

State of the Judiciary Address
Chief Justice Bernette J. Johnson, Louisiana Supreme Court
Message to the Louisiana Legislature
March 15, 2016, in Baton Rouge, Louisiana

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, COLLEAGUES, DISTINGUISHED GUESTS, LADIES AND GENTLEMEN:

Good morning. It is an honor and a privilege to visit with you this morning, and thank you for the invitation to address you on the State of the Judiciary. I know you have much on your legislative agenda, especially in light of the historic flooding in our state, and I do appreciate your taking the time to be here today.

Before I begin, let me first introduce my colleagues - Justice Jeannette Theriot Knoll from Marksville; Justice John Weimer from Thibodaux; Justice Greg Guidry from Jefferson and St. Tammany; Justice Marcus Clark from Monroe; Justice Jefferson Hughes from Denham Springs; and our newest Justice, Justice Scott Crichton from Shreveport. Unfortunately for the Court and for the state, this will be the last time Justice Knoll will be in attendance as a sitting Justice, as she will be retiring at the end of 2016 after two decades on the Supreme Court and 30 years of judicial service. Jeannette is now in her victory lap. Justice Knoll is a distinguished jurist who has left an indelible mark on Louisiana jurisprudence, and we will certainly miss her on the court, and I wanted to recognize her today.

On behalf of the Justices, let me extend our congratulations and welcome to the newly elected legislators in the House and Senate. Let me also offer our thanks and congratulations to the veteran legislators on your re-elections, although you all must feel like veteran legislators upon the conclusion last week of the Special Session.

Our respective two branches of government have a history of mutual respect and cooperation, and it is my goal as Chief Justice to do everything I can to continue that, and build upon this relationship. I believe the mutual respect of our two branches is based upon a recognition that the Legislature and the Judiciary are two separate, but equal, branches of government. Both our federal and state Constitutions enshrine the principle of separation of co-equal powers, a principle which is meaningless and ineffective without maintenance of an independent judiciary.

Although judges in this state are elected, their allegiance is owed to the Louisiana Constitution and to the Rule of Law, and not to the rule of the majority. It is the duty and the responsibility of each judge in this state to apply the constitution and laws to the facts before him or her, without fear or favor. A judge cannot be partisan, despite which way political winds may blow. An independent judiciary is a hallmark of our democracy, and we should take whatever steps are necessary to respect and preserve this independence.

This morning, I will speak on the "State of the Judiciary". I am pleased to bring with me today, hot off the press, copies of our 2015 Annual Report, and you have each been given a copy. Our Annual Report includes basic information on our state judiciary, as well as an annual statistical compilation of case filings at all levels of court. It also includes updates and discussions of court activities and related entities, such as the Office of the Judicial Administrator, the Louisiana Law

Library, the Judicial College, the Judiciary Commission of Louisiana, the Louisiana Attorney Disciplinary Board, and the Committee on Bar Admissions. The Annual Report is prepared in hard copy form, and it is also available online in electronic form on the Supreme Court website.

Judicial Council

The Annual Report is prepared under the auspices of the Judicial Council. It is the research arm for the Court, and is composed of 17 members, representing the judiciary, the legislature, the bar, and the citizens of Louisiana. Senator Dan Claitor and Representative Frank Foil are your current representatives on the Judicial Council.

The Judicial Council has several standing committees that report to the Legislature regularly, and chief among these are the New Judgeship Committee and the Standing Committee to Recommend Court Costs and Fees. Both of these committees were established in response to the Legislature's request that the Council review all requests for new judgeships, the splitting or merging of any courts, or requests for new or increased court costs or fees. These committees play a critical role in assisting the Legislature when bills regarding the structure of the judiciary or the need for new or increased court costs are presented.

Judiciary Budget

I would like to highlight and specifically refer you to information that is included in our Annual Report on the judiciary budget. In addition to this budget information, copies of our most recent judiciary appropriations bill and legislative audit can be found online on our court's website. Further, our budget request for this upcoming fiscal year, FY 2016-2017, has been filed as HB 616, and that is available online on the Legislature website.

