

Legislative report

Published by The
Louisiana District Attorneys Association



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VOL. 43, NO. 6

4/4/17

THE MISSION of the LDAA is as follows:

To improve Louisiana's justice system and the office of District Attorney by enhancing the effectiveness and professionalism of Louisiana's district attorneys and their staffs through education, legislative involvement, liaison and information sharing.

THE CORE VALUES of LDAA members include:

We believe that the Louisiana Constitution requires, and Louisiana citizens favor, locally-elected, independent prosecutors. We believe that prosecutor discretion must be protected from interference through manipulative funding or legislative restrictions. Finally, we believe that prosecutors are the best and most trustworthy resource for legislative improvements to the criminal justice system.

SPECIAL REPORT ON THE JUSTICE REINVESTMENT TASK FORCE

For nearly a year, the Elected District Attorneys have closely monitored the work of the Justice Reinvestment Task Force (JRTF). We have reviewed and debated the general policy issues under consideration at every membership meeting. Their Report to the Legislature was adopted in March and only within the past week has the specific language of the recommended Legislation been available for review. This Special Legislative Report contains our response to the JRTF recommendations.

As ministers of justice and the primary protectors of public safety in the courtroom, the District Attorneys must assure that these recommendations do not endanger the public or hinder the administration of justice. Our position on each of the JRTF recommendations is guided by the following principles:

1. **Violent / Dangerous Offenders** - This Task Force was created by HCR 82 of 2015 with the following #1 goal: "Reducing correctional populations and associated criminal justice spending by focusing prison space on serious and violent criminals." Legislative approval of HCR 82 and the recruitment of Task Force members was primarily based on the premise that Louisiana's reforms should focus on "non-violent" offenders. The

prevalent theme of this initiative is that Louisiana and these states unnecessarily incarcerate too many “non-violent offenders.” Based upon these fundamentals, proponents have gathered endorsements from dozens of groups, such as LABI, the Louisiana Family Forum, local Chambers of Commerce, and the Louisiana State Bar Association. Numerous editorial boards and advocacy groups have also pledged support for the work-product of the task force. It should be noted that these endorsements were acquired BEFORE A SINGLE RECOMMENDATION WAS MADE BY THE JRTF. Unfortunately, many of the Task Force recommendations go far beyond the group’s mission and recommend release of murderers, armed robbers, rapists, and sex offenders. It appears that the JRTF has succumbed to “mission creep.” The District Attorneys will oppose the recommendations that call for significant reduction of penalties for, and/or early release of violent offenders. The DOC reports that 17,000 inmates are released each year. They also report that 33% of these offenders commit another crime within 3 years and nearly 45% will do so within 5 years. Several of these recommendations would add many violent offenders to the number of inmates released each year. This is a sure prescription for disaster.

2. **Reinvestment / Pre-investment** - Texas is cited as a model for “right on crime” reform. It is seldom mentioned that Texas pre-invested over \$240 million in alternatives to incarceration, supervision services, and other programs, BEFORE enacting their reforms. Other model states had a better network of services and alternatives to incarceration in place at the time of their justice reform. Louisiana has slashed the already substandard funding for these programs and we believe that the promise of reinvestment is tentative at best. Early release of more violent and dangerous offenders without available alternatives and services in place would be a risk to public safety.
3. **Details** - Criminal laws and procedures are technical and strictly construed by the Courts. Many penalties and procedures are inter-related and complex. Some of the massive changes recommended in the JRTF report will require much deeper consideration than the policy-level discussions held during the Task Force hearings. The unintended consequences of a hasty enactment of many of these recommendations are very likely to disrupt the administration of justice for years to come. We believe that the felony class system idea and directly related recommendations should be more carefully studied before attempting to enact them.

To be clear: Louisiana’s DAs generally support continuing efforts to responsibly reduce Louisiana’s rate of incarceration and the number of those incarcerated. In our judgement, several of the recommendations do not fit that description.

After much study and consideration, the LDAA has adopted the following positions on JRTF Report recommendations. In summary, we support the concept on nine (9) of the recommendations; oppose eight (8) recommendations as written; firmly oppose seven (7) recommendations; and need more information on three (3) recommendations.

SUPPORT THE CONCEPT

(9 recommendations)

We generally endorse the policies behind these recommendations, but must conduct further study of the specific language of bills that were filed less than one week ago.

RECOMMENDATION 3: IMPROVE THE VICTIM REGISTRATION AND NOTIFICATION PROCESS. (NOTE: HB 116 AND HB 309 ADDRESS THIS ISSUE, WE ARE STUDYING THESE BILLS CLOSELY.)

RECOMMENDATION 4: EXPAND ALTERNATIVES TO INCARCERATION.

Without substantial increases in funding for these alternatives, this recommendation is useless. The “re-investment” or “pre-investment” feature of proposed reforms will be critical to any sustained success. (NOTE: PARTS OF HB 316 ADDRESS THIS ISSUE, HOWEVER, THE BILL MANDATES REFERRAL TO PROGRAMS THAT ARE UNFUNDED OR UNDERFUNDED.)

