

2011 Criminal Justice Summit
Louisiana State Bar Association
Baton Rouge, Louisiana
March 25, 2011



Serving the Public. Serving the Profession.

The 2nd annual Louisiana Criminal Justice Summit was hosted by the Louisiana State Bar Association and the LSBA Criminal Justice Committee. This report on the Summit was prepared by the Louisiana State Bar Association's Access to Justice Department.

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2011 Criminal Justice Summit

Executive Summary

The 2011 Louisiana Criminal Justice Summit was convened by the Louisiana State Bar Association's Criminal Justice Committee to help address the ongoing challenges faced by those working in Louisiana's criminal justice system. Under direction of the LSBA's Criminal Justice Committee and President Mike Patterson, the Access to Justice Department organized the event which brought together approximately 40 leaders from across the state to address critical issues for the criminal justice community and participate in a series of productive work sessions.

At the first statewide Summit, attendees identified six topics that merited shared and immediate attention. After reviewing those topics, the Criminal Justice Summit Planning Committee identified funding as the issue which seemed most critical to maintaining a functional and effective criminal justice system in Louisiana. More specifically, the Summit focused on the assessment, collection and remittance of mandatory court costs, fines and fees as central to improving overall funding for the system.

Funding has long been a challenge for many components of the criminal justice system. For example, recent funding problems have led the Louisiana Public Defender Board to contemplate severe cutbacks in service delivery in several judicial districts around the state. As the state faces serious budgeting challenges, improving the efficiency and accountability of the assessment, collection and distribution of fines and costs will serve to improve the funding outlook for the criminal justice system as a whole.

The 2011 Summit sessions were moderated by criminal justice leadership with the goal of addressing this important issue, arriving at consensus and agreeing to actionable solutions. The Summit focused on identifying shared issues of concern and designing model legislation and a sample uniform fine and cost assessment worksheet that can be implemented to improve the assessment, collection and remittance of fines and costs. Following a series of topical presentations, participants of the Summit engaged in small group dialogue to develop strategies for improving the assessment, collection and remittance of fines and costs. The following report summarizes those discussions and recommendations, and includes draft legislation and sample fee worksheet developed during the Summit.

Summary of Discussion and Recommendations

During the discussion sessions, participants were asked to work in small groups to discuss three basic questions about the assessment, collection and remittance of fines and costs. A summary of the questions and discussion is provided below.

1. What is the greatest challenge in assessing, collecting and remitting fines and costs? How can we solve this problem?
 - Lack of awareness among jurisdictions of mandatory fines and costs to be assessed.
 - A regularly updated, uniform worksheet would help jurisdictions in accurately assessing fines and costs.
 - Education and training should be provided for judges who are tasked with assessing fines and costs.
 - Collection is particularly difficult considering that many of those who have fines and costs levied against them are indigent or incarcerated.
 - A review date should be set for each case where fines and costs are assessed so that jurisdictions can account for any balances owed.

- Privatizing the collection process may lead to greater revenue
- Poor communications between sheriffs, clerks of court and the judiciary creates problems for effectively remitting funds.
 - A uniform fine and cost worksheet would help to agencies understand where funds for remittance are coming from.
 - Developing standard accounting procedures and reporting would help improve remittance practices overall.

2. What elements would be included in a uniform assessment worksheet?

- Participants agreed that basic elements of the uniform worksheet should include: Jurisdiction; Statutory Authority for Each Fine or Cost; Mandatory and Discretionary Fines and Costs; Line Item and Total Amounts.
- Local jurisdictions should have the flexibility to include local costs alongside state costs, provide information about where and when to submit payments, or for smaller parishes to combine both misdemeanor and felony fines and costs into a single form.

3. What does the system need in order to implement a uniform assessment and collection practice?

- Improved communications between parties including the Sheriff, Clerk of Court, members of the judiciary, and funded programs or agencies.
- Identifying technology and software programs that can be used to streamline the process and improve reporting.
- The Louisiana Supreme Court, in approving a uniform worksheet, should distribute that form with instructions to the Chief Judge of each jurisdiction.

Funding Our Criminal Justice System: How Louisiana Courts Assess Costs, Fines and Fees

Speakers: Jean Faria, State Public Defender; Mark Dumaine, Chief of Administration, East Baton Rouge District Attorney's Office

During this session, speakers provided an overview of the current funding mechanisms for Louisiana's criminal justice system and examined the various methods for assessing, collecting and distributing court costs, fines and fees in Judicial Districts across the state. However, it was apparent that the lack of uniformity in the assessment, collection and remittance practices leads to a number of funding problems.