Please be reminded that the judiciary appropriations bill does not include funding for the entire state judicial system. The Louisiana court system is a non-unified system. It is not a totally state funded court system under the control of the Supreme Court. There is no one overarching budget for state courts. The judicial branch of government is funded through multiple sources, including funds appropriated by the state legislature and also local governing bodies; self-generated revenues from fines, fees and court costs; and also we rely on federal grants.

The budget prepared by the Louisiana Supreme Court and presented to you annually funds the operations of the Louisiana Supreme Court and the five courts of appeal, and also includes salaries and retirement benefits for all state judges. The budget also includes some state funding for lower courts, and funding for operations of programs that you have asked the Supreme Court to administer, such as oversight of state drug courts.

We have always utilized these state appropriated funds in a prudent manner, and we have also actively sought and obtained significant federal funding to assist our courts. I believe we have done an excellent job and been good stewards of the public fisc, especially considering that we are able to effectively and efficiently operate a third co-equal branch of government with state appropriations totaling less than one percent (1%) of the total State budget. Page 11 of the Annual Report shows how much of the total state budget you have allocated to the judiciary; it is exactly .63%.

We rely on you to provide adequate funding of our branch of government; this guarantees an independent judiciary. It enables the state judiciary to fulfill its constitutionally mandated duties

to resolve disputes, and also allows us to continue to work for reforms and improvements in the area of judicial administration.

We are aware of the budget crisis facing our State, we all live here, and I commend you for the courage you demonstrated in tackling the difficult budget issues during the Special Session. We know you have many challenges ahead of you during this Regular Session. We do have an area of particular concern with regard to indigent defense. Approximately 85% of all criminal defendants are represented by public defenders. It is our constitutional obligation to provide adequate representation. We cannot try felony cases - cases where folks are subject to imprisonment at hard labor - without them having an attorney. While not usually considered as a cost savings method, if we fail to provide adequate counsel at the outset, we will not be able to avoid the exorbitant costs associated with reversal and retrial of case.

Our indigent defender system is funded through a combination of state appropriations (\$33 million last year), proceeds from traffic tickets, and local funds and court fees. Unfortunately, revenues from traffic tickets have decreased dramatically; and we know state appropriations have been slashed. As a result, 33 of the state's 42 judicial district public defender offices are presently operating under a Restriction of Services, and they foresee that half the public defender offices in the state will be insolvent within months.

We are also concerned about the effect of budget cuts on the system of legal representation in child protection cases. The Child Protection Representation Commission was recently advised that due to reductions in funding for the Louisiana Public Defender Board, state funding for provision of legal services to indigent parents would soon cease. These planned cuts to funding and services not only threaten the constitutional and legal rights of parties in abuse and neglect cases, they put Louisiana at risk of losing millions of dollars in federal child welfare funds.

Court costs

I mentioned that our state courts are partially funded by the collection of court costs and fees. These costs and fees are implemented by either state or local legislation, and differ from jurisdiction to jurisdiction. Although the Office of the Legislative Auditor includes a review of court cost collections in its regular audits, at this time, there is no composite inventory of what costs are being assessed by all courts.

There is a problem when people without the means to pay criminal fines and fees may face disproportionate rates of incarceration. This issue has been publicly highlighted in various lawsuits in both state and federal court, as well as a recent publication by the American Civil Liberties Union entitled, "Louisiana's Debtor's Prisons: An Appeal to Justice."

Defendants released on their own recognizance or on unsecured bonds have no problem; however, the majority of individuals accused of low-level crimes are being held in jail simply due to poverty and the inability to pay fines and fees. People held in pretrial detention for minor offenses not only lose their freedom, and often their jobs, their homes. In this way, a relatively minor arrest can destabilize an entire family. The Settlement Agreement effected in the Snow v. Lambert in Ascension Parish seeks to address these critical issues by eliminating preset bail for misdemeanor arrestees. The Agreement prohibits any misdemeanor defendant from being held in jail, after arrest, on a secured money bond that the defendant cannot afford. In response to

the Settlement in Snow, many state and local courts have chosen to voluntarily address the constitutional concerns presented by preset bail schedules.

