

LABI JUDICIAL MODERNIZATION PROJECT

Improving Transparency in Judicial Funding

LABI presents the third installment in its four-part Judicial System Modernization Series, for more information or to view other series installments visit www.LouisianaJudiciary.com.

INTRODUCTION

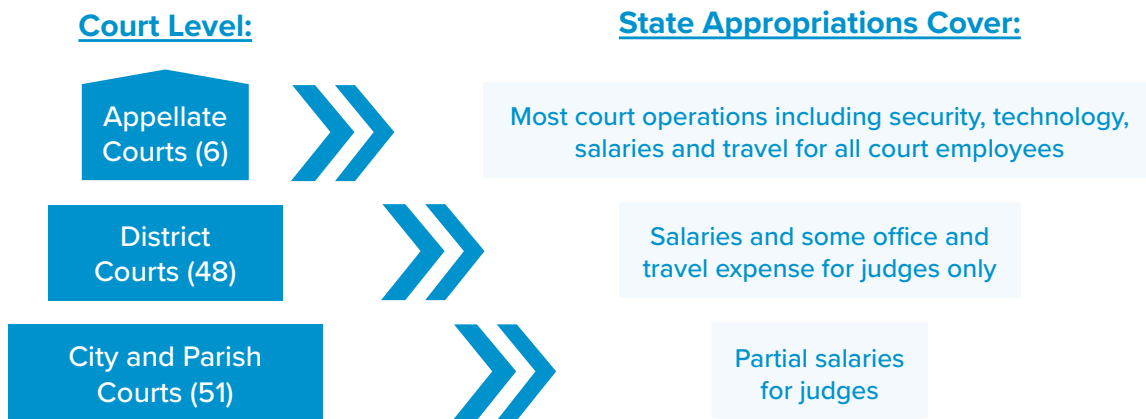
Public trust in the judiciary is based in large part on whether citizens believe the system is fair and impartial. Transparency is a critical factor aiding that determination. A transparent system dispels public suspicions and confusion concerning the judiciary and helps citizens understand how their judges are carrying out the jobs they were elected to do. Understanding how courts are funded and how they spend money is a large part of the equation, particularly since taxpayer dollars are involved.

In our earlier release on improving access to the courts through technology, we discussed the challenges presented by Louisiana’s “non-unified” judicial system and, specifically, the negative impact the lack of uniform technology across our courts has on access and efficiency. When it comes to the fiscal operations of our courts, a similar lack of uniformity—and to a certain extent a lack of transparency—also poses problems that impact all Louisiana taxpayers.

Rather than having a unified state court funding system, Louisiana uses a tiered funding system within which state appropriations vary by court level. An annual appropriation of state general funds from the Legislature fund the operations of the Louisiana Supreme Court and the five courts of appeal. But while state appropriations cover the majority of appellate court funding, at the district court level, the State covers only judges’ salaries and benefits, travel and some office expenses. Operations of district, parish and city courts are primarily funded by local government support and self-generated revenue from user fines and fees.

There does appear to be some momentum for moving to a more unified court system with a more consistent funding mechanism. In June, the National Center for State Courts published a report commissioned by the Louisiana Commission on Justice System Funding. Among other things, the report examined four states (Alabama, Florida, Minnesota, and New Hampshire) that have shifted to a state-funded and/or centrally administered trial court system. The report includes a number of specific suggestions for the Commission to consider going forward.

Louisiana has a tiered funding system in which state appropriations vary by court level.



For Fiscal Year 2021-22, the Legislature appropriated \$190 million for the judiciary. This year’s appropriation was up from \$188 million during Fiscal Year 2020-21. In 2018, the most recent year for which comparative data is available, Louisiana ranked 36th out of 42 states in the amount of state appropriation for the judicial system. Louisiana may rank near the bottom when it comes to state funding for its judicial system, but as the chart above shows, that is not the complete picture of judicial funding—it’s only the funding taxpayers can see. Until more detailed information about the courts’ other sources

of funding and expenditures are made available to the public, we simply do not have enough information to determine whether our judiciary is funded appropriately.

LABI's primary concerns, as it relates to judicial funding, involve transparency and accountability. As with judicial ethics, when it comes to funding, our courts are not held to the same standards for transparency and accountability as that of the other two branches of state government. Our goal is to shed light on how the judiciary is currently funded and to offer specific recommendations for improving transparency and accountability, which we hope in turn increases trust in our judicial system. The goal is to develop a complete picture of current judicial funding, expenditures, and financial need. We believe that until this information is made publicly available and accessible, it will be difficult for lawmakers to make informed decisions about how to further invest taxpayer dollars into modernizing our judicial system. If lawmakers do consider moving to a funding model that relies more heavily on state tax dollars, taxpayers must feel confident that they are paying for an efficient, effective, and fair court system.

