

## ALTERNATIVES TO INCARCERATION

### ALTERNATIVES TO BAIL

#### Statement of Position

As announced by the State Board, December 1975

**Assurance that a defendant will return for trial should be obtained through means other than bail, since bail is inherently discriminatory. Alternatives include expanded use of the appearance ticket, release on own recognizance, conditional or supervised release, and detention by written determination of the judge that there is no other alternative.**

The 1991 LWVNYS Convention adopted a study of Alternatives to Incarceration (ATI) to expand the judicial position, which had previously addressed only certain aspects of pretrial situations. The 1993 League Legislative Advocacy conference allowed the League to present the new ATI position, announced in February, to the legislators.

Delegates to the LWVNYS Convention in June 1993 voted for "an extension of the ATI study to examine the need for alternatives for those incarcerated under laws and/or significant circumstances that have since changed." Delegates to Council in 1994 voted to discontinue the study based on the state board recommendation that we could take action on these concerns under the current position.

Our position supports the use of ATI at all levels of the criminal justice process, including re-entry, for nonviolent felony offenders. The American Bar Association eligibility criteria adopted as part of our position state that community-based sanctions should be available to an offender who, although convicted of a violent crime, had no pattern of violent behavior and would not pose a threat to the community.

## ATI POSITION

### Statement of Position

As announced by the State Board, February 1993

Recognizing the enormous costs of state prisons and local jails, and the distressingly high rates of recidivism, the League of Women Voters of New York State, at its convention in 1991, adopted a study of Alternatives to Incarceration.

In the criminal justice system there is a need for a broad range of punishments less restrictive than incarceration. Prisons and jails must be viewed as a scarce and expensive resource to be utilized only when necessary. The current system wastes time, money, and human resources. The LWVNYS strongly supports the use of ATI for nonviolent offenders. There is a need for earlier, more effective intervention and, if applicable, treatment. Sanctions should be more innovative, constructive and less restrictive.

#### Eligibility

The League concurs with the American Bar Association Model Adult Community Corrections Act of February 1992. The following offender groups shall be eligible for sentencing to community-based sanctions:

1. Those convicted of misdemeanors;
2. Nonviolent felony offenders, including drug abusers and other offenders with special treatment needs;
3. Violators of parole, probation, and community corrections conditions whose violation conduct is either non-criminal or would meet either criterion (a) or (b) above had it been charged as a criminal violation;
4. Offenders who, although not eligible under criteria (a) through (c) above, are found by the court to be the type of individuals for whom such a sentence would be appropriate. In making such a determination, the judge shall consider factors that bear on the danger posed and the likelihood of recidivism by the offender, including but not limited to the following:
  - a. That the offender has a sponsor in the community;
  - b. That the offender is employed or has enrolled in an educational or rehabilitative program;
  - c. That the offender has not demonstrated a pattern of violent behavior and does not have a criminal record that indicates a pattern of violent offenses.

#### Evaluation of individual offenders

From the time of arrest, individual offenders should be carefully screened and matched with appropriate programs. In the screening process, the highest priorities are:

1. Public Safety
2. Rehabilitation of the offender, including treatment for substance abuse, education beginning with basic literacy skills, vocational responsibility training, and family intervention
3. Severity of the crime
4. Violence of the crime

## **ATI POSITION**

### **Statement of Position**

**As announced by the State Board, February 1993 (continued)**

#### **State legislation**

**The League strongly favors state legislation supporting ATI programs. This legislation should include a Master Plan that provides:**

- 1. Funding incentives for the use of ATI programs.**
- 2. Evaluation of individual programs**
- 3. Minimum standards in local program operations**
- 4. Methods for encouraging community support.**

**In conclusion, the LWVNYS believes it is essential that there be long-term evaluation and sufficient funding of alternative programs.**

#### **Recent Activity**

In June 2015, LWVNYS convention delegates approved a state board recommended program item to conduct a post-convention concurrence with portions of LWV of Ohio's Juvenile Justice position. New York State and North Carolina are the only states that prosecute all youth 16 years of age and older as adults. This law does not reflect brain development research that has proved the human brain is not fully formed until the age of 26. These developing adolescents are often impulsive and lack the ability to focus on the consequences of their behavior. Adolescents respond well to interventions and are likely to grow out of negative or delinquent behavior.

The LWV Ohio position is quite comprehensive and specific; LWVNYS positions are generally phrased more broadly to allow flexibility in responding to specific legislation as it is introduced. Thus, we are proposing a concurrence with only portions of the Ohio position. The portions listed below will cover the specifics of the legislative packages proposed during the last legislative session, but are flexible enough to cover future legislative proposals.

1. Children under the age of 18 are not adults and their treatment within the juvenile justice and criminal court system should relate to their stage of development.
2. Children should not be held in adult jails.
3. Rehabilitation is the purpose of the juvenile justice system.
4. The legal rights of children should be protected.

If the concurrence is adopted, these principles will form our position on Juvenile Justice.

