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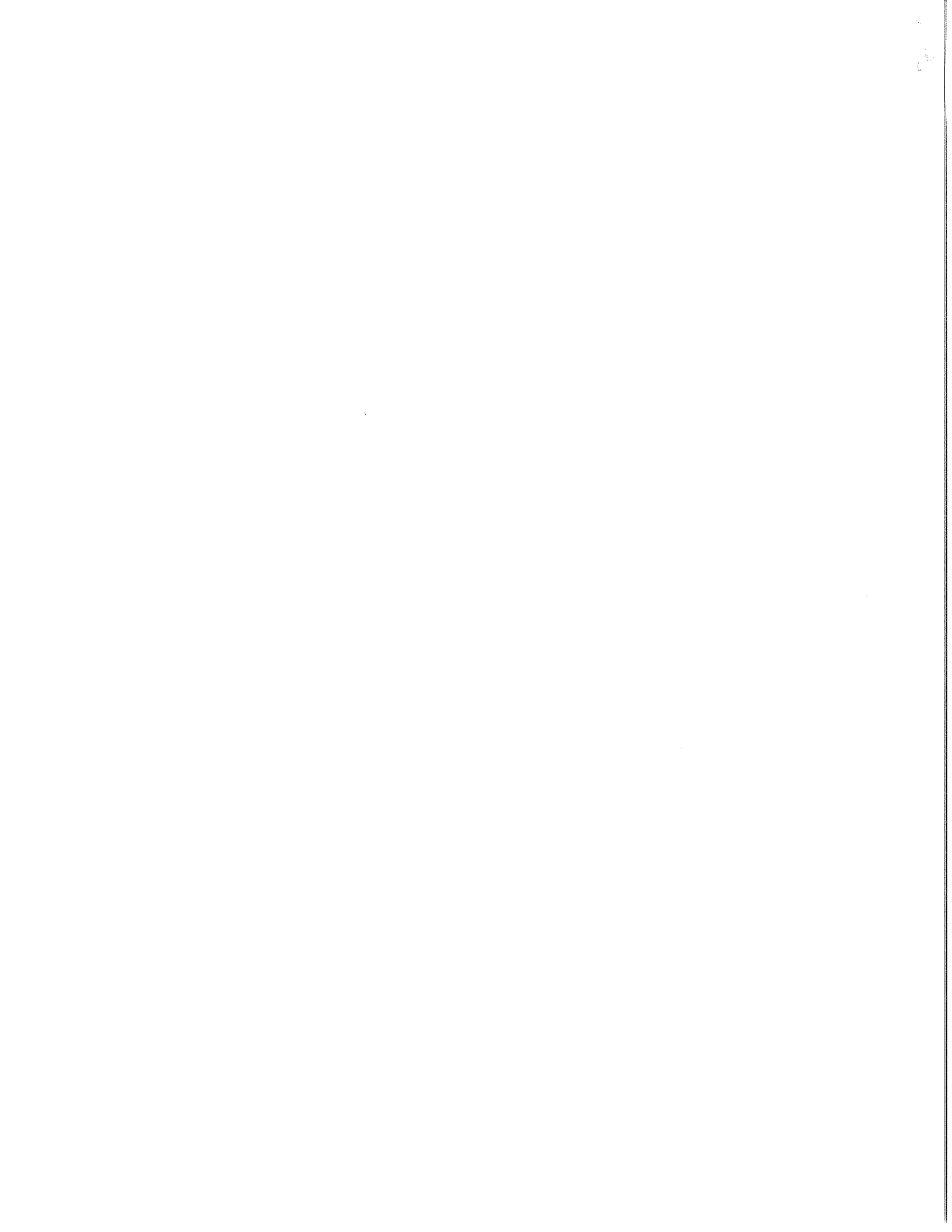
LOUISIANA COMMISSION ON JUSTICE SYSTEM FUNDING REPORT

Regarding

**House Concurrent Resolution 3
of the
2020 Regular Session**



FEBRUARY, 2022



LOUISIANA COMMISSION ON JUSTICE SYSTEM FUNDING

ADOPTED RECOMMENDATIONS

This report is submitted in response to House Concurrent Resolution 3 (HCR 3) of the 2020 Regular Session. The Louisiana Commission on Justice System Funding recommends the following:

1. Definitions for the various types of legal financial obligations, the court system, and core or essential court functions.
 - a. **“Essential Court Function”** – any function required for criminal or juvenile prosecutions under the United States or Louisiana Constitutions that is performed by government officials or agencies including the public defender.
 - b. **“Legal Financial Obligations”** (LFO) - any fine, fee, cost, restitution, or other monetary obligation authorized by this Code or by the Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.

