish case plans for parole eligible offenders so that parole is streamlined for compliant inmates and parole hearings are restricted to noncompliant inmates

Improve Reentry Processes

- Allow occupational licenses for those reentering society
- Allow stabilization assistance (like food assistance) for those reentering society

Community Corrections – Policy Recommendations in Development

Expand Alternatives to Incarceration

- Expand eligibility for post-conviction prison alternatives, including probation, the substance abuse probation program, drug court, and reentry court

Implement Positive Behavior Incentives

- To incentivize compliant behavior, enact good time credits for those on supervision
- Add intermediate incentives for minor and early achievements while on supervision

SENTENCING SUBGROUP

Sentencing – Goals

The group is developing policy recommendations to:

- Restore certainty to and promote uniformity in the sentencing process.
- Protect public safety and hold offenders accountable.
- Focus prison space on serious and violent offenders.

Sentencing – Key Findings

- Louisiana's current criminal code is overly confusing, and provides for a lack of clarity and uniformity in sentencing.
- Louisiana sends nonviolent offenders to prison at a rate of 1.5 to 3 times that of neighboring states with similar crime rates.
- The use of prison over prison alternatives has been increasing over the last decade.
- Sentence lengths for common nonviolent offenses have increased in recent years.
- Use of discretionary parole for nonviolent offenses is limited and shrinking.
- Over the last decade, Louisiana has seen significant growth in the number of inmates with very long prison stays.

Sentencing – Policy Recommendations in Development

Felony sentencing in general

- Implement a felony class system, based on Alabama’s felony class system, to greatly simplify Louisiana’s code

Class	Sentence Range	With/Without Hard Labor	Ability to Suspend	Jury Type
A	Life or capital verdict	With	None	12-person
B	2 – 40 <i>(minimum for violent crimes under debate)</i>	With	Minimum cannot be suspended for violent, sex offenses	12-person
C	1 – 20 years <i>(minimum for violent crimes under discussion)</i>	With	Minimum cannot be suspended for violent, sex offenses	12-person
D	1 – 10 years	With or without	All	6-person
E	1 – 5 years (max 2 years unsuspended prison time)	With or without	All	6-person

Sentencing – Policy Recommendations in Development

Sentencing for Drug and Property Offenses

- Distinguish between criminal conduct driven by substance abuse and criminal conduct driven by financial gain
 - Narrow sentence ranges for lower-level possession offenders
 - Align commercial penalties so that sentence ranges for selling larger quantities of drugs are higher than sentence ranges for selling smaller quantities
- Distinguish joyriding (unauthorized use of a motor vehicle) as less severe than theft of a motor vehicle
- Raise and unify the felony theft threshold across theft offenses

Sentencing – Policy Recommendations in Development

Sentencing for Other Nonviolent Offenses

- Ensure greater compliance with sex offender registration laws by mandating that the Department of Corrections, not the offender, is responsible for community notification requirements
- Bring penalties for felon in possession of a weapon into line with surrounding states

Habitual Offender Statute

- Implement a habitual offender statute with graduated increases in maximum and minimum penalties, while maintaining strict enhancements for those with a significant violent criminal history

Sentencing – Policy Recommendations in Development

Under discussion:

- Simplify and expand parole and good time eligibility, and tie eligibility to the felony class system
- Allow for retroactive parole eligibility for certain nonviolent longest-serving inmates

REPORT FROM VICTIM ROUNDTABLES

Bob Wertz, Louisiana Commission on Law Enforcement

Louisiana Justice Reinvestment Task Force

Crime Victim/Survivor/Advocate
Roundtables
Priorities

Two Roundtables Were Hosted in November 2016

- 17 survivors and victim advocates attended the Orleans Parish Roundtable on November 14
- 10 survivors and advocates attended the Rapides Parish Roundtable on November 15
 - This Roundtable focused primarily on victims' issues and concerns in rural and tribal jurisdictions

SEVEN MAIN PRIORITIES WERE IDENTIFIED BY PARTICIPANTS

1. Survivors and advocates support the expansion of reentry services and bringing down probation and parole caseloads.

- Reentry programming
 - Job training/placement, treatment, affordable housing, and sustenance support
- Increased community-based and diversion programs for women
- Strong enforcement of the Interstate Compact in rural and tribal communities
- Expansion of gender-responsive services for justice-involved women who return to tribal communities

2. Crime victims and survivors need more consistent enforcement of their rights.

- Reasonable protection
 - Better enforcement of no-contact orders for women and their children
 - Improved enforcement of firearm restrictions under law
- Restitution and other legal/financial obligations
- Inclusion of victim impact statements as part of pre-sentence investigations and plea agreements
- Use of a victim impact statement that is specific to reentry
 - A sample *reentry victim impact statement* used by the Minnesota DOC has been provided to all Roundtable participants