In 2009, Jonathan Lippman was named Chief Judge of New York. He, and his predecessor, Chief Judge Kaye introduced the idea of the courts as a problem-solving entity, more relevant to society's current needs and problems. ATI programs were the natural result of this focus. With dozens of drug treatment courts and dozens of other problem-solving courts, New York has become is a national leader in the area of problem-solving. For example, drug courts operate under the goal of treating nonviolent addicted offenders and reintroducing them into society as valued members of the community rather than incarcerating them. These ideas have been expanded to arrested person suffering from mental health illnesses. At the present time, according to the New York State Division of Probation and Correctional Alternatives (DPCA), it funds and oversees approximately 165 ATI programs designed to reduce reliance on pretrial detention and/or incarceration and operate in a manner consistent with public safety such as Mental Illness Programs, Pretrial Services, and TASC and Drug and Alcohol Programs.

### **Past League Activity**

The state League board at its March 1994 meeting affirmed that an example for using this criterion might be the case of a battered woman who struck back or killed her abuser in a single act of violence, provided that she had no previous history of violence and would pose no threat to the community.

At its March 1994 meeting, the board affirmed a broad interpretation of the term "alternative" in our position. Thus, we could support sentence reduction measures, such as good time and clemency, for classes of individuals. However, the board felt it inappropriate for the League to support clemency for any particular individual.

The state League board supported in concept other re-entry programs such as (but not limited to) earned eligibility, conditional release, and early parole. The Board also reaffirmed support in concept for treatment, vocational and rehabilitation programs under our ATI position. Support for specific legislation will depend upon the criteria in our position.

Persons "incarcerated under laws and/or significant circumstances that have since changed," can use a petition process for sentence review, starting with a direct appeal up through the highest state court. If that fails, the person can file a "440 motion" or "Collateral Attack on a Criminal Conviction". Prisoners Legal Services provides a packet of sample forms for this complex process upon request. The packet is based on [A Jailhouse Lawyer's Manual](#), available in prison libraries.

Our current position already allows the League to take action in opposition to mandatory drug laws and second felony offender laws under which so-called "drug mules" are incarcerated.

During and since 2000, the League supported several drug law reform bills. One bill, in both the Assembly and Senate, would have given the option of a sentence to probation for all controlled substance felony convictions, including second felonies. Judges could then impose conditions for rehabilitation, including drug programs, according to existing penal law. That bill also permitted retroactive setting aside of some sentences. Another bill, significant for its Senate Republican sponsorship, would have permitted, for first time B, C, or D drug felonies, a definite

sentence of one year or less, or of probation or conditional discharge. No action occurred on either bill.

The League continued support for these bills when they were re-filed in 2001. Members had chosen drug law reform as an issue for emphasis in 2001. Responding to increased community agitation for drug law reform, the governor, and leaders in the Assembly and Senate proposed a variety of changes, which ended up as two omnibus bills, one in each House. Unfortunately, these bills were far different from the straightforward ones supported by the League. They reduced some sentences and increased others. They detailed the types and extent of drug treatment, limiting participation in some cases and mandating treatment in others. They did not meet our position standards for access, flexibility, and innovation. Nor did they take account of the poor outcome data for current programs, including the Willard program.

Just before adjourning in June 2002, the Assembly and Senate passed different drug law reform bills, modifications of the ones on which they had taken no action in 2001.

In March 2003, the Senate passed a bill dealing only with "Class A" drug felonies. Then in early June the Assembly passed a modified form of their 2002 bill, and filed another, shorter bill in mid-June. Heated negotiation among the leaders did not result in a compromise bill. The League continued to press for more options for alternatives for more offenders.

The budget bill passed in May 2003 included several items regarding early discharge from prison or parole. Class AI drug felons can earn merit time. A new presumptive release program bypasses the parole board by allowing the Corrections Commissioner to issue a certificate of earned eligibility to some inmates. Merit termination from parole was shortened from three years to two years for Class A drug felony offenders and after one year for others.

In 2005, the legislature approved remedies for those still incarcerated under the harsh Rockefeller Drug Laws. Drug law reform has long been a League issue. Guidelines for immediate review and possible release of affected prisoners did not bring about the results supporters had hoped. More needs to be done in this area.

In March 2007, Governor Spitzer signed Executive orders 9 and 10. Executive Order 9 orders that certain violent offenders be barred from temporary release programs. Executive Order 10 establishes a Commission on Sentencing Reform to study and make recommendations on sentencing consistency, effect, and appropriateness. In addition, the commission is to study victim impact issues, the effect of early release of convicts on the public at large, the use of alternatives to incarceration, and the fiscal impact of many aspects of the sentencing process. An initial report was scheduled to be submitted to the governor by 9/1/2007 with the final report to be issued by 3/1/2008.

The League continues to support and advocate for alternatives to incarceration for non-violent drug offenders. It is hoped that the Commission on Sentencing Reform will include in its study, a review of why many non-violent Rockefeller era drug offenders continue to be held at in NYS prisons.