Categories of LFO's:

“Fines” - monetary penalties dictated by criminal statute which are assessed as part of the sentence for convictions or dispositions. These may be mandatory or discretionary.

“Restitution” - In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.

“Court Costs” - 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, 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.

“Fees” - amounts charged to court users and defendants in criminal matters in exchange for services provided.

“Asset Forfeiture/Sale” - proceeds of any sale and any monies forfeited or obtained by judgment or settlement under the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989.

- c. **“Scope of the Court System”** – includes Judges (Art. V, Louisiana Constitution), Clerks of Court (Art. V, §28, Louisiana Constitution), District Attorney (Art. V, §26, Louisiana Constitution), Law Enforcement (sheriffs listed in Art. V, sec 27, Louisiana Constitution), Probation and Parole, Public Defenders (Art I, Louisiana Constitution).

2. Continuation of the Commission on Justice System Funding work to include:

- a. Studying financial obligations of criminal defendants and how those financial obligations are used to fund and subsidize core functions of the Louisiana court system.
- b. Determining the amount needed from state and local general revenue funds that would enable courts to substantially reduce reliance on self-generated revenue.
- c. Identifying fees and costs that can be eliminated, including but not limited to self-generated funds assessed by the courts.
- d. Creating a system for collecting, disbursing, and tracking collected amounts including partial payments.
- e. Proposing statutory safeguards that ensure adequate court funding and limit the use of self-generated revenue to fund essential court functions.

INTRODUCTION

The legislature created the Louisiana Commission on Justice System Funding (Commission) in the 2019 Regular Session via House Concurrent Resolution 87 (HCR 87) and recreated the Commission via House Concurrent Resolution 3 of the 2020 Regular Session (HCR 3). The purpose of HCR 3, and of HCR 87 before it, is to study current financial obligations of criminal defendants and how those financial obligations are used to fund and subsidize core functions of the Louisiana court system, and 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 of the 2017 Regular Session of the Legislature (Act 260). Act 260 is a part of the 2017 *Justice Reinvestment Act* reforms to reduce mass incarceration in Louisiana. Act 260 proposes to reduce the financial barriers to an offender's successful rehabilitation and reentry into society. Act 260 notes that "Financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the law.... These financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society."

