

SUPREME COURT OF LOUISIANA

**REPORT OF THE SUBCOMMITTEE ON ACCEPTABLE MODELS
FOR FUNDING THE STATE JUDICIAL SYSTEM**

To The

PRICE OF JUSTICE GRANT ADVISORY COMMITTEE



**PUBLIC COMMENT HEARING AND WRITTEN COMMENT PERIOD
FOR REPORTS FROM THE PRICE OF JUSTICE GRANT ADVISORY COMMITTEE**

The Louisiana Supreme Court is hosting a public comment hearing and written comment period to receive feedback on the work to date of the Price of Justice Advisory Committee. The Advisory Committee was established in conjunction with the *Price of Justice: Rethinking the Consequences of Justice Fines and Fees* grant that was awarded to the Louisiana Supreme Court by the U.S. Department of Justice and focuses on the subject of criminal court costs and fees. Louisiana was one of five states to receive grant funding.

The public comment hearing will be held on Thursday, April 4, 2019, from 10 am – 12 noon at the Louisiana Supreme Court, located at 400 Royal Street in New Orleans. Additional information on the written comment period may be found below.

The mission of the Advisory Committee is to develop recommendations for policy and action to achieve a more transparent, accountable, and fair system of assessing, collecting, and distributing legal financial obligations. In accordance with the grant, the Advisory Committee is developing Louisiana-specific best practices to assess and collect criminal court costs and to also develop resources to support these best practices, specifically considering a defendant's ability to pay and alternatives to incarceration.

The Advisory Committee has been meeting over the last year and has divided into four working groups or subcommittees. Each of the four subcommittees has prepared a draft report of its findings and recommendations. The Advisory Committee is holding this public comment hearing and written comment period to receive feedback on the substance and recommendations of the draft reports. The four draft reports are:

1. Draft Report of the Addressing Barriers to Payments Subcommittee
2. Draft Report of the Technological Solutions Subcommittee
3. Draft Report of the Alternatives to Legal Financial Obligations and Incarceration Subcommittee
4. Draft Report of the Acceptable Models for Funding the State Judicial System

The Committee is chaired by Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and Orleans Parish Criminal District Court Judge Paul Bonin, and includes judges, court administrators, clerks, sheriffs, district attorneys, citizens, indigent defenders, and representatives of public interest groups. The Advisory Committee will also make policy recommendations for the future, especially in light of recent changes in the laws that affect the assessment of criminal court costs.

Interested parties are welcome to provide feedback about the reports and recommendations either in person at the public comment hearing on Thursday, April 4, 2019 at 10 a.m. at the Louisiana Supreme Court, or by providing written comment by email or US mail no later than April 28, 2019. Written comments may be sent via email to priceofjustice@lasc.org or mailed to Price of Justice, c/o Supreme Court Judicial Administrator, 400 Royal St., Suite 1190, New Orleans, LA 70130. The Advisory Committee members will review and consider all comments received as they develop final recommendations to the Court, the Legislature, and other bodies.

The Supreme Court welcomes individuals with disabilities or those needing interpreters and has committed to making court employment opportunities, programs and services accessible to all persons.

Any person wishing to request an accommodation in order to participate in the public comment meeting should utilize the ADA Accommodations Request Form, if possible. The form is available at: http://www.lasc.org/employment/ada_statement.asp.

Requests for accommodation should be directed to the following individual through the sources listed below or by using the Louisiana Relay Center TDD/TTY 1-800-846-5277, voice 1-800-947-5277.

Lauren McHugh Rocha, ADA Ombudsman
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400 Royal Street, Suite 1190
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Title VI of the Civil Rights Act of 1964 requires courts to take reasonable steps to provide meaningful access to limited English proficient individuals in court operations. If you are interested in attending the public comment hearing but, due to your national origin, have a limited ability to understand English, please contact Julia Spear at (504) 310-2629 or jspear@lasc.org so that we may arrange to have an interpreter present.

This project was supported by Grant No. 2016-ZB-BX-008, awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice or the Louisiana Supreme Court.

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Introduction

Court-imposed financial obligations have become a vehicle through which courts, as well as broader municipal entities, secure necessary funding. In Louisiana today, court-imposed legal financial obligations (hereafter, LFOs) take several forms. Fines and restitution are explicitly about paying one's debt to society. Fines are meant to deter criminal behavior and are imposed as punishment in the same way as a jail term, and restitution is meant to compensate a person harmed by a crime. Fees and court costs, in contrast, are imposed as taxes on the users of government systems.¹ Their purpose is revenue creation for the government.

The current policy conversation around LFOs pits those convicted of crimes who claim the inability to pay against the economic needs of the court system. But the Constitution compels that the government cannot violate individual rights and liberties protected under our Bill of Rights by weighing them against the needs of the public treasury.

In *Bearden v. Georgia*, 461 U.S. 660 (1983), the U.S. Supreme Court made clear that a local government can only jail someone for not paying a fine if it can be shown, in a hearing, that the person could have paid but “willfully” chose not to do so. While the ruling defined the rights of indigent defendants, the opinion did not define “willfully.” Judges were left with the discretion, on a case-by-case basis, to determine whether an offender was too poor to pay a LFO. Critics of the practice argue the system impermissibly and disproportionately punishes the impoverished.

The most recent example of these dynamics surfaced in a class action lawsuit filed against Orleans Parish Criminal District Court. In *Cain v. City of New Orleans*, 281 F. Supp. 3d 624, 2017 U.S. Dist. LEXIS 204998, 2017 WL 6372836,² the plaintiffs, who had been convicted of crimes in Orleans Parish, challenged the manner in which the Orleans Parish Criminal District Court collected post-judgment court debts from them as indigent criminal defendants. The plaintiffs argued, in summary, that the judges’ failure to inquire into plaintiffs’ ability to pay court debts violated the Fourteenth Amendment. The ruling, which is currently on appeal with the United States Fifth Circuit Court of Appeals, relied in part on *Bearden* as it reaffirmed that a defendant’s ability to pay must be determined before he or she could be incarcerated for failing to pay court debts. District Court Judge Sarah Vance then clarified that an Orleans Parish Criminal Court judge cannot, constitutionally, make such a determination in the first place:

The Judges’ power over fines and fees revenue creates a conflict of interest when those same Judges determine (or are supposed to determine) whether criminal defendants are able to pay the fines and fees that were imposed at sentencing. As explained earlier, the Judges have a constitutional obligation to inquire into criminal defendants’ ability to pay court debts. But the Judges have a financial stake in the outcome of ability-to-pay determinations; if they determine that a criminal defendant has the ability to pay, and collect money from her, then the revenue goes directly into the Judicial Expense Fund.

¹ Please see more detailed definitions in Exhibit A to this report.

² This case is currently on appeal at the U.S. Court of Appeals for the Fifth Circuit.

. . .

The Judges' dual role, as adjudicators who determine ability to pay and as managers of the OPCDC budget, offer a possible temptation to find that indigent criminal defendants are able to pay their court debts. This "inherent defect in the legislative framework" arises not from the bias of any particular Judge, but "from the vulnerability of the average man—as the system works in practice and as it appears to defendants and to the public." [Citation omitted.]

In the administration of justice in our state, ultimately, everyone wants what is fair. The task of the Price of Justice Advisory Committee is not to balance the rights of individuals against the budgetary interests of the government. Rather, acknowledging that the state has to protect individuals' constitutional rights, this subcommittee recommends next steps for funding the courts in a manner that avoids conflicts of interest and supports an independent and impartial judiciary. The budgetary consequences of taking these steps are not easy to resolve, but it is the subcommittee's task to contend with them.