THE TRANSPARENCY GAP

Debate over how our state judiciary is funded is not new. In fact, the issue has received quite a bit of attention over the past several years following Governor Edwards' comprehensive criminal justice reforms in 2017. The bipartisan package of 10 bills passed by the Legislature was aimed at reducing recidivism in our jails and removing barriers to successful re-entry for offenders. Among them, Act 260 by Rep. Tanner Magee (R-Houma) specifically addressed an issue that has dogged Louisiana courts for decades—an overreliance on user fines and fees. While Louisiana is not the only state where both state and local government agencies generate revenue through court fines and fees, it assesses more in total fines per adult resident than nearly every other state. Recent federal court decisions from the Fifth Circuit have cast doubt on the constitutionality of Louisiana's funding system. In two recent rulings, the court ruled that criminal court judges in New Orleans had an unconstitutional conflict of interest because the money collected from fines and fees imposed on defendants subsidizes their court operations. The rulings will likely have broader implications on the future of Louisiana's current funding system as a whole.

Act 260 was intended to ensure criminal justice fines and fees do not become a barrier to successful re-entry by determining a person's ability to pay, creating a reasonable payment plan, creating incentives for consistent payments and differentiating inability to pay versus a choice not to pay. The law was initially scheduled to go into effect on August 1, 2018, but during the 2018 session the Legislature postponed the effective date to August 2019—and then postponed two more times in 2019 and 2020 amid concerns about how district courts would be funded should they not be able to collect fines and fees that make up a major source of their funding. The new effective date is August 2022.

At the same time the Legislature passed the original delay on the implementation of Act 260, they established the Louisiana Justice System Funding Commission in 2019. The Commission, which included legislators and almost every major stakeholder in the criminal justice system, was established to “study and determine optimal methods of supporting and funding the Louisiana court system in a way that would allow for the implementation of changes made in Act No. 260.” The Commission met multiple times, solicited input from outside groups and submitted its final report to the Legislature in February 2020. Among other things, the report revealed a serious lack of transparency and accountability in the current funding system.

Shockingly, during the Commission's hearings, Supreme Court staff reported that data does not exist to even estimate a total cost of state and local court operations in Louisiana, much less the amount of user fines and fees specific courts rely on or where those revenues are generated.

An excerpt from the Commission's final report sums up the issue as follows:

“The Commission's attempts to investigate and understand the current state of court funding has revealed a lack of basic information about how fines and fees are assessed, collected and disbursed. The Legislative Auditor, who was tasked with surveying several district courts, reported that there is no standardized system for tracking how much money is collected in fines versus user fees, how such moneys are disbursed between the various agencies that receive these funds and what resources are spent on collection. Indeed, in many cases the legislative auditor could not discern which fees each court assessed. This extreme level of opacity creates conditions ripe for abuse.”

Apart from an annual report published online by the Louisiana Supreme Court each year that provides a one-page overview of the Legislature's annual appropriation to the judiciary, there is very little publicly available information about how funding is collected by courts or how that money is spent. Not a single court of appeal or district court website includes any information about the court's finances, despite the fact that they all rely, to some extent, on state and local taxpayer dollars to fund their operations.

One of the few sources of reliable data that does show the amounts received and managed by courts are court audits submitted to the Legislative Auditor each year. Unfortunately, those reports provide very little useful data to citizens who are not accountants or lawyers. The reports are audited financial statements and vary widely in terms of how data is presented and what information is included, with very few containing any detailed information about sources of revenue or expenditures. The complete lack of uniformity in reporting on fines and fees has made it difficult if not impossible to understand and create a complete picture of the revenue coming into the court system. Further complicating matters, not all judicial entities follow the same fiscal year, so comparing reports from various courts is not necessarily comparing apples to apples.

In the case of district courts, when the entities report to the Legislative Auditor each year in December, they are almost always reporting the district court's "judicial expense fund." This fund essentially serves as a depository within each court for various sources of revenue, primarily fines and fees. Judges have "exclusive authority" to determine how monies in the fund are used and typically use the money on salaries and benefits, travel, supplies, contract services, building maintenance or other operational costs. Understanding how each court's judicial expense fund works is no small feat. A separate statute governs each one, and over the years, specific rules and exceptions have been added to each. For the Fourth Judicial District (Ouachita and Morehouse Parishes), for example, the Legislature passed a bill in 2018 allowing the court to access any excess dollars in the Ouachita Parish Police Jury's Court Fees Fund, which is normally dedicated to covering the cost of paying law enforcement officers to testify in criminal proceedings. In early 2020, the court received \$125,000 from the fund, and then in September 2020, they requested another \$125,000, which the police jury approved. The district court is expected to continue drawing down the Court Fees Fund each year to prop up its own finances. Details about that transfer will not be captured in the Fourth JDC's annual filing to the Legislative Auditor.

