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EAST BATON ROUGE PARISH

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To the Citizens of East Baton Rouge Parish:

I am asking each of you to read a report developed at my request by the LSU Office of Social Service Research and Development that evaluates our local 2015 non-violent convictions. The findings of this report will be very important for my discussion with others about justice reform during this year's legislative session.

Justice reform proposals for this year's legislative session offer an exciting and dangerous opportunity for us all

I applaud the efforts of the Governor and the members of the Justice Reinvestment Task Force, including Secretary Jimmy Leblanc, for the hard work and effort they have put into leading a discussion to reduce the rate of incarceration in our state. One of the tools they have relied upon is a PEW study published in a Louisiana Legislative Auditor's report. PEW is a charitable organization that funded the analysis of the Department of Corrections data looking at the rate of incarceration for non-violent offenders. Their conclusions did not ring true for many prosecutors so we have met many times with the researchers conducting the PEW study. Their data is not wrong. Instead, we believe that their lack of intimate familiarity with our criminal justice system caused a tendency to treat criminal data as numbers instead of looking beyond the data to the individual criminal. They did not look below the simple fact of a non-violent conviction to examine any individual's entire history and reason for incarceration. For those of us working every day in this field, we know we have to keep the individual in mind when looking at any data because at the end of the day it is individual criminals who harm individual citizens. Our laws recognize this individuality and the legislature has given judges much discretion to sentence individuals for both the severity of their individual crime and their individual criminal history. That is why the legislature has previously passed both mandatory minimum sentences and habitual offender laws. We also know that many of those released are likely to re-offend. For that reason, the District Attorneys are seeking to work with others on smart and safe justice reform proposals. For East Baton Rouge parish, we asked our research partners at LSU to help us analyze the same data PEW had used. This objective and independent report was prepared by Dr. Steven Maberry, LSU's Office of Social Service Research and Development, and comes at a critical time for those of us working to improve our criminal justice system during this legislative session.

Justice reform during this legislative session must be limited to addressing the needs of non-violent offenders

The District Attorneys of this state, all 42 of us, have come together to issue our position detailing the changes needed to support virtually every bill filed by the Task Force. We have a very real concern that the Task Force is attempting to go beyond their charter and make recommendations for the release of violent offenders. We believe we can find common ground in the non-violent recommendations once the data from the PEW study is correctly understood. My letter will not attempt to duplicate the specific recommendations of the Louisiana District Attorney's Association as those have been widely published, including on my office website at www.ebrda.org.

District Attorneys have led the development of alternatives to incarceration for more than 30 years

Despite media reports to the contrary, District Attorneys have been innovators of alternatives to incarceration for many years. During the last epidemic of opioid abuse occurring in the late 1970's and early 80's, District Attorneys worked with others to establish the very first pre-trial diversion programs to address substance abuse crimes through treatment instead of incarceration. We worked with judges to establish the first Drug Courts that allowed substance abusing offenders the ability to avoid a felony conviction by successfully completing treatment programs. Since that time, we have continued to establish pretrial intervention programs that identify the true first time offenders and provide them with the alternatives of counseling, coaching, and treatment instead of prosecuting them in the criminal justice system. Each of these alternatives requires time, effort, and money to operate but also requires an individual offender ready, willing, and committed to changing their own criminal behavior.

With this history, we stand together today as District Attorneys largely supportive of the currently proposed justice reform measures and have provided reformers with the specifics of our written support for 19 of their 21 proposals. Our historical record has shown our past support for reform with more than 30 legislative changes adopted under the "Smart on Crime" reforms. These changes have helped decrease the state's incarceration rate by 8 percent since 2012. Louisiana is headed in the right direction and we will continue our efforts to further reduce incarceration rates in Louisiana.

