

# **LEAGUE OF WOMEN VOTERS ILLINOIS**

## **CRIMINAL JUSTICE POSITION STUDY QUESTIONS 8-14**

**JANUARY 14, 2021, 5 PM**

**This packet will be the basis of our discussion at the consensus meeting. Please review this information before the meeting. It would be helpful to print this packet, so you can refer to it as we discuss each of the consensus questions.**

## **LWVIL Criminal Justice Position Update – Consensus Questions #8-14**

### **8. Restorative Justice**

- a. Should the criminal justice system be open to the use of restorative justice approaches and values?
- b. Must restorative justice courts involve members of the community to be successful?
- c. Must restorative justice courts be adequately funded?

### **9. Emerging adults**

Should emerging adults (ages 18-25) in the criminal justice system be treated in a developmentally appropriate manner, recognizing that those in this age group are not fully mature and culpable for their actions?

### **10. Courtroom procedures and access**

Should barriers in the courthouse and courtrooms be eliminated whenever possible?

### **11. Sentencing Laws and Procedures**

- a. Should we delete from existing position: “The League believes that there should be strict penalties and enforcement for all crimes committed with a handgun or an assault weapon.”
- b. Should evidence-based practices and best practices guide sentencing laws and prosecutorial decision-making?
- c. Should sentencing take into consideration the public health issues involved in any crime committed?
- d. Should there be more collaboration between stakeholders so that sentencing outcomes are more just and fair?
- e. Should racial impact statements inform any new criminal law or regulation?
- f. Should legislation that reduces penalties for a crime also benefit those previously convicted and sentenced for that crime?
- g. Should the charge of felony murder be abolished?

### **12. Incarceration, mandatory supervision and release**

- a. Should offenders be entitled to humane treatment and access to healthcare?
- b. Should all programs be evidence-based or based on best practices?
- c. Should all rehabilitative and evidence based programs be made available to all for whom they are appropriate?
- d. Should programs be tailored according to individual needs?
- e. Should all offenders have access to program credits?
- f. Is pre-release planning critical for successful reentry into the community?
- g. Are adult transition centers critical in bridging the gap between prison and the community in order to ensure successful reintegration into society?
- h. Should the length of mandatory supervised release (MSR) be determined by completion of goals tailored to the offender as well as expected consequences if rules are violated?
- i. Should rules attached to MSR be clearly explained to the offender as well as expected

consequences if rules are violated?

j. Should caseloads be manageable so parole officers can play a supportive role with the parolee?

### **13. Post-incarceration and sentence completion**

a. Should all unnecessary barriers encountered by people with criminal records which hinder their successful return to society after completion of sentences be removed?

b. Should people with criminal records have access to the same income-based support opportunities and services that are available to others in society and for which they would otherwise qualify?

### **14. Funding**

a. Should we delete from existing position: “The League believes that state fund should emphasize community-based sanctions over the construction of more prisons.”

b. Should we revise the position to state that funding should emphasize community-based sanctions and treatment instead of incarceration?

c. Should all program funding be periodically evaluated for its effectiveness and to ensure that proper offender populations are being served?

## **Purpose of Consensus Meetings – Criminal Justice**

The LWVE’s task is to help develop a position statement on criminal justice, along with Leagues across the state, to provide the basis for future advocacy in Illinois. For example, as legislation is proposed to change criminal justice laws, we can advocate for reform using the position statement as a foundation. It gives us more credibility and allows us to speak with one voice.

Our task is not to be the decision-makers about policing or sentencing or other complex issues confronting the reform of our criminal justice system. We are not looking to suggest details of specific policies and their implementation.

For many of the proposed items, the cost of implementing change is introduced as a reason to oppose. Participants should remember that incarceration and recidivism also impose costs on society. More important, these proposed reforms are aspirational and long term, and LWVIL adoption of these positions will not impose an immediate mandate or financial burden on any locality. LWVIL, local leagues, and other organizations will lobby/work with legislatures and other bodies to responsibly move towards these positions with adequate financial resources.

These are complex issues, and a detailed discussion could be very interesting, but our goal is to articulate a response and try to reach consensus on the positions circulated by LWVIL.