Anecdotal reports show that many jurisdictions are either unfamiliar with the current mandatory fines and costs, or fail to assess mandatory costs. Of course where jurisdictions fail to assess mandatory fines and costs, they lose significant funding opportunities. Nevertheless, even where fines and costs are assessed, there remain additional collection problems, since many jurisdictions have no procedure for effectively collecting balances due, nor a system to track whether a defendant has completed his or her payment of the fines and costs assessed. These issues then make it difficult for many jurisdictions to accurately and efficiently remit payments to agencies and departments who are owed money from fine and cost collection. Simply put, the patchwork of practices makes the assessment, collection and remittance of fines and costs unnecessarily burdensome at best and costly to the system at worst.

Participants were invited to discuss problems faced in their particular jurisdiction or inherent in the system as a whole. Given the clear lack of uniformity and related funding problems, participants questioned why the state's auditors and inspectors had not already taken up this issue. In general, there was agreement and shared concern among the diverse group of participants. District Defenders complained about a lack of uniformity in assessment that threatens their revenue streams, while District Attorneys noted that planning is difficult without standardized practices for monthly cash flow. On the other hand, some participants reported successful systems, such as developing a memorandum of understanding with between their Sheriff and Clerk of Court to account for fines and costs, or implementing more sophisticated software programs that allow jurisdictions to track their collections and remittances.

Presentation on Best Practices: How Jurisdictions Handle Fees

Facilitators: Bernard E. Boudreaux, Jr., Partner, Breazeale, Sachse and Wilson, LLP; Cheney C. Joseph, Vice Chancellor for Academic Affairs, LSU Law Center

Speakers: Michael A. Mitchell, District Defender, 19th JDC; Hon. Robert M. Murphy, Judge, 24th JDC; Charles A. Riddle, District Attorney, 12th JDC; Tony C. Tillman, District Defender, 30th JDC

Participants had the opportunity to hear from a range of practitioners who had been identified as having successful assessment, collection or remittance practices in their jurisdictions. The goal of this session was to present best practices that might serve as a model for jurisdictions seeking to improve their fine and cost collection and remittance procedures. Additionally, in presenting a diversity of fine and cost practices, this session underscored the benefits of uniformity among jurisdictions in their assessment, collection and remittance procedures.

The assessment of fines and costs was discussed briefly, with some judges and district attorneys indicating their discomfort in assessing certain costs against indigent defendants who will be put in jail. Participants agreed that community service would be a fair substitute for monetary payment in many cases of indigent defendants, however it was noted that whether or not to accept community service hours in lieu of payment should be decided in the collection process rather than at the time of assessment.

No matter how accurate the assessment process, jurisdictions still face funding challenges because of the difficulty in collecting fine and costs. Judges noted that there are many defendants from whom the court will never collect because of their indigency. These defendants represent a significant amount of money on the books that cannot truly be considered a “receivable” for practical purposes. While accepting community service in lieu of payment may allow courts to clear collections from the books, it does not tend to improve their funding outlook. In addition, many participants expressed their view that collection becomes difficult without the threat of jail time, although others argued that even defendants facing jail time will fail to pay. Nevertheless, speakers at this session offered solutions including the possibility of outsourcing collections to private attorneys who might collect an additional fee for their services, as well as utilizing the Department of Revenue to garnish funds from debtor’s tax returns pursuant to LSA-R.S. 47:299.1. Participants agreed that collections in many jurisdictions could benefit from more efficient probation and parole offices and collection procedures. Mr. Michael Mitchell, Public Defender for East Baton Rouge Parish, discussed the success he has had in collecting the statutory \$40 application fee from indigent clients. Although a number of participants expressed their ethical concerns about collection money from indigent clients who they are constitutionally obligated to represent, Mr. Mitchell pointed out that the law requiring a client application fee also provides for a waiver of the fee if necessary. Furthermore, Mr. Mitchell explained that in his experience, most clients do not mind paying a small fee for representation and gain more ownership over their case.