Louisiana is not alone in this effort. States, cities, and towns nationwide are crafting constitutionally adequate policies for court-imposed financial obligations while also adequately funding their court systems and other municipal functions. No silver-bullet solution has emerged, but there are several principles available to guide the crafting of alternative policies. As far back as 2011, the Conference of State Court Administrators stated that, "Courts, as a core function of government, should be substantially funded by general government revenues. It is as illogical to expect the judiciary to be self-supporting through user fees as it would be to expect the executive or legislative branches of government to be funded through user fees."

The comparison offered here – that the legislative and executive branches do not depend for their funding on being "used" by individual constituents who are billed for service – helps illuminate the questions at hand. As a policy matter, the justice system doesn't exist to be funded. It exists to administer accountability, protect victims and ensure public safety. Good policy, including funding mechanisms, should serve that end.

Still, some see court-imposed financial obligations as a statutorily-imposed, mandatorily-collected, evenly-applied means of allowing the courts to sustain themselves, and see defendants' debts as a direct and legal consequence for illegal activity. This position is defensible, as a matter of policy, where the imposition of financial obligations honors the constitutional protections articulated in *Bearden*.

This subcommittee does not seek to eliminate criminal justice debt. Rather, this subcommittee recommends that the branches of Louisiana Government adopt the following funding principles for the judicial system and create an inter-branch task force to determine adherence to these principles, develop the necessary course of action to comply, and further identify and dedicate funding that would implement and sustain long-term solutions.

Principle I: Resolve conflicts of interest and follow all constitutional requirements

Principle II: Create consistency across courts

Principle III: Maximize the use of technology for access to the courts

Principle IV: Provide transparency operations and budgeting

Principle V: Promote accountability through measurement of outcomes

The subcommittee recommends specific practices be adopted to further these principles:

1. Cease collection practices around LFOs that cause possible conflicts of interest for judges and other stakeholders
2. Develop and implement more uniform and reliable sources of funding for court operations and services across the state
3. Develop a uniform reporting template for courts that shows the court's entire budget and allows comparisons between courts
4. Review judicial branch personnel and recommend changes consistent with caseloads
5. If collecting LFOs:
 - a. Develop uniform procedures and standards for assessment, collection, and reporting
 - b. Make total court costs per infraction consistent across the state
 - c. Restrict practices that allow court costs to be assessed in excess of their stated purpose
 - d. Use technology to remove barriers to payment, implement alternatives to LFOs and reduce failures to appear
 - e. Consolidate and organize court cost statutes for ease of understanding and application

This report proceeds in several sections. First, it provides the subcommittee charge assigned by the Price of Justice grant team. It then relates the subcommittee's process and the activities that led to the recommendations. Then, it states and discusses the five principles that should be adopted in any plan to fund the judiciary. The report includes the data and information we know about current adherence to the principles as well as the information we still need to know to determine the best funding model for Louisiana.

I. Subcommittee Charge

A reduction in the use of LFOs, changes in arrest/ticketing practices, and fluctuations in a city's population may all affect a court's financial stability. Additionally, the reliance on LFOs to fund the judiciary creates a conflict of interest for some courts. Are there alternative ways to structure the courts' funding? What are the other potential models? What changes would be required to put something else in place?

II. Subcommittee Activities

At the end of May 2018, this subcommittee considered the enormity of their given charge and decided that more information was needed before any funding options could be recommended. What were other states doing? Were any states funding the judiciary without the imposition of court costs? What were the other models and were they working? The group decided to develop a survey that would be delivered to each state's court administrator through the Conference of State Court Administrators list serve. The survey asked for salary, operations, support staff, and court infrastructure funding sources at all levels of the judiciary with additional questions that attempted to identify the judiciary's budgetary reliance on court costs and how those costs were both collected and disbursed throughout the state.

The survey was submitted to the staff at the National Center for State Courts (NCSC) for final review in September of 2018, at which point the subcommittee learned that the survey would be impossible for most, if not all, states to complete. Even those states with a "unified" court system (a term that is not defined and thus used differently across states) would not have unique court level data that would allow them to quickly respond with, for example, the percentage of court costs retained by the courts. NCSC had been pursuing similar questions for years and thus had first-hand knowledge about the capabilities of states to respond in a way that could inform the subcommittee's work.

The subcommittee was advised to attempt to answer the survey questions within our own state. In order to understand the best options for Louisiana, we needed to know how the Louisiana Judiciary was funded. How reliant is the Louisiana Judiciary on court costs? What percentage of judiciary funding is borne by defendants across all levels of our state courts? What percentages are paid by local governments and what percentage is covered by state appropriation? Additionally, best practices recommend funding "core court functions" with general governmental revenues rather than fines and fees.³ If the subcommittee were to recommend that state appropriation cover core court functions, how should these functions be defined and how much would it cost?

In October of 2018, the subcommittee began to examine the current budget "pie" using Louisiana Legislative Audit reports to provide budget information for the courts' Judicial Expense Funds as well as local governing agencies. Simultaneously, we attempted to develop a proposed definition for core court functions.

Both efforts were far more difficult than imagined. Current budget and auditing standards allow government agencies to report their revenues and expenditures in a variety of ways. The lack of uniformity in fiscal year, line-item detail, and fund accounting makes parsing local government contributions and state grant contributions (Drug Court funds, for example) difficult. The project is doable; however, follow-up with most local governments and many courts would be necessary.

³ See *Courts are Not Revenue Centers*, 2011-2012 Policy Paper, Conference of State Court Administrators; *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, 2015-2016 Policy Paper, Conference of State Court Administrators; *Principles on Fines, Fees, and Bail Practices*, the National Task Force on Fines, Fees, and Bail Practices.

Further, core court functions are not consistently defined and vary between states. A discussion of core court functions is attached as Exhibit C; the subcommittee suggests that core court functions in Louisiana are broadly defined and may need refining.

After taking the above actions, it became apparent to the subcommittee that recommending a particular course of action would not be feasible; an inter-branch effort is needed. The subcommittee then focused on choosing principles and specific practices to guide the development of any system of funding the Louisiana judiciary.

III. Five Principles for Funding the Louisiana Judiciary

The five principles below are based on national expertise as well as the experience of other states, in the context of the Louisiana judicial funding structure. It is the subcommittee's belief that a funding system based on these principles will support an independent and impartial judiciary.

Principle I: Resolve conflicts of interest and follow all constitutional principles.

As discussed in the introduction above, the imposition of fines, costs, and fees (legal financial obligations, or LFOs) as a means of funding the judicial system has long raised important constitutional questions. In a line of cases beginning with *Tumey v. Ohio*, the U.S. Supreme Court has found that if a judge assesses a legal financial obligation from which the judge benefits either directly or indirectly (due to the judge's control over funds that benefit the court), the resulting real or potential conflict of interest is a violation of constitutional due process.⁴

Regarding indigent individuals and LFOs, the U.S. Supreme Court has held that converting an individual's fine to a jail term solely because the individual is indigent violates the Equal Protection Clause of the United States Constitution.⁵ Courts may only jail an individual when that person has the means to pay but refuses to do so.⁶ Further, in the seminal case of *Bearden v. Georgia*, the Supreme Court held that courts cannot jail an individual for failure to pay without first making an inquiry into facts that demonstrate the defendant had the ability to pay, willfully refused to pay, and had access to adequate alternatives to jail for non-payment.⁷

Finally, the legislature is limited in its ability to use courts as a means of funding operations of government unrelated to the administration of justice. A "fee" that materially exceeds the cost of the associated service or is used for a purpose unrelated to the administration of justice runs the risk of being deemed unconstitutional.⁸ This is the argument advanced in *Lawrence v. State*, a case currently in litigation in which the plaintiff alleges that certain LFOs assessed against him after a traffic stop bore little or no relation to his offense and thus are unconstitutional taxes.⁹

⁴ *Tumey v. Ohio*, 273 US 510 (1927); *Ward v. Village of Monroeville*, 409 US 57 (1972).