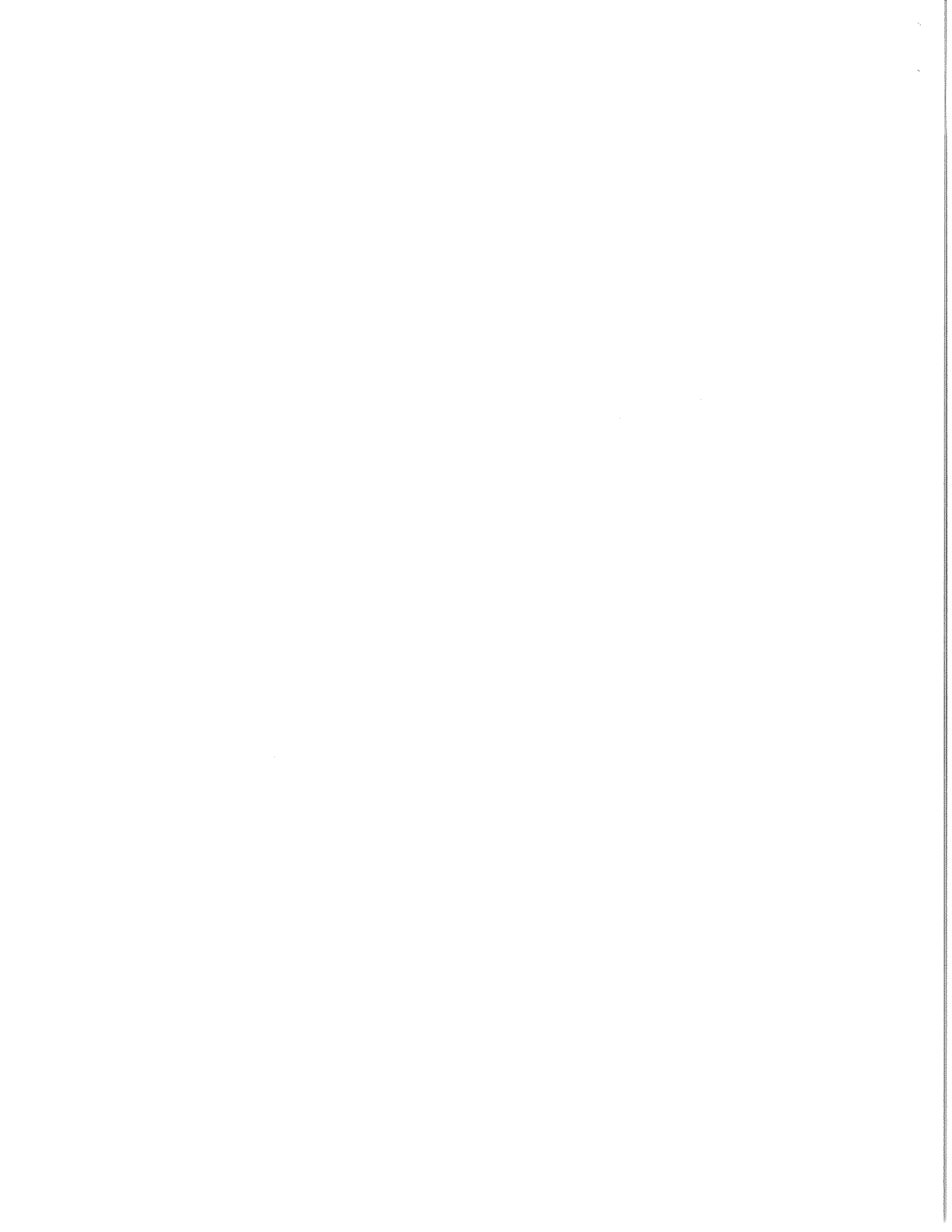
During the Commission's initial term, federal courts found that the funding structure of Orleans Parish Criminal District Court is unconstitutional due to a structural conflict of interest. Because the issues raised in those cases (*Cain v. City of New Orleans* and *Caliste v. Cantrell*, discussed in further detail below) had possible statewide implications, those issues became an additional focus of the Commission.

HCR 87 Commission Recommendations

The HCR 87 Commission recommended that the work of the Commission continue, with an expanded mandate to examine criminal fines, fees, and costs assessed in all courts, including but not limited to mayor's courts, municipal courts, city courts, parish courts, and district courts. It also recommended that the legislature should require uniform reporting by all those that assess, collect, or receive revenue from pre or post—adjudication costs, fines, and fees; delineating which costs, fines, and fees are assessed, how they are collected and disbursed, and how much is spent on collecting.

Legislative Action on HCR 87 Recommendations

The legislature passed Act No. 87 of the 2020 Regular Session (ACT 87) to require uniform reporting by all local and state auditees that assess, collect, or receive revenue from pre or post—adjudication costs, fines, and fees, what costs, fines, and fees are assessed, understanding the types of costs, fines, and fees that are assessed, the amounts of assessments, how they are collected and disbursed, and how much is spent on collecting. The legislature also passed HCR 3 to recreate and expand the Commission.



HCR 3 of 2020

In HCR 3, the legislature authorized and directed continuation of the Commission:

(1) To continue to study financial obligations of criminal defendants and how those financial obligations are used to fund and subsidize core functions of the Louisiana court system and to continue 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 of the 2017 Regular Session of the Legislature

(2) To expand its scope of study to include an examination of criminal fines, fees, and costs assessed in all courts, including but not limited to mayor's courts, municipal courts, city courts, parish courts, and district courts

(3) To provide recommendations on all of the following:

(A) Developing definitions for the various types of legal financial obligations, the court system, and core or essential court functions.

(B) Determining the amount needed from state and local general revenue funds that would enable courts to substantially reduce reliance on self-generated revenue.

