

PRETRIAL PROCEDURES

In 1973, reflecting a growing concern with both the protection of defendants' rights and the inability of the courts to handle increasing caseloads, the League adopted a study of pretrial procedures in the criminal courts, focusing on four areas: counsel for the indigent, bail and alternatives to bail, plea bargaining, and the grand jury. Consensus was reached in 1975. A 1986 consensus updated the section dealing with the indicting function of the grand jury. (See Grand Jury Position Statement.)

Upon completion of Alternatives to Incarceration (ATI) study in 1993, the portion of Pretrial Procedures relating to Alternatives to Bail was moved under the ATI position. (See ATI Position Statement.)

PRETRIAL PROCEDURES

Statement of Position

As announced by the State Board, December 1975

The ultimate recourse for justice, both for society and the offender, is the court system. The judicial system in New York State still needs reforms in the method of selecting judges, and court structure. Due to the inefficiency and congestion of the judicial system, most criminal proceedings never actually reach the courts.

Given these present realities, the League of Women Voters, while continuing to press for court reform, recommends that the following improvements be made in pretrial procedures:

The rights of defendants should be protected at every stage of a criminal proceeding, including the pre-arraignment period. They should be entitled to competent legal counsel at every stage.

At present, indigent defendants must be provided counsel at full public expense. The quality of defense provided for the indigent should be improved by better training and screening of attorneys.

PRETRIAL PROCEDURES

Statement of Position

As announced by the State Board, December 1975 (continued)

The League believes those not deemed indigent, but unable to afford full legal fees, should be required to pay for counsel only according to their financial ability. To assure uniform administration of justice, procedural guidelines should be developed for defining indigency for purposes of retaining counsel. Local determination of eligibility should be flexible, however, and each county should continue to determine what system can best provide counsel for its indigent defendants (i.e., public defender, assigned counsel, etc.). Funding for indigent defense should come from all levels of government.

The League concedes the continued necessity for the practice of plea-bargaining to handle the criminal caseload.

Full written records in the pretrial process are essential to gain public trust and to protect both society and the defendant. They should be kept for all negotiated pleas and all grand jury proceedings, subject to deletions by the court to protect witnesses and defendants. Plea bargaining records should contain, for example, evidence that the defendant understood the implications of his plea and was fully informed of all negotiations, and reasons for the judge's accepting the plea and any promises made to the defendant. Information about the defendant's background and previous criminal record should be reviewed by all parties before an agreement is reached or sentence imposed. Procedural guidelines should be developed to assure equal treatment in the plea bargaining process.

There is an inherent and unresolved conflict between society's need to be protected from dangerous defendants and its need to protect the defendant's constitutional rights. To address this dilemma, as well as many other problems of the pretrial period, guarantee of a speedy trial is an imperative.

Finally, many cases go through the judicial process, which could be better handled by other means. Community and paraprofessional services should be utilized in diverting accused law-breakers from criminal processing to social rehabilitation.