⁵ *Tate v. Short*, 401 U.S. 395, 398 (1971).

⁶ *Tate*, 401 U.S. at 400.

⁷ 461 U.S. 660, 662-63 (1983)

⁸ *Safety Net for Abused Persons v. Segura*, 96-1978 (La. 4/8/97), 692 So. 2d 1038.

⁹ *Lawrence v. State*, 19th JDC Docket No. 639010.

As discussed in the introduction, the Louisiana system of court financing, which uses LFOs to at least partially finance each level of courts, has been challenged on constitutional principles. Articles and lawsuits have alleged direct and indirect conflicts of interest involving the use of LFOs to fund Louisiana's justice system.¹⁰ Further, although the constitutional aspects have not been researched for this report, it appears that other stakeholders in the justice system, such as public defenders and prosecutors, also face possible conflicts of interest. Indigent defenders are partially funded by a court cost that is not due unless their client is found guilty, pleads guilty, or forfeits bond;¹¹ prosecutors make plea deals that may include LFOs, including prosecutor fees.¹²

A review of the Louisiana court funding structure demonstrates the influence of LFOs at each level.

Louisiana currently utilizes a tiered funding system in which state appropriations cover most court operations at the appellate court level, salaries and some office and travel expenses for judges at the district court level¹³, and partial salaries for judges at the city court level. Though the Louisiana Supreme Court relies on court costs to partially fund its programming and the courts of appeal collect some court costs for their judicial expense funds, the district and city courts rely heavily on a combination of court costs and local government support for court operations.

Though determining total expenditures on the courts is difficult because of their multiple funding sources, when state appropriated funds, grants, and local government contributions were considered along with the judicial expenses for ten district courts, LFOs accounted for 24% of spending, on average.¹⁴

Available budget documents and audits show that city and parish courts rely on court costs to fund their operations at an even higher percentage than district courts, largely due to the reduced state funding for city courts.¹⁵ An examination of 21 city courts shows that 29% of the courts' budget derived from user fees, on average; however, this may be grossly underestimated since a number of the analyzed city courts relinquish their collected court costs to the city in exchange for the city's financial support. Thus, the local government's piece of the "pie," which in these 21 city courts is nearly 50% of the courts' budgetary support, may be made up in large part or even entirely of court cost collections.

¹⁰ *Cain v. City of New Orleans*, 281 F. Supp. 3d 624, 2017 U.S. Dist. LEXIS 204998, 2017 WL 6372836; West, *Financial Conflicts of Interest and the Funding of New Orleans's Criminal Courts*, 101 Cal. L. Rev. 521 2013.

¹¹ La. R.S. 15:168.

¹² La. R.S.16:16.

¹³ La. R.S. 13:691; La. Const. Art. V, § 21; La. R.S. 13:10.3

¹⁴ The average is based on a review of ten district court expenditures using the Legislative Audits for judicial expense funds and local governments, the Louisiana Supreme Court annual budget, and local government budget documents. Expenditures for courthouse maintenance are not included. The ten district courts selected cover the judicial jurisdiction of 36% of the population of Louisiana. An assessment of all district court expenditures is needed to provide a comprehensive view of spending on courts.

¹⁵ City court data includes audits of the city courts, local government audits, local government budget documents, and the Louisiana Supreme Court budget.

Depending on the resources of the local government, a reliance on LFOs leaves many courts vulnerable to litigation or, if assessing indigency according to Bearden principles, a loss of necessary revenue that may impede the operations of the court.

We do not know what it will cost to eliminate the use of LFOs to fund the judicial system. Legislative audits for District Court Judicial Expense Funds in 2017 indicate that \$29.2 million was collected from defendants to augment the operations of the courts; however, this number does not necessarily reflect the actual needs of the courts. Some courts may have collected more than was needed while others were forced to use reserves or seek additional funding to cover their costs.

Principle II: Create consistency across courts.

Courts should have uniform processes and defendants should receive consistent treatment regardless of the court's locality. The amount of fees and miscellaneous charges should be established on a rational basis throughout a state; it should not be more or less costly for a court user simply as a result of venue and jurisdiction.¹⁶ Superfluous LFOs, which are not easily understood and accepted by the public, erode public confidence.¹⁷

The tiered system that leaves much of district and city court funding to local government and revenue derived from court costs may result in disparate court operations. The inconsistent and unreliable revenues derived from LFOs makes budgeting and spending decisions difficult for courts and other stakeholders who are funded by LFOs, such as indigent defenders, prosecutors, and law enforcement.

The tiered system also may result in the perception by the public of inconsistent outcomes. Court costs vary among courts, cities, parishes, and districts. In addition to *common* factors such as charge and charge-severity (misdemeanor or felony), the total amount of court costs assessed per defendant will depend on *varied* factors such as the population of the city in which the court is located¹⁸, whether the sheriff or other law enforcement agency has created a non-profit Crime Stoppers in the jurisdiction¹⁹, and whether additional funding for local court operations (or reasonably-related functions) were successfully replaced or supplemented by a court cost.²⁰

The process of enacting court cost legislation contributes to inconsistencies in LFOs across courts. Because the legislature responds to requests for new or increased court costs by an individual jurisdiction or agency, courts assessments often include the collection of costs for that jurisdiction or agency only. The result is inconsistencies in LFOs assessed by courts for the same infraction. For example, a defendant arrested for misdemeanor possession of marijuana and sentenced to probation will face \$360 in LFOs if convicted in Leesville City Court but \$750 if in

¹⁶ *Courts are Not Revenue Centers*, 2011-2012 Policy Paper, Conference of State Court Administrators, citing the A.B.A., Standards Relating to Court Organization 99 (1974).

¹⁷ *Courts are Not Revenue Centers*, 2011-2012 Policy Paper, Conference of State Court Administrators.

¹⁸ La. C.Cr.P. Art. 887(F); Court cost to support Trial Court Case Management Information Fund

¹⁹ La. C.Cr.P. Art. 895.4; Court cost to fund local Crime Stoppers

²⁰ La. R.S. 15:1094.7; Court cost to fund the commission in Florida Parishes

the 24th Judicial District Court.²¹ Though some of the difference in assessed LFOs across courts might be rationalized as a variation in access to court resources and programming (more is paid because more is received), such arguments fail to explain why defendants in some jurisdictions should benefit from resources that are unavailable in others.

In addition to revenue-based inconsistencies, court processes regarding LFOs vary across courts as well. The National Task Force on Fines, Fees, and Bail Practices targeted process-based inconsistencies that exist around ability-to-pay policies across the state and laid out the following principle in support of consistency: states should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person's ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.²²

As part of the Justice Reinvestment Initiative, the Louisiana Legislature passed statewide legislation consistent with this principle. The legislation mandates a determination of substantial financial hardship prior to the assessment of LFOs following a felony conviction; allows a judge to waive or modify the LFOs, or order a payment plan. The legislation also allows for alternatives to payments if circumstances later warrant; offers rewards for compliance with a payment plan; sets notice standards for a contempt hearing when payments are missed; prohibits extension of probation solely to pay LFOs; and modifies laws suspending driver's licenses due to unpaid LFOs to willful violations.²³

Principle III: Maximize the use of technology for access to the courts

Article I, Section 22 of the Louisiana Constitution guarantees access to courts. Courts should use whatever means possible to promote access, including offering extended and flexible hours of service and using innovations in technology such as online payment of LFOs, reminders of court proceedings by email or text, and online dispute resolution where appropriate. Access to court online services should be provided without additional fees other than those reasonable and necessary to support them.²⁴

Challenges associated with geographic location and access to resources can potentially be overcome through technology. While the Louisiana Supreme Court, through its CMIS division as well as the Price of Justice grant, has worked with many courts to improve case management systems and to provide access to technological resources, access to technology and the availability of individual court staff to understand and utilize technology varies greatly from court to court.

