

Regular Session, 2014

SENATE BILL NO. 223

BY SENATOR MURRAY

CRIMINAL PROCEDURE. Creates the Louisiana Risk Review Panel. (gov sig)

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AN ACT

To enact R.S. 15:574.22, relative to probation and parole; to create the Louisiana Risk Review Panel; to provide for membership of the panel; to provide for the powers and duties of the panel; to provide relative to eligibility for review by the panel; to provide for the adoption of rules; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:574.22 is hereby enacted to read as follows:

§574.22. Louisiana Risk Review Panel

A. The Louisiana Risk Review Panel is hereby created within the Department of Public Safety and Corrections. The secretary of the Department of Public Safety and Corrections may create not more than three risk review panels.

B. Each panel shall consist of five members in accordance with the following provisions:

(1) One member shall be a board certified psychologist, who shall be selected, on a rotating basis, from a pool of nine psychologists authorized and approved by the secretary of the Department of Public Safety and Corrections.

1 (2) One member shall be the warden, or in his absence the deputy
2 warden, of the institution where the offender is incarcerated.

3 (3) One member shall be the secretary of the Department of Public
4 Safety and Corrections, or his designee, who shall be chairman.

5 (4) A retired judge with criminal law experience, who shall be appointed
6 by the governor.

7 (5) A probation or parole officer with a minimum of ten years
8 experience, who shall be appointed by the governor.

9 C. A majority of the members of each panel shall constitute a quorum.
10 All official actions of the panel shall require the affirmative vote of a majority
11 of the members of the panel.

12 D. Members, other than the secretary or his designee, the warden or
13 deputy warden, or psychologists who are employees of the department, may
14 receive a per diem for each day spent in actual attendance of meetings of the
15 panel. The amount of the per diem shall be fixed by the secretary in an amount
16 not to exceed forty dollars per hour. Members may also receive a mileage
17 allowance for mileage traveled in attending meetings. The mileage allowance
18 shall be fixed by the panel in an amount not to exceed the mileage rate for state
19 employees.

20 E. Each panel shall meet on the call of each chairman or upon the
21 request of any three members.

22 F. The panels shall review, notwithstanding the provisions of R.S.
23 15:574.12, presentence reports, prison records, medical and psychological
24 records, information and data gathered by the staffs of the Board of Pardons
25 and the committee on parole, information provided by the convicted person, the
26 district attorney, the assistant district attorney, and any other information
27 obtained by the Board of Pardons, the committee on parole, or the Department
28 of Public Safety and Corrections.

29 G. The panel shall evaluate the risk of danger to society that each person

1 who has been convicted of a crime, and who is confined in a prison facility of
2 any kind, may present if released from confinement. However, the following
3 persons shall not be eligible for review by the Risk Review Panel:

4 (1) A person convicted of a crime of violence as defined or enumerated
5 in R.S. 14:2(B).

6 (2) A person convicted of a sex offense as defined or enumerated in R.S.
7 15:541 when the victim is under the age of eighteen years at the time of
8 commission of the offense.

9 (3) A person convicted of a violation of the Uniform Controlled
10 Dangerous Substances Law, except that the following persons shall be evaluated
11 by the panel:

12 (a) A person convicted of possession as defined in R.S. 40:966(C), 967(C),
13 968(C), 969(C), or 970(C).

14 (b) A person convicted of distribution or possession with the intent to
15 distribute cocaine where the offense of which the person was convicted involves
16 less than twenty-eight grams of cocaine.

17 (c) A person convicted of distribution or possession with the intent to
18 distribute marijuana where the offense of which the person was convicted
19 involves less than one pound of marijuana.

20 (d) A person sentenced for any other violation of the Uniform Controlled
21 Dangerous Substances Law who has served the mandatory minimum sentence
22 in actual custody for the offense, or one-half of the sentence imposed, whichever
23 is less.

24 (e) A person sentenced to a term of life imprisonment for a violation of
25 the Uniform Controlled Dangerous Substances Law who has served at least
26 seven years of the term of imprisonment in actual custody, except that the
27 provisions of this Subparagraph shall not apply to:

28 (i) Any person who has been convicted of a sex offense as defined or
29 enumerated in R.S. 15:541 when the victim is under the age of eighteen years

1 at the time of commission of the offense.

2 (ii) Any person who has been sentenced as a habitual offender under R.S.
3 15:529.1 where one or more of the crimes for which the person was convicted
4 and sentenced under R.S. 15:529.1 is a crime of violence defined or enumerated
5 in R.S. 14:2(B).

6 (4) A person sentenced as a habitual offender under R.S. 15:529.1 where
7 one or more of the crimes for which the person was convicted and sentenced
8 under R.S. 15:529.1 is a crime of violence defined or enumerated in R.S.
9 14:2(B).

10 H. The secretary of the Department of Public Safety and Corrections, on
11 or before January 1, 2015, shall adopt and promulgate rules, regulations, and
12 procedures under which the panels shall perform their duties. The rules,
13 regulations, and procedures shall include but shall not be limited to the
14 following:

15 (1) The requirements necessary for a convicted person to apply and be
16 considered for risk review, the type of crime committed, the age of the convicted
17 person, the time served in confinement, the prison record of the convicted
18 person, the damage or injury occasioned by the crime committed, any resources
19 available to the person in the event of release, and any other criteria or
20 information which the panel may deem to be advisable or helpful in the
21 performance of its duty.

22 (2) The psychological evaluations or other evaluations that shall be
23 utilized in order for the panel to make the risk evaluation required by this
24 Section.

25 (3) The manner in which a victim of the crime or crimes committed by
26 the convicted person may provide information to the panel.

27 (4) The procedure by which persons who are to be evaluated may apply
28 for such risk evaluation.