Judicial expense funds are just one part of courts' overall budgets. The Commission, in order to get a better understanding on the amount of revenue judicial entities are receiving from fines and fees, agreed to require courts to submit an annual fines and fees report. Beginning in June, judicial entities such as justice of the peace and constable offices began reporting on amounts collected in fines and fees from defendants. Other judicial entities who collect fines and fees such as sheriffs and clerks of court will submit their fines and fees reports beginning in December 2021. Unfortunately, other sources of revenue and expenditures that do not flow through the judicial expense fund remain unreported, with no means for the public to provide input. Taxpayers remain in the dark about:

- how much funding courts receive from local, state and the federal government, and how that money is used
- how much money is received from other grants, and how that money is used
- how large court budgets are outside of the judicial expense funds, including any surplus funding that goes unused year-to-year

As an example, parish police juries contribute hundreds of thousands, or even millions of dollars, toward courts, but these revenues and how they are spent are not disclosed in court budgets unless they go into a judicial expense fund.

JUDICIAL PAY

Judicial pay is often discussed as a metric for assessing proper funding of the judiciary. According to the National Center for State Courts' (NCSC) most recent state survey, Louisiana ranks near the bottom in judges' salaries across all levels of our judiciary. But this statistic does not tell the entire story. Louisiana has five times more appellate court judges compared with our neighboring states with similar populations. Because Louisiana has so many more judges per taxpayer than our peer states, the total amount of funding for our judicial payroll may actually be sufficient, if not for being spread so thin. In addition, the cost comparison only takes into consideration judicial salary. It does not consider the other costs associated with an appellate judgeship. The cost for one Louisiana appellate court judgeship in 2011 (including salary, staff and travel, etc.) was nearly \$500,000 annually, even without considering retirement benefits. This number is undoubtedly much higher today when you consider pay raises alone. We believe

an earnest review to consider consolidating appellate court judge positions and investing in technology upgrades would not only save taxpayer dollars but also likely lead to a more efficient, effective system.

<u>State</u>	<u>Population</u> (estimate)	<u>Number of</u> <u>Appellate</u> <u>Judges</u>	<u>Salaries</u>	<u>Appellate Judge</u> <u>Salary Cost</u> (taken from the average of judicial salaries)
Louisiana	4.93 Million	53	\$166,000	\$8,798,000
Alabama	4.90 Million	10	\$151,00 - \$189,000	\$1,700,000
Arkansas	3.00 Million	12	\$169,000 - \$172,000	\$2,046,000
Mississippi	2.98 Million	10	\$105,000 - \$105,000	\$1,065,000
Georgia	10.62 Million	15	\$175,000	\$2,625,000

In 2019, the Legislature passed a bill giving judges a 2.5 percent pay raise for 2019-20 and locking in a 2.5 percent raise for them each year through 2023. Interestingly, a separate provision of law also ties pay raises of local sheriffs to the judicial pay raises. When the bill passed in 2019, the initial pay raises were funded by the Supreme Court’s surplus funds, which they reported were approximately \$50 million.

Supreme Court Justices in Louisiana currently make \$177,717 (rank 31st nationally), appellate court judges make \$166,184 (rank 26th nationally) and district court judges make \$159,666 (31st nationally). But when the rankings are adjusted for Cost of Living Index, we rank 16th. State employees, legislators and other public officials do not receive multi-year, locked-in pay raises.

We do not take issue with how much judges in Louisiana are paid. As with any profession, higher salaries attract more qualified candidates. But we do not believe it is good fiscal policy to commit future tax revenue without first examining the number of judicial seats necessary to meet needs, and also before stronger accountability metrics are in place. We do not believe it is sound policy to link pay raises for one agency or branch of government to that of another. Each agency should be responsible for making its case to the Legislature each year and justifying the

FILLING THE GAP

The Commission on Justice System Funding offered recommendations for the 2020 legislative session. Several of the recommendations aligned with what we propose. The Commission recommended the Legislature require uniform reporting by any court that assesses, collects or receives revenue from fines or fees, including reporting on what costs, fines and fees are assessed, how they are collected and disbursed and how much is spent on collecting them. The Commission also recommended that the legislative auditor develop Agreed-Upon Procedures (AUPs) to provide for uniform reporting from all agencies required to report. And the Commission concluded the Legislature “must make strides to establish accountability metrics so the general public can inform itself of how money is spent throughout the entire judicial system.” We support each of these recommendations.