3. Prison beds in Louisiana should be used for the most serious offenders.

- Lower-level offenders can be effectively supervised in the community (with additional services and support that are described in Priority #1)
- Concerns were also expressed about housing inmates with different risk levels together and housing pretrial detainees with people convicted of crime
 - Research shows that these approaches can increase recidivism

4. Treatment services should be expanded.

- For alleged and convicted offenders in rural and tribal communities
- For those incarcerated pretrial
- To include long-term Batterers Intervention Programs available to *all* parishes in Louisiana
- For victims after crime has occurred and for those in prison who have been victimized

5. Louisiana can implement national best practices in victim notification.

U.S. Department of Justice SAVIN Guidelines & Standards

- Recommend a *centralized, single point of entry and e-registration into the automated victim notification system*
- Providing victims with information about accessing LAVNS services from *all* criminal justice officials, from law enforcement through corrections

6. Improvements are needed in victim and survivor services.

- Safety assessments and safety planning
- Witness protection
- Victim employment assistance
- Trauma-informed treatment and services for victims both in and out of prison
- Increased services and advocates for juvenile victims of crime
- Expanded services for victims in traditionally marginalized communities
- Release options and lower penalties for survivors who harm their batterers
- Transitional housing for domestic violence victims

7. Education and training should be expanded for professionals in the criminal justice system.

Including judges, prosecutors, and probation and parole officers

- Victim trauma and the neurobiology of trauma on victims, survivors, and offenders
- Human trafficking
- Sexual assault
- The nuances of the impact of child abuse and domestic violence on victims and survivors

Education and training (*cont.*)

- Multidisciplinary judicial and law enforcement training about the dynamics of domestic violence
 - How to interpret strangling in domestic violence cases
 - The importance of protective orders to the safety of victims and children
 - Ways to ensure that victims' actions aren't considered mitigating factors
- Training for victim advocates on the use of risk and needs assessments that are evidence-based
- Research-based use of statutory violent crime list and when to charge certain more serious offenses like domestic abuse battery, domestic abuse battery with strangulation, cruelty to a juvenile, and vehicular homicide as aggravated crimes, which fall under the violent crimes definition

REPORT FROM CHAMBERS OF COMMERCE

Jason El-Koubi , One Acadiana

Ben Johnson , New Orleans Chamber



High Imprisonment Rate: A Problem We Can't Ignore

Business Groups Outline Four Principles for
Criminal Justice Reform in Louisiana

1. **Strengthen Public Safety:** Businesses thrive in safe communities. The primary goals of the criminal justice system are to reduce crime, hold offenders accountable and keep citizens safe. Reforms to the system must keep those goals at the forefront and increase public safety.
2. **Only Evidence-Based Solutions:** Anecdotes aren't good enough. Policy decisions must be driven by data and carefully weigh risk and rehabilitation. We should consider safe alternatives to prison and implement programs proven to reduce the likelihood of committing new crimes and increase the likelihood of future employment.
3. **Link Spending with Outcomes:** Corrections is a necessary part of the state budget, but prison populations and costs can't continue on autopilot. Instead we must seek ways to reduce the overall prison population, decrease costs and invest savings in programs proven to change criminal behavior and thinking.
4. **Invest in Employability to Address Workforce Needs:** For many companies in the state, finding qualified workers is a major challenge. With the right treatment and training, former offenders can find well-paying jobs. Corrections reforms should include career training and programs to address critical employability skills to increase opportunities for those supervised in the community and those coming out of prison and increase available workforce for Louisiana businesses.

REPORT FROM LOUISIANA CENTER FOR CHILDREN'S RIGHTS

*Jill Pasquarella, Louisiana Center for Children's Rights,
Dr. Loretta Sonnier, Tulane University*

Juvenile Life Without Parole in Louisiana



Louisiana Center
for Children's Rights

www.laccr.org

What is Juvenile Life Without Parole?

- 15, 16 and 17 year olds charged with 1st and 2nd degree murder
- Prosecuted as adults
- Even in cases where children were accomplices to murder
- Until 2012, the mandatory sentence was Life without the possibility of Parole
- LWOP = natural life

Who are the children serving JLWOP in Louisiana?

- There are over **300 people** serving life without parole sentences in Louisiana for crimes committed as children
- Nearly half were **15** or **16** at the time of the crime
- **75%** are black
- **120** are today 45 years of age or older
- At least **44** were convicted as accomplices to murder
- **1/4** were sentenced between 1990 – 2000
- **4** of Louisiana's 64 parishes account for **55%** of all JLWOP sentences, **8** are responsible for **70%**

U.S. Supreme Court on JLWOP

4 times in the last 11 years, U.S. Supreme Court has attempted to give states guidance on appropriate sentencing for children.