29 (5) The frequency with which such persons may apply for risk

1 **evaluation.**

2 **(6) The procedure by which risk evaluations shall be conducted, whether**
3 **by record review, by hearing, or by both record review and hearing.**

4 **(7) The manner in which a recommendation of the panel shall be**
5 **determined, reported, and disseminated.**

6 **I. When a panel has determined by a preponderance of the evidence that**
7 **a person will not present a risk of danger to society if released from**
8 **confinement, the panel may recommend that the person be considered for**
9 **clemency by the Board of Pardons or the panel may recommend that the person**
10 **be considered for parole by the committee on parole. The panel may also**
11 **recommend to the appropriate board or committee such conditions for**
12 **clemency or parole as it may deem advisable. Any recommendation of the panel**
13 **shall not be binding on the Board of Pardons or the committee on parole.**

14 Section 2. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Murray (SB 223)

Proposed law creates the Louisiana Risk Review Panel within the Dept. Public Safety and
Corrections (DPSC). Proposed law further provides that the secretary of DPSC may create
up to three risk review panels.

Proposed law provides that each panel is to consist of five members:

- (1) A board certified psychologist, who is to be selected, on a rotating basis, from a pool
of nine psychologists authorized and approved by the secretary of the department.
- (2) The warden, or in his absence the deputy warden, of the institution where the
offender is incarcerated.
- (3) The secretary of the department or his designee, who is to be chairman.
- (4) A retired judge with criminal law experience, who is to be appointed by the

governor.

- (5) A probation or parole officer with a minimum of 10 years experience, who is to be appointed by the governor.

Proposed law provides that a majority of the members of each panel constitutes a quorum, and all official actions of the panel require the affirmative vote of a majority of the members.

Proposed law provides that members of a panel, other than the secretary or his designee, the warden or deputy warden, or psychologists employed by the department, may receive a per diem for each day spent in actual attendance of meetings of the panel, the amount of which is to be fixed by the secretary in an amount not to exceed \$40 per hour. Proposed law further provides that members may receive a mileage allowance for mileage traveled in attending meetings, which amount is to be fixed by the panel in an amount not to exceed the mileage rate for state employees.

Proposed law provides that each panel is to meet either on the call of each chairman or upon the request of any three members.

Proposed law provides that the panels are to review presentence reports, prison records, medical and psychological records, information and data gathered by the staffs of the Board of Pardons and the committee on parole, information provided by the convicted person, the district attorney, the assistant district attorney, and any other information obtained by the Board of Pardons, the committee on parole, or the department.

Proposed law provides that the panel is to evaluate the risk of danger to society that each person who has been convicted of a crime, and who is confined in a prison facility of any kind, may present if released from confinement. Proposed law provides that the following persons are not eligible for review:

- (1) A person convicted of a crime of violence as defined by present law.
- (2) A person convicted of a sex offense as defined by present law when the victim is under the age of 18 years at the time of the offense.
- (3) A person convicted of a violation of the Uniform Controlled Dangerous Substances Law, except that the following persons are to be evaluated by the panel:
 - (a) A person convicted of simple possession of various controlled dangerous substances under present law.
 - (b) A person convicted of distribution or possession with the intent to distribute cocaine where the offense of which the person was convicted involves less than 28 grams of cocaine.
 - (c) A person convicted of distribution or possession with the intent to distribute marijuana where the offense of which the person was convicted involves less than one pound of marijuana.
 - (d) A person sentenced for any other violation of the Uniform Controlled Dangerous Substances Law who has served the mandatory minimum sentence in actual custody for the offense, or one-half of the sentence imposed, whichever is less.
 - (e) A person sentenced to a term of life imprisonment for a violation of the Uniform Controlled Dangerous Substances Law who has served at least seven years of the term of imprisonment in actual custody, except a person convicted of a sex offense under present law when the victim is under the age

of 18 years at the time of the offense, or a person sentenced as a habitual offender under present law where one or more of the crimes for which the person was convicted and sentenced is a crime of violence as defined by present law.

- (4) A person sentenced as a habitual offender under present law where one or more of the crimes for which the person was convicted and sentenced is a crime of violence as defined by present law.

Proposed law provides that the secretary of DPSC, on or before 1/1/15, is to adopt and promulgate rules, regulations, and procedures under which the panels are to perform their duties, which rules are to include at least the following:

- (1) The requirements necessary for a convicted person to apply and be considered for risk review, the type of crime committed, the age of the convicted person, the time served in confinement, the prison record of the convicted person, the damage or injury occasioned by the crime committed, any resources available to the person in the event of release, and any other criteria or information which the panel may deem to be advisable or helpful in the performance of its duty.
- (2) The psychological evaluations or other evaluations that will be utilized in order for the panel to make the risk evaluation required by proposed law.
- (3) The manner in which a victim of the crime or crimes committed by the convicted person may provide information to the panel.
- (4) The procedure by which persons who are to be evaluated may apply for such risk evaluation.
- (5) The frequency with which such persons may apply for risk evaluation.
- (6) The procedure by which risk evaluations are to be conducted, whether by record review, by hearing, or by both record review and hearing.
- (7) The manner in which a recommendation of the panel is to be determined, reported, and disseminated.

Proposed law provides that when a panel has determined by a preponderance of the evidence that a person will not present a risk of danger to society if released from confinement, the panel may recommend that the person be considered for clemency by the Board of Pardons or the panel may recommend that the person be considered for parole by the committee on parole. Proposed law further provides that the panel may also recommend to the appropriate board or committee such conditions for clemency or parole as it may deem advisable. Proposed law further provides that any recommendation of the panel is not to be binding on the Board of Pardons or the committee on parole.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 15:574.22)