EXHIBIT "B"

# LOUISIANA DISTRICT ATTORNEYS ASSOCIATION

EXECUTIVE DIRECTOR
E. PETE ADAMS

TO: All Member District Attorneys

FROM: David W. Burton

DATE: March 20, 2003

RE: Juvenile Justice Commission

Following is a report on the status of the Juvenile Justice Commission's actions. The Commission's Advisory Board has made a total of fifty-eight (58) recommendations to the Juvenile Justice Commission, fifty (50) of which were passed without objection from the LDAA or other parties of interest. The LDAA objected to only eight (8) of the Advisory Board's recommendations.

On behalf of the LDAA, I appeared and testified with our Executive Director before the JJC on Monday, January 27, and Thursday, March 6. On the latter date, the JJC voted on the Advisory Board Recommendations, and approved for legislative consideration 56 of the 58 recommendations.

Two of the recommendations to which we objected were permanently deferred. They were:

1. The study of a regional juvenile court system; and

2. The creation of a statewide office of juvenile advocacy

A final recommendation was adopted with a modification intended (unsuccessfully, I suggest) to meet our objections.

This memo will attempt to outline the six (6) issues which were approved over and/or contrary to our objections.

**ISSUE #1:**

THE CREATION OF THE DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES

This issue is the major point of contention, since it calls for the removal of the Office of Youth Development (OYD) from the Louisiana Department of Corrections (DOC), and its placement in a newly-created Department of Children, Youth, and Families, a social service agency. Some may recall that OYD was previously housed within the old Department of Health and Human Resources (DHHR), and that it was placed within DOC in approximately 1985. There is no reason to believe that the new agency envisioned by the Advisory Board will be any more effective than DOC, or DHHR before it.

OYD has run juvenile corrections in a traditional manner, like most other states. We have now had a glimpse of the Missouri system, which seems to offer a different, more hopeful direction. Missouri's system is a new one, however, devised through trial and error; and yet, DOC/OYD is being roundly criticized for not "measuring up".

DOC/OYD has been given no mandate for change. If given such a mandate, there is no reason to believe that it will not adapt and implement this more hopeful approach. If it is to be successful, however, it must be given the tools necessary to implement those concepts which are the "heart" of the Missouri approach, to-wit:

1. State-funded regional residential facilities, with high staff-to-offender ratios, requiring that all members of the staff be college graduates, with attractive salaries so as to recruit and retain competent staff;

2. Increased numbers of juvenile probation officers, so as to allow for more intensive supervision (Missouri probation officers have caseloads less than half the caseloads of our probation officers);

3. Increased use of "trackers", as a supplement to juvenile probation officers, to check on problem juvenile offenders on a daily basis, if necessary; and,

4. Allow juvenile judges and probation officers access to a wide range of services for juvenile offenders such as those which are readily available in Missouri, including individual and group counseling, family therapy and chemical dependency programs.

We suggested to the JJC, in our testimony on March 6th, that all these components of the Missouri system can be implemented without the creation of a single new board, commission or agency; further, that the creation of statewide and regional boards, and the placement of OYD within a new social agency will not house one additional juvenile offender in a regional residential facility, nor will it place one additional probation officer or "tracker" in the field, and there will be no new counseling or treatment services available to juvenile judges or probation officers to meet the needs of juvenile offenders.

The District Attorneys of Louisiana are on record favoring all the components of the Missouri system, with the suggestion that DOC/OYD be given a mandate by the administration and the legislature to implement a system more akin to that in Missouri, with the tools necessary to carry out that mandate. The District Attorneys are on record supporting real, substantive reform which will make a difference in each judicial district - - in each community. We are on record opposing stylistic, cosmetic reform in the form of new boards, commissions and agencies, which will produce a great deal of discussion/press coverage, but little if any substantive reform.

**ISSUE #2:**

ESTABLISHMENT OF (1) THE (INTERIM) LOUISIANA JUVENILE JUSTICE PLANNING AND COORDINATION BOARD, AND (2) (INTERIM) REGIONAL JUVENILE JUSTICE PLANNING AND COORDINATION ADVISORY BOARDS

These are separate recommendations of the Advisory Board, both of which were adopted by the JJC at its meeting on March 6, 2003. We opposed the creation of these new boards, suggesting that "The JJC Advisory Board has completed its mission by adopting recommendations to be considered by the JJC. Its recommendations should now be submitted to the JJC, the Children's Cabinet and its Advisory Board, and others, for further review. There is no need for new bureaucracies to further complicate the process of devising and implementing an improved juvenile justice system."

We further suggested that ". . .the Advisory Board of the Children's Cabinet should be expanded to include groups such as the Louisiana District Attorneys Association, or that the scope of its mission should be re-evaluated." We suggested that ". . .it is timely to consider such changes since the Children's Cabinet Advisory Board is, we understand, currently up for reauthorization, and that the 'fine-tuning' of entities which currently exist is far preferable to the establishment of new bureaucracies."

We have emphasized the importance of community-based planning, or planning within judicial districts, coordinated with existing entities such as the Children's Cabinet, LCLE/OJJDP, and regional service providers. One might envision less than enthusiastic participation, over time, in Regional Planning Boards drawing their membership from multiple judicial districts. We suggest that community-based planning, or planning within judicial districts, would encourage far more enthusiastic participation.

The original Draft Recommendations of the JJC Advisory Board, prepared by its Planning Team, simply called for the creation of both the statewide and regional boards. Our opposition resulted in their characterization as "interim" boards in the final Advisory Board recommendations, with a "sunset" provision which would bring the existence of both the statewide and regional boards to an end on December 31, 2004.

