



LOUISIANA PUBLIC DEFENDER BOARD

BOARD MEETING

Tuesday, February 16, 2016
LSU Law Center, Tyson Room
Baton Rouge, LA 70806
2:00 p.m.

AGENDA

1. Call to Order and Remarks of the Chairman
 - a. Welcome, Carol Kolinchak, Compliance Officer
 - b. Congratulations Mark Plaisance, *Montgomery v. Louisiana*
 - c. Board Vacancies
2. Call for Public Comment
3. Adoption of the Agenda* pgs. 1-2
4. Adoption of the Minutes-December 1, 2015 Meeting* Tab 1, pgs. 3-7
5. Executive Session¹, ^{2*}
6. Budget and Fiscal Issues Tab 2
 - a. Financial Report as of December, 2015* pgs. 8-12
 - b. Proposed FY 17 Budget pgs. 13-16
 - c. Act 578 of 2012 – Final Report Hand Out
 - d. Arnold Grant Update

*Requires action

¹ The Board may vote to go into executive session pursuant to La. R.S. 42:16 and 42:17 (formerly La. R.S. 42:6 and 42:6.1), by a two-thirds vote of the members present. The executive session is limited to matters allowed to be exempted from public discussion pursuant to La. R.S. 42:17, including character and professional competence of a person; provided, however, such person(s) may require that such discussion be held at an open meeting pursuant to La. R.S. 42:17(A)(1). No final or binding action will be taken during executive session. The Board may discuss issues pertinent to the selection of district defenders in districts 3, 5, 9, and 26.

² The Board may vote to go into executive session pursuant to La. R.S. 42:16 and 42:17 (formerly La. R.S. 42:6 and 42:6.1), by a two-thirds vote of the members present. The executive session is limited to matters allowed to be exempted from public discussion pursuant to La. R.S. 42:17, including strategy sessions with respect to litigation and prospective litigation after formal demand. In accordance with La. R.S. 42:19(A)(b)(iii), the Board may discuss the following: *Darwin Yarls, Leroy Shaw and Douglas Brown v. Derwyn Bunton and James T. Dixon, Jr.* Civil Action: 3:16-cv-31, Middle District of Louisiana; *LPDB v. Dorroh, et al*, Docket: 2015CA1401, First Circuit Court of Appeal, Oral Argument, Feb 23 2016; *Pipkins v. Stewart*, 5:15-CV-02722-DDD-MLH; and, *Lawrence v. The State of Louisiana*, No. 639,010, Section 24, 19th Judicial District Court. Additionally, the Board may discuss the non-remittance of collected fines and fees in District 25 (Plaquemines).

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| <ul style="list-style-type: none"> 7. Policy Committee Report and Recommendations <ul style="list-style-type: none"> a. <i>Montgomery v. Louisiana</i>, Proposed Resolution* b. Changes in the Law 8. District Issues <ul style="list-style-type: none"> a. Appointment of District Defender, District 26* b. District Defender Position Status - Districts 3, 5, 9 c. ROS – Updates 9. JLCB – Draft Report, Due March 1, 2016* 10. Legislative Session, 2016 <ul style="list-style-type: none"> a. Indigent Defense Review Commission Report 11. LPDB Positions Status – TLCO, CCC, JJCO 12. Juvenile Strategic Plan Update 13. SPD Report 14. Other Business 15. Next Meetings: April 6; May 10 16. Adjournment* | <p>Tab 3
pg. 17
pgs. 18-20</p> <p>Tab 4, pgs. 21-26</p> <p>Tab 5
pgs. 27-28</p> <p>Tab 6, pgs. 29-34</p> |
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**Requires Board Action*



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Baton Rouge, LA 70806
2:00 p.m.

Minutes

1. Call to Order and Remarks of the Chairman. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman on Tuesday, February 16, 2016, at 2:05 p.m. at the LSU Law Center, Tyson Room, in Baton Rouge, Louisiana.

The following Board members were present:

Robert Burns, Chairman
Flozell Daniels, Jr.
Hector Linares

Franz Borghardt
Jacqueline Nash Grant
Tom Lorenzi

Hampton Carver
Herbert Larson
Steven Singer

Rebecca Hudsmith, *ex-officio*

The following Board members were absent:

Leo Hamilton
Herschel Richard

Frank Holthaus
Gina Womack

Robert Lancaster

The following members of the Board's staff were present:

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Acting Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Carol Kolinchak, Trial Level Compliance Officer
Richard Pittman, Deputy Public Defender, Dir. Juvenile Defender Services
Tiffany Simpson, Juv. Justice Compliance Officer/Director of Legis. Affairs
Erik Stilling, ITM Director

Chairman Burns welcomed Carol Kolinchak who has accepted the position of Trial Level Compliance Officer. He introduced Mr. Mark Plaisance, District Defender for District 17 (Lafourche Parish) and congratulated him on his recent U. S. Supreme Court victory in *Montgomery v. Louisiana*.