(C) Identifying fees and costs that can be eliminated, including but not limited to self-generated funds assessed by the courts.

(D) Creating a system for collecting, disbursing, and tracking collected amounts including partial payments.

(E) Proposing statutory safeguards that ensure adequate court funding and limit the use of self-generated revenue to fund essential court functions.

COMMISSION ORGANIZATION

In accordance with the provisions of HCR 3, Speaker Pro Temp Tanner Magee, the Chair of the Commission, requested identification of the designees from the entities listed in the resolution and convened the Commission with the following members, listed in order and numbered as in the resolution:

(1) Speaker Pro Temp Tanner Magee, the author of Act No. 260 of the 2017 Regular Session of the Legislature, co-chair of the Commission.

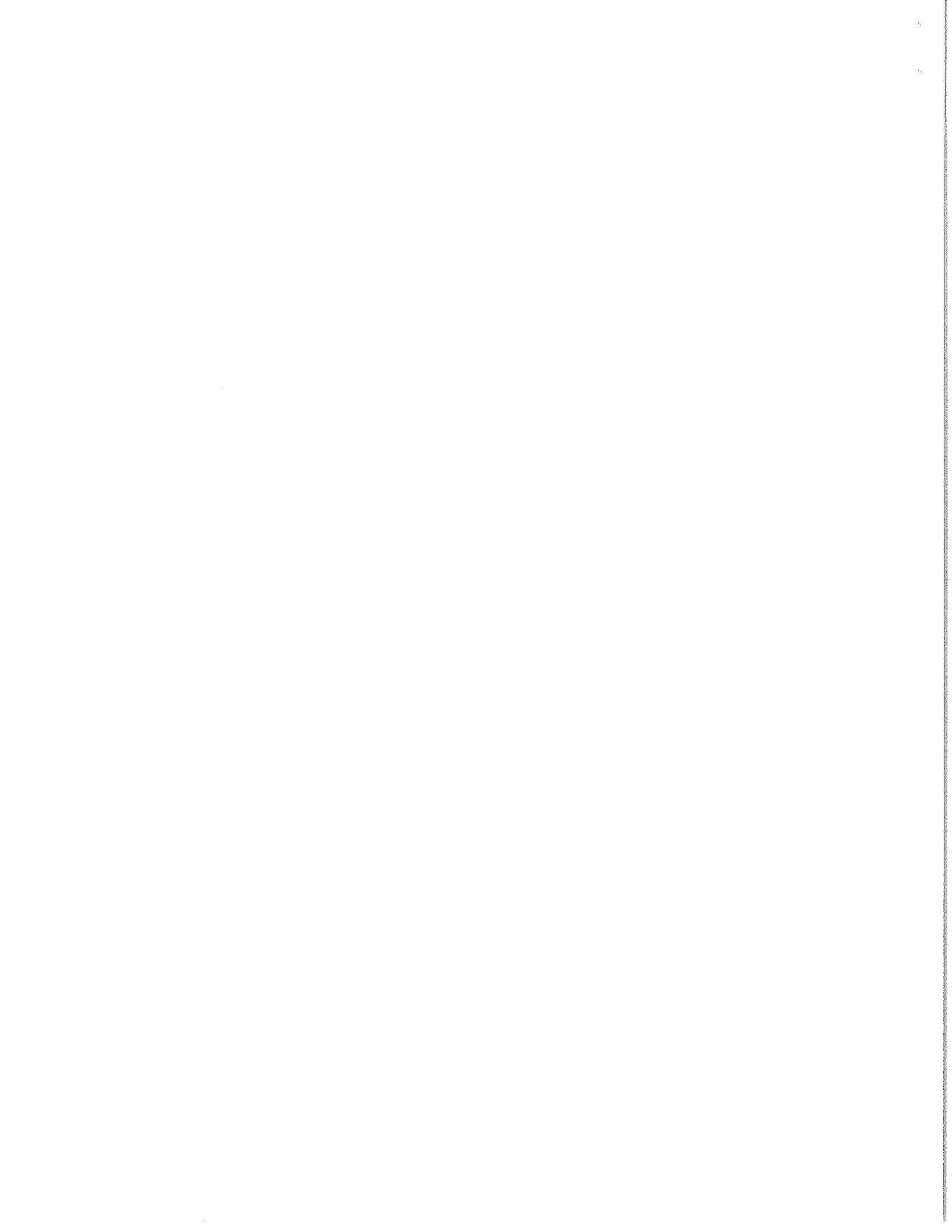
(2) Ms. Leslie Chambers, designee of the governor.

