

## ADMINISTRATION OF JUSTICE

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**Support for a system of justice that assures adults and juveniles prompt and equal treatment before the law.**

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The League's positions covering administration of justice were first adopted in 1957 and have been expanded several times since then. Extensive additions were made in the 1970's, with several reviews and updates since then. In a number of studies, many of the consensus positions focused on local communities, and since there were significant differences in communities, many local Leagues reached agreement in areas that were not shared by enough other local Leagues to reach statewide agreement. Therefore, the state Board authorized local Leagues to act on positions arrived at locally, provided that they were not in conflict with state positions.

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### COURTS

#### **Support of:**

**Availability of judges at all times in all parts of the state to take care of judicial work without undue delay.**

**Adoption of a system of equal compensation for equal work and more even distribution of the workload of judges.**

**Reduction in the present inequities in the cost of judicial administration in different parts of the state.**

**Establishment of uniform rules of practice and procedure.**

**A requirement that all judges be licensed to practice law.**

**A broader base of jury selection with fewer exemptions.**

**In the area of pre-trial disposition of the adult defendant in the criminal process, use of a point system based on past record, family ties, employment and length of residence, to evaluate the stability of the individual, and all who qualify to be released on recognizance.**

**Free legal services of high quality for those in need.**

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The position was adopted in 1957; reviewed and reaffirmed in 1971; amended in 2013.

The League took an active role in successfully securing passage of a constitutional amendment providing for a single level trial court and an intermediate appeals court. Two other League-supported improvements were passed, providing for a Chief Judge in each of 14 administrative districts in the state and uniform rules and procedures.

The League unsuccessfully continued its support for a constitutional amendment providing for the selection of judges based on qualifications established by citizen review. The League has recommended the establishment of a citizen's advisory review board to make recommendations to the governor for judicial appointments through a merit selection process. Some governors have chosen to do this, but there has been no effort to make this method a statutory requirement.

The jury selection position was used successfully when the League supported a bill that broadened the base of jury selection by removing most exemptions and providing procedures to make jury administration more efficient.

The existing provision of legal services for the poor within the adult criminal justice system has consistently been supported by the League since the public defender program was first established. Adequate funding for the program in the state budget has been a political issue, especially in recent years.

In 2009 the League petitioned the state Supreme Court to adopt rules requiring a judge or justice to recuse him/herself from cases involving a major campaign contributor. The Court denied the League's petition and adopted rules written by Wisconsin Manufacturers and Commerce and the Wisconsin Realtors Association. These rules

said that a lawfully given campaign contribution or independent expenditures would not by themselves be considered cause for recusal.

At the 2013 state annual meeting, the League removed its position on judicial selection from its positions. The old position stated support of: "A system which provides that judges be appointed on the basis of qualifications established by citizen review, and that they subsequently stand for election on their records." This change was made following an online survey of Leagues which revealed a lack of consensus on the position.

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## **LAW ENFORCEMENT**

### **Support of:**

**Law enforcement policy locally developed by cooperative efforts of citizens and law enforcement agencies using state guidelines, but reflecting local needs.**

**Adoption of flexible physical requirements (height and weight) to widen the recruitment base for law enforcement personnel; active recruitment of women and minorities.**

**Mandatory basic training within state standards for law enforcement personnel and continuing in-service training.**

**Lateral entry for law enforcement personnel; promotions based on ability with additional positive consideration for continuing education and training; pay incentives based on training, education, and outstanding work used to encourage job satisfaction and excellence of performance within a given rank.**

**Removal from the criminal statutes of non-commercial sexual behavior between consenting adults, including fornication, adultery and homosexuality. There should be no criminal penalty for possession of small amounts of marijuana for personal use. The vagrancy statute should be abolished.**

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This position was adopted in 1973. While the League believes the state should set standards, it also recognizes the need for flexibility. Since law enforcement policy is developed locally by agencies that reflect local needs, local Leagues may use the state position to bolster their own positions in working for such procedures as citizen review boards or mandatory human relations training of personnel. The League believes that some hiring requirements are restrictive, effectively discouraging or eliminating women and members of minorities. Community needs can best be served when police are representative of the entire population. The League has opposed efforts to relax the minimum state training standards.

Laws that prohibit widely practiced behavior usually are not enforced. The League believes this situation tends to encourage disrespect for the law. Attempts to enforce such laws are inherently unequal and may lead to questionable police practices. The vagrancy statute is an example. It represents an improper use of the criminal sanction to deal with a social problem. The League does not support the use of marijuana but believes that most prohibitive laws are unenforceable. The League seeks laws that will be uniformly enforced and that are worthy of respect. In 1983, the League worked hard for the successful passage of a bill that would remove non-commercial sexual behavior between consenting adults from the criminal statute.

