

1 SB36
2 176863-1
3 By Senator Sanders
4 RFD: Judiciary
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6 PFD: 02/01/2017

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8 SYNOPSIS: This bill would create the Fairness in
9 Enforcement of Fines and Fees Act and would require
10 all courts within the State of Alabama and all
11 municipal or other governmental entities to comply
12 with basic constitutional principles relevant to
13 the enforcement of fines and fees, including due
14 process, equal protection, and right to counsel.

15 This bill would prohibit a person from being
16 incarcerated for nonpayment of fines or fees
17 without a prior indigency determination and would
18 provide the person with certain notifications.

19 This bill would require a person charged
20 with a traffic violation or minor misdemeanor be
21 provided with adequate information, including the
22 charges against him or her and the options he or
23 she has for resolving the charges.

24 This bill would require a court to
25 proportion all fines, fees, and costs imposed by
26 the court when a sufficient showing of indigency
27 has been made and would require the court to

1 consider alternative sentencing, such as payment
2 plan options or community service in lieu of paying
3 fines and fees.

4 This bill would require notice regarding the
5 waiver of posting certain bonds based on the
6 inability to pay and would require meaningful
7 notice and adequate representation, including
8 counsel, in cases where the enforcement of fines
9 and fees could result in imprisonment.

10 This bill would prohibit the use of arrest
11 warrants as a means of coercing payment of a court
12 debt and prohibit arrest warrants from being issued
13 in response to the inability of a person to pay a
14 fine or fee.

15 This bill would provide that if a defendant
16 fails to make a court appearance the court would
17 have to conduct a hearing on why a warrant should
18 not be issued and include an assessment of the
19 ability of the person to pay any pending fine or
20 fee.

21 This bill would require a court to provide
22 notice of a show cause hearing through first class
23 mail, at a minimum, and would require the court to
24 attempt to make contact with the person by
25 telephone or text message if available.

26 This bill would prohibit bail or bond
27 practices that cause a person to remain

1 incarcerated solely because he or she cannot afford
2 to pay for his or her release and would require
3 that a person arrested for an initial violation of
4 law or on an outstanding warrant receive a court
5 date and be released on his or her own recognizance
6 within a certain time frame under certain
7 conditions.

8 This bill would provide that the failure of
9 a person to appear or pay a fine in a case
10 involving a traffic violation or minor misdemeanor
11 may not be grounds for suspension of the driver's
12 license of the person and would provide for
13 immediate reinstatement of the driver's license of
14 any person whose driver's license has been
15 suspended for failing to appear or pay a fine in
16 such cases.

17 This bill would require prosecutors to
18 operate impartially and independently from courts
19 and would require the prosecutor, not court staff,
20 to perform prosecutorial duties.

21 This bill would require a municipality to
22 ensure the sufficient independence of its municipal
23 judges to avoid impropriety and existing or
24 potential conflicts of interest.

25 This bill would require certain notice
26 requirements regarding diversion from the justice

1 system be made to a person with a mental illness or
2 intellectual or developmental disability.

3 This bill would require courts and municipal
4 or other governmental entities to provide
5 appropriate training on safeguarding against
6 unconstitutional practices by its staff and private
7 contractors.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 Relating to the enforcement of fines and fees by
14 courts within the State of Alabama; to create the Fairness in
15 Enforcement of Fines and Fees Act; to require all courts and
16 governmental entities to comply with basic constitutional
17 principles relevant to the enforcement of fines and fees,
18 including due process, equal protection, and rights to
19 counsel; to prohibit a person from being incarcerated for
20 nonpayment of fines or fees due to indigency; to provide
21 certain notice requirements; to require proportional fines,
22 fees, and costs under certain conditions; to provide for
23 alternative sentencing; to restrict the use of arrest warrants
24 as a means of coercing payment; to further provide for show
25 cause hearing notice requirements; to prohibit a person from
26 being held on bail or bond solely because he or she cannot pay
27 for his or her release; to limit the grounds for the

1 suspension of a driver's license of a person; to require
2 prosecutors to perform prosecutorial duties; to require
3 municipalities ensure the independence of its municipal
4 judges; to require certain notices to a person with a mental
5 illness or intellectual or developmental disability; and
6 require training on safeguarding against unconstitutional
7 practices under certain conditions.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. This act is known and may be cited as the
10 Fairness in Enforcement of Fines and Fees Act.

11 Section 2. (a) No person shall be incarcerated for
12 nonpayment of fines or fees without a prior indigency
13 determination establishing that the failure to pay was willful
14 rather than based on inability to pay.

15 (b) A person charged with a traffic violation or a
16 minor misdemeanor shall be provided with oral and written
17 notices and shall be provided ability-to-pay determinations
18 consistent with the following requirements:

19 (1) The person shall be provided with adequate and
20 reliable information regarding the charges brought against him
21 or her, the options and requirements for resolving the
22 charges, and the consequences for failing to resolve the
23 charges in a timely matter.