Thankfully, during the 2020 Regular Session, despite all the state had to deal with in responding to the COVID-19 public health emergency, the Legislature acted on the Commission’s findings and recommendations. Act 87, authored by Rep. Tanner Magee (R-Houma), requires the legislative auditor and the Supreme Court to develop a uniform audit report for all local and state auditees that assess, collect or receive revenue from pre- or post-adjudication costs, fines that include, at a minimum: the amounts collected, the amounts outstanding, the amounts retained, the amounts disbursed and the amounts received from disbursements. These uniform audit report forms went out on January 4th to all entities collecting fines and fees. The law

gives the legislative auditor and the Supreme Court joint authority over the required reporting. As of July 6, the Legislature had received approximately 1,150 reports from reporting entities, including justices of the peace and constables with other reporting entities like the clerks of court and sheriffs set to report in December.

More recently, in the 2021 Regular Session, Chairman Zeringue was successful in amending the “judicial appropriations bill”, House Bill 584, on the House floor. His amendment required that the Judicial Administrator for the Supreme Court develop a uniform budget template that shows itemized revenues and expenditures for any district court, city court, municipal or traffic court that receives state funds. The form must be distributed to every chief judge, who must submit the completed form back to the Supreme Court no later than January 1, 2022. Once received, the Supreme Court must publish all completed forms on its website.

We commend both the Commission on Justice System Funding and the Legislature on their swift and thoughtful recommendations and actions, each of which we support. Yet there is still work to be done to improve transparency in judicial funding. For one, the budget transparency language included in the FY 2021-22 judicial budget is only in effect for this budget year. It needs to be placed in statute and made a permanent requirement.

In 2018, LABI collaborated with other pro-business and good government groups to support adoption of the Louisiana Checkbook website, www.checkbook.la.gov. Act 1 of the 2018 Second Special Session requires the Commissioner of Administration to establish and maintain the website and requires that it provide information to the public about data and reports of state expenditures, contracts, incentive expenditures, revenues and other financial matters. The law requires all agencies, boards, commissions, departments, institutions of higher education, Legislature and the judiciary to furnish information and reports requested by the Commissioner to ensure the website provides the requisite level of detail to the public. The one-stop, interactive, searchable website, which built upon and improved the state’s existing LaTrac (Louisiana Transparency and Accountability) system developed under Governor Jindal, gives the public real-time access to agency spending, employee salaries, contract data and financial reports.

Since 2019, agencies have gradually been integrating information into the LA Checkbook system, and complete implementation is scheduled for 2022. The site is not clouded with spreadsheets or financial statements only accountants can understand. It uses easy to understand charts and lists to provide detailed, accurate information. However, despite the fact that the implementing legislation, Act 1, requires the Louisiana judiciary to participate in LA Checkbook by providing the state with the required expenditure and financial data, no information about our courts exists on the website today. In fact, more than 30 state agencies, board and commissions or other state entities already participate on the system, and the website’s “Implementation Schedule” lists another three scheduled to come online in late 2021, yet the judiciary is not listed. We are not aware of any reason why our state courts cannot fulfill their legal obligation to participate in LA Checkbook, just as every other state agency will, and encourage the Legislature to take action to ensure swift implementation during the upcoming legislative session.

On the revenue side, given what we know about the varied compilations of different funding sources making up each court’s budget, courts should be required to submit standardized data to their local government, the state and the public at large. In accordance with Act 87, the legislative auditor and Supreme Court should implement standard financial reporting that, at a minimum, provides detailed information about courts’ sources of revenue. In addition to user fines and fees, the reports should provide detailed information about any local and state tax dollars courts receive and how those dollars are used. The reports should be digestible enough for a lay taxpayer to understand. Each court should be required not only to submit the report to the legislative auditor but also to make its financial report available online by a certain date following the end of each calendar year.

LABI RECOMMENDATIONS

- The Legislature should place in statute the judicial transparency measures included in the 2021 Judicial Appropriations Bill. In combination with Act 87, this change would require all courts that collect user fines or fees or receive any state funding to submit annual financial reports using a prescribed, uniform format to the Supreme Court and legislative auditor and would ensure the reports are published for all taxpayers to see. In addition to user fines and fees, the reports should provide detailed information about any local and state tax dollars courts receive and how those dollars are used.
- The Legislature should require any courts receiving state funding to participate in the Louisiana Checkbook portal by 2022. Each court should be required to establish a link to the Louisiana Checkbook portal on its website. This level of transparency and access is needed to increase citizens’ and lawmakers’ trust in the judiciary.