In an attempt to learn exactly what costs and fees are being imposed throughout the state, we have charged the Judicial Council Standing Committee on Court Costs to gather information on court costs and fees currently collected by all Louisiana courts. We asked the Committee to study the use of court costs and fees for the operational needs of the judicial system, and to develop and recommend best practices for the collection and use of costs and fees.

The Committee recommended the creation of a transparent, public database, listing all required and optional fines and fees that may be charged; the creation of an effective system for tracking assessed and collected fines, fees and costs; and the development of best practices for fairly collecting and using these fees and costs. I am happy to report that we received a grant of \$50,000 from the State Justice Institute to fund these efforts.

Work on this important project is well underway. To assist in its work, the Court Costs Committee recently asked the Judicial Council to recommend to the Legislature the imposition of a short-term moratorium on all new fees and costs, except for exigent circumstances. I look forward to reporting to you on the work of the Committee.

Mass Incarceration

I would like to turn now to another issue that costs our state millions of dollars - mass incarceration. I rarely make a speech these days without talking about mass incarceration. Louisiana has the highest rate of incarceration in the world. We spent over \$600 million on state corrections in FY 2014-2015. One in 86 adult Louisianans is behind bars, nearly twice the national average. As of last year, we imprison 816 people per 100,000, compared to the national average of 496 per 100,000. In 2013, Louisiana's incarceration rate was nearly five times Iran's, 13 times China's, and 20 times Germany's. I guess it would not matter, except that it costs us money.

While in Louisiana we are rich in oil and gas natural resources, I believe our greatest natural resource is our people. Yet our incarceration rate is so high. It is no coincidence that Louisiana is a leader in both poverty and prison population. Maybe there is a connection there.

In May 2015, I convened a meeting of over fifty (50) criminal justice stakeholders to discuss evidence-based solutions to over-incarceration. At the meeting, Bill Hubbard, American Bar Association Immediate Past-President, led the discussion about the importance of developing legislation and policy aimed at implementing alternatives to incarceration for low-level offenders, - which just to make clear, we are only talking about low-level offenders; no one is talking about letting rapists or murderers out of jail - reducing the length of excessive criminal sentences, and providing meaningful pathways back to work and society for returning citizens. Mr. Hubbard discussed how South Carolina passed omnibus legislation that has already begun to significantly reduce the prison population, while also influencing a reduction in violent crime. These legislative reforms are estimated to save the state of South Carolina \$350 million.

Pre-Trial Services

Without a doubt, the problem of over-incarceration is detrimental both to our society and our economy. So what can be done? There are several initiatives underway in our state court system

to address the over-incarceration issue. First, we have been looking at pre-trial services offered in our state and at how decisions are made at the point a defendant enters the criminal justice system. Research shows that pretrial detainees account for more than 60 percent of the U.S. inmate population and cost an estimated \$9 billion per year to incarcerate. Public safety is undermined when space and money are unnecessarily allocated for imprisoning low-level offenders.

I believe that a comprehensive solution to Louisiana's over-incarceration must include statewide pretrial services. There are models available to us that provide judges with objective, data-driven assessments of a defendant's risk level and the most effective approach to protecting public safety in each case. A team of judges, sheriffs and court staffers recently traveled to Kentucky to learn from that state's highly successful statewide pretrial services program. This is an ongoing project about which you will hear more in the future.

Specialty Courts

We also want to recognize that the work our specialty courts are doing can have a dramatic effect on our incarceration rate. In Louisiana, our specialty courts include Drug Courts, Re-entry Courts, Veterans Courts and Behavioral Health Courts.

One of the shining success stories of the collaboration of our two branches is the operation of our Drug Courts, and we thank you again for HCR 216 which you passed last year, commending the work of the Louisiana Supreme Court Drug Court Office.

