



Section Policy Aims to Address the Budget Crisis and E-Discovery

BY JANET LEVINE

Many members think of the Criminal Justice Section as a provider of comprehensive National Institute programs, treatises, and books on substantive or procedural criminal law. However, the Section also aims to address cutting-edge issues by evaluating the need for new policy and promoting necessary policy changes that further the cause of justice. The Section is actively engaged in many areas of policy—this column focuses on two.

Policy Implementation for the States

Shrinking budgets are forcing governors and legislators nationwide to examine all areas of public spending for possible savings; as a result, many in government are realizing that comprehensive criminal justice reforms can save money, improve public safety, and provide the necessary foundation for a more effective criminal justice system. The urgency of the current budget crisis

presents an opportunity to fix our broken criminal justice system—the time for change is now.

Data on the criminal justice system illustrates the failure of our country's criminal justice system to effectively deter crime and punish offenders, and rehabilitate those who have served their sentences. From 1975 to 2009, the number of people incarcerated in the United States grew from 380,000 to 2.25 million, an increase of almost 600 percent. One in every 100

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adults in the United States is in prison or jail and one in every 31 adults in the United States is under some form of correctional control. A breakdown by race reveals much higher rates for minorities. The United States prison and jail population is at an all-time high of 2.3 million people, making our country the world leader in incarceration.

In addition to this stark data, reflecting what Georgetown Law Professor Louis Michael Seidman refers to as an addiction to incarceration, studies conducted by the Bureau of Justice Statistics and other leading researchers conclude that more than two-thirds of the individuals released from prison are rearrested within three years.

Recognizing that states are confronting budget crises that threaten all components of the criminal justice system, including courts, prisons and jails, police departments, prosecutors, and public defenders, the ABA and civic

leaders in state and local governments identified five key areas of criminal justice reform that enhance public safety, reduce recidivism, and save taxpayer money. These policy areas include pre-trial release of accused low-risk offenders; the decriminalization of minor offenses; reentry support programs; expanded reliance on parole and probation; and community corrections.

Our Section's State Policy Implementation Project Task Force, headed by our former chair, Charles "Joe" Hynes, district attorney of Kings County (Brooklyn), and staffed by Sarina Cox of the ABA Criminal Justice Section, conducts targeted outreach to encourage state legislative re-

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forms that reflect ABA policies in one or more of the five identified areas that enhance public safety and save taxpayer money.

Several states have seized the opportunity and are engaged in creative reform aimed at saving money while fixing a broken system. The task force is organizing and sponsoring roundtables in law schools around the country to highlight these successful reforms and discuss necessary next steps for future progress. This economic crisis has afforded the opportunity to explore and adopt reforms that enhance public safety, reduce recidivism, and save the public money. The ABA State Policy Implementation Project Task Force hopes to help states seize this opportunity. For more information, visit www.americanbar.org/groups/criminal_justice and scroll down to “Project Resources.”

The Spring Meeting and the ESI Task Force

While the term “e-discovery” brings chills to most of us in the criminal justice system, the presence of electronically stored information (ESI) in criminal matters has become almost ubiquitous, influencing and infecting almost every aspect of an investigation or filed case. With little guidance provided by courts and none from the rules, prosecutors and defense attorneys on the state and federal level have been dealing with ESI, its skyrocketing volumes, and the increasing costs and resources associated with handling these issues in the prosecution or defense of a case. The ABA Criminal Justice Section is addressing both the lack of guidance and increasing costs of ESI in two ways.

First, the ABA Spring Meeting (April 13–14 in

Los Angeles) features the first ever full-day conference on e-discovery in government investigations and criminal litigation. The conference features five panels that will track the evolution of a criminal case—from the outset of a government investigation to the trial. The panels, comprised of experienced practitioners and thought leaders, including in-house counsel, state and federal prosecutors, state and federal judges, defense attorneys, and other experts, will discuss the evolving world of e-discovery relating to government investigations and criminal matters, focusing on subpoena compliance; Fourth Amendment issues; postindictment discovery and trial evidence; social media and cyber ethics; and cost-effective approaches to dealing with ESI. (For more, see the article, *The ESI Tsunami*, in this issue at 31.)

Second, the Criminal Justice Section has formed a task force, chaired by Stephen Byers, to examine issues relating to and arising from ESI in the criminal context and to propose, if appropriate, best practices for dealing with ESI in postindictment discovery, as well as subpoena compliance. The task force includes state and federal prosecutors, public and private defenders, judges and academics, and other experts and experienced practitioners in this field. We expect and look forward to hearing much more from them in the coming months.

Policy initiatives are the result of Section members’ suggestions—suggestions that span the breadth of the criminal justice system, affirming the Section’s diversity of membership. We welcome any and all suggestions and encourage your participation. ■