Louisiana's efforts at justice reform must balance the opportunity for release against the real risk of future harm

Reformers cite statistics showing that Louisiana has the highest percentage of prison population and highest rate of incarceration in the United States and in the world. These are not statistics that make any Louisiana citizen proud. These are statistics that must change through smart and safe reform. The solution will never be as simple as letting everyone out of prison. Every the most well intended programs like President Obama's crack-cocaine offender release

program, Texas's non-violent offender release program, and California's non-violent offender release program have seen released offenders commit new crimes, including murder. No release program can ever be 100% safe. We must all learn to use data, risk assessment tools, and criminal histories to balance the opportunity for release with the very real danger that a released offender will once again perpetrate harm upon our citizens. Any changes proposed for this legislative session must follow a measured and deliberative legislative process that gives priority to public safety, victim rights, and defendant rights.

Smart and safe justice reform must spend money on adopting risk assessment tools, implementing individualized screening, counseling and coaching, and providing additional resources for rehabilitation and supervision

The changes proposed have great implications for all of us. In 2014, California's effort, known as Proposition 47, resulted in the release of 4700 non-violent inmates. Much like Louisiana's current proposals, none of California's savings were pre-invested. No money was spent until the savings were actually realized. The result: many former inmates ended up on the street with no safety net and law enforcement and business owners experienced an increase in crime, especially in property thefts.

I have spent my life on all sides of our criminal justice system: as a district attorney investigator responding to every homicide and rape, as a criminal defense attorney, and, now, as your District Attorney. During this time I have worked with many dedicated judges, public defenders, and law enforcement professionals. All of us want the best system of justice possible. Many of us are frustrated by the lack of resources available to us from the crime scene to the jail, from the jail to the court house, from the courthouse to the prison, and, most critically, from the prison back to the community. To successfully do this work and truly bring improvement to our criminal justice system we need to provide the basic infrastructure that our communities currently lack. Two key facts must be kept in mind: today almost 50% of those released will reoffend within 5 years and virtually every prisoner, except those serving life sentences, will return to our communities. Simply releasing prisoners without preparing them for this reality is both foolish and dangerous. We can never eliminate all risk when releasing a prisoner but we do need to employ risk assessment tools and not release those whose history or evaluations indicate a substantial likelihood of harming our citizens. There is no doubt in my mind that we can both reduce incarceration and increase public safety. These goals are not incompatible but they cannot be accomplished without a substantial investment in reducing known crime drivers and providing greater assistance to those returning from prison.

When I first became District Attorney, there was a similar push for juvenile justice reform. District Attorneys were presented with a wonderful road map for improvement known as the Missouri model. We were promised an improved Juvenile Justice system if we would all agree to close juvenile facilities modelled on adult prisons and transfer those cost savings into regional rehabilitation centers located closer to the offender's family and home. The juvenile

prisons were closed. But those savings and improvements never materialized. The promised regional centers were never built. Where did those savings go? Juvenile youth today, eight years later, still face a decrepit and underfunded system in Baton Rouge that does not meet their needs and does not protect the public. We will not entertain the same empty promises being made for adult offenders.

This year's proposals for justice reform consist of 21 action items that include: rewriting our criminal code and sentencing provisions; reducing drug sentences; reducing habitual offender restrictions; retroactively releasing both violent and nonviolent offenders; providing for back end releases; increasing alternatives to incarceration; limiting juvenile life sentencing options; eliminating barriers to reentry; providing for prisoner financial obligations; and allowing for even earlier parole eligibility. In addition, there are five additional recommendations that include the retroactive release of violent offenders and provide for parole for those sentenced to life.

Along with these proposals, the proponents of reform are promising to invest half of any costs saved in resources for returning prisoners. Why only half? Where do we plan to spend the other half of these millions? Texas is cited as a model of justice reform. Yet, Texas wisely pre-spent \$420 million in additional upfront costs to build rehabilitative services before beginning the process of releasing prisoners back into the community. I have yet to see a budget or spending plan detailing Louisiana's specific reinvestments.

