May 11, 2018

The Honorable John Bel Edwards
Governor of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

Subject: House Bill 699 (2018 Regular Session)

Dear Governor Edwards:

I am writing on behalf of the American Bar Association (ABA) to express our opposition to HB 699, which would effectively remove jury polling results in criminal cases from timely public access. The ABA is a voluntary, national membership organization of the legal profession. Its more than 410,000 members, from each state and territory and the District of Columbia, include prosecutors, public defenders, private lawyers, judges, legislators, law professors, law enforcement and corrections personnel, law students, and a number of nonlawyer associates in allied fields.

While HB699 would continue the practice of allowing the clerk to poll the jury if requested to do so, it eliminates oral polling and relegates polling records to being sealed on court order and not released to the public without a subsequent order of the court. If the polling slips are ultimately released, the names of jurors must be redacted. The presumption, therefore, becomes secrecy, not transparency, for juror polling in criminal cases.

The ABA has adopted as policies of the Association Principles for Juries and Jury Trials and Standards on Trial by Jury, which both use the same language:

When a verdict has been returned and before the jury has dispersed, the jury should be polled at the request of any party or upon the court’s own motion. The poll should be conducted by the court or clerk of court asking each juror individually whether the verdict announced is his or her verdict. If the poll discloses that there is not that level of concurrence required by applicable law, the jury may be directed to retire for further deliberations or may be discharged.
The Commentary on the Principles and Standards explains that the purpose of the poll is to determine, "before it is too late, whether the jury's verdict reflects the conscience of each of the jurors . . . .”

It thus appears that both transparency (the polling in open court) and timeliness (the public’s ability to view first-hand the jurors’ affirmation of their votes when the verdict has been returned) are essential elements of a fair and open criminal trial. Since HB699 is inconsistent with these important criteria, the ABA urges you not to approve this legislation.

Sincerely,

Hilarie Bass