In 2001, you allocated funds to enable the Supreme Court to establish a Drug Court office to provide oversight and standards to newly established drug courts throughout the state. In 2015, there were 50 operational drug court programs in Louisiana. Of the 50 programs, there were 30 adult drug courts, 17 juvenile drug courts, and 3 family preservation courts. Forty (40) of our programs have been in operation ten years or longer.

National research shows that 80% of offenders abuse drugs or alcohol, and almost 50% of inmates are clinically addicted; approximately 60% of arrestees test positive for drugs at arrest. Drug Courts address the incarceration problem by offering an effective alternative sentencing option.

Our Drug Courts are successful and we have the statistical data to prove it. Our drug courts not only decrease incarceration rates, they also reduce crime and save money. In Louisiana, three years post-graduation, 89.8% of clients who graduated in 2012 had no new criminal convictions, for a recidivism rate of only 10.2%, something we should be proud of. Nationally, research has shown significant reductions in recidivism for participants in drug courts compared to those sentenced to conventional justice intervention. And for each \$1.00 invested in drug courts, our state receives an average of \$3.36 in benefits through reduced recidivism, decreased victimization costs, decreased medical costs, and increased worker productivity.

Even more impressive is the fact that 49 drug-free babies were born to drug court participants in 2015, for an estimated savings of Twelve million, two hundred fifty thousand dollars (\$12,250,000) just this year. Since the inception of the drug court program, we have seen the birth of 593 drug-free babies, for an estimated savings of a whopping One hundred forty eight million, two hundred fifty thousand dollars (\$148,250,000) in medical and related expenses that we do not have to spend on babies who are born addicted.

We have also seen increased interest in Louisiana in Re-entry Courts. The theory behind Re-entry courts is to address the needs of an offender by providing skills, training, education and counseling while the offender is still incarcerated. The ultimate goal is for the offender to successfully re-enter society upon release and become a productive citizen.

Upon release, re-entry courts closely supervise offenders, provide links to social services, and monitor the transition through intensive case management. Each Re-entry Court judge first identifies a possible participant for the program. After the offender is assessed to determine his risk of recidivism and his needs, the offender is placed in an appropriate training program while incarcerated. All of these re-entry court programs are provided at Angola, take a minimum of two years to complete, and are taught by fellow offenders who are serving life sentences but have been chosen to be “mentors” to the Re-Entry clients.

Department of Public Safety and Corrections Secretary James LeBlanc is dedicated to the re-entry concept. Currently, there are 16 vocational training programs offered at Angola such as automotive repair, welding, electrical, refrigeration and air conditioning repair. An inmate trained in these areas can test for certification, and if successful, has the potential to earn as much as \$75,000 a year. Upon release, of course, a key element of the success of the re-entry court is the placement of the offender in a job upon release from prison, which requires the support and assistance of local businesses and communities.

Currently we have eight statutorily created Re-entry Courts in Louisiana, and I understand there are bills pending in this session to authorize additional re-entry courts. Two of our Re-entry court judges - Judges Laurie White and Arthur Hunter of Orleans Criminal District Court - recently received national recognition for their re-entry courts.

Preliminary results for Re-entry Courts are encouraging. The recidivism rates for participants are far less than the average rates of recidivism. This could mean dramatic savings and a decrease in crime over time. In recognition of the potential of the re-entry court model, and the need to be able to quantify its successes with measurable standards, the Supreme Court recently asked Judge William Knight of the 22nd JDC to coordinate the drafting of best practices and standards for re-entry courts, much like the drug court model.

We have also seen an increase in interest in Speciality Courts to address specific issues relating to veterans and those who suffer from mental illness. I recently attended a conference in Washington, D. C. where Judge Steve Leifman, a Miami-Dade County Florida state judge, received the prestigious Rehnquist Award in recognition for his great strides with mental health courts. As a result of Judge Leifman’s efforts, Florida was able to close a prison. We are in the process of gathering information on the Florida model so we can move our citizens with mental health issues out of the court system and into appropriate treatment programs.

