



# LOUISIANA DISTRICT ATTORNEYS ASSOCIATION

EXECUTIVE DIRECTOR  
E. PETE ADAMS

## **Response to the Recommendations of the Juvenile Justice Commission Advisory Board Adopted by the LDAA Board of Directors January 22, 2003**

### **BACKGROUND**

The Juvenile Justice Commission Advisory Board has issued a broad set of recommendations for consideration by the Juvenile Justice Commission. These recommendations were drafted by staff and adopted by vote of the Advisory Board after a series of meetings and public hearings. Much of the substance of these recommendations is derived from the work product of the Annie Casey Foundation, a consultant to the Commission.

The Advisory Board is comprised of 45 members. This minority response represents the views of the three (3) prosecutor members of the Advisory Board and it has been unanimously adopted by the Board of Directors of the Louisiana District Attorneys Association.

The Louisiana District Attorneys are constitutionally responsible for all criminal cases arising in their respective jurisdictions. By law, Louisiana's District Attorneys handle the prosecution of juvenile delinquency cases. Common sense dictates that District Attorneys must be a partner in any significant revisions to the juvenile justice system and in the development of early intervention or diversion programs for juveniles in need of services.

### **RECOMMENDATIONS**

**LDAA Position #1: The District Attorneys of Louisiana endorse the recommendations of the Advisory Board to the extent that they recognize the need for additional resources for disposition options in juvenile delinquency cases.**

#### *Discussion:*

There has been a recurring theme within the Advisory Board, widely accepted as true, that Louisiana relies too heavily on secure-care custody as the remedy in juvenile cases. Such a conclusion begs the question, however, which I would pose as follows:

1. Does it suggest excessive incarceration, given the current range of options available to juvenile judges?

OR

2. Does it suggest excessive incarceration, assuming a broader range of high-quality, adequately funded options?

If the answer is the former, then many, if not most of us who work in the system, would strongly disagree that we have an excessive rate of incarceration. If the latter, then many of us would agree that such options would often be preferable to secure-care custody. Clearly, juvenile judges need a broader range of high-quality, adequately funded options. In many cases, juvenile judges eschew probation, knowing that our probation officers carry caseloads far too heavy to allow for meaningful supervision, and that other options are simply unavailable.

Most juvenile judges have no access to state-funded regional residential facilities, for those children who require out-of-home placement, but for whom secure-care custody is unnecessary. Most juvenile judges have no access to intensive day programs, for those children who do not require out-of-home placement or secure-care custody, but who require a structured program, coupled with intensive monitoring. By contrast, in Missouri, such facilities and programs are state-funded, and readily available in each region of the state.

Most juvenile judges and juvenile probation officers have little or no access to appropriate mental health services, or substance abuse counseling and treatment, for juveniles under their supervision. If one of our probation officers can see that a juvenile is mentally ill, he/she has no access to proper diagnostic or treatment services. By contrast, in Missouri, juvenile probation officers, as well as personnel at the regional residential facilities, can readily access mental health services or substance abuse counseling and treatment without "going up the ladder," and without returning to court.

Our judges must have ready access to all of these options and more if we are to seriously discuss reductions of the numbers of juveniles in secure-care custody. We must significantly increase the numbers of juvenile probation officers, and we must improve on their training and retention rates, if we are to give real meaning to the term "supervised probation." We should supplement their efforts through the use of "trackers," for those juveniles who do not require an out-of-home placement or an intensive day program, but who require regular, sometimes daily monitoring beyond the capacity of juvenile probation.

Mr. Joseph Liu, of the Annie Casey Foundation, was surprised to learn that caseloads are such that supervised probation in Louisiana most often consists of contact with the juvenile once a month, the functional equivalent of unsupervised probation. Even this limited contact may not involve surprise visits, or even in-home contact. By contrast, in Missouri, the average juvenile probation officer has a caseload of approximately 20, some of whom may be in secure-care facilities, further lessening the active caseload of the probation officer.

Mr. Liu suggests that "trackers" can be utilized at an average cost, per juvenile, of \$15 per day, compared to \$60 per day for day treatment, \$85 per day for placement in a residential facility, and \$157 per day for secure-care custody. Clearly, the State may expect substantial savings by lessening its reliance on secure-care custody, through the use of "trackers" and through the implementation of a variety of alternatives to incarceration. However, Mr. Liu emphasizes that these savings must be invested in alternatives to secure-care custody, and that there must be a transition period so that the alternatives to incarceration are in place and available to juvenile judges before further

"down-sizing" our secure-care facilities. We suggest that total expenditures may significantly increase during the transition.