Speakers went on to explain that remittance of fines and costs is most accurate and efficient when there is good communication and cooperation between the Sheriff and the Clerk of Court in a particular jurisdiction. Many jurisdictions benefit from using computer accounting software that can accurately track accounts payable and receivable. In fact, speakers reported that they were able to improve their jurisdictions funding outlook by working with the Sheriff and Clerk of Court to streamline the accounting and reporting process. For example, Tony Tillman, the District Defender in Vernon Parish, was able to get a detailed monthly statement from the Sheriff and Clerk of Court that includes information about how much of the assessed amount each defendant has paid, when they paid, and how much they still owe. Similarly, Judge Robert Murphy discussed the RevQ software program that they use in the 24th JDC to track accounts. There was broad agreement among participants that identifying and implementing successful software programs could greatly benefit jurisdictions in their collection and remittance procedures.

Thinking About Solutions

Facilitators: Bernard E. Boudreaux, Jr., Partner, Breazeale, Sachse and Wilson, LLP; Cheney C. Joseph, Vice Chancellor for Academic Affairs, LSU Law Center

Speakers: John DiGiulio, Trial Compliance Officer, Louisiana Public Defender Board; Mark A. Dumaine, Chief of Administration, East Baton Rouge District Attorney's Office; Jean M. Faria, State Public Defender

To begin the session, the Louisiana Public Defender Board provided participants with a snapshot of the funding shortfalls across the criminal justice system, particularly those that affect indigent defense. LPDB Board Members Frank Neuner and Lucia LeDoux explained that a persistent lack of funding has led the LPDB to develop a policy for closing various public defender offices around the state. The LPDB is currently preparing a strategic plan to instruct these “failing districts” on procedures to downsize their offices and services in accordance with funding that is available. Mr. Neuner and Ms. LeDoux explained a shutdown of even some public defender office would have serious and far reaching collateral consequences for all aspects of the criminal justice system.

The goal of this session was to develop build consensus around workable solutions for the funding shortfalls in the criminal justice system. In advance of the Summit, the Working Group had developed model legislation for the implementation of a uniform fine and cost worksheet as one potential solution. During this session, an open microphone discussion allowed participants to brainstorm ideas, ask questions, make comments and work collaboratively to develop solutions and improve the draft legislation. During the discussion period, participants addressed the following issues and potential solutions:

1) Improved Financial Data for Courts

It was recommended that a statewide survey of fine and cost collection be conducted to allow jurisdictions to see where they stand in comparison to their peers. In addition, the technology and accounting systems available to jurisdictions varies greatly across Louisiana. While some parishes use cutting-edge computer systems and accounting software to effectively communicate collection and remittance to the appropriate government body, other parishes continue to use out-of-date technology and procedures. In many cases, adopting a simple computer program could greatly improve collections and remittance, and subsequently the financial outlook, for courts and partner agencies. A basic study of available software should be conducted and made available to jurisdiction for their review.

2) Funding Mechanisms for Indigent Defense

It was suggested that funding for criminal justice and indigent defense be increase through traffic ticket assessments. However, it was noted that there is a fundamental problem with this type of funding structure. For example, a rural parish without a major highway will have fewer traffic tickets and therefore derive far less revenue than a similarly sized and situated parish with a major highway. Furthermore, traffic tickets assessment is generally not dependable, as it is subject to the political motivations of each local parish. For example, should parish law enforcement wish to put criminal defense at a disadvantage, they would simply reduce the number of traffic tickets issued in their jurisdiction. To avoid these problems, it was proposed that a single statewide fund for indigent defense be created and managed by a single entity. All money collected or allocated for indigent defense would go into this fund and be distributed to local public defender offices according to their funding needs and services. While this avoids certain political problems and may reduce funding discrepancies, there are serious challenges in getting larger, more affluent parishes to relinquish some of their funds to other parishes.

3) Uniform Application for Indigent Representation

The statutorily authorized application fee for indigent defense is a significant source of revenue for the state's indigent defense services, accounting for about \$1 million in annual revenue according to the State Public Defender. During this session a number of District Defenders recommended a uniform application for representation that would be used by public defender offices in taking on new clients. The form should include standardized financial data about each client-applicant for the court to look at. In addition, public defender offices might look at adopting a sliding scale payment system for services, or a "pay by motion" system as proposed in the 15th JDC. Some judges expressed concern that the application process would be cumbersome for the courts. However, others assured them that the court would be required to do nothing more than to hand indigent defendants the application, and the public defender offices would be responsible for reviewing and accepting clients.