²¹ These amounts were derived from court cost documentation submitted by City and District Courts to the Louisiana Supreme Court. The total provided does not include the fine that might be imposed.

²² Principle 2.3, Principles on Fines, Fees, and Bail Practices, the National Task Force on Fines, Fees, and Bail Practices

²³ Act 260 of 2017. The Act's effective date has been delayed until August 1, 2019.

²⁴ Principle 1.10, Principles on Fines, Fees, and Bail Practices, the National Task Force on Fines, Fees, and Bail Practices

In a survey distributed to Louisiana courts and sheriffs by the Price of Justice Technological Solution subcommittee, the differences among jurisdictions in both access to technology and the resources to use technological tools became apparent.²⁵ Twenty-six percent of respondents indicated that online payments were not available for their constituents. Only 9% of survey responders used text messaging technology to remind defendants of court dates or upcoming payments. Additionally, nearly 40% of the 63 respondents say that their case management system does not allow them to review LFO information on a defendant-by-defendant basis. These technological disparities exacerbate inconsistencies across courts, resulting in greater access and ease in handling LFOs for defendants and court administrators alike.²⁶

Access to technology is also affected by the tier-based structure of the courts. City courts often have better access to defendant data than do judges in district courts. This is because city courts usually have a clerk on staff, collect their own court costs (sometimes with the assistance of a third party vendor), and operate using a single case management system. District courts, on the other hand, work with an independently-elected clerk and a sheriff,²⁷ who handles LFO collections for the district court (though a few districts have internal collections departments). Access to information regarding the status of a person's payment or arrest for failure to appear and pay is often dependent on the integration of multiple case management systems. Manual processes that are created in an attempt to resolve these problems are prone to human error and failure.

Though the initial investment in technology is often costly, the gains in efficiency and broadened access to services should make technology a priority. When the increased knowledge about assessments of court costs, collections, and the cost of recouping LFOs is added to the equation, technology becomes a necessary step in understanding how the courts are currently funded and what could be changed in the future. It is also a crucial component for increasing transparency in the judicial system.

Principle IV: Provide transparency in operations and budgeting

This principle has two aspects. First, LFOs should be consistent and only assessed as necessary to carry out the stated purpose of the particular cost. The authorized amounts of LFOs, the source of authority for each, and the authorized and actual use of LFOs should be compiled and available to the public as well as court officials to promote transparency, ease of access, and understanding.²⁸

²⁵ Draft report of the Technological Solutions Subcommittee of the Price of Justice Grant Advisory Board, Exhibit B, found on the Supreme Court website at http://www.lasc.org/grants/Price_of_Justice.asp. Last checked on April 1, 2019.

²⁶ Draft report of the Technological Solutions Subcommittee of the Price of Justice Grant Advisory Board, Exhibit B, found on the Supreme Court website at http://www.lasc.org/grants/Price_of_Justice.asp. Last checked on April 1, 2019.

²⁷ In districts with jurisdiction over multiple parishes, the court works with multiple clerks and multiple sheriffs, all of whom may have unique case management systems that are not integrated with each other.

²⁸ Task Force Principle 3.3.

Further, LFOs should be established by the legislature in consultation with judicial branch officials. These amounts should not be excessive and should periodically be reviewed and modified, as necessary or appropriate.²⁹ The Judicial Council of the Louisiana Supreme Court has the statutory duty to review all requests for court costs and make a recommendation to the legislature prior to the request being acted upon by the legislature; however, the request does not always come to the Judicial Council prior to being passed by the legislature.³⁰ Also, between 2011 and 2018 the Council was limited in its review of each cost as to whether or not the cost was reasonably related to the operations of the courts. This limited standard did not allow the Council to provide a full review of each request. In 2018 the legislature amended the standard of review to allow for a wider investigation into the need for the cost and for the effect on those who will pay the cost.

The second aspect of this principle, which is connected to the first aspect, is transparency in court budgets. The judicial branch cannot request additional funds to decrease dependence on LFOs without knowing the cost of those functions. The Task Force on Fines, Fees, and Bail Practices suggests that courts should practice transparency and accountability in their collection of LFOs through the collection and reporting of financial data and case dispositions to the court of last resort, in this case the Louisiana Supreme Court.³¹ In contrast, reporting of Louisiana court budgets is currently neither consistent, transparent, nor comparable across courts. A review of their budgets as they were presented to the Louisiana Legislative Auditor, tells us the following:

- 1) Without a template to guide the separation of “Judiciary” spending on court operations as opposed to those spent on the district attorney or other criminal justice organizations, understanding the contribution of local governments to the courts is impossible.
- 2) Without additional reporting by court cost collectors (sheriff, city court clerk, or district court collections office) regarding the amounts collected and disbursed to statutorily designated agencies, the legislature and judiciary cannot ensure that the amounts collected and the amounts received by the agencies are aligned.
- 3) The lack of resources in some courts leads them to manage their finances in ways that are not in alignment with best practices and to have “inadequate segregation of accounting functions³².”
 - a. In 2017 and 2018, 16 city courts and 4 district courts were cited in legislative audits or reviews for having improper or inadequate segregation of duties in accounting functions or preparation of financial statements. Two courts were also reported to have unqualified or underqualified staff. Often, these issues are the by-product of a small office with limited personnel to handle the financial operations of the court and are not indicative of intentional wrongdoing.
- 4) The ways in which some court costs are applied vary across region. Statutes permitting sweeps of some court cost funds into other funds have created a system in which court costs allocated for a specific purpose but not needed in full to support that purpose are

²⁹ Task Force Principle 6.1.

³⁰ La. R.S. 13:61 and 62.

³¹ Task Force Principle 3.2

³² Louisiana Legislative Audits make note of budgeting and auditing issues in each government entity’s audit.

re-purposed for causes that, to the knowledge and belief of the Judicial Council, have not come before it.

For example, collection of off-duty witness fees are intended to fund the compensation of law enforcement officers for time spent as subpoenaed witnesses on days they are off-duty and not otherwise paid by their employer. Though the amount paid is dictated by statute, the amount collected from defendants is to be determined by the judge or judges of a jurisdiction who are to create and adopt a “schedule of costs.”³³ Additionally, they are to adjust the schedule as needed to insure that the proceeds are adequate to cover the cost of paying off-duty officers.

The available documentation does not tell us whether courts have reduced or increased this court cost to align with the needs of the funds. Seven district courts, two parishes, one city court, two cities, and one mayor’s court have permission to “sweep” a portion of unspent funds into judicial expense funds, criminal court funds, or city coffers (in the last case, to be spent on police equipment). These sweeps would not exist if the amount collected for these funds were not disproportionate to the need and, in sweeping them into other funds instead of reducing the amount collected, the courts eliminate transparency in collecting this cost and run the risk of eroding public trust.

In some of the jurisdictions without an approved sweep, fund balances are large. Courts could either eliminate the collection of these costs for a number of years to deplete their reserves or reduce the amount collected to better reflect the needs of the court.

Principle V. Promote accountability through measurement of outcomes

If the funding structure of the court system is to change going forward, courts must not only be transparent with funds but also accountable for using the funds to effectively fulfill their role:

Effective judicial governance and accountability require courts to identify primary responsibilities for which they can and should be held responsible. Since courts use public resources, taxpayers and their elected representatives are legitimately entitled to raise questions about efficiency and effectiveness in the expenditure of court funds. In response, performance assessment provides the means for courts to demonstrate the value of services delivered.

...