I trust that those who are working on reform are as well intended as those who worked diligently but failed to bring the Missouri model to Louisiana. For any reform to be successful, we must not only reform the rules and laws used to sentence prisoners but we must also ensure that any savings goes entirely to assisting released inmates for successful re-entry into our community. Otherwise our community will see the same rise in crime that California has experienced.

Any proposal to reduce the prison population that does not provide for adequate supervision for those released from prison or the necessary rehabilitation services for released inmates and youth entering the system, is doomed to fail. Reform efforts must address the well-known drivers of crime: our challenges in education, poverty, and broken homes as well as our challenges in mental health and substance abuse. We know, for example, that approximately 74% of state prisoners, 63% of federal prisoners and 76% of jail inmates meet the criteria for a mental health disorder. Substance abuse disorders often co-occur for this population. Consequently, over 40% of state prisoners and nearly half of all jail inmates meet the criteria for both a mental health and sub-stance use disorder. During this legislative session our public officials will have to juggle these multiple priorities to effectuate the goals of public safety, victim rights, and defendant rights.

For justice reform to succeed we must learn from other states and invest in criminal justice data collection and analysis

Each day brings new studies with great ideas for justice reform and reinvestment. This is an exciting time for those working in criminal justice as more attention is paid to data and to ensure the data is used to assess the risks in our criminal justice system from both the individual and the system as a whole. These ideas are well worth study and implementation but they come with a cost that we must be prepared to bear. Today, criminal justice agencies struggle even to maintain their data, much less share and analyze their data. We need major overhauls of our State's criminal justice funding priorities and criminal justice data systems to employ the best in risk analysis tools already in use in other states. We also need to invest in systems that use uniform criteria to adequately capture the case loads, statutory loads, and program loads labored under by our public defenders, our judges, our probation, parole, and corrections personnel, and our prosecutors.

For many, the PEW study can wrongly be read to equate a non-violent conviction with a "non-violent" or "first time" offender

My 60 prosecutors handle more than 20,000 new criminal cases each year. The PEW study of the prevalence of non-violent offenders committed to the Department of Corrections prisons rang untrue to their ears. To try to get in front of what has so far been primarily an emotional appeal, I requested my research partners at LSU to analyze the claims concerning the incarceration of non-violent offenders from East Baton Rouge parish. Taking the exact same data used by the PEW study, I requested LSU examine more closely the data for non-violent offenders from East Baton Rouge parish in 2015 and provide an independent and objective report of their analysis of this "non-violent" population. The overarching conclusion of this report is that none of us should be talking about "non-violent offenders" as if they were "first time" offenders. This report belies such equivalency.

Just because a person is sentenced to prison for one non-violent conviction does not mean that he is a non-violent individual or that he is not a repeat offender. In East Baton Rouge parish, my prosecutors rarely send first-time non-violent offenders to jail. Conversely, they do send to the Department of Corrections those convicted, even as first-time offenders, of the violent crimes of armed robbery, rape, and murder. In East Baton Rouge parish, prosecutors examine first non-violent offenders cases and attempt to send them to resources that can address why they have committed this crime in the first place. Every day of the week, my prosecutors work with public defenders, judges, and criminal defense attorneys to find programs that will address the underlying causes of each first offender's criminal behavior.

One example where our processes have changed significantly since 2009 is the now-routine referral of first-time DWI offenders to our pretrial intervention program. Instead of incarceration, our first-time DWI offenders are seen by a licensed clinician, undergo behavioral

assessments, and develop individualized counseling plans that they must complete during their one year of supervision. This year of supervision not only involves the state required interlock devices, litter detail, and victim impact panels, but also involves mandated counseling, drug and alcohol testing, outpatient treatment, and, where prescribed, inpatient treatment for substance abuse and mental health. Although this program has only been in existence eight years, we have already seen decreases in recidivism rates from approximately 30% to 5% and a decrease in second, third, and fourth offense re-arrests rates of 17%, 28%, and 62%. We have also learned that some of our DWI offenders are actually dealing with severe personal issues and that their DWI arrest is only an expression of their attempt to submerge difficult personal issues. For transparency and program improvement, we track the recidivism for every graduating class annually. After the first five years of the program's existence, we also invited LSU to evaluate our success rate in a published study that showed our program was having a statistically significant effect on the rates of drinking and driving in East Baton Rouge parish.