(3) Justice William J. Crain, the designee of the chief justice of the Louisiana Supreme Court.

(4) Ms. Julia Spear, designee of the Supreme Court Judicial Administrator

(5) Rep. Marcus Bryant, designee of the speaker of the House of Representatives.

(6) Sen. Rick Ward, designee of the president of the Senate.



(7) Rep. Edward C. James, the chair of the House Committee on Administration of Criminal Justice.

(8) Rep. Randall Gaines, the chair of the House Committee on Judiciary.

(9) Sen. Gary Smith, the chair of the Senate Committee on Judiciary B.

(10) Sen. Franklin Foil, the chair of the Senate Committee on Judiciary C.

(11) Mr. Pat Magee, designee of the attorney general, later changed to Mr. Chris Walters.

(12) Mr. Bobby Jamie Lee, designee of the secretary of the Department of Public Safety and Corrections.

(13) Mr. Rick McGimsey, a representative from the division of administration appointed by the commissioner of administration and co-chair of the Commission.

(14) The president of the Louisiana Sheriffs' Association or his designee – none.

(15) Mr. Richard Berger, a probation and parole officer appointed by the Louisiana Probation and Parole Association.

(16) Mr. Bo Duhe, appointee of the president of the Louisiana District Attorneys Association.

(17) Mr. Rémy Starns, appointee of the State Public Defender Board.

(18) Judge Juan Pickett, appointed by the chief justice of the Louisiana Supreme Court and Judge Guy Bradberry, later changed to Judge Steve Enright, appointed by the Louisiana District Judges Association.

(19) Ms. Debbie Hudnall, Executive Director of the Louisiana Clerks of Court Association.

(20) Ms. Ivy Wang, later changed to Ms. Vanessa Spinazola, and Mr. Will Harrell, representatives from Louisianans for Prison Alternatives.

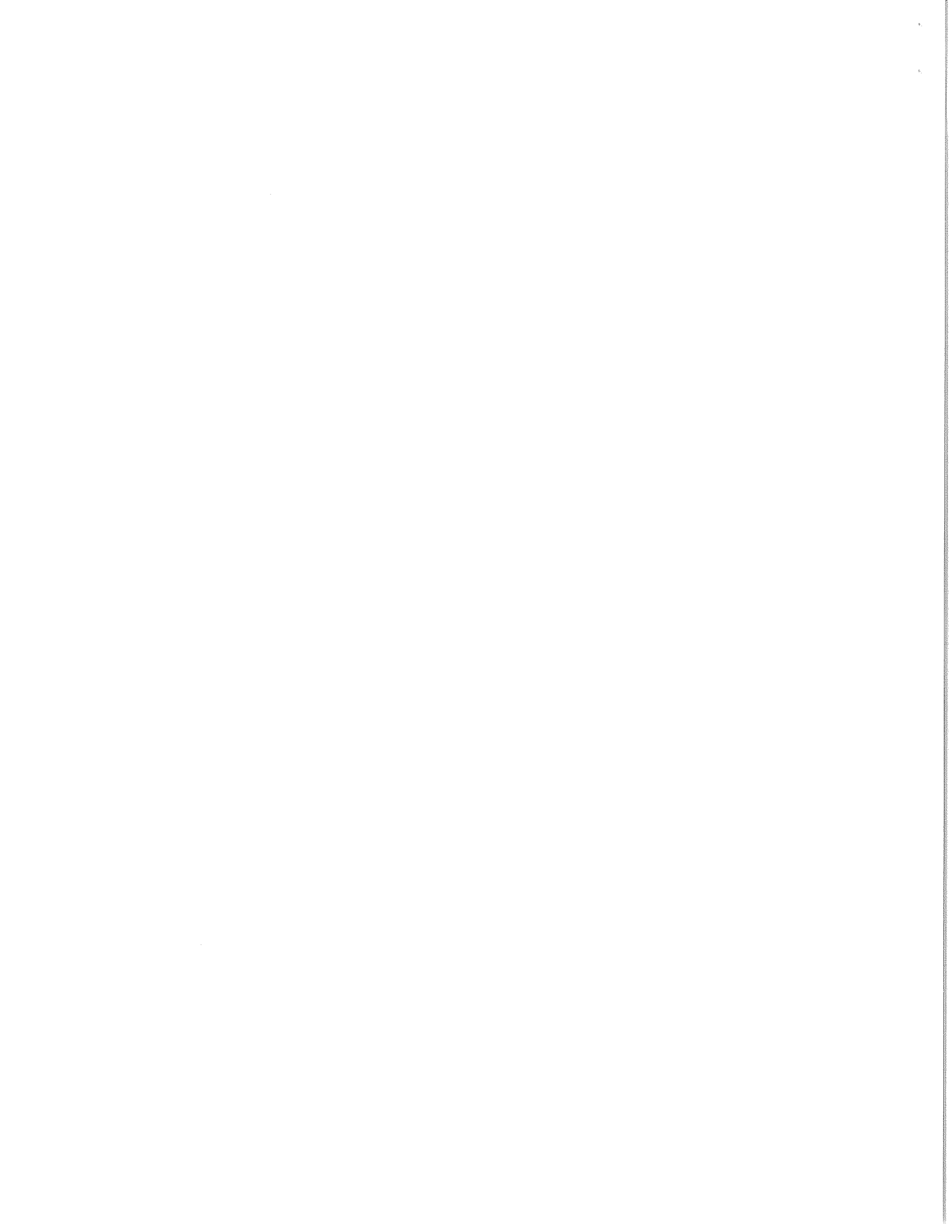
(21) Mr. Daniel Erspamer and Mr. Scott Peyton, representatives from the Louisiana Smart on Crime Coalition.