Performance assessment... shields courts from the criticism that budget requests are the product of some individual judge’s or administrator’s personal preference. Instead, budget proposals flow from the mission of meeting agreed-upon goals.³⁴

³³ La. R.S. 15:255

³⁴ See La. R.S. 13:81-85, the Judicial Budget and Performance Accountability Act.

Why Measure? CourTools, a Project of the National Center for State Courts

Members of the legislature have emphasized that their responsiveness to the monetary needs of the judiciary are, in part, tied to the judiciary's ability to accurately discuss amounts needed and to demonstrate the value of what is being funded.³⁵ The National Center for State Courts has developed CourTools, recommended performance measures that improve the accountability of the judicial branch and assist it in its efforts to communicate its accomplishments and its needs to partners.

NCSC's CourTools help the courts to increase accountability by providing ten measures for trial courts that cover clearance rates, disposition time, trial scheduling, case file integrity, management of legal financial obligations, defendant perceptions of fairness, employee satisfaction, and cost per case. In addition, they provide measures for drug court and mental health court performance. Appellate CourTools measures are also available. While the measures recommended might need to be adjusted and augmented to reflect the structure and work flow of our courts, they would provide valuable quantitative measures of the good work courts do.

An important aspect of financial accountability is knowing how many judges and court staff are needed to efficiently handle the caseload in a particular jurisdiction. The Louisiana Judicial Council contributes to this effort by investigating and making a recommendation to the legislature regarding requests for new judgeships, commissioners, magistrates, hearing officers, and other judicial officers.³⁶ The Council also makes a recommendation regarding requests to split or merge courts. To aid in this task, Louisiana has developed a set of formulas to measure judicial workload. However, the workload formulas have not been updated in years and may no longer accurately assess workload.³⁷

³⁵ Price of Justice Grant Advisory Committee member discussions.

³⁶ La. R.S. 13:61.

³⁷ Public Hearing regarding House Concurrent Resolution 143, 1/23/14, John J. Hainkel Jr. Room, State Capitol Building, Baton Rouge, LA. A video of the hearing is available at: <http://senate.la.gov/video/videoarchive.asp?v=senate/2014/01/012314HCR143STUDYCOMM> (checked 3/25/19).

Exhibit A - Definitions

- A. Fines and Penalties:** Amounts assessed to penalize an individual or organization for violating a provision of law or rule following conviction or other adjudicatory decision by a judicial officer.³⁸ The Louisiana Supreme Court noted in *State v. Rugon*, No. 60001 (La. Sept. 19, 1977), 355 So.2d 876: “In *State v. Brannon*, 34 La. Ann. 942 (1882), this Court stated that a fine “is a sum expressly imposed in lieu of, or in addition to a term of imprisonment, or as any part of the punishment for an offense.” (Emphasis added.) Since that time, we have defined a fine as: “a pecuniary penalty” (*State v. Price*, 124 La. 917, 50 So. 794 (1909)); “a pecuniary exaction, imposed as a punishment for violation of the law.” (*McHugh v. Placid Oil Co.*, 206 La. 511, 19 So.2d 221 (1944)).”
- B. Court cost:** A specific charge or cost, or a range of specific charges or costs, or a specific percentage of an amount of costs, or a limit of an amount of cost that is used to defray the operational costs of courts and the court-related operational costs of law enforcement, clerks of court, district attorneys, the indigent defense system, state and local probation and parole functions, and other court-related functions, and that has been authorized by state law and levied by a court to be collected from a person convicted of, or pleading guilty to, or forfeiting a bond with respect to, certain specified crimes or pre-delinquent and delinquent acts.³⁹
1. “Court-related operational costs” mean those operational costs that are in direct support of the pre-adjudicative, adjudicative, and post-adjudicative functions of a court, including but not limited to: training; data sharing; law enforcement service of process; court reporting; pro se assistance; certain treatment programs sponsored or closely affiliated with the courts; bailiff services; short-term detention; probation; legal representation; prosecution; legal research; court-related technologies; informal adjudicative programs such as diversion, alternative dispute resolution, restorative justice, pre-trial and such other programs that are either sponsored by or closely affiliated with the courts.⁴⁰
 2. “Courts” mean the district courts, the juvenile and family courts, the city, parish, municipal, and traffic courts, the justices of the peace, and the mayor's courts.⁴¹
- C. Fee:** A charge or cost or a range of specific charges or costs, or a specific percentage of an amount of costs, or a limit of an amount of cost that is used to defray the operational costs of the courts or the court-related operational costs of the clerks of court or other court-related functions, and that has been authorized by state law to be collected from a person either filing a document in any civil or criminal proceeding with the clerk of court, appearing in a civil matter before a court, failing to fulfill a condition of release, or meeting a condition of probation or other court order.

³⁸ *Courts Are Not Revenue Centers*, Council of Chief Justices/Council of State Court Administrators, 2011-2012 Policy Paper, p. 1-2.

³⁹ Louisiana Judicial Council, *General Guidelines of the Standing Committee to Evaluate Requests for Court Costs and Fees*, revised 10/18, p. 1.

⁴⁰ *Id.*

⁴¹ *Id.*

The Supreme Court has set forth the legal distinction between government charges which constitute a “fee” as opposed to a tax. In *National Cable Television Association, Inc. v. United States*, 415 U.S. 336, 340–41, 94 S.Ct. 1146, 1148–49, 39 L.Ed.2d 370 (1974), the Court held that in order for a monetary charge by a government to meet the legal definition of a “fee” the charge must be incident to a voluntary act and must confer a benefit. A government charge which is mandatory and does not confer a benefit is a tax. *Augustus v. Roemer*, 771 F. Supp. 1458, 1470 (E.D. La. 1991).

- D. Miscellaneous Charges:** Amounts assessed that ultimately compensate individuals or non-court entities for services relating to the process of litigation. These amounts often vary from case to case based on the services provided.⁴²
- E. Surcharges:** Amounts added to fines, fees, or court costs that are used for designated purposes or are deposited into the general fund.⁴³

⁴² *Courts Are Not Revenue Centers*, Council of Chief Justices/Council of State Court Administrators, 2011-2012 Policy Paper, p. 1-2.

⁴³ *Id.*

Exhibit B – Applicable Task Force Principles, Summarized

- 1) While having authority to impose and collect LFOs, the courts are not established as a revenue-generating arm of the executive or legislative branches.
- 2) Courts should be entirely and sufficiently funded from general governmental revenue sources, and core functions should generally not be supported by revenue generated from court-ordered fines, fees, or surcharges. Neither performance nor compensation of a judge should ever be measured or related to the judge generating revenue from LFOs. A judge's decision to impose a legal financial obligation should be unrelated to the use of revenue generated from the imposition of such obligations. Revenue generated from LFOs should not be used for salaries or benefits of judicial branch officials or operations.
- 3) User fees and charges that are necessary should never fund activities outside the justice system. Such fees should not exceed the actual cost of providing the service. Core court functions such as personnel and salaries should be primarily funded by general tax revenues.
- 4) Courts should be operated to ensure an impartial and independent judiciary.
- 5) Methods for paying LFOs should be easily accessible during both normal and extended hours, including 24/7 access to online services.
- 6) The state should have statewide standards for:
 - a) assessing ability to pay,
 - b) waiving or reducing LFOs,
 - c) authorizing payment plans for LFOs, and
 - d) using alternatives to payment or incarceration.
- 7) Demonstrate transparency and accountability in the collection of LFOs by reporting all financial collection data to the Supreme Court. Set statewide standards and procedures for collecting LFOs.
- 8) Authorized amounts, sources of authority, and authorized and actual use of LFOs should be compiled and maintained to promote transparency, ease of access, and understanding.
- 9) Case load data reflecting core court functions should be reported at least annually to the Supreme Court.
- 10) Judges should have discretion to modify LFOs pre-sentence based upon ability to pay.
- 11) Judges should have authority to modify LFOs post-sentencing if circumstances related to ability to pay change and paying is a hardship.
- 12) LFOs should be uniform, consistently assessed throughout the state, and reviewed and modified as necessary to ensure that revenue generated is used for its stated purpose and does not exceed what is needed for the stated purpose.
- 13) Courts should not extend probation to collect LFOs.

