

La. tries to overhaul its 'user pay' court system

By Matt Sledge and Bryn Stole / TheAdvocate (Baton Rouge)

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BATON ROUGE -- For decades, Louisiana's criminal justice system has balanced its budget with the legal equivalent of squeezing blood from a turnip.

Courts, sheriffs, prosecutors and public defenders have assessed more and more fees on poor defendants who often leave court with convictions and massive legal debts.

But that system has revealed its limitations over the past few years, as declining traffic ticket revenues threaten criminal justice agencies' budgets and civil rights lawsuits target the notion that judges can impose fees to pay for operating their courts.

An advisory committee chaired by state Supreme Court Chief Justice Bernette Joshua Johnson has issued several draft reports that recommend dramatically revamping the state's "user pay" legal system.

The committee's proposals include requiring judges to consider a defendant's ability to pay before they impose fines, ending arrests for non-payment except for felonies and child support, capping how much cities and towns can generate from traffic enforcement, and forgiving aged debts.

More broadly, the draft reports suggest eliminating the "conflict of interest" at play in many of the state's district and municipal courts, where defendants' fines and fees often pad the budgets, thereby providing an incentive for finding defendants guilty and thus liable for the fines.

The practical complications involved in dismantling the current system, however, have been on full display at the State Capitol this legislative session.

Lawmakers, unable to figure out just how much money is being collected by Louisiana's dozens of independent jurisdictions, are considering delaying -- again -- a 2017 law that would have required judges to tailor fines to felony defendants' ability to pay, created payment plans and forgiven some court debts that defendants have been unable to pay off.

The difficulty of implementing just those reforms points to the huge challenges facing reformers hoping to fundamentally change how Louisiana's justice system is funded.

NO CHOICE

State Public Defender Jay Dixon said that whatever happens at the Legislature this year, he believes larger changes are inevitable.

"It may not happen tomorrow, but I think within a couple years we can get this done," Dixon said. "When the courts are beginning to see financial crunches, and bad ones, and the public defense system is collapsing, I don't think you have a choice."

Over his 43 years practicing law, Orleans Parish Criminal District Court Judge Paul Bonin has seen a bewildering array of court costs sprout up in New Orleans.

They include a bail bond fee, a mandatory \$5 fee, more fees up to \$2,500 on felons, court costs up to \$100, a \$14 fee for an indigent transcript fund, another category for transcripts, a public defender fee and a sheriff's fund.

Other courts around the state also have dizzying arrays of fine and fee categories for a simple reason, Bonin said: Criminal justice agencies in Louisiana have long been desperate for money, but state legislators have been reluctant to pay up. So both sides settled on the compromise of layering more court costs on defendant.

NATIONAL CATALYST

Since protests in Ferguson, Missouri, in 2014 focused national attention on the issue, civil rights lawyers have filed lawsuits in New Orleans and across the country, arguing that the spiraling court costs disproportionately burden the poor and create unconstitutional "debtors prisons" when defendants are locked up for failure to pay.

There is also a fundamental conflict of interest when judges set the fees that pay for their courts' budgets, the lawyers say.

In 2016, the state Supreme Court received a \$500,000 grant from the federal Bureau of Justice Assistance to conduct a wholesale review of Louisiana's court costs.

The grant's advisory committee included judges, court administrators, legislators, a sheriff, representatives of nonprofit groups, a clerk of court and the chief of administration for the East Baton Rouge Parish District Attorney's Office.

The committee's draft reports covered barriers to payment, technical fixes that could ease payments and make for better record-keeping, proposals for alternatives to the current court costs system, and a bigger-picture report on different models for funding the court system.

The reports include a wide array of proposals. They include making judges determine a defendant's ability to pay before they impose fines and fees, stopping arrests for non-payment except for felonies and child support cases, standardizing computer systems and collection guidelines, expanding community service opportunities, communicating more clearly to defendants about what fees they owe, providing online payment portals and offering longer payment schedules.

COURT FEES

Some recommendations would make collections more efficient, while others would start to move Louisiana away from its addiction to imposing fees for court costs.

The most overarching recommendation in the draft reports is to end the conflicts of interest inherent in the current system, where judges, clerks, public defenders and prosecutors are all funded partially by the penalties levied on defendants.

Drawing on a limited sample of courts, Supreme Court staffers found that district courts received an average of 24 percent of their budget from court costs, and city courts on average received at least 29 percent of their money from fines

and fees.

“There’s a lot of variation across courts. Some courts are really well funded by their jurisdiction, whether it’s a city or a parish, and some are very reliant on fines and fees,” said Rose Wilson, the grant manager for the advisory committee.

The draft reports are careful not to recommend doing away with court fees and fines altogether. Bonin said some are reasonable, but defendants can’t be expected to bear the costs of courts’ operations by themselves.

The public comment period for the draft reports ended Sunday. After the committee members approve the final reports, they will be handed to state Supreme Court justices for their consideration.

SLOWING DOWN

But even implementing the modest measure in the 2017 criminal justice reform package that would enact just one of the draft report’s recommendations has proved a monumental challenge, not least because state policymakers still don’t have a clear notion of just how much money is collected in fines and fees.

Larger shifts are imperiled by the fact that the state also does not know which traffic tickets or convictions generate the most revenue, which ones go unpaid and which agencies or local courts would be hardest hit by changes.

“We really don’t know how much money we’re talking about. We don’t even have an idea of that number,” said state Rep. Tanner Magee, a Houma Republican. The principal author of the change to felony fees, he has spent the past two years working with the Legislative Auditor’s Office and various court agencies to get a fix on the issue.

Letting the 2017 law go into effect this fall as planned would risk throwing the budgets of some court-fee-funded agencies -- including judges, clerks of court, public defenders and district attorneys -- into unpredictable chaos, Magee said in an interview.

Instead, he is pushing for another two-year delay, a step strongly criticized by some advocacy groups who have fought to reduce the financial burdens on Louisianans caught up in the court system.

'IT GETS EMOTIONAL'

"We can't wait for two years for (relief from) these fines and fees," said Tyeaisha Worthy, a single mother from New Orleans who came to Baton Rouge to testify against Magee's proposed delay. "I've a 3-year-old and work is really hard, and it's harder when you can't get to it on time, when you have a vehicle and you can't use your license because it's suspended because of fines and fees that are just outstandingly high."

"It gets emotional because it feels like you're trying your best but you can't succeed," added Worthy. "You feel like you're drowning. Honestly, it's just unfair. We don't have anything extra (to pay) for (court) fees. If I did, it'd be top of my list."

The two-year delay, Magee said, would let lawmakers craft a funding package to prop up the state's 43 district courts and offset any potential drops in fine and fee collections.

Even judges who back the aims of the bill and the state Supreme Court's reports said they're worried that cutting the fines and fees now stacked on criminal defendants might end up crippling the courts.

Magee likened overhauling the way Louisiana's justice system is funded to "peeling an onion," where removal of each layer reveals further issues and complications.

"The problem is (the funding of courts through fines and fees) is pretty ingrained, and we have a system that, tomorrow, needs to work," Magee said.