In our testimony before the JJC, we reiterated our view that additional boards, commissions or agencies are unnecessary; and beyond that, we suggested that "interim" boards have a way of becoming permanent boards. The original concept of the Planning Team contained no "sunset" provision, and we think it disingenuous to suggest that the proponents of these new boards intend that they expire.

**ISSUE #3:**

RECOMMENDED CLOSURE OF SECURE-CARE FACILITY

The Annie Casey Foundation originally recommended the immediate closure of a secure-care facility (Tallulah). We responded that the abrupt closure of a secure-care facility and the return of juvenile offenders to local communities with no new residential facilities, no additional probation officers or "trackers," and no new counseling services for those who require them, could result in a public "backlash" which could jeopardize the entire reform process.

The rationale for the closure of a secure-care facility is that the savings could then be invested in the development of a system more like that in Missouri. We favor the development of such a system, with the caveat that there be a transition period during which those components which are the "heart" of the Missouri system can be put in place, so that juvenile judges and probation officers have the resources to address the needs of juvenile offenders released from secure-care, in a manner consistent with public safety.

The Annie Casey Foundation has responded to our concerns, by modifying their position. They now recommend a transition period of approximately one year within which to identify juvenile offenders who can be safely released from secure-care facilities. This modification is a welcome one, but it does not address the need to fund the alternatives to secure-care incarceration which are vital components of the Missouri system. We remain skeptical that these alternatives to incarceration can be funded and made available to juvenile judges and probations officers within a one year transition period. We are hopeful, however, that the continued involvement of the Annie Casey Foundation makes it more likely that real, substantive reform will eventually occur.

**ISSUE #4:**

CHANGE IN THE MANDATORY SENTENCING LAW

After originally considering repeal, the JJC has voted to recommend changes to CC Art 897.1 after negotiations with the LDAA.

Article 897.1 of the Children's Code provides as follows:

"A. Not withstanding any other provision of law to the contrary, after adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder, R.S. 14:42, aggravated rape; R.S. 14:44, aggravated kidnapping; R.S. 14:113, treason; the court shall commit the child to the custody of the Department of Public Safety and Corrections to be placed within a secure detention facility until the child attains the age of twenty-one years without benefit of parole, probation, suspension of imposition or execution of sentence, modification, or furlough.

"B. Notwithstanding any other provision of law to the contrary, after adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:64, armed robbery, the court shall commit the child to the custody of the Department of Public Safety and Corrections to be placed within a secure detention facility for the length of the term imposed by the court at the disposition hearing without benefit of parole, probation, suspension of imposition or execution of sentence, modification, or furlough." (Emphasis added).

Our opposition to any change is based upon public safety concerns arising out of the seriousness of the listed offenses. Each of the offenses listed in 897.1(A) is punishable in adult criminal proceedings by death or by life without parole. Armed robbery, listed in 897.1(B), carries with it a 10-99 year sentence, also without benefit of parole.

We have suggested: (1) that the mandated sentences are appropriate for each of these offenses; (2) that mandated sentences, for these most serious offenses, are not an undue restriction on juvenile judges, some of whom give far too little consideration to public safety concerns; and (3) that the elimination of mandated sentences for such offenses will make juvenile court an unacceptable option in most such cases. A significant increase in juvenile transfers to the district court will inevitably result.

It is difficult to foresee how 897.1 can be modified in a manner acceptable to most District Attorneys.

**ISSUE #5:**

PROHIBITION OF WAIVER OF COUNSEL

The JJC Advisory Board recommended that Article 810 be amended to prohibit a waiver of counsel in delinquency proceedings [as in FINS cases, per Article 740(B)]. It was further recommended that the Judicial Council of the Supreme Court establish a task force to develop ways to ensure that all courts having juvenile jurisdiction have counsel to represent children and youth in child dependency, FINS and delinquency cases. The JJC voted to proceed with the Advisory Board recommendations after negotiations with the LDAA.

Article 810 of the Children's Code provides as follows:

"A. The court may allow a child to waive the assistance of counsel if the court determines that all of the following exist:

(1) The child has consulted with an attorney or other adult interested in the child's welfare.
(2) That both the child and the adult advisor have been instructed by the court about the child's rights and the possible consequences of waiver.
(3) That the child is voluntarily waiving his right to counsel . . ."

We have suggested that knowing and intelligent waivers of counsel should be permitted, and that, if some judges are abusing their discretion in permitting juveniles to waive counsel too frequently (as some have suggested), then that problem should be directly addressed by the Supreme Court in its supervisory role, and through increased CLE requirements for all judges exercising juvenile jurisdiction.

**ISSUE #6:**

"RELOCATION" OF ALL CHILDRENS' FUNDING TO THE CHILDREN'S BUDGET

We have opposed any attempt to "co-opt" LCLE/OJJDP funding, suggesting that this program has served the state well for many years; that it has funded many community-based programs -- programs for the implementation of local solutions; and that, while the state must do a better job of funding the juvenile justice system, it should not "snuff out" efforts to devise community-based solutions through LCLE/OJJDP grants. These programs, most of which are run by District Attorneys, Sheriffs and individual juvenile courts, are invaluable as laboratories for the development of model programs.

The JJC voted to adopt the Advisory Board recommendation, that OJJDP funding be "relocated" to the Children's Budget; however, in response to our objection and that of LCLE, the JJC voted to exclude from this relocation any OJJDP funds which are "earmarked" for specific programs. We believe that the amendment may protect LCLE funds, but may have broad, negative consequences that are unforseen by the Commission.