Another successful specialty court was the recent subject of a positive national news article. Chief Judge Desiree Charbonnet of New Orleans Municipal Court was recently spotlighted in The Atlantic’s online magazine for establishing a new diversion program to address defendants charged with prostitution. Judge Charbonnet’s “Crossroads” program aims to break the cycle of prostitution, arrest and incarceration by offering support through services such as health care, housing, job training or counseling.

We owe a debt of gratitude to all of our judges who preside over specialty courts in addition to maintaining their regular dockets. You pay their salaries, but they do not get an additional dime for this extra work. They handle their specialty court dockets for no additional compensation but simply because they believe in the good that can be accomplished.

Justice Reinvestment Initiative

I am looking forward to serving on the Louisiana Justice Reinvestment Task Force, which you created last year under HCR 82 and which I believe has great potential. The Task Force has been charged with studying the state's adult criminal justice system with an eye toward reducing inmate populations, expanding research-based supervision and sentencing practices, and reinvesting savings to reduce recidivism and improve reentry outcomes.

Juvenile Justice

Another initiative which affects the incarceration rate and which could ultimately result in significant costs savings to the state is raising the age of juvenile jurisdiction, a subject which you will be considering in Senate Bill No. 324 by Senator J.P. Morrell. The bill seeks to create a council to study raising the age of juvenile court jurisdiction to include age 17. Seventeen year olds are minors; eighteen year olds are majors. Not only have other states which have made such a change seen reduced recidivism and increased cost savings, but in a recent study, the LSU Health New Orleans' Institute for Public Health and Justice projected similar significant taxpayer savings in Louisiana if the age of juvenile court jurisdiction were raised.

On the subject of juvenile justice, Louisiana must now respond to the U.S. Supreme Court's recent decision that children are constitutionally different from adults for purposes of sentencing. There is also a need for supporting common-sense juvenile justice reform that will curb crime, use taxpayer resources responsibly, and achieve better outcomes for children. In addition to raising the age for juvenile court jurisdiction, some further reforms include:

- right-sizing the juvenile justice system by keeping more nonviolent offenders out of juvenile prison;
- improving education in juvenile custody so that every child in custody has access to high-quality educational options;
- promoting fairness by providing legal counsel for every child in juvenile prison.

Other initiatives

What else is going on at the Supreme Court, in addition to our continued maintenance of a current docket? We are in the process of implementing a state-of-the-art case management system in our Clerk of Court's office. We continue to review the state bar examination with an eye towards making improvements, and we are in the process of reviewing recommended revisions to the rules governing the Judiciary Commission of Louisiana. Late last year, I signed an Order creating an Access to Justice Commission to continue our existing efforts to provide access to the courts and to assure continuity of policy and purpose in the collaboration among the private bar, the courts, and the civil justice community. This was done to further the goal of ensuring that Louisianans, regardless of their economic circumstance, have access to equal justice under the law. Louisiana is only one of three states that provides zero funding for civil legal services.

Our Judicial College is completing a year of strategic planning and is continuing to improve the quality of judicial education for our state judges. I might also mention that we suffered a great loss with the untimely death of Professor Cheney Joseph, Executive Director Emeritus of our Judicial College. I know Professor Joseph taught many of you in law school, and his contributions to Louisiana criminal law are immeasurable.

I refer you to the Annual Report for additional information on the Court's year in review.

Conclusion

As I conclude, I began my remarks commenting on the history of the cooperation and collaboration between our two branches of government. The Court pledges to continue that cooperation, open lines of communication, and mutual respect.

Let me again say what an honor and privilege it is to appear before you today. We greatly appreciate your hospitality. I look forward to working with you as Chief Justice, and the members of the Court and I stand ready to assist where appropriate. On behalf of the state judiciary, thank you President Alario, Speaker Barras, and all of you, the dedicated members of our state Legislature, for opening your chamber to us today, for your attention to my remarks, and for your unfailing devotion to the people of Louisiana.

Thank you.