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## **CORRECTIONAL POLICY**

### **Support of:**

#### ***GOALS***

**The primary goal of criminal sanctions should be the protection of society through deterrence, incapacitation, and reform. Protection of society should be pursued with concern for preservation of rights of privacy and freedom of movement, due process to protect the innocent from victimization, and the prevention of inhumane punishment. Retribution should not be the primary goal of punishment. However, acts that inflict death or extreme bodily harm to others should incur some punishment even when**

the protective function of society is negligible.

#### *PUNISHMENTS*

Specific punishments should be humane. Punishments regarded as inhumane and in violation of the sanctity of human life include capital punishment, infliction of severe bodily harm or mutilation, imposition of conditions shown to be destructive of mind or body, forced inactivity, isolation from human contact for prolonged periods, inadequate diet, unsanitary conditions, lack of opportunity for physical recreation, lack of prompt and adequate medical services, and lack of social services.

Specific punishments should seek to avoid criminalization. The offender should be treated like the non-offender in all regards except where inherently inconsistent with the prescribed punishment. For the prisoner, this should include access to full protection of the law in regard to alleged offenses against him or her by staff or other inmates, access to independent arbitration of disciplinary action affecting his or her disposition or freedom, free access to reading material, use of proper forms of address, and minimization of uniformity and regimentation in dress and movement. For the ex-offender, this should include restoration of civil rights, elimination of restrictions on employment except where related to criminal behavior, and elimination of restrictions on political activity.

Specific punishments should promote the offender's potential for responsible behavior in relation to family and community. This is done through encouraging maintenance of positive family ties whenever possible, maximizing opportunities for private, normal contacts with family by means of furloughs, family counseling where desired, and contacts with other members of the community concerned with providing help. It is also accomplished by providing work release opportunities when appropriate, adequate wages for prison employment and

corresponding responsibility for partial maintenance of self and family while confined, opportunities for education including relevant vocational training, availability of pre-release counsel and aid in securing employment, and confinement in small institutions near urban centers and home community whenever possible.

Specific punishments should be applied equally regardless of race, religion, sex, economic or social status. This includes more minority group representation on correctional staff.

#### *SENTENCING*

General deterrence as a means of protecting society should be the primary consideration in specifying criminal penalties. The deterrent justification should be supported wherever possible by showing evidence of effectiveness. Restitution for property loss as well as reparation for bodily injury suffered by the victim of crime should be paid by the offender. Changes in the criminal justice system designed to make such sentencing feasible should be given high priority. To reduce the disparity in sentencing, classification of crimes and their penalties (reflecting differences in the seriousness of the offense) is necessary. Sentencing alternatives for offenses should be spelled out in such a classification system. Sentences should provide the offender with the maximum degree of certainty as to release date, either through absolute fixed terms or clear criteria for early release. The right to appellate review of all sentences should be assured. Pre-sentence investigation should be conducted in all felony cases. Legal services should be available at the time of the parole hearing and the offender should have the right of judicial appeal from the parole board's decision.

#### *CORRECTIONAL FACILITIES*

Since only the state has the authority to incarcerate offenders, it is appropriate that the state own and operate these correctional facilities in Wisconsin. We oppose the use of

**private correctional facilities because of issues concerning oversight, restricted access to information, quality of personnel and the inappropriateness of profit making in this area. Certain professional services, such as health care, education, rehabilitation programs, and other special services may be contracted with state oversight.**

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It is the state's responsibility to own, operate and have oversight of prisons. It is the government's role to mete out justice and to provide rehabilitation and services. Public mechanisms provide for better scrutiny than private ones. Government must ensure that treatment is humane. It is in the interest of society to rehabilitate offenders. Higher quality staff will be drawn to state institutions because of better pay.

Private prisons would require more oversight and monitoring which could be difficult. There were questions regarding training of guards and low wages. Private facilities might want only better behaved prisoners and once established may raise costs.

The profit motive of private facilities could encourage an increase rather than a reduction in prison populations, which could then become a lobby bloc. The goal of a private prison is to make money; society's interest lies in providing treatment and services so that prisoners do not re-offend. Only a few corporations are in the prison business so there is little competition. When a private business loses a contract, it leaves an empty building that isn't an economic benefit.

There was support for public facilities using private contractors for specific services such as health care and education.

There was support for keeping Wisconsin residents in Wisconsin facilities. It was suggested that the state have regional facilities where one region keeps prisoners.

The ability of Leaguers to see the broad picture is both a blessing and a curse. In the consensus of 2003, it was difficult for Leaguers to

remember that we were creating only an update on a specific portion of our entire Administration of Justice Positions, allowing us to decide whether we would support or oppose the establishment of private correctional facilities in this state.

Most consensus comments eloquently addressed the need to reduce the prison population, to improve rehabilitation efforts, and to address current problems in the prisons. A careful reading of the Administration of Justice Positions reveals how clearly such issues are addressed, providing a basis for us to continue to take action on them.