24 (2) The citation, summons, arrest notification form,
25 and other charging documents shall contain, or at a minimum be
26 contemporaneously supplemented with, a separate document that
27 contains clear and detailed information regarding the rights

1 and responsibilities of the person charged, including all of
2 the following information:

3 a. The specific violation charged.

4 b. The options of the person for addressing the
5 charge, including whether an in-person appearance is required
6 or if alternative methods, including online payment, are
7 available.

8 c. Information regarding all pending deadlines.

9 d. A clear statement notifying the person of the
10 right to challenge the charge in court and instructions
11 regarding how to do so.

12 e. The exact date, time, and location of the court
13 session at which the person must or may appear.

14 f. Information regarding how to seek a continuance
15 for a court date.

16 g. The specific fine imposed, if the charged offense
17 has a preset fine.

18 h. A clear statement that the person is entitled to
19 have the amount of the imposed fine proportioned to the
20 ability of the person to pay.

21 i. The range of possible penalties for failing to
22 meet court requirements.

23 j. Clear instructions regarding how to acquire
24 information regarding a pending charge, including how to
25 contact a clerk of the court by phone and in person.

1 (c) (1) A court shall affirmatively inquire as to the
2 financial capacity of a person prior to initially assessing
3 fines, fees, and costs.

4 (2) When a sufficient showing of indigency is made
5 based on the completion of a standard affidavit by the person
6 under penalty of perjury, without requirement of further
7 proof, the court shall proportion all fines, fees, and costs
8 imposed by the court to the financial resources of the person.

9 (3) Objective and consistent criteria shall be
10 established for proportioning fines, fees, and costs to the
11 income of a person in cases where the person makes sufficient
12 showing of indigency.

13 (4) The objective and consistent criteria shall take
14 into account the income of the defendant and shall also
15 consider any documented fines or fees owed to other courts.

16 (5) Ability-to-pay determinations shall be conducted
17 prior to the court imposing an initial fine or fee, upon any
18 increase in the fine or related court costs and fees, and upon
19 the request of a person for an ability-to-pay determination at
20 any point in a case.

21 (6) No more than a single assessment shall be
22 imposed for court costs and fees for all traffic violations
23 arising from any one stop or arrest, unless separate court
24 proceedings are necessary and held.

25 Section 3. (a) A person unable to pay fines and fees
26 shall be provided with appropriate alternatives to
27 incarceration, including reasonable installment payment plan

1 options and community service, consistent with the following
2 requirements:

3 (1) The person shall be provided with the option of
4 performing community service in lieu of paying fines and fees.

5 (2) A community service program shall establish
6 reasonable rates at which community service is credited
7 against pending fines and fees and shall establish reasonable
8 time periods for the completion of community service
9 obligations that take into account the existing employment and
10 familial obligations of the person.

11 (3) The person shall be provided with the option of
12 a court-managed payment plan for reasonable periodic payments,
13 which shall include all of the following:

14 a. An ability-to-pay determination to assess a
15 periodic payment amount that is reasonable in light of the
16 financial resources of the person.

17 b. Procedures for the person to seek a reduction in
18 the periodic payment amount.

19 c. Procedures to allow the person, without appearing
20 in court, to seek requests for extensions of payment
21 obligations, to be granted upon a showing of good cause.

22 d. Opportunities each month, at varied days and
23 times, for the person on the payment plan to appear before the
24 court to petition the court for a modification or extension of
25 the payment plan or for other relief.

26 (b) If a person fails to timely fulfill a community
27 service obligation or fails to satisfy a court debt within the

1 time frame allotted by a court payment plan, the court shall
2 collect the outstanding debt in a manner consistent with the
3 processes set forth in this act.

4 Section 4. (a) Access to a judicial hearing or
5 appeal may not be conditioned upon the prepayment of bonds,
6 fines, or fees.

7 (b) A person shall be provided with notice of the
8 availability of waivers of the requirement for posting
9 appellate bond based on his or her inability to pay, and the
10 person shall be granted the waiver if it is determined that he
11 or she is unable to pay.

12 Section 5. A person shall be provided with
13 meaningful notice and adequate representation, including
14 counsel in cases which may result in imprisonment, in the
15 enforcement of fines and fees.

16 Section 6. (a) An arrest warrant may not be used as
17 a means of coercing the payment of a court debt when the
18 person has not been afforded constitutionally adequate
19 procedural protections.

20 (b) An arrest warrant may not be used as a means of
21 collecting a court debt.

22 (c) An arrest warrant related to a traffic violation
23 or a minor misdemeanor may be issued, if at all, only after
24 all other mechanisms available for securing the appearance of
25 a person in court have been exhausted.