RECOMMENDATION 6: CONSOLIDATE LAWS ON PROPERTY CRIMES AND RAISE THE VALUE THRESHOLD FOR FELONY CHARGES.

Adjustment to the felony threshold may inevitably be necessary to adjust for inflation, however, the threshold amount should be discussed with businesses and other victims.

RECOMMENDATION 7: DISTINGUISH PENALTIES FOR WEAPONS OFFENSES AND ENHANCEMENTS ACCORDING TO THE SEVERITY OF THE UNDERLYING CRIME.

This proposal may merit consideration in some form, however, the current proposal relies on the proposed class system which needs further study.

RECOMMENDATION 9: ESTABLISH A TEMPORARY FURLOUGH POLICY FOR INMATES WITH SERIOUS MEDICAL NEEDS. (NOTE: HB 169 ADDRESSES THIS ISSUE. WE ARE STUDYING THE BILL CLOSELY.)

RECOMMENDATION 10: EXPAND INCENTIVES FOR INMATES TO PARTICIPATE IN RECIDIVISM REDUCTION PROGRAMMING. (NOTE: HB 615 ADDRESSES THIS ISSUE. WE ARE STUDYING THE BILL CLOSELY.)

RECOMMENDATION 15: ADDRESS COLLATERAL CONSEQUENCES OF FELONY CONVICTIONS THAT CREATE BARRIERS TO REENTRY.

RECOMMENDATION 20: REINVEST 50 PERCENT OF THE DOLLARS SAVED FROM REDUCTION IN THE STATE PRISONER POPULATION.

The LDAA believes that 75% of the savings should be reinvested in services and programs such as the Prosecutors’ Early Intervention Programs (PEIP) and other crime prevention initiatives. (NOTE: HB 489 ATTEMPTS TO ADDRESS THIS ISSUE. THIS BILL NEEDS WORK.)

RECOMMENDATION 21: MANDATE DATA COLLECTION AND TRACKING OF PERFORMANCE MEASURES TO MONITOR IMPLEMENTATION AND OUTCOMES OF THE STATE'S JUSTICE REINVESTMENT REFORMS.

OPPOSE AS WRITTEN

(8 recommendations)

NOTE: WE OPPOSE THESE RECOMMENDATIONS AS CURRENTLY COMPOSED. WE MAY, HOWEVER, BE ABLE TO CRAFT AMENDMENTS OR ALTERNATIVES TO ACCOMPLISH SOME, OR MOST, OF THE GOALS OF SEVERAL OF THESE RECOMMENDATIONS.

RECOMMENDATION 1: IMPLEMENT A FELONY CLASS SYSTEM TO ELIMINATE INCONSISTENCIES IN SENTENCING AND RELEASE.

This concept is well-intended and potentially workable, but cannot be responsibly accomplished in the 2017 session. Implementing this recommendation would require amending more than 580 felony criminal statutes and classifying each. No consideration has been given to the consequences if these changes on related procedural statutes and decades of applicable jurisprudence. The policy questions concerning such classification have not been sufficiently vetted and the unintended consequences are likely to be immense. We recommend referring this matter to the Louisiana Law Institute and will work with that body and others to recommend language for the 2018 Legislature. (NOTE: HB 489 AND SB 220 ATTEMPT TO ADDRESS THIS ISSUE. THESE BILLS NEED MUCH WORK AND STUDY.) In lieu of enacting the felony class system this session, we are willing to study the existing criminal penalties and release mechanisms and to consider reasonable amendments to select statutes that would affect some reductions in maximum and mandatory minimum sentences.

RECOMMENDATION 2: INCREASE EQUITY BY MAKING BACK-END RELEASE MECHANISMS RETRO-ACTIVE FOR THOSE CONVICTED OF NONVIOLENT OFFENSES.

See the felony class comments above. This concept is well-intended and potentially workable, but cannot be responsibly accomplished in the 2017 session.

RECOMMENDATION 5: REVISE DRUG PENALTIES TO TARGET HIGHER-LEVEL DRUG OFFENSES.

See the felony class comments above. This concept is well-intended and potentially workable, but cannot be responsibly accomplished in the 2017 session.

RECOMMENDATION 8: REDUCE THE WINDOW OF TIME FOR WHICH CERTAIN PRIOR CRIMES WOULD COUNT TOWARD CURRENT HABITUAL OFFENDER PENALTY ENHANCEMENTS.

This proposal would deprive your District Attorney of a necessary tool to remove career criminals from your community. In lieu of the recommended changes to the Habitual Offenders statute, we are willing to consider reasonable amendments to the enhancement penalties. (NOTE: HB 218 ATTEMPTS TO ADDRESS THIS ISSUE.) WE ARE WILLING TO DISCUSS CHANGES TO THE SENTENCING ENHANCEMENT RANGES IN THIS STATUTE.

