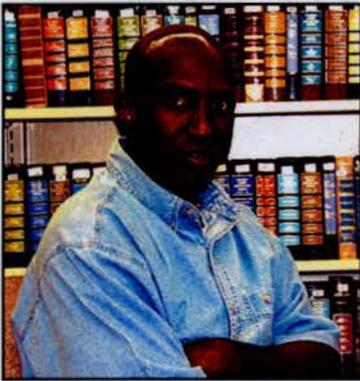


2014 Legislative Session Will Prove Whether Policy Makers Have Gotten Smart on Crime

by Ronald Marshall



Only time will reveal whether the 2014 Legislative Session will mark a sincere effort by Louisiana's lawmakers to reform sentencing laws so that offenders can have a meaningful opportunity to get off the count. At the behest of the Jindal administration, four

organizations joined in a collective effort to analyze criminal justice data/statistics and offer options to assist Louisiana lawmakers in reducing the prison population and corrections expenditures.

October 2013, The Reason Foundation, Pelican Institute for Public Policy, Texas Public Policy Foundation, and Right on Crime prepared a paper "Smart on Sentencing, Smart on Crime," a valid argument for reforming Louisiana's determinate sentencing laws.

What is a determinate sentence? A determinate sentence is a minimum mandatory sentence fixed by statute. It requires judges to sentence those convicted of specific crimes to mandatory minimum sentences.

The habitual offender law and mandatory minimum sentences for drug related and nonviolent crimes are some of the states determinate sentencing laws the paper highlighted. For example, offenders convicted as convicted felon with a firearm are subject to a mandatory minimum sentence of fifteen years of hard labor in prison.

Another example of a determinate sentencing law is the habitual offender statute, which was "enacted to counter criminal recidivism by making longer terms of imprisonment for repeat offenders." The paper noted that, "longer sentences and higher incarceration rates during the 1980s and 1990s did reduce crime significantly." This antiquated philosophy however, is no longer valid in light of the state's crime rate, which in 2011 was higher than it was in 1977.

Furthermore, in 2011, 50 percent of inmates returned to prison within five years. The number of offenders serving sentences for third felony drug crimes or third felony property crimes was three times higher than those serving sentences for first time felony crimes. "Louisiana's mandatory minimum sentences appear to do little either to rehabilitate or to deter the criminal behavior lawmakers ostensibly targets," the paper stated.

The paper further noted other serious problems in Louisiana's determinate sentencing laws. First,

predetermined sentences remove judicial discretion to tailor the sentence to fit the crime and the defendant. For instance, if a statute mandates a twenty year sentence for a crime, the judge has no discretion, except to impose the sentence predetermined by the statute, despite the existence of mitigating circumstances. In some cases, the determinate "sentence is grossly disproportionate and goes against a basic principle of criminal justice: that the punishment fit the crime," the paper noted.

A second problem is that "mandatory minimum sentences create arbitrary outcomes by drawing essentially trivial lines between degrees of punishment. For example, a defendant convicted of simple robbery without a deadly weapon is not subject to a mandatory minimum sentence, but a defendant convicted of purse snatching without a deadly weapon is subject to a mandatory prison sentence."

A third problem is that mandatory minimum laws significantly contributes to the increased prison population by eliminating judicial discretion in imposing alternative forms of punishment, such as probation or drug treatment programs.

A fourth problem with the mandatory minimum laws is that a large number of nonviolent crimes call for a predetermined sentence while numerous violent crimes do not.

These problems were pointed out not to urge lawmakers to enact harsher penalties for those violent crimes, but to stress that non-violent drug offenders are often subject to equal or harsher punishment as violent offenders.

To remedy the many problems with Louisiana's mandatory minimum laws, the paper offered cost-effective options that lawmakers could implement to reduce the prison population without compromising public safety.

The first option would require lawmakers to repeal mandatory minimums for non-violent drug offenders and make those changes retroactive. Repealing those laws would give judges the discretion to impose alternative forms of punishment, rather than imposing mandatory sentences to prison. These changes would undoubtedly reduce corrections cost and free up scarce prison bed space and scarce correctional expenditures to be reserved for violent offenders.

The second option would require lawmakers to modify the habitual offender statute so that it would "apply only to those convicted two or more times for violent crimes." The paper recommended that these changes be made retroactive. That way the habitual

(Continued on page 23)

(Continued from page 22)

offender statute would operate as intended: to keep violent career offenders behind bars.

The third option would require lawmakers to enact "safety valves," which would allow judges to depart from mandatory minimums. Like the state of Maine, safety valve laws allow judges to fashion punishment to fit the individual criminal, despite the predetermined sentences of mandatory minimum laws.

And the fourth option would require lawmakers to reform the parole scheme "so that offenders have greater clarity regarding the likelihood that their efforts at rehabilitation will be successful.

If Louisiana lawmakers act on these options and make the changes retroactive, many offenders, particularly non-violent and first-time violent offenders sentenced under the habitual offender statute, will gain a remedy to have their sentences ameliorated. The 2014 Legislative Session will reveal the truth on whether lawmakers are sincere in their efforts to reform sentencing laws or the whole idea of crunching numbers and statistics with those four organizations was a political stunt. The results of the 2014 session will be coming to prison near you.

About the Author: Ronald Marshall was wrongfully convicted for armed robbery and is serving a 50 year sentence in Louisiana's

Department of Corrections. He has entered his seventeenth year on incarceration; he's a self-taught legal assistant and unpublished author of several urban novels. Upon his release, he plans to publish his books and launch his own paralegal service, specializing in criminal law, post conviction relief and federal habeas corpus practice. He hopes to create a relief generating engine for deserving prisoners and eliminate the practice of duplicitous attorneys who exalt financial gain over ethical obligations owed to the legal profession. He intends to partner with a licensed attorney whose passion and commitment for criminal justice is strong and determined as his own.

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