(22) Ms. Belinda Constant, representing the Louisiana Municipal Association, Mr. Chester Cedars, representing the Louisiana Police Jury Association, and Judge Sheva Sims, representing the Louisiana City Court Judges Association.

(23) Mr. Stephen P. Adams, representing the Association of Louisiana Bail Underwriters.

(24) Mr. Jeffrey Clayton, representing the American Bail Coalition.

(25) Mr. Flozell Daniels and Ms. Cataline Theriot, representing the interests of victims.



The Commission met on the following dates:

December 10, 2020, January 5, 2021, March 1, 2021, April 5, 2021, June 7, 2021, July 6, 2021, October 4, 2021, November 1, 2021, December 7, 2021, January 10, 2022, January 31, 2022, February 7, 2022.

The agenda and minutes of each meeting are attached as Exhibit 1.

As provided in the resolution, the Division of Administration provided administrative assistance and staffing to the Commission to assist it in conducting its meetings and accomplishing its duties. The Louisiana Supreme Court provided research assistance and coordination.

COMMISSION WORK PLAN

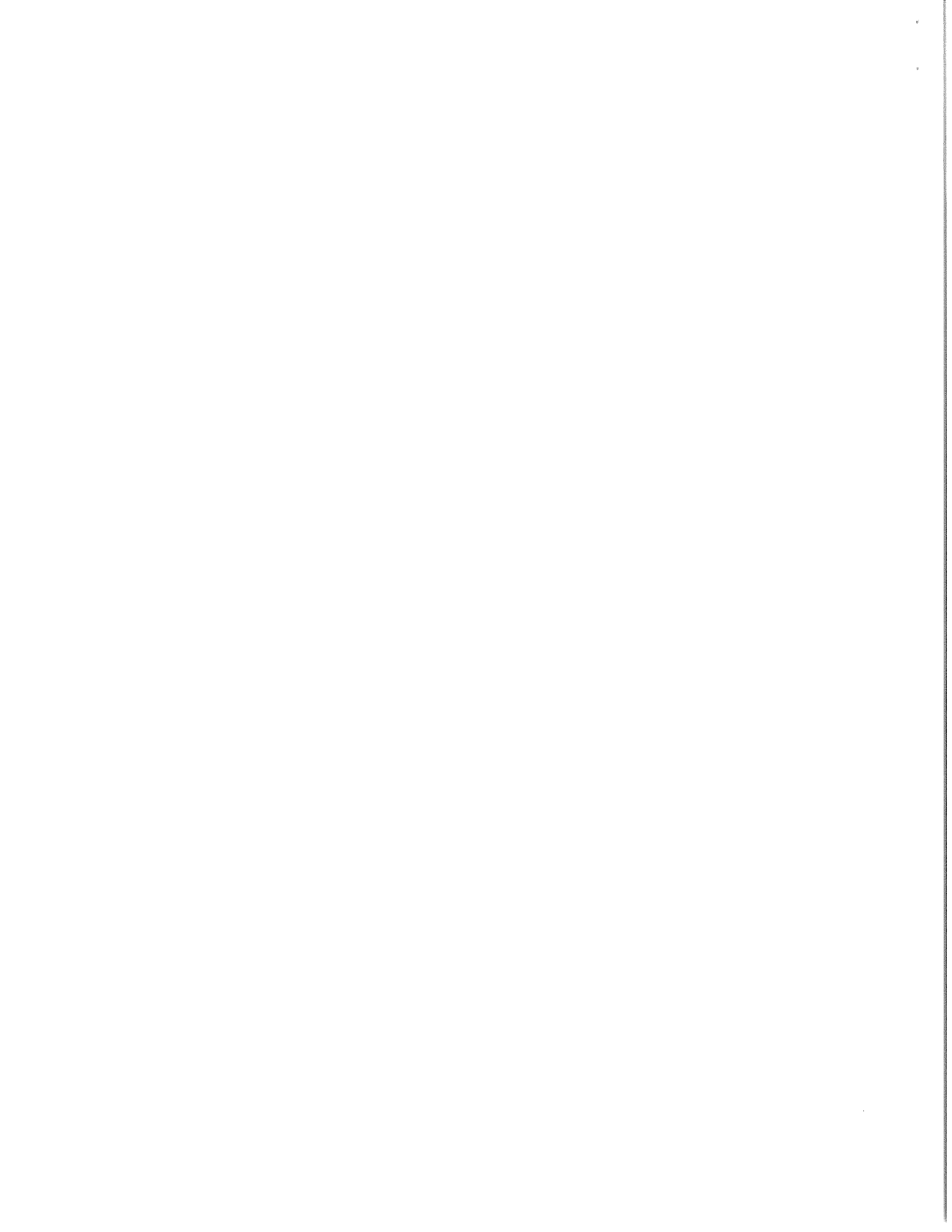
Commission members heard testimony, examined documents, and received reports from Commission work groups, the Legislative Auditor, the National Center for State Courts, and the public. The Commission took a multi-tiered approach to carrying out the Commission's charges, including individual work group tasks, combined work group responsibilities, and matters handled by the full Commission.

Full Commission Actions