RECOMMENDATION 12: STREAMLINE PAROLE RELEASES FOR THOSE WHO ARE COMPLIANT WITH CASE PLANS AND INSTITUTIONAL RULES.

This proposal would weaken an already weak pardon and parole process and would deprive victims of meaningful participation in the process. This proposal could also violate the Victims' Rights Amendment in the Louisiana Constitution. (NOTE: HB 489 ATTEMPTS TO ADDRESS THIS ISSUE. THIS BILL NEEDS WORK.)

RECOMMENDATION 14: ADDRESS GAPS AND DEFICIENCIES IN SWIFT, CERTAIN, AND PROPORTIONAL SANCTIONS FOR VIOLATIONS OF PROBATION AND PAROLE CONDITIONS. (NOTE: HB 316 AND SB 136 ATTEMPT TO ADDRESS THIS ISSUE, BUT CONTAIN PROVISIONS THAT GO MUCH FARTHER. THESE BILLS NEED WORK.)

RECOMMENDATION 16: TAILOR CRIMINAL JUSTICE FINANCIAL OBLIGATIONS TO A PERSON'S ABILITY TO PAY. (NOTE: HB 249 ATTEMPTS TO ADDRESS THIS ISSUE BUT GOES TOO FAR. THE BILL NEEDS WORK.)

OPPOSE

(7 recommendations)

RECOMMENDATION 11: BRING LOUISIANA INTO COMPLIANCE WITH THE *MONTGOMERY* DECISION BY RETROACTIVELY EXTENDING PAROLE ELIGIBILITY TO INMATES WHO WERE JUVENILES SENTENCED TO LIFE WITHOUT PAROLE.

This proposal would eliminate life without parole for even the "worst of the worst" juvenile murderers and goes beyond the mandate of the U.S. Supreme Court.

RECOMMENDATION 13: FOCUS COMMUNITY SUPERVISION ON THE HIGHEST-RISK PERIOD BY REDUCING MAXIMUM PROBATION TERMS AND ESTABLISHING AN EARNED COMPLIANCE CREDIT INCENTIVE.

This proposal would reduce already insufficient supervision on violent and serious offenders. Probation and Parole officers are overworked and underpaid. They carry caseloads that are far above the recommended standards. The already dismal recidivism rate (45%) will surely rise if this measure is enacted.

ADDITIONAL POLICY 1: PROVIDE THE OPPORTUNITY FOR PAROLE CONSIDERATION TO SOME OF LOUISIANA'S LONGEST-SERVING INMATES.

This provision would violate the promises made to families of murder victims and risk public safety.

ADDITIONAL POLICY 2: ELIMINATE LIFE WITHOUT PAROLE SENTENCES FOR JUVENILES, GRANTING PAROLE REVIEW AFTER 30 YEARS. This proposal would eliminate life without parole for even the "worst of the worst" juvenile murderers. It would also violate promises made to grieving victim families.

ADDITIONAL POLICY 3: MAKE PAROLE ELIGIBILITY CHANGES FOR VIOLENT OFFENSES RETROACTIVE

This proposal could trigger the immediate release of many violent offenders and violate promises made to victims and victim families.

ADDITIONAL POLICY 4: FOCUS HABITUAL OFFENDER PENALTIES ON MORE SERIOUS CRIMES

This proposal would handcuff District Attorneys when dealing with career criminals.

ADDITIONAL POLICY 5: ELIMINATE THE MANDATORY MINIMUM SENTENCE FOR PEOPLE CONVICTED OF POSSESSION OF A WEAPON BY A FELON WITH AN UNDERLYING VIOLENT OR COMMERCIAL DRUG OFFENSE

This proposal could trigger earlier release of dangerous violent offenders.

NO POSITION

(3 recommendations)

Note: We need additional information on these recommendations.

RECOMMENDATION 17: MODIFY PENALTIES FOR FAILURE TO PAY CRIMINAL JUSTICE FINANCIAL OBLIGATIONS.

RECOMMENDATION 18: SUSPEND CHILD SUPPORT DURING INCARCERATION.

RECOMMENDATION 19: EXPAND ELIGIBILITY PERIOD FOR TRANSITIONAL WORK PROGRAMS AND INCREASE TAKE-HOME PAY.

CONCLUSION

The District Attorneys are primarily concerned with public safety. Drastic reduction of sentences and early release of violent and dangerous offenders will generate unnecessary victimization of innocent citizens. Many of the recommendations are conceptually sound, but need more study and work to effectively accomplish the intended goals.

While we are opposed to the JRTF recommendations concerning serious and violent offenders, we are committed to work toward developing responsible changes to the other recommendations that will help reduce unnecessary incarceration of non-violent offenders. In short, the LDAA and its members stand ready to work with all parties to develop and support a reasonable bill that will help reduce Louisiana's incarceration rate while keeping Louisiana citizens safe from people who really should be in prison.