## 8. Restorative Justice

### a. Should the criminal justice system be open to the use of restorative justice approaches and values?

#### PRO

- Restorative justice encourages the offender to take responsibility for his/her/their illegal behavior and involves the community and victim(s) in the process of repair and rehabilitation.
- The offender is held personally accountable in providing restitution and repair.
- The restorative justice process promotes the support and reintegration of the victim and offender into the community.
- Overall, the results evaluating restorative justice programs and practices showed a moderate reduction in future delinquent behavior relative to more traditional juvenile court processing. National Institute of Corrections, "Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis (2017)" (<https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250872.pdf>)

#### CON

- The criminal justice system exists for the victims of crime to receive restitution and retribution, to punish the offenders, and to deter crime.
- The data on the effectiveness of restorative justice programs for reducing recidivism and increasing victim satisfaction is mixed.

### b. To be successful, must restorative justice courts involve members of the community?

#### PRO

- The involvement of community members provides a support system for young offenders as well as victims.
- Nonviolent, criminal activity affects a community, as well as the victim and offender, and should be involved to help create solutions to repair the harm.
- Some nonviolent, criminal activity does not have an identifiable victim – such as drug offenses – and a community member can serve as surrogate victim in the restorative justice process.

#### CON

- Members of the community do not need to be involved in the restorative justice process, as the offense involves only the offender, the victim, and the court system.

### c. Must restorative justice courts be adequately funded?

#### PRO

- Adequate funding for restorative justice courts can reduce other costs of the criminal justice systems, such as court costs, imprisonment, and re-offense.

#### CON

- Restorative justice should only focus on the victim being made whole subsequent to a crime.

- Restorative justice requires additional expenses for training and labor-intensive, community engagement to establish trust in the process.

## 9. Emerging Adults

**Should emerging adults (ages 18-25) in the criminal justice system be treated in a developmentally appropriate manner, recognizing that those in this age group are not fully mature and culpable for their actions?**

### PRO

- Research has shown that many crimes are committed by this age group, largely owing to the incomplete development of the brain, which causes them to make rash decisions and youthful mistakes.
- Equity: African American emerging adults are incarcerated at a rate 9.4 times greater than their white peers in Illinois. Illinois has one of the highest incarceration rates of African American emerging adults in the country, three times higher than New York and 2.5 times higher than California.

### CON

- Leave age out — further research might expand or contract the ages involved.
- Young people are considered adults for voting, serving in the military, purchasing and using alcohol and cannabis (21+) – why should young offenders be treated differently?

## 10. Courtroom Procedures and Access

**Should barriers to and within the courthouse and courtrooms be eliminated whenever possible?**

### PRO

- All participants in a court hearing should have access and barriers should be removed, including physical barriers, inability to hear or understand, or insufficient time.

### CON

- It is not necessary for everyone to hear the proceedings.

## 11. Sentencing Laws and Procedures

**a. Should we delete from existing position: “The League believes that there should be strict penalties and enforcement for all crimes committed with a handgun or an assault weapon.**

We are asked to delete the existing position on crimes committed with guns and discuss support for questions b through g.

### PRO

- Sentencing should be based on the actual crime committed without add-ons. Gun enhancements are added to the sentence for the crime. In Illinois, 15 years is added when a crime is committed with a gun in possession, but not discharged; 20 years if the gun is discharged with no injuries; and 25 years if there is a death or serious injury.

- The philosophy of firearm enhancements runs counter to nationally-cited research showing that policies that increase the severity of punishments do little to meaningfully reduce crimes. These laws significantly increase mass incarceration and costs of imprisonment. In 2019, the annual cost per inmate in Illinois prisons was \$ 38,000, with the price per person in the Cook County Jail even higher: \$52,000 per year.
- Illinois’s mandatory gun enhancements are the most severe in the U.S., and they lead to long sentences, prison overcrowding, and high costs.

#### **CON**

There should be strict penalties for crimes committed with a handgun or assault weapon, because there is more certainty of being killed with a gun rather than another weapon.

#### **b. Should evidence-based practices and best practices guide sentencing laws and prosecutorial decision-making?**

##### **PRO**

- Mandatory minimums (truth-in-sentencing laws) force a judge to hand down a minimum prison sentence based on the conviction. Research indicates that mandatory minimum sentencing effectively shifts discretion from judges to prosecutors who often over-charge a defendant to get them to plead guilty to a lesser sentence. Every year at least 95% of federal drug defendants plead guilty often in an attempt to reduce their sentence.
- Mandatory minimums are the most significant factor in increasing mass incarceration and costs of imprisonment in the U.S. The Bureau of Justice Statistics reported that the U.S. spends more than \$80 billion each year to keep roughly 2.3 million people behind bars.
- Example: In 1995, Leandro Andrade, a nine year Army veteran and father of three, stole 5 children’s videotapes from a K-Mart store in California. He had previously been convicted of theft, and this was his third “strike”. He was sentenced to 50-years-to life because of mandatory minimums for a third felony. The case went all the way to the Supreme Court and the sentence was upheld.