National Center for State Courts Technical Assistance. Commission members agreed to a "technical assistance project" with the National Center for State Courts (NCSC) to examine how other states have reengineered their judicial systems. The NCSC provided assistance in "identifying and reviewing state judicial systems that have recently been, or have considered being, reengineered." The states included Alabama, Florida, Minnesota, and New Hampshire. On April 20, 2021, Chairman of the Commission, Speaker Pro Tem Magee, signed a letter of agreement with NCSC outlining the work to be executed. Members of the commission were asked to provide comments after reviewing both technical assistance reports - **The Shift to State Funding and Unification of the Judicial Branch: Four States's Experience** (April 11, 2011) and **The Shift to State Funding and Unification of the Judicial Branch: Louisiana Constitutional and Statutory Framework** (July 15, 2021).

These reports were not adopted by the Commission; however, at the October 4, 2021 meeting, the members agreed to utilize them as a tool for the work groups. The Chairman asked each work group to review the reports relative to their own recommendations. Each work group was to identify proposals from the NCSC report that could work or those that could not work within their own final recommendations to the full commission for approval. There were no proposals adopted by the full commission.

The letter of agreement outlining scope of work and reports are attached as Exhibit 2.



Louisiana Legislative Auditor (LLA) and Uniform Reporting . Act 87 of 2020, resulted in part from the legislative auditor’s office report to the Commission in 2019 in which Brad Cryer, the LLA representative, explained that they could not make determinations about the amount of money collected, received, or moving through the court system because there was no uniform reporting requirement in place.