- 2005: No death penalty for children. *Roper v. Simmons*
- 2010: No LWOP for children convicted of non-homicide offenses. Children must be given a “meaningful opportunity for release.” *Graham v. Florida*
- 2012: LWOP should be reserved only for the “rare” and “uncommon” child convicted of homicide. All others must receive a “meaningful opportunity for release.” *Miller v. Alabama*
- 2016: SCOTUS says this applies to ALL children, regardless of date of conviction. *Montgomery v. Louisiana*

Louisiana's Legislative Response

- **2007** and **2008**: the House failed to pass by 1 and 2 votes bills that would have provided for parole eligibility for all 15 and 16 year olds after their 31st birthday
- **2010**: U.S. Supreme Court handed down *Graham* decision
- **2011**: legislature failed to pass legislation that addressed *Graham*
- **2012**: legislature did away with LWOP retroactively and prospectively for non-homicide offenses only. Did not address homicide offenses
- **21 days later**, U.S. Supreme Court issued another directive in *Miller*
- **2013**: legislature, responding to *Miller*, provided for parole eligibility in juvenile homicide cases. The law applied prospectively only
- Louisiana was one of **7** states that did not respond to *Miller* with a retroactive fix
- **2016**: U.S. Supreme Court decides Henry Montgomery's case out of Louisiana instructing Louisiana to apply *Miller* retroactively
- **2016**: legislature failed to pass legislation that addressed *Montgomery*

Louisiana Courts' Response

- Since 2012, **81%** of children who have had *Miller* sentencing hearings have received LWOP.
 - Far from the Court's mandate these sentences be “rare” and “uncommon”
- Since June 2016, courts have attempted to provide for retroactive relief for the 300 eligible defendants. The process has been confusing, burdensome, inconsistent and is far from complete.

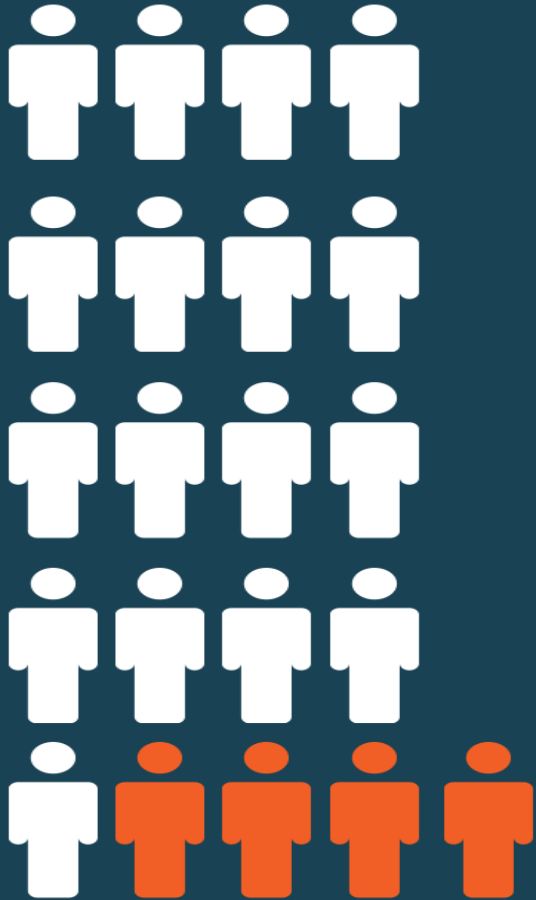
Louisiana v. Other States

- In total, **24 states** and the District of Columbia now ban the sentence, ban it in most cases, or have never imposed it
- Conservative states have led legislative reforms: In the last **3 years** alone, Utah, Wyoming, West Virginia, Iowa, and Nevada have all abolished the practice
 - West Virginia eliminated LWOP sentences for children, granting them their first parole review after **15 years**
 - Nevada implemented a tiered approach: the first parole review occurs after **15 years** for non-homicide offenses and after **20 years** for homicide offenses

What's the problem?