4) Uniform Fine and Cost Assessment Form

Participants urged the implementation of a uniform fine and cost assessment worksheet. Participants began by discussing the necessary elements of a uniform fine and cost assessment form. In general, the components of such a form would include the local jurisdiction, statutory authority for each fine or cost, whether amounts are mandatory or discretionary, and the amount of each fine and cost. Participants then asked to hear what the judges, clerks and sheriffs in attendance thought about this topic. Debbie Hudnall of the Louisiana Clerks of Court Association explained that she would communicate these issues to her organization at their April convention, and expressed her willingness to work on developing one in collaboration with the Louisiana Supreme Court.

5) Improved Collections Practices

There was broad agreement that any assessment and remittance procedures were futile without a strong and efficient collections process. Some jurisdictions reported successful collections where they had a strong Probation and Parole Department to demand payments. Other jurisdictions have had success in collecting fines and costs by working with the Department of Revenue to garnish debtors' tax returns. Finally, it was suggested that the best way to collect on receivables might be to privatize the process. That is, the private bar would be invited to collect outstanding balances in exchange for receiving an additional fee charged to each debtor. The additional fee could be a flat rate or a percentage of the total owed, and as an additional fee it would not take any funds away from the entities collecting fines and costs.

6) Pro Rata Distribution of Funds

There is wide ranging discrepancy in the way that jurisdiction handle the remittance of fines and costs after collection. For example, some jurisdictions accept partial payments of debts and remit what has been collected on a monthly basis, while others do not remit any funds until 100% of the balance owed by a defendant has been collected. This has led to a situation where some parishes reporting having as much as \$5 million held in their account, some of which represented collections begun fifty years ago, that they will not release because 100% of each balance has not been collected. To solve this issue, it was suggested that any proposed legislation include a provision to allow for the pro rata distribution of funds. In other words, funds that had been collected could be distributed on a pro rata basis to the entities that are entitled to funding, and as more money was collected on the remaining balances, that money would subsequently be remitted pro rata. This method would allow for agencies to receive funding in a fair manner without having to wait until 100% of the fines and costs were paid. Overall, there appeared to be general agreement that a pro rata remittance system would work. However, there was objection to any system that would prioritize the distribution of funds to one entity over another.

Discussion Sessions

During the discussion sessions, participants were asked to work in small groups to discuss three basic questions about the assessment, collection and remittance of fines and costs. The goal of these small group discussions was to identify issues of shared concern and build consensus around plans to improve financial practices across the state. A summary of the questions and discussion is provided below.

1. What is the greatest challenge in assessing, collecting and remitting fines and costs? How can we solve this problem?

Summit participants agreed that the greatest challenge in properly assessing fines and costs is the lack of awareness among jurisdictions of mandatory fines and costs to be assessed. Participants suggested that a regularly updated, uniform worksheet would help jurisdictions in accurately assessing fines and costs. Additionally, it was recommended that education and training be provided for judges who are tasked with assessing fines and costs. Collection is particularly difficult considering that many of those who have fines and costs levied against them are indigent or incarcerated. Participants recommended that a review date should be set for each case where fines and costs are assessed so that jurisdictions can account for any balances owed. Participants concluded that remittance is difficult where there is poor communication between sheriffs, clerks of court and the judiciary. Participants agreed that a uniform fine and cost worksheet and developing standard accounting procedures and reporting would help improve remittance practices overall.

2. What elements would be included in a uniform assessment worksheet?

Participants agreed that the sample assessment form was a good starting point for developing a uniform worksheet in collaboration with the Louisiana Supreme Court. Each discussion group reviewed the sample assessment form and agreed on a number of basic elements that should be included in a final version: Jurisdiction; Statutory Authority for Each Fine or Cost; Mandatory and Discretionary Fines and Costs; Line Item and Total Amounts. The actual format of the form was not specified, as long as it gave local jurisdictions the flexibility to, for example, include local costs alongside state costs, provide information about where and when to submit payments, or for smaller parishes to combine both misdemeanor and felony fines and costs into a single form. It was also suggested the worksheet include a section to specify to who, when and where defendants should submit their payments. The sample assessment form discussed at the Summit is attached to this report.

3. What does the system need in order to implement a uniform assessment and collection practice?

There was agreement among participants that implementing an effective assessment, collection and remittance practice in local jurisdictions would require improved communications between parties including the Sheriff, Clerk of Court, members of the judiciary, and funded programs or agencies. In discussion it became apparent that many jurisdictions fall far behind others in terms of available technology and accounting software systems. Participants recommended identifying software programs that can be used to streamline the process and improve reporting. Participants also suggested that the Louisiana Supreme Court, in approving a uniform worksheet, distribute that form with instructions to the Chief Judge of each jurisdiction.