#### ***REHABILITATIVE TREATMENT***

**Programs aimed at changing offender behavior and/or enhancing opportunities for successful re-entry into society should be available but not mandatory. Such programs should be continually re-evaluated as to effectiveness in meeting the above goals. Participation in such programs should not be a determining factor in prescribing or mitigating the sentence.**

#### ***ALTERNATIVES TO INCARCERATION***

**There is a strong need for further development and primary reliance on alternatives to incarceration except for the most dangerous offenders. Citizen education and participation should play an important role in the reintegration of the offender into the community. Use of community based treatment centers and halfway houses should be expanded. Probation services should include professional staff, each with a reasonable number of cases, use of trained volunteer aides, paraprofessionals, and wider use of community resources through purchases of services by the Department of Corrections. Unnecessary and unenforceable restrictions on behavior should be eliminated. Pre-trial intervention should be used to provide rehabilitation alternatives to a criminal record for adults who commit minor offenses, particularly first time offenders, and those whose lack of income would ordinarily doom them to jail before trial.**

### **LOCAL JAILS**

**State government should establish minimum standards for the operation of county jails and should provide for enforcement of those standards. The state should establish minimum training requirements for jail personnel and make special training programs available to counties to enable them to meet these requirements. Funding of day-to-day jail operations should remain a local responsibility, but the state should provide assistance for training and other special programs or facilities needed to meet state requirements.**

**The League supports, in principle, the separation of the sheriff's department from jail administration. The latter should be under a separate director and staffed by trained civil service personnel. Consideration should be given to the practical difficulty of achieving this separation in smaller counties.**

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This position was first adopted in 1973. The agreement on local jails dealt with the role of the state *vis a vis* the county and did not deal with the content of jail standards. However, in applying this position, the League can draw upon the specific standards established in the earlier concurrence statement dealing with conditions of punishment. These standards apply equally to prisons and jails.

League action in correctional policy began soon after member agreement was reached in 1975. In almost every session bills have been introduced asking for reinstatement of the death penalty in several forms in Wisconsin. The League has continued to oppose these bills in every session.

League has sought increased state support for correctional alternatives in the community and has supported several bills designed to remove barriers to employment for the ex-offender.

Under Human Resources and Correctional Policy positions, the League, working with the Coalition for Group Homes, secured passage of a law permitting the state to suspend local

zoning ordinances to allow the establishment of small group homes in areas zoned for single families. It applies to a number of groups, including the developmentally disabled, juveniles, the elderly, ex-offenders, and alcoholics.

The "Truth in Sentencing" bill, passed in 1998, effectively put an end to parole in Wisconsin by requiring a felon to stay in prison for the entire sentence set by the judge. League strongly opposed every version of the bill, including the final one, for several reasons: it ignored other approaches suggested by the Governor's task force on sentencing and corrections, it continues the high costs from prison over-crowding, and it does not effectively improve public safety.

(See also *Social Policy, Mental Health*)

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### **JUVENILE JUSTICE**

**Support of:**

#### **GOALS**

**The goal of the juvenile justice system should be to protect society through deterrence, incapacitation, and reform, as well as to protect the child whose development and welfare are in jeopardy. Punishment applied to the juvenile, like the adult, should be humane, seek to avoid criminalization, promote the juvenile's potential for responsible behavior in relation to family and community and be applied equally regardless of race, religion, sex, economic or social status. However, the age and level of responsibility of the child should be taken into consideration.**

**For specifics referring to "humane", "criminalization", etc., refer to the position on the adult offender.**

#### **PREVENTION**

**Priority should be given to measures which may prevent delinquency, including programs to strengthen the positive influence of the family, school and neighborhood on children's development. Prevention should include greater provision for the adolescent to act as a responsible**

and contributing member of society. Programs aimed at prevention should avoid labeling children as pre-delinquent.

The League strongly encourages innovative methods of parent education, including emphasis on courses and programs for young people before they become parents. Other preventive measures which should be encouraged are providing assistance through family crisis counseling, street workers, and "hot lines"; parent participation in school and community; school alternatives to meet the needs of all children, with adequate provision for vocational preparation; neighborhood organizations and drop-in centers. Membership on school boards and other policy-forming groups is desirable. Opportunities for work and work-training programs should be available.

#### *DETENTION*

Detention should be restricted to necessary holding of the child rather than for punishment or treatment. Personnel, intake procedures, and facilities should be adequate to insure that the least restrictive form of temporary care required is used. Secure detention should be used for children who pose a threat to themselves or others. It should not be used for children who have run away from home or as a temporary measure when parents cannot be located.