Some have said that there is no juvenile justice system in Louisiana. We disagree. We have a system, but it is heavily weighted toward secure-care custody, and all other options are under-staffed and under-funded. We do not require dramatic gestures, such as the closure of a secure-care facility, without meaningful programs for those juveniles released from custody. We do not require the creation of new bureaucracies, such as those proposed by the Advisory Board recommendations, in order to improve the system.

We do, however, need to provide prosecutors, judges, and the Department of Corrections, including juvenile probation officers, with the tools to do their jobs. This will necessarily result in further reductions in the numbers of juveniles in secure-care custody, a measured response far preferable to the dramatic gestures suggested by some, which may result in a public backlash if juveniles are returned to their communities from secure-care custody before suitable alternatives to incarceration are in place.

The numbers of juveniles in secure-care custody peaked in 1997-1999, when there were over 2,000 juveniles in secure care. These numbers have steadily declined, since that time, and in June 2002, there were approximately 1,300 juveniles in secure-care, the lowest number since 1993. We can expect further reductions in these numbers, as juvenile judges respond to the increased availability of alternatives to incarceration.

**LDAA Position #2: The District Attorneys of Louisiana oppose the creation of the Office of Children, Youth and Families; the creation of the Louisiana Juvenile Justice Planning and Coordination Board; the creation of Regional Juvenile Justice Planning and Coordination Advisory Boards; and the "study" of regional juvenile courts (see Sections 3.01, 3.02, 3.15 and 5.09)**

*Discussion*

The Louisiana District Attorneys Association, through its Board of Directors, opposes the creation of the Office of Children, Youth and Families; and particularly, the transfer of the office of Youth Development from the Louisiana Department of Corrections to that agency. The placement of the Office of Youth Development within the Department of Corrections represents, we suggest, an appropriate recognition of the public safety concerns that are currently regularly addressed by the Office of Youth Development.

The Louisiana Department of Corrections has been an active participant throughout the meetings and deliberations of the JJC Advisory Board. Secretary Stalder has consistently demonstrated a commitment to serving the needs of the juvenile justice system and a willingness to adapt to the recommendations of the Juvenile Justice Commission. Placement of the Office of Youth Development within a new agency will do nothing to improve the juvenile justice system. In our view, it is far more important to equip the Office of Youth Development, within the Department of Corrections, with the proper resources to provide appropriate and effective alternatives to secure care, together with adequate funding and staff. Section 3.15.

The Louisiana District Attorneys also oppose the establishment of the Louisiana Juvenile Justice Planning and Coordination Board, Regional Juvenile Justice Planning and Coordination Advisory Boards, and a "study" of regional juvenile courts. Sections 3.01, 3.02 and 5.09, respectively.

The JJC Advisory Board was presented with no information to justify the creation of these new Boards, or to justify a "study" of regional juvenile courts. Further, the Advisory Board was furnished no information to suggest that the new boards will not duplicate the functions of existing entities, such as the Children's Cabinet and its Advisory Board.

The JJC Advisory Board has completed its mission by adopting recommendations to be considered by the Juvenile Justice Commission. Its recommendations should be submitted to the Juvenile Justice Commission, the Children's Cabinet and its Advisory Board, and others, for further review. There is no need for new bureaucracies to further complicate the process of devising and implementing an improved juvenile justice system.

It may be that the Advisory Board of the Children's Cabinet should be expanded to include groups such as the Louisiana District Attorneys Association, or that the scope of its mission should be re-evaluated. And if so, it is timely to consider such changes since the Children's Cabinet Advisory Board is, we understand, currently up for reauthorization. We suggest that the "fine-tuning" of entities which currently exist is far preferable to the establishment of new bureaucracies.

The Louisiana District Attorneys Association, through its Board of Directors, opposes the concept of regional juvenile courts, and therefore opposes a study of that concept. We believe that the people of our parishes prefer to have their children adjudged by locally elected juvenile judges who know their communities, and who know many of the juvenile offenders, their victims, and the families of both victims and offenders. It would be inappropriate to dilute the authority of our local district courts.

We favor the concept of specialized juvenile courts, however, in those areas where caseloads may require them, and where there is local support for their creation. We also favor meaningful, mandatory CLE for all judges exercising juvenile jurisdiction, whether they may be city judges, district judges or judges of specialized juvenile courts.

### **LDAA Position #3: The District Attorneys of Louisiana oppose the prohibition of waiver of counsel in delinquency cases (see section 5.04)**

#### *Discussion*

Curiously, in Section 5.03, the recommendations call for "greater judicial discretion" in juvenile dispositions. Yet, in Section 5.04, the recommendations suggest that judges be barred from exercising discretion in accepting waivers of counsel.

We suggest that knowing and intelligent waivers of counsel should be permitted, and that, if some judges are abusing their discretion in permitting juveniles to waive counsel

too frequently (as some have suggested), then that problem should be directly addressed. We further suggest that the prohibition of waivers of counsel would ignore the wishes of juveniles and their families, their financial circumstances, as well as the nature of juvenile proceedings.

