



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION

EXECUTIVE DIRECTOR
LOREN M. LAMPERT

December 29, 2021

VIA U.S. MAIL

VIA ELECTRONIC MAIL: JUD@LEGIS.LA.GOV

ATTENTION: Honorable Randall Gaines, Chair

Louisiana House of Representatives
Committee on Judiciary
Equal Justice Task Force
P.O. Box 444486
Baton Rouge, LA 70804-4486

RE: Equal Justice Task Force (HR 197)

Dear Chairman Gaines and Task Force Members:

The LDAA would like to thank the Committee for the opportunity to present relevant information and our perspective to the members in consideration of the repealed non-unanimous jury verdict law in Louisiana. Unquestionably, Louisiana prosecutors embrace the unanimous jury process going forward.

In 2018, this Legislature and voters of Louisiana overwhelmingly adopted a unanimous jury system which was expressly **prospective only** in application. In fact, the author of the original bill and several current members then-advocating for retroactive application acknowledged the difficulty of applying retroactivity to unanimous verdicts; specifically, the arduous task of assessing and potentially re-trying decades-old cases – many of which involve witnesses and evidence that are no longer available. In recognizing those very difficulties, the enabling legislation was ultimately amended to assure all voters and stakeholders that this was prospective only.

Recently, in considering the question of retroactivity, the U.S. Supreme Court held that the jury-unanimity rule established by the court in Ramos v. Louisiana, 140 S.Ct. 1390 (2020), was not to be afforded retroactive application on federal collateral review. Edwards v. Vannoy, 141 S.Ct. 1547 (2021). However, the Edwards court noted that states remain free to retroactively apply the jury-unanimity rule as a matter of state law if they choose to do so.

This very issue of retroactivity under state law is currently working its way through Louisiana’s appellate courts. State v. Melendez, 2021-K-0597 (La. App. 4th Cir.), & State v. Nelson, KW21-461 (La. App. 3rd Cir.). The decisions in both were incompatible as the Melendez Court granted retroactivity and the Nelson court denied retroactive application. As such, a final decision from the Louisiana Supreme Court is expected on this issue in the very near future.

The following represents LDAA’s position:

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- Prosecutors are committed to reviewing all allegations of injustice, including alleged non-unanimous jury convictions.
- These reviews have resulted in the vacating of some convictions. Some are resolved by pleas, some will have to be re-tried, and some will not be able to be re-tried.
- Conversely, these reviews have also revealed that a number of these claims are baseless and would result in injustice to the community and victims if the convictions were vacated.
- Prosecutorial review takes time as it requires not only reviewing the potential status as non-unanimous but also a determination of whether the verdict was actually non-unanimous:
 - Several complaints of non-unanimous verdicts, upon review, were unanimous jury verdicts;
 - Several of those verdicts which are non-unanimous occurred where the hold-out juror(s) was voting to convict for a higher grade of crime (2nd degree murder rather than manslaughter, 1st degree rape rather than 2nd degree rape, etc.);
 - Several of these cases have no racial component – such as Caucasian defendant convicted by all Caucasian non-unanimous jury;
 - Other factors taken into consideration are:
 - Impact on the process in an overall fairness setting;
 - Strength of evidence produced at trial;
 - Availability of evidence in the event of a new trial;
 - Victim/survivor implications;
 - Overall fair administration of justice assessment.
- According to advocates there are potentially 1,500 of these cases to be reviewed of which an estimated 60% are homicides. There are a substantial number which cannot be re-tried due to absence of witnesses/evidence/etc.
- Wholesale vacating of the convictions of these serious offenses will unequivocally result in the forced release of multiple violent and sex offenders with no ability to re-try these cases.
- Adding 1,500 serious felony cases would severely strain the already overburdened system created by the pandemic backlog and would result in further damage to the criminal justice system.
- Any legislative effort to make unanimous jury requirements retroactive will undoubtedly be followed by a flood of filings from those who pled guilty to now challenge their guilty pleas - citing retroactive application and the fact that they would not have pled if they had known that unanimity was mandated. We are already seeing these allegations being made.
- Of particular note, Louisiana law currently affords those incarcerated offenders both a forum and process for their convictions to be reviewed: To wit, the Louisiana Pardon Board and Committee on Parole.

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- At least half of these 1,500 offenders are already parole eligible. La. R.S. 15:574 *et seq.*
 - For those who are not currently parole eligible, those offenders are eligible to apply for a pardon/clemency hearing after serving 15 years in the Department of Corrections. La. R.S. 15:572.4.
- The Parole/Pardon/Clemency process will afford all stakeholders a fair opportunity to address all of the issues – including ensuring victim impact.
- To this end, resources should be made available to the Pardon Board and the Committee on Parole to provide for an expedited review of those cases which on their face appear to be non-unanimous. Moreover, the original bill filed by Chairman Gaines (HB 346) recognized the viability of the parole process and included a parole review component.

In conclusion, Louisiana's prosecutors are and continue to be committed to the fair administration of justice. Further, we support utilizing the parole/pardon/clemency procedure already in place to vet these allegations and these cases. As victims deserve and are entitled to the opportunity to be heard at all stages, this process would ensure their voices could be heard.

As always, the LDAA and its members stand ready to assist the Committee and to answer any questions that may arise.

Very truly yours,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, identifying Loren M. Lampert.

Loren M. Lampert
Executive Director

LML:rbj