##### **CON**

Sentences are set by statute to dissuade and punish crimes. It is up to the legislature to proscribe certain conduct, set sanctions and rules under which the system operates.

#### **c. Should sentencing take into consideration the public health issues involved in any crime committed?**

##### **PRO**

- Public health includes mental health, addiction, family support, and community involvement. The report of an Illinois State Commission recommends increasing rehabilitative service and treatment capacity in high-need communities with the highest behavioral health/trauma services.
- This question reflects the importance of the first consensus question: “To reduce crime and violence there should be investment in underserved and/or impoverished communities.” The foundation of criminal justice reform is investing in communities by providing services proactively rather than paying in the long run with more imprisonment, longer sentences,

and more prisons.

**CON**

Public health is too broad of a term. The issue of sentencing cannot adequately address issues of mental health, addiction, or family/community needs.

**d. Should there be more collaboration between stakeholders so that sentencing outcomes are more just and fair?**

**PRO**

- Collaborating with different stakeholders may include victims, accused, prosecutor, defense attorney, and judges. Alternatives to incarceration (probation, restitution, community service, mental health, or rehabilitative services) are the most appropriate sentence for nonviolent, non-serious offenders. While some of these diversion programs are costly, they're cheaper than incarceration. Prison or jails are appropriate only if these alternatives fail.
- Example: In Problem Solving Courts in Illinois, teams work to improve outcomes for the defendant, victim, and community. They provide an alternative forum for certain individuals, such as veterans and those with mental illness or substance abuse disorders.

**CON**

An increase in collaboration may increase the time involved in getting to a sentence. Additional parties may confuse or distract from the issues involved. Our adversarial system guards against collaboration and/or collusion, which may not lead to just outcomes.

**e. Should racial impact statements inform any new criminal law or regulation?**

**PRO**

- Racial impact statements are used to identify unintended consequences that would be best addressed before adopting new policies or passing new laws. An example that is often cited is failing to consider racial impact in mandatory minimum sentences for crack and powder cocaine, which led to negative consequences for African American communities. Both drugs are pharmacologically alike, yet more severe sentences were put into effect for crack cocaine. Crack cocaine was sold in cheaper amounts than the powder form in impoverished inner-city African American neighborhoods. The result has been an overly harsh punishment disproportionately targeting a racial minority.
- It is very hard to reverse sentencing policies once they have been adopted.

**CON**

All laws should treat defendants equally. A new regulation is not required. Justice should be blind.

**f. Should legislation that reduces penalties for a crime also benefit those previously convicted and sentenced for that crime?**

**PRO**

When legislation changes, all those charged and imprisoned due to that crime should benefit from the shortened sentences. It is the humane thing to do, and it would significantly decrease overall prison costs.

**CON**

If someone is convicted of a crime, particularly by a jury, then that person should serve out that sentence even if the law gets changed. You do the crime, you serve the time.

**g. Should the charge of felony murder be abolished****PRO**

- First-degree murder is called felony murder when a person is killed during the commission of a felony, and everyone involved in the crime (even those with little or no involvement in the death such as the get-away driver) would be charged with felony murder.
- The felony murder charge disproportionately impacts emerging adults (aged 18-25) who often act in groups. The felony murder charge assumes that an individual or group involved in committing a crime that ends in a death should have known that death could be a consequence and all are equally culpable for the death.
- Research shows that young offenders are still maturing cognitively and developmentally. This group is more influenced by group and peer pressure and many times make poor decisions which result in poor outcomes. A charge of felony murder results in extreme prison sentences, including life without parole.
- Example: Marsha Scaggs is currently serving a sentence of life without parole for felony murder. Marsha was prosecuted after an altercation with the victim in her case resulting in her co-defendant killing the victim. Marsha was not responsible for the killing nor did she have any intention for that to happen. She was 23 years old at the time, has spent 30 years in prison, and has no chance for parole.

**CON**

The felony murder charge assumes that an individual or group involved in committing a crime that ends in a death should have known that death could be a consequence and all are equally culpable for the death. Those people often are involved in gangs.

**12. Incarceration, Mandatory Supervised Release****a. Should offenders be entitled to humane treatment and access to health care?****PRO**

IDOC has constitutional healthcare obligations. Prisoners should be treated humanely, including health care.

**CON**

Medical care is extensive.