The LSU report shows that those considered “non-violent” by the PEW study are actually serving time under a non-violent conviction for mandatory sentences, for multiple or repeat offenses, and for non-compliance with the terms of their initially granted sentence of probation

This LSU non-violent offender report reveals that 74% of persons classified as non-violent by the PEW study actually have prior felony convictions and that the majority of those also have multiple convictions. Further, 50% of these non-violent offenders are classified as high level offenders either by their convicted offense or by their lengthy criminal history. The LSU report further concluded that when this 50% of the non-violent population was released, they committed another felony crime 65% of the time. This is sufficient evidence for our researchers to conclude that these offenders are not today receiving the types of services needed to break the criminal behavior cycle. Also of significance was the finding that that almost 50% of these non-violent offenders were incarcerated for mandatory minimum sentences. Significant as well was the finding 13% of those classified non-violent offenders were only sent to prison because they had committed another crime while on an initially suspended or probated sentence.

This report confirms that my prosecutors do not send first time non-violent offenders to prison. That myth has now been disproved locally as it has already been disproved nationally as less than 6% of prisoners nationwide are both low level and non-violent. To go to prison in East Baton Rouge parish you must be a repeat offender, be subject to a minimum mandatory sentence, have demonstrated violence, or have failed to comply with the terms of your probation. These East Baton Rouge practices have now been confirmed as similar to those of other District Attorneys who have conducted their own evaluations of this data.

When evaluated individually, those categorized as non-violent by the PEW study have a high risk of re-offending unless significant resources are employed to change their behavior and supervise their rehabilitation

This LSU report also shows that very few of these currently incarcerated “non-violent” offenders would be suitable for release if we add the criteria of “likely to re-offend.” This criteria must be added to the early release picture if the goal of our criminal justice system is to keep the public safe. Each prisoner was convicted individually and each prisoner must be evaluated for individual suitability for early release. Today, the best guide may be each individual’s criminal history. Other states and our own Department of Corrections have developed and are in the process of implementing risk assessment tools that may also be useful in evaluating the future risk of re-offending. Despite the best tools, however, each citizen must understand that none of us can truly predict which released offender will re-offend.

To further ensure release without re-harm, we will also need to address the lack of resources in our local prisons. Our Department of Corrections will tell you that their programs and resources do not even touch the 78% of their own inmates housed and released from a local prison under a contract with the Department of Corrections.

Your District Attorneys are committed to reducing incarceration through smart and safe reform

Social scientists can tell you that crime is largely driven by Louisiana’s challenges of illiteracy, poverty, and broken families. It should be no surprise that when Louisiana leads the nation in illiteracy, poverty, and single parent households, that Louisiana will also lead in a high rate of incarceration. Does anyone believe we can reduce crime through justice reform without spending the time, effort, and money required to also improve these three metrics? Justice reform without an actual plan for investment and improvement in these three areas is simply a slogan, not a plan.

The District Attorneys of this state are in a unique position to evaluate the pros and cons of each of the justice reform proposals. Every District Attorney deals with crime, crime victims, and the awful consequences that crime has on our communities every day. Our unified position, written and articulated point by point, is that our criminal justice system can be improved and that we can support in principal many of the justice reform proposals being made.

I am hopeful that this report by LSU will enable a more thorough and more fact-based discussion of what we mean when we say we want justice reform for non-violent offenders. I am also hopeful that our citizens now understand that our District Attorneys and our Sheriffs are committed to reducing incarceration through smart and safe justice reform practices that ensure rehabilitation through well designed programs and adequately funded resources.

Very truly yours,



Hillar C. Moore III