Chairman Burns asked State Public Defender James Dixon to give an update on membership vacancies. Mr. Dixon reported that a letter to the Speaker of the House has been drafted requesting the Speaker's appointment to the Board to replace Mr. Add Goff. He clarified that LPDB will urge that the appointment be representative of North Louisiana in order to maintain geographical balance on the Board. Professor Grant, whose term expires this month, indicated her willingness to continue on the Board.

2. Call for Public Comment. G. Paul Marx, District Defender for the 15th Judicial District Public Defender Office and Ms. Caitlin Graham also of the 15th JDC PDO, addressed the Board concerning the dire consequences of recent and proposed future budget cuts to the district office and their plans and efforts to keep the office functioning.

3. Adoption of the Agenda*. Mr. Borghardt moved to adopt the agenda as presented. Mr. Lorenzi seconded the motion. Mr. Singer requested that item 5, Executive Session, be placed after item 13 in the agenda in order to address budget and fiscal issues first. Mr. Singer moved to reconsider the motion to adopt the agenda. Mr. Larson seconded the motion, which passed unopposed. Mr. Singer then moved to amend the order of item 5 to after item 13. Mr. Larson seconded the motion, which passed unopposed.

4. Adoption of the Minutes-December 1, 2015 Meeting*. Mr. Larson moved to accept the minutes after amending them to indicate his absence at the December 1, 2015 meeting. Mr. Carver seconded the motion which passed unopposed.

5. Budget and Fiscal Issues

a. Financial Report as of December, 2015*. Budget Officer Natasha Carter reported that the financial report presented in the materials, current as of the time of printing, reflects approximately \$205,882 available for reallocation to the districts. However, as of Monday, February 15, 2016, a mid-year reduction to LPDB's budget in the amount of \$472,000 was approved by appropriations committees leaving a zero balance available for reallocation. Mr. Larson moved to accept the financial report as presented. Mr. Daniels seconded the motion which passed unopposed.

b. Proposed FY 17 Budget. Ms. Carter reported that staff received notice of the Governor's proposed reduction to LPDB's budget for FY17 in the amount of approximately \$20,000,000 leaving approximately \$12,800,000 total appropriations to LPDB. Ms. Carter reported that staff is currently working on documenting where cuts can and will be made. Ms. Carter clarified that the 12.8M for FY17 is the Governor's recommendation and if no new revenue is found, will likely be LPDB's operating budget pending legislative approval.

c. Act 578 of 2012 – Final Report. Director of Legislative Affairs Dr. Tiffany Simpson reminded the Board that the \$45 increase sunsets this legislative session and an

extension of Act 578 will be requested. She presented a four-page report to be provided to the legislature this session.

d. Arnold Grant Update. Capital Case Coordinator Jean Faria reported that a BA-7 has been approved allowing \$100,000 of the grant funds to be expended and that the project is on task.

7. Policy Committee Report and Recommendations

a. *Montgomery v. Louisiana*, Proposed Resolution*. Ms. Kolinchak presented a Resolution for Board approval that would: 1) prohibit districts in ROS from accepting new *Miller* cases (with the exception of appearing for the limited purpose of protecting the *Miller* defendant's rights, including pursuing a halt of the prosecution, litigating for funding, ensuring compliance with the Prison Rape Elimination Act (PREA) and ensuring that any *Miller* defendant who is detained is held in a facility that is equipped to safely and constitutionally house a juvenile); 2) require districts in ROS to immediately stop *Miller* expenditures in ROS districts beyond those already required by existing cases and repurpose any money or attorney time budgeted for *Miller*; 3) require districts in ROS to notify the LPDB Compliance Officer of juveniles under the age of 18 arrested for first or second degree murder in their districts; 4) require the SPD to cause to be filed a notice with the court of the inability to assign counsel; and, 5) requires the district defender to notify the SPD in cases where the DA indicates that LWOP will not be sought at which time appropriate counsel shall be assigned.

After a brief discussion, Mr. Singer moved to amend the notification requirement by districts in ROS to notify the LPDB Compliance Officer to requiring all districts to notify the TLCO as soon as his/her district gets or becomes aware of any *Miller* case. Mr. Linares proposed to amend the resolution language, removing the DA's involvement, requiring the district defender to immediately notify the SPD when a life without parole sentence is no longer a possibility and to assign appropriate counsel to represent the *Miller* defendant. Mr. Singer accepted Mr. Linares' motion as a friendly amendment moved to accept the Resolution as amended. Professor Grant seconded the motion which passed unopposed.

b. Changes in the Law. DPD-DJDS Richard Pittman briefly summarized LPDB's proposed changes to existing law.