Conclusion

A significant portion of funding for many core components of the criminal justice system is dependent upon statutory court costs, fines and fees. However, many essential stakeholders suffer from grossly inadequate funding partially as a result of inefficient assessment, collection and remittance practices. The 2011 Criminal Justice Summit provided an opportunity for these stakeholders to identify areas of shared concern, develop strategies to improve financial practices and ultimately achieve collective impact on important funding issues. Overall, participants worked with the goal of improving the efficiency and accountability of financial practices in order to improve the financial outlook for the system as a whole.

Anecdotal accounts at the Summit made it clear that there is wide ranging discrepancy in the way jurisdictions handle assessment, collection and remittance of fines and costs. Moreover, many jurisdictions appear either unfamiliar with, or simply fail to assess, current mandatory fines and costs. It was also evident from discussion that each stage of the funding process is connected to the other, and all are required for adequate funding. In other words, without proper assessment there is nothing to collect; without efficient collection there is nothing to remit; and without accurate remittance processes there is not sufficient funding for the various programs and offices involved in the criminal justice system.

Jurisdictions face numerous challenges in their attempts to reform assessment, collection and remittance practices. For example, Summit participants noted the lack of awareness among many key stakeholders of the mandatory costs and fines to be assessed. Furthermore, there are numerous challenges inherent in collecting funds from indigent and incarcerated individuals. Even assuming fines and costs can be collected, inefficient accounting procedures and poor communications between government offices leads to inaccurate remittance practices.

Summit participants concluded that uniformity of assessment, collection and remittance practices among jurisdictions can lead to greater accountability and ultimately more efficient use of limited resources. Uniformity will also allow for accurate data collection and measurement so that courts, legislators, and other stakeholders can more accurately assess the state of funding for the criminal justice system regularly and accurately. To achieve these goals, Summit participants made the following general recommendations:

1) Implement a Uniform Fine and Cost Assessment Worksheet

Participants urged the implementation of a uniform fine and cost assessment worksheet. A draft of the worksheet and model legislation is attached to this report. Additionally, the Louisiana Supreme Court was encouraged to participate in the process by approving a uniform worksheet and distributing that form with instructions to the Chief Judge of each jurisdiction.

2) Develop Practices for Efficient Collection of Assessed Fines and Costs

A statewide survey should be conducted to identify the most successful methods for collecting fines and costs that have been assessed. In addition, the feasibility of implementing new proposals for collection, such as privatized collections practices, should be studied.

3) Develop Practices for Accurate and Efficient Remittance of Fines and Costs

In order to improve remittance, and implement an accurate pro rata distribution method, jurisdictions must improve communication between stakeholders. Participants urged the use of more sophisticated software programs to communicate financial data and accurately tracking accounts. A comparative study of accounting programs and practices should be conducted and provided for use by jurisdictions.

Regular Session, 2011

HOUSE BILL NO. 553

BY REPRESENTATIVE FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COURTS/COURT COSTS: Provides for a uniform fines and costs assessment form for criminal cases

1 AN ACT

2 To enact R.S. 13:848.1, relative to court costs; to require the use of a uniform assessment
3 form in criminal cases; to provide for the disbursement of funds collected; and to
4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 13:848.1 is hereby enacted to read as follows:

7 §848.1. Criminal cases; assessment form; disbursement

8 The clerk of court for every court with original criminal jurisdiction shall
9 utilize a uniform fines, fees, costs, and assessment form approved by the Louisiana
10 Supreme Court. The form shall be known as the uniform fines and costs assessment
11 form and all fines, fees, costs, and assessments imposed on each defendant shall be
12 recorded on the form. The sheriff, clerk, marshal, or other agency or office whose
13 duties include receiving court fines, fees, costs, assessments, and forfeitures for
14 courts within their jurisdictions shall disburse all sums due on a monthly basis and
15 shall provide an itemized detail of the sources of the sums.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Foil

HB No. 553

Abstract: Requires clerks of court to record all fines, fees, costs, and assessments on a uniform document in all criminal cases.

Proposed law requires clerks of court to utilize a uniform fines and costs assessment form, approved by the supreme court, to record all fines, fees, costs, and assessments imposed on each criminal defendant.

Proposed law requires the person or agency responsible for receiving these funds to distribute them monthly with an itemized detail of the source of the funds.

(Adds R.S. 13:848.1)