Exhibit B(2) – Complete Principles



Introduction

State courts occupy a unique place in a democracy. Public trust in them is essential, as is the need for their independence, accountability, and a service-oriented approach in all they do.

Important questions have arisen over the last several years concerning the manner in which courts handle the imposition and enforcement of court-ordered fines, fees, or surcharges (“Legal Financial Obligations”) and about the ways court systems manage the release of individuals awaiting trial. Local, state, and national studies and reports have generated reliable, thorough, and news-worthy examples of the unfairness, inefficiency, and individual harm that can result from unconstitutional practices relating to Legal Financial Obligations and pretrial detention.

As a way of drawing attention to these issues and promoting ongoing improvements in the state courts, in 2016 the Conference of Chief Justices and the Conference of State Court Administrators established the National Task Force on Fines, Fees, and Bail Practices (the “National Task Force”).

The goals of the National Task Force are to develop recommendations that promote the fair and efficient enforcement of the law; to develop resources for courts to use to ensure that no person is denied their liberty or access to the justice system based on race, culture, or lack of economic resources; and to develop policies relating to the handling of Legal Financial Obligations that promote access, fairness, and transparency.

The National Task Force’s deliverables can be found on its web-based Resource Center. At this site are bench cards, policy papers from state and national groups and National Task Force partner organizations; interactive maps; and links to important fines, fees, bail-related policy, planning, and practice materials, including links to information about pilot programs dealing with fines, fees, and bail practices.

The National Task Force is now pleased to offer its Principles on Fines, Fees, and Bail Practices. Developed with input from a variety of stakeholders, these principles are designed to be a point of reference for state and local court systems in their assessment of current court system structure and state and local court practice. The principles can also be used as a basis for developing more fair, transparent, and efficient methods of judicial practice regarding bail practices and the imposition and collection of Legal Financial Obligations.

The National Task Force's 34 principles each fall into one of the following seven categories:

- Structural and Policy-Related Principles
- Governance Principles
- Transparency Principles
- Fundamental Fairness Principles
- Pretrial Release and Bail Reform Principles
- Fines, Fees and Alternative Sanctions Principles
- Accountability Principles

The National Task Force expects these principles to be refined over time as jurisdictions put them into practice and the court community gains insight into the strategies associated with their implementation. It is anticipated that the Task Force's Executive Committee will review them periodically. In the ordinary course, such review will be biennial, unless extraordinary circumstances, such as a landmark State Supreme Court or United States Supreme Court decision, have changed the underlying legal landscape.

Structural and Policy-Related Principles

Principle 1.1. Purpose of Courts. The purpose of courts is to be a forum for the fair and just resolution of disputes, and in doing so to preserve the rule of law and protect individual rights and liberties. States and political subdivisions should establish courts as part of the judiciary and the judicial branch shall be an impartial, independent, and coequal branch of government. It should be made explicit in authority providing for courts at all levels that, while they have authority to impose Legal Financial Obligations and collect the revenues derived from them, they are not established to be a revenue-generating arm of any branch of government -- executive, legislative, or judicial.

Principle 1.2. Establishment of Courts. The authority for establishing any court or its jurisdiction should be clearly established in the constitution or laws of the state or, if such authority is delegated to a political subdivision, in ordinances duly adopted by it. The authority to create courts should reside exclusively with the legislative branch of government or with the people through a constitutional amendment, except as otherwise provided by law.

Principle 1.3. Oversight of Courts. A state's court of last resort or administrative office of the courts should have knowledge of every lower court operating within the state and supervisory authority over the judicial officers, court clerks, and other staff of each such court.

Principle 1.4. Access to Courts. All court proceedings should be open to the public, subject to clearly articulated legal exceptions. Access to court proceedings should be open, as permissible, and administered in a way that maximizes access to the courts, promotes timely resolution, and enhances public trust and confidence in judicial officers and the judicial process. Judicial branch leaders should increase access to the courts in whatever manner possible, such as by providing flexibility in hours of service and through the use of technology innovations, e.g., online dispute resolution where appropriate, electronic payment of fines and costs, online case scheduling and rescheduling, and e-mail, text messages, or other electronic reminder notices of court proceedings.

Principle 1.5. Court Funding and Legal Financial Obligations. Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should not be supported by revenues generated from Legal Financial Obligations. Under no circumstances should judicial performance be measured by, or judicial compensation be related to, a judge's or a court's performance in generating revenue. A judge's decision to impose a Legal Financial Obligation should be unrelated to the goal of generating revenue. Revenue generated from the imposition of a Legal Financial Obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, and court staff, nor should such funds be used to evaluate the performance of judges or other court officials.

Principle 1.6. Fees and Surcharges: Nexus to the "Administration of Justice." While situations occur where user fees and surcharges may be necessary, such fees and surcharges should always be minimized and should never fund activities outside the justice system. Fees and surcharges should be established only for "administration of justice" purposes. "Administration of justice" should be narrowly defined and in no case should the amount of such a fee or surcharge exceed the actual cost of providing the service. The core functions of courts, such as personnel and salaries, should be funded by general tax revenues.

Principle 1.7. Court Facilities. Court facilities should be provided for and operated in a manner that ensures an impartial and independent judiciary.

Principle 1.8. Court Management and Staffing. Courts should be operated in a manner that ensures an impartial and independent judiciary. Court staff should not be managed or directed by officials in either the executive or legislative branch.

Principle 1.9. Judicial Officers Exclusively Within Judicial Branch. All judges, judicial officers, and other individuals exercising a judicial or administrative function in support of judicial proceedings should be members of the judicial branch of government. Such individuals should also be independent of management by or direction from officials in the executive or legislative branch. All judges and judicial officers, including those serving in a court established by a political subdivision, should be subject to the authority of the court of last resort or the administrative office of the courts, bound by the state's code of judicial conduct, and subject to discipline by the state's judicial conduct commission or similar body.

Principle 1.10. Accessible Proceedings, Assistance for Court Users, and Payment Options. Court proceedings, services provided by the clerk's office, other assistance provided to court users, and methods for paying Legal Financial Obligations should be easily accessible during normal business hours and during extended hours whenever possible. Judicial branch leaders should consider providing 24/7 access to online services, without any additional fees other than those reasonable and necessary to support such services.

Governance Principles

Principle 2.1. Policy Formulation and Administration. All states should have a well-defined structure for policy formulation for, and administration of, the state's entire court system, including

any local courts. All such guidance and authority shall extend to local courts of limited or specialized jurisdiction.

Principle 2.2. Judicial Selection and Retention. Judicial officers should be selected using methods that are consistent with an impartial and independent judiciary and that ensure inclusion, fairness, and impartiality, both in appearance and in reality. In courts to which judges are appointed and re-appointed, selection and retention should be based on merit and public input where it is authorized. Under no circumstances should judicial retention decisions be made on the basis of a judge's or a court's performance relative to generating revenue from the imposition of Legal Financial Obligations.

Principle 2.3. Statewide Ability to Pay Policies. States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person's ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.

Transparency Principles

Principle 3.1. Proceedings. All judicial proceedings should be recorded, regardless of whether a court is recognized in law as a "court of record."

Principle 3.2. Financial Data. All courts should demonstrate transparency and accountability in their collection of fines, fees, costs, surcharges, assessments, and restitution, through the collection and reporting of financial data and the dates of all case dispositions to the state's court of last resort or administrative office of the courts. This reporting of financial information should be in addition to any reporting required by state or local authority.