Mr. Flozell Daniels moved to amend the agenda which was seconded by Mr. Larson. Mr. Daniels moved to go into executive session which was seconded by Mr. Borghardt and passed unanimously.

Mr. Daniels moved to leave executive session which was seconded by Franz Borghardt and passed unanimously.

8. District Issues

a. Appointment of District Defender, District 26*. SPD Dixon reported staffs' recommendation of Mr. Michael Miller as the District Defender for District 26 (Bossier/Webster) to be paid the same salary as former District Defender Pamela Smart. Mr. Singer moved to approve Mr. Miller as the District 26 District Defender to be paid at

the same rate of pay as former District Defender Smart. The motion was seconded by Mr. Larson and passed unopposed.

b. ROS*. SPD Dixon presented three scenarios addressing the \$20M proposed cut to LPDB for FY17. Scenario 1 would provide no funding at all to the districts; scenario 2 – no funding to the contract programs; and, scenario 3 -- an equal 65% cut to DAF and contract programs and effective March 1, 2016, the implementation of a statewide ROS plan prioritizing adult felony defendants, acceptance of no new Sex Offender Assessment Panel (SOAP) matters, and the cessation of new CINC cases, appeals, non-support, curatorships, *Miller* and capital cases. Additionally, effective July 1, 2016, the cessation of new misdemeanor, juvenile delinquency and FINS, and new adult felony cases if the defendant is not incarcerated would be implemented.

After discussions, Mr. Lorenzi moved to accept scenario 3. Mr. Larson submitted a friendly amendment that the Board accepts the implementation of these cuts and restriction of services under protest because they are a violation of attorney ethical obligations under the Louisiana Rules of Professional Conduct; however, the Board sees no viable alternative. Mr. Borghardt remarked that the circumstances leading to restriction of services is ethically offensive and patently unconstitutional. Mr. Daniels seconded the motion, as amended. Upon vote, the motion passed six to two.

c. District Defender Position Status - Districts 3, 5, 9. SPD Dixon reported on-going searches for district defenders in three districts. In District 3 (Lincoln/Union), applications are currently being submitted to the selection committee. In District 5 (Franklin, Richland, WCarroll), two applications have been submitted and interviews are expected to be held soon. Because of exceptional circumstances in District 9 (Rapides), SPD Dixon asked the Board's permission to allow a limited private practice by the district defender. The Board agreed that the district defender in the 9th PDO could maintain a limited private practice but would be required to expend at least 40 hours per week in the PDO.

9. JLCB – Draft Report, Due March 1, 2016*. General Counsel Barbara Baier presented the 2015 report to the Joint Legislative Committee on the Budget. Mr. Singer moved to approved the report as presented. Prof. Grant seconded the motion which passed unopposed.

10. Legislative Session, 2016

a. Indigent Defense Review Commission Report. Mr. Dixon reported that the Commission will be seeking a one-year extension to submit the report which is due this legislative session.

11. LPDB Positions Status – TLCO, CCC, JJCO. Ms. Baier reported that three unclassified position terms were expiring and staff appeared before the Civil Service Commission and obtained four-year extensions for each position, to expire February 3, 2020.

12. Juvenile Strategic Plan Update. Mr. Pittman gave a brief update on the progress of the juvenile strategic plan which includes the completion of five organizational meetings, adoption of a mission statement and three broad goals, and organization of several work groups to complete the strategic planning process

13. SPD Report. Mr. Dixon reported that staff activities since the December 1, 2015, Board meeting are outlined in the SPD report located in the Board materials.
14. Other Business. No other business was presented for discussion.
15. Next Meeting(s) - Proposed Dates, 2016. In addition to two meetings set for April 6 and May 10, 2016, the Board set its next meetings for 1:00 p.m. on Thursday, March 17, 2016. The location is to be announced.
16. Adjournment*. Mr. Larson moved to adjourn. Mr. Borghardt seconded the motion which passed unopposed and the meeting adjourned.

Guests:

Harry Fontenot	Mitchell Bergeron	Harold Murry
Kyla Romanach	David Price	Don Kneipp
Richard Bourke	Chris Murell	Richard Tompson
Matt Robnett	Paul Fleming	Jim Looney
Michael F. Miller	Derwyn Bunton	Ilona Prieto
Vic Bradley	Reggie McIntyre	G. Paul Marx
Michael A. Mitchell	Mark Plaisance	John Lindner
Oliver Carriere	Amanda Trosclair	Shannon Mese
Cecelia Bonin	Alan Robert	Kerry Cuccia
Tony Champagne	Caitlin Graham	Chad Ikerd

I HEREBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board meeting held on the 16th day of February, 2016, as approved by the Board on the 17th day of March, 2016, at Baton Rouge, Louisiana.

Judge Robert J. Burns (Ret.), Chairman