26 (d) An arrest warrant may not be issued in response
27 to the financial inability of a person to pay a fine or fee.

1 (e) A court shall meet all of the following minimum
2 requirements:

3 (1) A person who has missed a required court
4 appearance or payment with notice of the missed requirement,
5 shall be provided notice of a new court date or payment
6 deadline, and shall be provided notice of the potential
7 consequences for failing to satisfy the subsequent
8 requirement.

9 (2) If a person fails to satisfy the subsequent
10 required court appearance, the court shall conduct a hearing
11 on why a warrant should not be issued, including an assessment
12 of ability to pay any pending fine or fee. The court may not
13 issue a warrant for a person who appears at the show cause
14 hearing.

15 (3) A court shall provide effective notice of any
16 motion for an order to show cause, at a minimum, through first
17 class mail, and shall attempt to contact the person by
18 telephone or text message if the contact information is
19 available.

20 (f) If the mechanisms provided by this section are
21 unsuccessful at securing payment or otherwise resolving the
22 case, the court may issue an arrest warrant and, upon
23 arresting a person pursuant to an outstanding arrest warrant,
24 the detention of the person shall comply with all of the
25 requirements of this act.

1 Section 7. (a) Bail or bond practices that cause a
2 person to remain incarcerated solely because he or she cannot
3 afford to pay for his or her release are prohibited.

4 (b) No person shall be held in custody after an
5 arrest because the person cannot afford to post a monetary
6 bond.

7 (c) A fixed monetary bond schedule may not be used
8 to detain persons who are determined to be unable to pay.

9 (d) A person arrested for an initial violation of
10 law or an outstanding warrant shall receive a court date and
11 be released on his or her own recognizance as soon as is
12 practicable after booking, and in any case within 12 hours of
13 booking.

14 (e) (1) In circumstances where a person who is
15 arrested has a documented history of failing to appear for a
16 required court appearance, an unsecured bond not to exceed one
17 hundred dollars (\$100) may be required prior to release.

18 (2) In such circumstances, the person who is
19 arrested shall be provided with the option of pleading guilty
20 and paying the amount of the fine without needing to
21 subsequently appear in court, unless the person is charged
22 with an offense for which an in-person appearance is otherwise
23 required by law.

24 (f) If the person cannot or does not elect to
25 resolve the charge through payment of a fine, the person
26 shall:

27 (1) Be provided with a new court date.

1 (2) Be clearly instructed that failure to appear as
2 required may result in an assessment of the amount of the
3 unsecured bond.

4 (3) Prior to the assessment, be provided a show
5 cause hearing as to why the unsecured bond may not be
6 assessed, with actual notice to the person.

7 (4) In no case be required to pay the bond amount
8 prior to release.

9 (g) A person who is arrested for assault or
10 threatening conduct, including assault on a law enforcement
11 officer, or who presents a danger to a victim, the public, or
12 any other person, may be held beyond 12 hours, provided that
13 both of the following requirements are met:

14 (1) The chief law enforcement officer or his or her
15 designee shall authorize the detention beyond 12 hours.

16 (2) A person held beyond 12 hours shall be brought
17 before a court within 24 hours of arrest.

18 Section 8. (a) The failure of a person to appear or
19 pay a fine in a case involving a traffic violation or minor
20 misdemeanor may not be grounds for suspension of the driver's
21 license of the person.

22 (b) In cases where the driver's license of a person
23 has been suspended for failing to appear or pay a fine in a
24 case involving a traffic violation or minor misdemeanor,
25 reinstatement letters shall be sent immediately and the
26 reinstatement letters may not be conditioned upon payment of
27 outstanding fines or fees in full.

1 Section 9. (a) A court shall operate impartially,
2 independently from the prosecutor, and in a manner that
3 eliminates existing and potential unlawful conflicts of
4 interest.

5 (b) The prosecutor, not the court staff, shall
6 perform all prosecutorial duties, including, but not limited
7 to, all of the following:

8 (1) Maintaining case files separate and apart from
9 those maintained by the court.

10 (2) Reviewing case files and filings.

11 (3) Setting fine recommendations.

12 (4) Responding to all discovery requests.

13 (5) Prosecuting all charges by information.

14 Section 10. A municipality shall ensure that a
15 municipal judge appointed to serve on a municipal court is
16 sufficiently independent to avoid impropriety, the appearance
17 of impropriety, and existing or potential conflicts of
18 interest.

19 Section 11. A person with a mental illness or an
20 intellectual or developmental disability shall be provided
21 with information about his or her available options for
22 diversion from the justice system.

23 Section 12. A court and a municipal or other
24 governmental entity has the duty to safeguard against
25 unconstitutional practices by court staff, staff of the
26 municipality or governmental entity, and private contractors,
27 including the duty to provide appropriate training.

1 Section 13. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.