#### *COURT JURISDICTION AND PROCEDURES*

Jurisdiction over the juvenile should clearly separate children who have committed criminal offenses from those who have not. Protection of the child rather than punishment should be the sole purpose of intervention when there has been no criminal offense. A court adjudication should relate to specific offenses rather than the general behavior of the child. Court jurisdiction over certain kinds of behavior that apply only to children should be limited with mechanisms for involving other agencies in resolution of the problems prior to court intervention. Included here are

running away from home, truancy, curfew violations, promiscuity, and possession of alcohol. The state should assist counties in providing funding for services to help children whose behavior suggests serious problems, regardless of whether there is a court adjudication. Police should retain the authority to take a child into custody for the child's protection.

Children should be accorded all due process necessary for fairness in keeping with their best interests. There should be right to counsel in all proceedings with a system for court appointment of an attorney where families are not able to pay for services. Because of the child's vulnerability, right to counsel should be unwaivable when extreme sanctions may be invoked. Children's records and all proceedings should be confidential. However, the child, parents, and child's attorney should have access to court and police records. Restrictions should be placed on such criminalizing procedures as fingerprinting, photographing, and handcuffing. Guidelines should be established to insure a speedy trial.

With regard to the limitation of jurisdiction over certain status offenses, the League is concerned that any court action be initiated after all alternatives have been exhausted, and that such action clearly function to protect the child. "Status offenses" should be treated individually with mechanisms for handling varying with the type of behavior involved.

The criterion on "specific offense" as grounds for court jurisdiction means that the League would support removal from the statutes of "uncontrollability" and "endangering health or morals of self or others", two vaguely defined categories that now appear in the statutes.

#### *TREATMENT*

Diversion from the system should be encouraged, with clear policy guidelines established between the police, schools, courts and other agencies to which youth

may be referred. The "least restrictive means" criterion should be applied to all dispositional judgments, and resources should be available to enable this. Dispositional alternatives available to the juvenile court judge should include restitution to the victim and public service to the community. There should be periodic review of dispositions to insure treatment is being provided, that it is still necessary and that there is continuity between agencies.

A variety of resources should be available to insure least restrictive treatment and may differ according to the size and nature of the community. Extremely important is the provision of an adequate number of group homes and foster homes. Community treatment facilities, walk-in crisis centers and shelter facilities are also important. Other programs that may be encouraged are alternative schools, jobs, use of volunteers - in probation, such as big brothers/sisters, as teen companions - programs for children with special needs.

#### **ADMINISTRATION**

Standards and procedures for the administration of the juvenile justice system should be formulated and enforced by the state to insure that children in all parts of the state receive fair treatment and equal access to services. However, administration should remain with local units of government. Uniform and adequate records should be kept for both planning and evaluation purposes. Specialized training should be encouraged for all personnel who play significant roles in the juvenile justice system. There should be continued evaluation of treatment programs, correctional institutions, private treatment centers, and all types of innovative alternatives.

Enforcement of state standards implies that there be penalties for non-compliance. These might take the form of withholding of funds or licensing or the possibility of reverting to state control. Evaluation of programs is interpreted to mean evaluation

**by someone other than the provider of the service.**

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These positions were first adopted in 1975 and were reviewed and reaffirmed in 1991. A major reform of the juvenile justice system, which the League supported with a major effort, was accomplished in 1978. The revision specified procedures for due process in the juvenile court and modified some of the court procedures. It limited the use of secure detention and placed increased responsibility with the court for all major decisions regarding juveniles. It encouraged alternatives for disposition and temporary placement of juveniles.

The League strongly supported the Youth and Family Aids (YFA) program, which provides funds to help counties to establish and use local correctional means (group homes, foster homes, supervisory services). Since counties were given a lump sum for all corrections, whether at a state-run institution or at a local alternative facility, there is a financial incentive to use the least restrictive criterion to keep juveniles in the community. The League has continued to support adequate funding for this program. Local Leagues are encouraged to review how YFA funds are used in their counties.

The latter part of the 1980's saw a move by some legislators to make the Children's Code much more restrictive. The League gave qualified support to the extended jurisdiction bill in 1989, which extended court jurisdiction until the age of 21 or 25 of 14 or 15 year olds who commit serious crimes.

In 1995, supervision of juvenile delinquents was moved to the Department of Corrections from the Department of Health and Social Services. League opposed the move because services to juveniles in the court system are closely integrated with other services to children.

Other recent revisions in the juvenile code have made it more punitive and have blurred the distinction between juveniles and adults. The League has opposed most of these

changes. They include: lowering the age of delinquency from 12 to 10; making 17 year olds subject to the adult court; waiving juveniles to adult court at a younger age; allowing secure detention in county facilities as an appropriate disposition for juvenile offenses; and the elimination of jury trials for juveniles. League also opposed involving truancy in the court system.

The League did support new alternative dispositions available to the court.