Principle 3.3. Schedule for Legal Financial Obligations. The amounts, source of authority, and authorized and actual use of Legal Financial Obligations should be compiled and maintained in such a way as to promote transparency and ease of comprehension. Such a listing should also include instructions about how an individual can be heard if they are unable to pay.

Principle 3.4. Public Access to Information. Except as otherwise required by state law or court rule, all courts should make information about their rules, procedures, dockets, calendars, schedules, hours of operation, contact information, grievance procedures, methods of dispute resolution, and availability of off-site payment methods accessible, easy to understand, and publicly available. All "Advice of Rights" forms used by a court should be publicly available.

Principle 3.5. Caseload Data. Court caseload data should reflect core court functions and be provided by each court or jurisdiction to the court of last resort or administrative office of the courts on a regular basis, at least annually. Such data should be subject to quality assurance reviews. Case data, including data on race and ethnicity of defendants, should be made available to the public.

Fundamental Fairness Principles

Principle 4.1. Disparate Impact and Collateral Consequences of Current Practices. Courts should adopt policies and follow practices that promote fairness and equal treatment. Courts should

acknowledge that their fines, fees, and bail practices may have a disparate impact on the poor and on racial and ethnic minorities and their communities.

Principle 4.2. Right to Counsel. Courts should be diligent in complying with federal and state laws concerning guaranteeing the right to counsel. Courts should ensure that defendants understand that they can request court-appointed counsel at any point in the case process, starting at the initiation of adversarial judicial proceedings. Courts should also ensure that procedures for making such a request are clearly and timely communicated.

Principle 4.3. Driver's License Suspension. Courts should not initiate license suspension procedures for nonpayment of a Legal Financial Obligation until an ability to pay hearing is held and a determination has been made on the record that nonpayment was willful. Judges should have discretion in reporting nonpayment of Legal Financial Obligations so that a driver's license suspension is not automatic upon a missed payment. Judges should have discretion to modify the amount of fines and fees imposed based on an individual's income and ability to pay.

Principle 4.4. Cost of Counsel for Indigent People. Representation by court-appointed counsel should be free of charge to indigent defendants, and the fact that such representation will be free should be clearly and timely communicated in order to prevent eligible individuals from missing an opportunity to obtain counsel. No effort should be made to recoup the costs of court-appointed counsel from indigent defendants unless there is a finding that the defendant committed fraud in obtaining a determination of indigency.

Pretrial Release and Bail Reform Principles

Principle 5.1. Pretrial Release. Money-based pretrial detention practices should be replaced with those based on a presumption of pretrial release by the least restrictive means reasonably to assure appearance in court and promote public safety. States should adopt statutes, rules, and policies reflecting a presumption in favor of pretrial release based on personal recognizance. If risk assessment protocols are used, they should be validated and transparent and should not result in differential treatment by race, ethnicity, or gender. Such tools are not substitutes for individualized determinations of release conditions. Judges should not detain an individual based solely on an inability to make a monetary bail or satisfy any other Legal Financial Obligation. Judges should have authority to use, and should consider the use of, all available non-monetary pretrial release options. Judges may only use preventative detention if there is clear and convincing evidence that an individual poses a serious risk of danger to the community or flight. Preventative detention may only be ordered after a detention hearing that affords an individual all appropriate due process protections.

Principle 5.2. Bail Schedules. Fixed monetary bail schedules should be eliminated and their use prohibited.

Principle 5.3. Pre-Payment or Non-Payment. Courts should not impose monetary bail as prepayment of anticipated Legal Financial Obligations or as a method for collecting past-due Legal Financial Obligations.

Fines, Fees, and Alternative Sanctions Principles

Principle 6.1. Legal Financial Obligations. The monetary amounts of Legal Financial Obligations should be established by the legislative branch in consultation with judicial branch officials. These amounts should not be excessive and should periodically be reviewed and modified, as necessary or appropriate.

Principle 6.2. Judicial Discretion with Respect to Legal Financial Obligations. State law and court rule should provide for judicial discretion in the imposition of Legal Financial Obligations. State courts should avoid adopting mandatory Legal Financial Obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to (1) waive or decline to assess fees or surcharges; (2) impose Legal Financial Obligations based on an individual's income and ability to pay; (3) modify sanctions after sentencing if an individual's circumstances change and his or her ability to comply with a Legal Financial Obligation becomes a hardship; and (4) impose modified sanctions (e.g., reduced or eliminated interest charges, reduced or eliminated fees, reduced fines) or alternative sanctions (e.g., community service, successful completion of an online or in-person driving class for moving violations and other non-parking, ticket-related offenses) for individuals whose financial circumstances warrant it.

Principle 6.3. Enforcement of Legal Financial Obligations. As a general proposition, in cases where the court finds that the failure to pay was due not to the fault of the defendant/respondent but to lack of financial resources, the court must consider measures of punishment other than incarceration. Courts cannot incarcerate or revoke the probation of a defendant/respondent for nonpayment of a Legal Financial Obligation unless the court holds a hearing and makes one of the following findings: (1) that the defendant's/respondent's failure to pay was not due to an inability to pay but was willful or due to failure to make bona fide efforts to pay; or (2) that even if the failure to pay was not willful or was due to inability to pay, no adequate alternatives to imprisonment exist to meet the State's interest in punishment and deterrence in the defendant's/respondent's particular situation.

Principle 6.4. Judicial Training and Continuing Education with Respect to Ability to Pay. Continuing education requirements for judges and court personnel on issues relating to all relevant constitutional, legal, and procedural principles relating to Legal Financial Obligations and pretrial release should be established. Judges should receive training on how to conduct a fair and unbiased inquiry regarding a party's ability to pay.

Principle 6.5. Alternative Sanctions. Courts should not charge fees or impose any penalty for an individual's participation in community service programs or other alternative sanctions. Courts should consider an individual's financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

Principle 6.6. Probation. Courts should not order or extend probation or other court-ordered supervision exclusively for the purpose of collecting fines, fees, or costs.

Principle 6.7. Third Party Collections. All agreements for services with third party collectors should contain provisions binding such vendors to applicable laws and policies relating to notice to defendants, sanctions for defendants' nonpayment, avoidance of penalties, and the availability of non-monetary alternatives to satisfying defendants' Legal Financial Obligations.

Principle 6.8. Interest. Courts should not charge interest on payment plans entered into by a defendant, respondent, or probationer.

Accountability Principles

Principle 7.1. Codes of Conduct. Codes of conduct for judges and court personnel should be implemented or amended, as applicable, to codify these Principles.

Exhibit C - What are the Core Functions of Courts?

Principle 1.5 of the National Task Force on Fines, Fees, and Bail Practices states:

Court Funding and Legal Financial Obligations. Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. **Core court functions** should not be supported by revenues generated from Legal Financial Obligations. Under no circumstances should judicial performance be measured by, or judicial compensation be related to, a judge's or a court's performance in generating revenue. A judge's decision to impose a Legal Financial Obligation should be unrelated to the goal of generating revenue. Revenue generated from the imposition of a Legal Financial Obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, and court staff, nor should such funds be used to evaluate the performance of judges or other court officials. (Emphasis added)

In furtherance of their task, the Price of Justice subcommittee members examining acceptable alternatives to funding the court system asked for further information regarding core court functions. This report is in response to that request.

As an introductory matter, the term "Legal Financial Obligation," or LFO, includes "fines, court costs and fees as well as the many add-on fees that are common such as monthly probation/supervision fees, payment for drug and alcohol testing, interest on the LFO, a fee to implement a payment plan, charges for daily jail costs, a charge for a public defender, fees for missing court, warrant fees, charges for mandatory classes, and many others." 2015-2016 Policy Paper, *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, CCJ/COSCA 2015-2016.