1. Louisiana is not in compliance with the Supreme Court rule – again
2. Current law punishes without appropriate tailoring
3. Maintaining the current system is unnecessarily costly

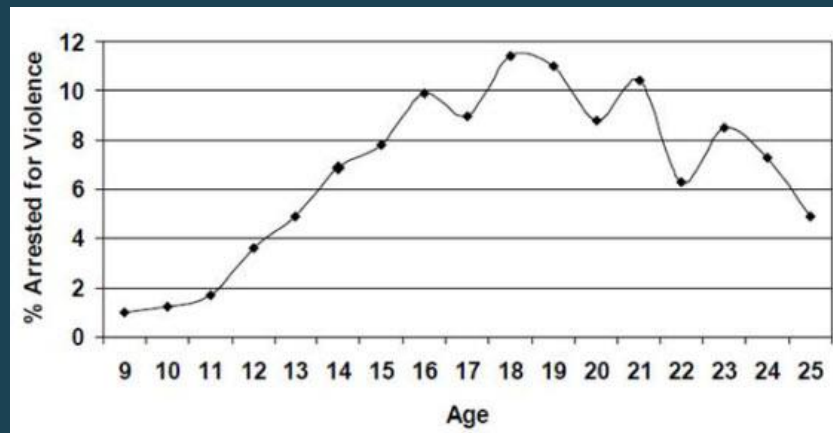
Louisiana out of compliance with SCOTUS rules



- Prospectively out of step with mandate that the sentence be “rare”
- No legislative fix for *Montgomery* eligible individuals
- 35 years does not represent a “meaningful opportunity for release”

Current Punishment is not Appropriately Tailored

- Principals may be categorically less culpable
- Children can and do age out of crime:¹



- LSU research tells us that recidivism rates for Louisiana lifers are less than 2%.² National studies note that released lifers are less than 1/3 as likely to be rearrested as all other prisoners and that those convicted of homicide have the lowest rearrest rates of all prisoners.³

¹ <https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx>

² http://lsucaper.weebly.com/uploads/5/4/4/3/54430369/caper_fact_sheet_recidivism.pdf

³ Marc Mauer, Ryan S. King, and Malcolm Young, "The Meaning of 'Life': Long Prison Sentences in Context" (May 2004), 24-27. "Low Recidivism Rate Reported for Parole NY Murderers," *Crime Report*, Jan. 8, 2011, <http://www.thecrimereport.org/low-recidivism-rate-reported-for-paroled-ny-murderers/>; Langan, P.A., & Levin D.J., "Recidivism of Prisoners Released in 1994," *Bureau of Justice Statistics Special Report* (2002), available at <https://www.bjs.gov/content/pub/pdf/rpr94.pdf>.

Incarceration Costs

- Louisiana spends **\$19,000** a year to incarcerate prisoners¹
- That means it could cost Louisiana nearly **\$1 million dollars** to incarcerate a child from age 15 until he dies
- If all *Montgomery*-eligible individuals were today made eligible for parole after having served 20 years, Louisiana could save as much as **\$117 million dollars**
- Releasing someone beyond their prime earning years will create additional burdens on the State²

¹<http://www.doc.la.gov/media/1/Briefing%20Book/Oct%2016/budget.oct.16.pdf>

² Pew Charitable Trusts. *Collateral Costs: Incarceration's effect on Economic Mobility* (2010) 4; 12.

Litigation Costs

- The Louisiana Public Defender Board estimated \$58,000 to defend a *Montgomery* case. That's a total of **\$13.5 million** for remaining cases
- Estimate is conservative: Federal court study in 2010 found *defense costs alone* in comparable capital prosecutions were **\$620,932 / case**.¹
- Prosecution costs similarly large. As an example, EBR DA spent **\$17,000** in fees for experts in 2008 death penalty trial²
- Pretrial *Miller* cases will incur the same or similar costs.
- Future litigation costs may be similarly high
 - As with death penalty cases, *Miller* litigation will not end with trial. Recent spending on capital post-conviction for psychiatrists in EBR was **\$38,000** (*Id.*)
 - Failure to follow SCOTUS mandate of “rare” and “uncommon” will lead to future litigation

¹Office of Defender Services of the Administrative Office of U.S. Courts, “Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases,” (September 2010). Available at: <http://www.uscourts.gov/services-forms/defender-services/publications/update-cost-and-quality-defense-representation-federal>

²“Diminishing All of Us: The Death Penalty in Louisiana,” Jesuit Social Research Institute, Loyola University of New Orleans (2012), http://catholicismobilizing.org/wp-content/uploads/2012/03/Death-Penalty-in-Louisiana_Full.pdf

What options solve the problem?

- Grant all children a chance to have their cases reviewed by the parole board after having served a meaningful sentence
 - Making all children wait until their 50th, 51st or 52nd birthday to have their first shot at the parole board is unnecessarily costly, out of step with constitutional principles and unnecessarily incarcerates those whose culpability may be low and rehabilitation great.

<u>Parole Eligibility</u>	<u>Amount Saved</u>
15 Years	\$150 million
20 Years	\$117 million
25 Years	\$55 million

- Correct the whole problem by creating a retroactive and prospective solution
 - Continuing to seek sentences that are constitutionally mandated to be rare doesn't make common or fiscal sense
 - Failing to create a lasting solution creates unpredictability for victims

Questions?

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**LOUISIANA CENTER FOR
CHILDREN'S RIGHTS**

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