



May 25, 2015

Dear Chairman Arnold:

We are the National Association for Public Defense (“NAPD”), a national organization of public defense professionals founded a little over 18 months ago (more information online at www.publicdefenders.us). Since forming, we have enrolled over 10,000 members. NAPD promotes the following: strong criminal justice systems policies and practices ensuring effective indigent defense; system reform that increases fairness for indigent clients; and, education and support of public defenders and public defender leaders.

We write to express our strong opposition to Louisiana House Bill 605 (“HB 605”). We know it is scheduled for a second hearing in the Louisiana House Judiciary Committee on May 28, 2015, and in advance of the hearing, wanted you and the other members of the Judiciary Committee to hear the reasons for our strong opposition. We believe this legislation is unworkable, fundamentally unfair and should be defeated.

We agree with all points made by opponents to HB 605 during the May 14, 2015 Judiciary Committee hearing. More specifically, we believe HB 605 fails to ensure effective indigent defense, undermines public defenders and public defender leaders throughout Louisiana, and creates an unfair system of defense for indigent clients.

HB 605 Promotes Ineffective Indigent Defense

HB 605 creates multiple bureaucracies to deliver public defender services in capital cases throughout Louisiana. In order to sustain their operations, these additional administrative structures will siphon money and resources from the district public defenders performing the day-to-day work of representing indigent persons in Louisiana’s courts.¹ This taxes Louisiana’s already poorly-resourced defenders. Moreover, by shrinking the state appropriation that funds district-level services, HB 605 places an even greater reliance on fines, fees and costs. This worsens the problems of Louisiana’s user-pay system of criminal justice, which is inadequate, unreliable and a widely criticized mechanism for resourcing public defense. The Louisiana Public Defender Board (“LPDB”) has the expertise and experience to regulate public defense service delivery in Louisiana. Creating a duplicative expensive bureaucracy that harms services to indigent citizens solves nothing.

HB 605 Undermines Public Defenders and Public Defender Leaders

The chief influence behind HB 605 is the Louisiana District Attorneys’ Association (“LDAA”) – who has not sought input from or consulted with public defenders or the LPDB. Allowing prosecutors to decide public defense service delivery is poor policy and poor process. The exclusionary process which produced HB 605 ignores and dismisses the extensive experience and expertise housed in Louisiana’s public defender community. Consequently, it fails to adequately account for and incorporate national workload standards and ethical considerations necessary for the provision of public defender services. HB 605 also ignores the authority so widely granted by the Louisiana Legislature not yet 8 years ago – authority that was overwhelmingly supported and complied with national standards and best processes.

¹ See Legislative Fiscal Office, Fiscal Note HB 605 (May 14, 2015).

HB 605 is in violation of several provisions of the foundational standards applicable to public defense. First, Principle #1 of the ABA *Ten Principles of A Public Defense Delivery System* (2002) requires the “public defense function, including the selection, funding, and payment of defense counsel” to be “independent.” The commentary to Principle #1 states that the public defense function “should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.” Taking capital cases out of the oversight of LPDB in a manner crafted by LDAA exposes this measure as being highly politicized, rather than independent from politics.

Further, by placing three judges and a former prosecutor in the “Committee for the Provision of Indigent Defender Services in Capital Cases,” HB 605 would directly violate the independence of the public defense function. The respected ABA *Standards for Criminal Justice Providing Defense Services*, Third Edition (1992) states in the commentary to Standard 5-1.3 pertaining to boards overseeing the public defense function, “Members of governing boards should not include prosecutors and judges. This restriction is necessary in order to remove any implication that defenders are subject to the control of those who appear as their adversaries...” Prosecutors and judges have no place on an oversight board governing public defense, particularly in capital cases.

Indeed, just by crafting HB 605 out of the purview of the LPDB and other defenders, the LDAA also ignored Principle #8, which begins, “There is parity between defense counsel and the prosecution with respect to resources and **defense counsel is included as an equal partner in the justice system.**” (emphasis added).

HB 605 requires the Committee to be “death qualified”

One of the provisions of HB 605 is that all members of the committee must “possess the qualifications required of a juror in a capital case provided by Code of Criminal Procedure Article 797(4.), which in effect requires the member to have the qualifications of a juror in a capital case under *Wainwright v. Witt*, 469 U.S. 412 (1985).”