Act 87 requires the LLA to develop a uniform format for audit reports for all “local and state auditees” that assess, collect, or receive revenue from pre- or post-adjudication costs, fines, and fees, and which requires the reporting of certain information that would help give a more complete and accurate understanding of the types of costs, fines, and fees that are assessed, the amounts and how they are assessed, and cost of collecting. The LLA jointly with the Louisiana Supreme Court shall develop, supervise, and require the use of the uniform, standardized, and consistent terminology for use in reporting on pre- and post-adjudication court costs, fines, and fees.

LLA and Louisiana Supreme Court created the uniform reporting schedule containing twelve broad categories to ask all the court entities to report on to keep uniformity between every reporting type (Mayor’s Court, District Court, District Attorneys, . . .). See form in Exhibit 3 for categories. On January 4, 2020, schedules were sent out to everyone and were due at the end of their fiscal year. The first group was due June 30, 2021, approximately 1,150 reports were received which included Justices of the Peace and Constables. The large collecting entities (Sheriffs and Clerks of Court) were due December 31, 2021. LLA stated that they would not have an overall picture until the beginning of 2022. LLA worked with Louisiana Municipal Association to assist with training regarding questions received on how to fill out the form and what type of information were they looking for on the form.

LLA presented a preliminary data report to the Commission on November 1, 2021. The data included only 4.9% of the reporting entities due several contributing factors: reports for large collecting entities (Sheriffs, Clerks of Court, and State Agencies) were not due until December 31, entities had emergency extensions do to the hurricanes, and LLA will have to manually input the data for some entities. More information will be needed to get an accurate understanding of how much money from court costs, fines, and fees is used to support justice system agencies. Recent communication with the legislative auditor’s office indicate that efforts to standardize the reports from relevant agencies, utilize the template without modifications, and inform agencies of their responsibility to submit the information is ongoing. The already herculean task has been made more difficult by the lack of standard naming conventions for agencies, the use of a form that cannot be uploaded if modified in certain ways, and a lack of knowledge about the distinction between court costs, fines, and fees or the purpose of reporting these to the legislative auditor.

As a result of these issues, the ability to upload the templates into a database and run reports on the collection and disbursement of LFOs across agencies is not yet feasible though the legislative auditor’s office is working diligently toward this goal.

The Act 87 forms and LLA presentation are attached as Exhibit 3.

Local Government Budget Act. On April 5, 2021, Commission member Ivy Wang addressed the Commission requesting Commission support for HB 403 of 2021, then pending in the legislature. HB 403 proposed several changes to the Local Government Budget Act, La. R.S. 13:3902 et seq. Those changes include

1. Requiring district, juvenile, mayor's, and justice of the peace courts to create comprehensive budgets each year. Currently, the law only requires city courts to comply with the Budget Act and district and juvenile courts insofar as their judicial expense funds;
2. Lowering the threshold for public participation in the budgetary process from five hundred thousand dollars to one hundred thousand dollars; and
3. Creating a process by which all political subdivisions must complete a uniform budget template and requiring courts to submit their budgets to—and itemize their revenues and expenses using a template created by—the Louisiana Supreme Court.

She explained that the bill is consistent with the goals of the Louisiana Commission on Justice System Funding. The Commission's role is to study and determine the best way to support and fund the Louisiana court system. Since the Commission-recommended Act 87 was passed, courts must now uniformly track and report money it collects through fees and costs ("user fees"). However, user fees are only one part of the picture. Because courts are exempted from the Budget Act, they do not create a single, comprehensive budget that accounts for all funding sources (e.g., grants and state, federal, parish, and user fees). Thus, the Commission cannot easily review courts' overall finances and how user fees fits into each courts' overall financial picture. The changes in HB 403 would provide clarity on all sources of court funding.

She also noted that due to feedback from the mayors and justices of the peace, she was proposing excluding those courts from the bill. She also proposed narrowing the requirement of the Legislative Auditor to creating budget templates for courts and not all agencies. With these modifications, the Commission voted unanimously to support HB 403 of 2021.

On June 7, 2021, the Chairman provided a legislative update and stated that even though the bill did not pass, the Louisiana Supreme Court agreed to a trial run of the process with seventeen different jurisdictions participating.

The fact sheet regarding the proposed amendments to the Local Government Budget Act and HB 403 are attached as Exhibit 4.