It makes little sense to prohibit waivers of counsel in all cases, whether a juvenile is a 1<sup>st</sup> or 4<sup>th</sup> offender, whether the charge is Simple Battery or Armed Robbery, and whether the juvenile's family is indigent or wealthy. Additionally, it would make little sense to prohibit waivers of counsel when it is constitutionally permissible for a juvenile to give a statement without counsel, or to enter a plea without counsel, when an "adult" just beyond his 17<sup>th</sup> birthday could clearly waive counsel and enter a plea in adult criminal proceedings.

**LDAA Position #4: The Louisiana District Attorneys oppose the creation of a statewide Office of Juvenile Advocacy and Representation (see section 5.14)**

*Discussion*

We suggest that juvenile defense services should be extended through local indigent defender boards, and that the services offered juveniles should be strengthened through increased CLE requirements and pay supplements. In this regard, we are in agreement with the proposals of Patrick Martin, Governor Foster's representative, whose suggestions are embodied in Section 5.12 of the Draft Recommendations.

We have emphasized the need to strengthen local judicial districts, including local juvenile courts and indigent defender boards, rather than to dilute their authority. We further suggest that rural areas would be seriously "short-changed" by the establishment of regional juvenile courts and/or an independent statewide juvenile defender service.

**CONCLUSION**

We do not oppose the extension of services on a regional basis – the establishment of regional residential facilities, regional intensive day programs, as well as regional offices (with outreach capabilities) for the provision of mental health services, and substance-abuse counseling and treatment. We suggest, however, that the State reconsider its history of extending services on a regional basis, which has so often resulted in the absorption of most, if not all, meaningful services by the dominant parish. We suggest that, where possible, regions be comprised of parishes which are reasonably similar to one another.

We should expand the FINS program, throughout the state. FINS programs serve a much broader "clientele" than does the juvenile justice system; further, FINS provides an opportunity to address the needs of the family, a concept vital to the notion of crime prevention, since so many juvenile and adult offenders are products of dysfunctional families. Once again, however, FINS programs so often lack access to the same mental health services, and substance abuse counseling and treatment, that are so desperately needed by the juvenile justice system. Access to such services should be assured.

Local Mental Health Clinics and Alcohol and Drug Abuse Clinics are under-funded and under-staffed. Perhaps as a result, many in those offices do not view it as part of their mission to serve the courts. If services are to be provided to the juvenile justice system and to FINS programs through such offices, then they must be properly funded and staffed, and their mission clarified so as to assure that there is a willingness to serve. If such services are to be provided through contract providers, then we must assure that the range of services is adequate, and that they are readily available.

The information gathered by the JJC Advisory Board has shown that there are significant differences from parish to parish, in terms of options available to juvenile judges. Some parishes have locally-funded detention centers; others have locally-funded probation officers, with manageable caseloads, who have ready access to locally-funded services. Many other parishes, and particularly rural parishes, are entirely dependent upon state-funded services. Judges in such parishes often view their choice as a limited one – secure-care custody or “the functional equivalent of unsupervised probation.”

The Louisiana District Attorneys Association is proactively working toward the development and statewide implementation of model multi-disciplinary, early intervention programs such as those currently in place in many Judicial Districts. Most, if not all of the early intervention programs throughout the state are operated by judges, district attorneys, sheriffs and others on the basis of grants funded by the Louisiana Commission on Law Enforcement. The Commission has served the juvenile justice system well, for many years. All grant awards are subject to rigid federal guidelines. The Louisiana District Attorneys, therefore, strongly oppose the relocation of this funding function to the Children’s Budget.

We understand the need for constructive change and are working and will continue to work toward that end. We believe that the answer is not in the creation of additional bureaucracies or the vesting of additional privileges and defenses. The answer lies in creative attention to the education, treatment, and rehabilitation needs of children - before they become hardened criminals. Much is to be done if we are to restructure the juvenile justice system so that it can better fulfill its purposes – to promote public safety, to be sensitive to the concerns of victims, to address the best interests of juvenile offenders, and most of all, to prevent juvenile offenders from becoming adult offenders.

Prepared by:

The Honorable David W. Burton  
District Attorney  
Thirty-sixth Judicial District  
P.O. Box 99  
DeRidder, Louisiana 70634-0099

Mr. E. Pete Adams  
Executive Director  
Louisiana District Attorneys Association  
1645 Nicholson Drive  
Baton Rouge, Louisiana 70802-8143

Mr. Barron Burmaster  
Assistant District Attorney  
Twenty-fourth Judicial District  
5<sup>th</sup> Floor, Courthouse Annex  
200 Derbigny Street  
Gretna, Louisiana 70053-5850