NAPD is deeply concerned about this specific proposal. This would result in those who are setting standards and guidelines, setting workloads, establishing performance supervision and evaluations, to be able to say that they could impose the death penalty. This provision is unheard of in any other public defense system or oversight body that represents/manages capital cases.

The proposal contained in HB 605 is an outlier in all of the United States. This is an ideological litmus test that has no place in a public defense authorizing statute. This provision alone will forever cast doubt on the fairness of whatever statewide system is crafted by the Committee.

HB 605 Is Unfair And Likely Unconstitutional

HB 605 creates an inherently and hopelessly conflicted system, casting constitutional doubt on any capital conviction achieved as a result of its passage. HB 605 creates a commission of judges, a prosecutor and a designee of the Louisiana Association of Criminal Defense Lawyers with the power to certify, select and compensate lawyers representing indigent defendants in death penalty cases. Put another way, if passed, it would remove decisions about public defense’s internal management from public defenders. There are no public defenders on the committee and there are as many prosecutors as defense attorneys. Moreover, judges – who are meant to be neutral in the justice process – are also making decisions about the representation of indigent people. Conflict-free representation is a constitutional right.²

HB 605 is patently unfair. No one would ask a person with means to allow the LDAA to pick their defense attorney in a criminal proceeding – especially a capital prosecution.

² See *Holloway v. Arkansas*, 435 U.S. 475 (1978).

“Equal justice under law is not merely a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists... it is fundamental that justice should be the same, in substance and availability without regard to economic status.”³ Equally troubling, HB 605 diverts even more resources from front-line defenders – making an already unfair system manifestly unjust.

HB 605 is an unnecessary, ill-conceived and unfair piece of legislation. It will not lead to effective representation, ignores standards and experience, and exacerbates systemic injustices.

NAPD strongly urges the Louisiana House Judiciary Committee to oppose and defeat HB 605.

Sincerely,



Tim Young
Chair, NAPD Steering Committee

ON BEHALF OF THE NAPD STEERING COMMITTEE:

TIM YOUNG, CHAIR, NAPD
Director, Ohio Public Defender
Columbus, OH

MARK STEPHENS, VICE-CHAIR, NAPD
District Defender, Knox County
Community Law Office, Knoxville, TN

JEFF ADACHI
San Francisco City and County Public
Defender, San Francisco, CA

ALEX BASSOS
Director of Training and Outreach,
Metropolitan Public Defender, Portland, OR

NANCY BENNETT
Deputy Chief Counsel for the Private
Counsel Division of the Committee for
Public Counsel Services, Boston, MA

DERWYN BUNTON
District Defender, Orleans Public Defenders,
New Orleans, LA

BOB BURKE
Training Branch Director, Administrative
Office of US Courts, Washington, DC

ANNE DALY
Division Director, Society of Counsel
Representing Accused Persons,
King County, WA

STEPHEN HANLON
Adjunct Professor, St. Louis
University School of Law,
St. Louis, MO

RICK JONES
Executive Director,
Neighborhood Defender Service of
Harlem, New York, NY

JUSTINE M. LUONGO
Attorney-in-Charge of the Criminal
Practice, New York Legal Aid,
New York, NY

ED MONAHAN
Kentucky Public Advocate,
Frankfort, KY

JANET MOORE
Assistant Professor of Law,
University of Cincinnati Law School,
Cincinnati, OH

TERI MOORE
Investigator, Federal Public Defender's
Office, District of New Jersey,
Trenton, NJ

MELANIE OBERLANDER
Administrative Supervisor, King County
Department of Public Defense,
Seattle, WA

NDUME OLATUSHANI
Children's Defense Fund,
death row exonerée (wrongfully
convicted to serve 28 years),
Nashville, TN

TAMARA STECKLER
Attorney-in-Charge, Juvenile Rights
Division, Legal Aid Society of New York,
New York, NY

SARA THOMAS
State Appellate Public Defender,
Boise, ID

PAUL DEWOLFE
State Public Defender,
Baltimore, MD



³ (Ret.) Justice Lewis Powell, Jr., United States Supreme Court.