**b. Should all programs be evidence-based or based on best practices?****PRO**

There is established research to support evidence based or best practice programming.

**CON**

Why should we pay more for prisoners? Programs are expensive.

**c. Should all rehabilitative and evidence-based programs be made available to all for whom they are appropriate?**

**d. Should programs be tailored to individual needs?**

**e. Should all offenders have access to program credits and the resulting in sentence credit?**

**PRO**

About 97% of prisoners will be released from prison and research shows that appropriate skills programs reduce criminal conduct and recidivism. Sentence credits are good incentives and are one of the best ways to safely reduce prison populations. Even high risk repeat offenders have been shown to benefit from such programs.

**CON**

Programs are expensive. Prisoners should serve their time.

**f. Is pre-release planning critical for successful reentry into the community?**

**g. Are adult transition centers critical in bridging the gap between prison and the community in order to ensure successful reintegration into society?**

**PRO**

Successful reentry programs for medium and high risk offenders (low risk offenders are more likely to move on without significant support) which offer support to meet the needs of the individual, such as housing assistance job placement, support for education, case management for families, substance abuse treatment, mental health therapy, and tattoo removal have demonstrated a reduction in recidivism. Frequently this is provided at adult transition centers (ATRs) in the last two years of the offenders' sentence, reducing the prison population.

**CON**

Prisoners should plan for their own release strategies. ATRs are ineffective since they have rules but no special areas of confinement if rules are not followed.

**h. Should the length of Mandatory Supervised Release (MSR) be determined by completion of goals tailored to the individual rather than a strict length of time?**

**i. Should rules attached to MSR be clearly explained to the offender as well as expected consequences if rules are violated?**

**PRO**

Recidivism is more likely to occur in the first 12 - 18 months after release. Thus front-loading supervision and meeting individual specific, incentive-based goals of supervision are powerful tools to motivate the individual to behavioral change. Offenders under MSR must note that fact on job applications, thus the sooner they are no longer under MSR they may be more likely to be considered for a job.

**CON**

It takes time to draft an individual program for each individual. Individuals released from prison should follow the rules just as they do in prison and held accountable.

**j. Should caseloads be manageable so that parole officers are able to play a supportive role with the parolee?**

**PRO**

When caseloads are manageable, parole officers can focus less on the breaking of rules and more on providing support to the parolee.

**CON**

A parole officer should act as a police person and send an individual back to prison if the rules, which the individual should know, are not followed. Reducing the caseload of ineffective parole officers who enjoy being a “cop” will not help the officer’s approach.

**13. Post-incarceration and Sentence Completion: from recidivism to successful re-entry**

**a. Should all unnecessary barriers encountered by people with criminal records which hinder their successful return to society after completion of sentence be removed?**

**b. Should people with criminal records have access to the same income-based support opportunities and services that are available to others in society and for which they would otherwise qualify?**

**PRO**

Currently people with criminal records face barriers when seeking employment, housing or education, and continue to have the burden of fees, fines and other costs after they have served their sentence. These barriers obstruct establishing a productive life and should be eliminated. .

**CON**

Even after completing a sentence they may still pose a threat to society and perhaps should forfeit their rights forever.

**14. Funding**

**a. Should we delete from existing position: “The League believes that state fund should emphasize community-based sanctions over the construction of more prisons.”**

**b. Should we revise the position to state that funding should emphasize community-based sanctions and treatment instead of incarceration?**

**c. Should all program funding be periodically evaluated for its effectiveness and to ensure that proper offender populations are being served?**

**PRO**

- Community programs in addition to providing alternative sanctions, also offer treatment programs through problem solving courts. Problem-Solving Courts are also known as specialty or therapeutic courts. They include, but are not limited to, drug, mental health, veterans and DUI courts. They have developed nationally and in Illinois to provide an alternative forum for individuals in the criminal justice system who have behavioral health disorders, which include mental illness and substance use disorders. Problem-Solving Courts use a collaborative, therapeutic approach with justice professionals partnering with community treatment providers to address an individual’s underlying behavioral health issues.
- Periodic evaluation is in accord with Recommendation 8 of The Illinois State Commission on Criminal Justice and Sentencing Reform: “Require all State agencies that provide funding for criminal justice programs to evaluate those programs. Agencies should eliminate those programs for which there is insufficient evidence of effectiveness and expand those that are proven effective. Ensure that programming appropriately targets and prioritizes offenders with high risk and needs.

**CON**

- The sense of the position has not been altered. There is no “con”.