Research produced no specific definition or comprehensive list of core court functions. What is considered a core court function varies between states and, in the case of court records under the control of an independently-elected clerk, may not even be under the authority of the judiciary.¹ Only two "functions" were consistently listed as core: Personnel and salaries.

This report includes information from national resources regarding core court functions and cites Louisiana-specific authorities to suggest that core court functions for Louisiana are broadly defined.

National Information

Two suggested core court functions, personnel and salaries, are noted in Principles 1.5 and 1.6 of the National Task Force Principles: **1.6 Fee and Surcharge: Nexus to the "Administration of Justice."** "While situations occur where user fees and surcharges are necessary, such fees and surcharges should always be minimized and should never fund activities outside the justice system. Fees and surcharges should be established only for "administration of justice" purposes. "Administration of justice" should be narrowly defined and in no case should the amount of such

a fee or surcharge exceed the actual cost of providing the service. The core functions of courts, such as personnel and salaries, should be primarily funded by general tax revenues.”

William E. Raftery, Ph.D., a senior analyst with the National Center for State Courts, notes that there is no definitive list of core functions of courts because the states vary in their definition of core court function. A few examples:

- Probation in some states is assigned (by statute or by constitutional provision) to the judiciary. That makes it a core court function in that state, but not for some other state. Further, juvenile probation or adult-misdemeanor probation may be under the judiciary, but felony-adult under the executive branch.
- In some states, clerks are independently elected. While they are providing core court functions, are they within the courts?
- What a core court function may be changes over time. IT infrastructure was not a “core court function;” now many state court systems have their own dedicated IT systems and support departments and deliberately do not rely on services from the other branches. The Arkansas Judiciary released its Strategic Plan and dedicated an entire section on “Embrace Technology”.
- Maine has, over the course of the last decade, effectively handed control over courtroom security to the state’s supreme court for most counties. New York and Massachusetts had already done so decades ago. In Rhode Island, the state court administrator under the direction of the chief justice controls and supervises all courthouses in the state; the chief justice is in effect the landlord of record.
- Are therapeutic courts/problem-solving courts parts of “core court functions”? 20 years ago you may have gotten a very different answer than what you get today. It was certainly debated when the Great Recession was forcing courts to have to decide what services to cut and whether those services were “core” or not.ⁱⁱ

Thomas Clarke, also of the National Center for State Courts suggests that adversarial case processing, including problem-solving functions, is the core function of courts. He suggests that other functions are ancillary: “Courts now perform ancillary functions like probation, parole, interpreters, public defenders, and many other functions that could be used to extend the list. It is telling that these other functions are rarely performed in most or all courts. Instead, the responsibilities are sometimes shifted outside the court to executive-branch agencies. In fact, it could be argued that the courts often control these other functions only because either nobody else wants them or other agencies are doing an inadequate job of managing them. Neither reason is a good one in the short run when resources are severely constrained, nor in the long run when courts have the possibility of defining their essential functions more appropriately.”ⁱⁱⁱ

State Court Organization, an interactive publication from the National Center for State Courts that presents detailed comparative data of courts in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of Guam, Northern Mariana Islands, and Virgin Islands includes the following categories that might be considered functions when describing the uses of judicial funding: Judicial personnel, non-judicial personnel, facilities,

security, technology, judicial education, performance evaluation, ADR, and other.^{iv} The “other” category includes court interpreters, court of chancery operations, policy development and case management, juror and witness fees, dispute resolution, bar exams, indigent defense, attorney certification, and victim’s rights.

In the NCSC-authored *Principles of Judicial Administration*, basic court functions are discussed:

The basic function of the court system is to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution. To fulfill this mission courts must:

- Provide proceedings that are affordable in terms of money, time and procedures
- Process cases in a timely manner while keeping current with its incoming caseload
- Adhere faithfully to relevant laws and procedural rules
- Provide a reasonable opportunity for litigants to present all necessary and relevant evidence
- Allow participation by all litigants, witnesses, jurors, and attorneys without undue hardship or inconvenience including those with language difficulties, physical or mental impairments, or lack of financial resources
- Provide facilities that are safe, secure, accessible, and convenient to use
- Make a complete and accurate record of all actions
- Provide for inclusive and representative juries^v

Louisiana-specific Authority

The Louisiana Supreme Court has held that LFOs collected by the courts may only be used for purposes that bear a “logical connection” to the justice system.^{vi} An examination of the LFOs that meet this definition suggest Louisiana core court functions are broadly defined.

The Judicial Council of the Louisiana Supreme Court, charged by the Legislature with making recommendations when a new or increased cost or fee is proposed prior to its being enacted by the legislature,^{vii} has developed guidelines to guide their review of new cost or fee requests.^{viii} The Council has defined a court cost as those costs that defray the operational costs of courts and court-related operational costs of law enforcement, clerks of court, district attorneys, the indigent defense system, state and local probation and parole functions, and other court-related functions.^{ix}

Court-related operational costs of other agencies are further refined to include those in direct support of the pre-adjudicative, adjudicative, and post-adjudicative functions of a court, including but not limited to: training; data sharing; law enforcement service of process; court reporting; pro se assistance; certain treatment programs sponsored or closely affiliated with the courts; bailiff services; short-term detention; probation legal representation; prosecution; legal research; court-related technologies; informal adjudicative programs such as diversion, alternative

dispute resolution, restorative justice, pre-trial and such other programs that are either sponsored by or closely affiliated with the courts.

Finally, the following court priorities in the form of goals and objectives are mentioned in the strategic plans of the Louisiana Courts. The strategic plans may be found at http://www.lasc.org/press_room/Strategic_Plans.asp. (Checked 4/1/19).

1. Access to Justice
2. Effective, transparent, and efficient administration of justice
 - a. Review lower court decisions
 - b. Develop and clarify the law
 - c. Promote the rule of law
 - d. Effectively manage cases
 - e. Develop court governance
3. Public trust and confidence
4. Judicial competency
5. Protection for children, families, and communities
6. Cooperation with other branches of government while protecting judicial independence.

Conclusion

A consistent, widely-accepted definition or list of core court functions has not been developed. Examples from national literature include the narrower view of simply adjudicating cases as well as a broader position that includes probation and parole, security, technology, indigent defense, treatment programs, legal research, and alternative dispute resolution. The Louisiana Judicial Council guidelines and the strategic plans of the Louisiana courts offer guidance as to the core purposes and functions of Louisiana courts, suggesting a broader rather than narrower definition of core court functions.

ⁱ Email from William E. Raftery, Ph.D., to Julia Spear and Rose Wilson dated 10/25/2018.

ⁱⁱ *Id.*

ⁱⁱⁱ Thomas M. Clark, *Possible Implications of the Principles-Based Essential Functions of Courts: A Most Proposal*, Future Trends in State Courts 2010, National Center for State Courts.

^{iv} State Court Organization, Table 1.4 a and b, “Uses of Funds for the Judicial Branch:” <https://www.ncsc.org/sco>, accessed on November 12, 2018.

^v *Principles of Judicial Administration*, National Center for State Courts, <https://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Judicial%20Administration%20Report%209-20-12.ashx>, last accessed on November 13, 2018.

^{vi} *Safety Net for Abused Persons v. Segura*, 96-1978 (La. 4/8/97), 692 So.2d 1038, 1044.

^{vii} La. R.S. 13:62 (B).

^{viii} The Judicial Council General Guidelines Relating to the Evaluation of Requests for Court Costs and Fees. The Guidelines may be found at

http://www.lasc.org/la_judicial_entities/Judicial_Council/CourtCost_Guidelines_2018.pdf, last accessed 3/25/19.

^{ix} The Judicial Council General Guidelines Relating to the Evaluation of Requests for Court Costs and Fees.

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