

Calendar No. 190

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-110

DC COURT SERVICES AND OFFENDER
SUPERVISION AGENCY ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1629

TO REVISE CERTAIN AUTHORITIES OF THE DISTRICT OF
COLUMBIA COURTS, THE COURT SERVICES AND OFFENDER
SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA, AND
THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF
COLUMBIA, AND FOR OTHER PURPOSES



AUGUST 3, 2015.—Ordered to be printed

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AUGUST 3, 2015.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1629]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1629) to revise certain authorities of the District of Columbia courts, the Court Services and Offender Supervision Agency for the District of Columbia, and the Public Defender Service for the District of Columbia, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1629, the District of Columbia (DC or the District) Courts, Public Defender Service, and Court Services and Offender Supervision Agency Act of 2015, seeks to provide the judicial offices of the District of Columbia with increased authority to make personnel, managerial, and programmatic decisions, including authority to improve the reentry programs of the Court Services and Offender Supervision Agency by allowing the agency to offer programmatic incentives to sentenced offenders; authority to collect

debts and erroneous payments from DC Courts employees; authority for the DC Public Defender Service to accept volunteer services; and related provisions.

II. BACKGROUND AND THE NEED FOR LEGISLATION

In 1997, Congress reorganized the District of Columbia judicial agencies and turned them into federal agencies with federal employees.¹ However, while federalizing these local agencies, Congress did not provide basic authorities that are available to other federal agencies and are necessary to the efficient operation of the judicial branch of the local District government.²

For example, the Court Services and Offender Supervision Agency has specific statutory authority to punish sentenced offenders but lacks statutory authority to improve reentry programs by offering incentives to those sentenced offenders who succeed.³ A growing body of research indicates that not only should supervision services provide incentive programs, they should be offering more opportunities for incentives than for sanctions.⁴ With the authority provided under this bill, the agency could provide simple, low cost items to former offenders such as bus fares to job interviews and fees for GED tests if those offenders are doing particularly well in the reentry program. These incentives would be paid for out of the agency's general operating fund.

The District's Public Defender Service also lacks authority to accept volunteer services. Without this authority, the agency cannot accept *pro bono* legal services from local law firms or unpaid legal interns and law clerks, which also hampers entry-level attorney recruitment, according to the agency.⁵ S. 1629 gives the Public Defender Services the authority to accept donations and volunteer services while also recognizing that its board members are employees of the District.

Finally, the District of Columbia Courts lack the basic authority to collect overpayments to their own employees by offsetting pay.⁶ If a simple payroll error occurs, the courts can ask the employee to repay and can proceed using common law legal methods to collect, but have no authority to simply and efficiently offset the employee's pay. The courts also lack the authority to purchase uniforms for employees.⁷ S. 1629 would provide the District of Columbia Courts with the authorities it needs to operate efficiently by authorizing the District of Columbia Courts to purchase uniforms for

¹National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33.

²For example, while 5 U.S.C. §5901 provides authorization for appropriations for uniforms for all federal agencies "and the government of the District of Columbia," that law was explicitly superceded by the D.C. Code §1-632.02(a)(5)(I). Furthermore, the D.C. City Council has no authority to authorize the purchase of uniforms based on the strict limitation under D.C. Code §1-206.02(a)(4), which prevents the council from enacting any measure related to the courts.

³National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33.

⁴American Probation and Parole Association, *Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision*, available at <https://www.appa-net.org/eWeb/docs/APPA/pubs/EROBLLPPS-Report.pdf>.

⁵National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33.

⁶The Comptroller General has held that specific statutory authority is necessary for a federal agency to offset an employee's pay. See 61 Comp. Gen. 450 (1982). While this specific authority has been granted to all federal agencies and to other agencies of the government of the District of Columbia, see 5 U.S.C. §§5514 and 5584; 31 U.S.C. §§3711 and 3716; D.C. Code §§1-629.01-1-629.04, and D.C. Code §2-406, it is not available to the Courts.

⁷See, D.C. Code §1-632.02(a)(5)(I).

certain employees and collect overpayments and other debts owed by employees.

III. LEGISLATIVE HISTORY

Senator Johnson introduced S. 1629 with Senator Carper on June 18, 2015. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1629 at a business meeting held on June 24, 2015. No amendments were offered. The Committee ordered the bill reported favorably *en bloc* by voice vote. Members present for the vote were: Johnson, McCain, Lankford, Ayotte, Ernst, Sasse, Carper, Tester, Baldwin, and Heitkamp.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title, the "District of Columbia Courts, Public Defender Service, and Court Services and Offender Supervision Agency Act of 2015."

Section 2. Authorities of District of Columbia Courts

This section authorizes the District of Columbia Courts to collect overpayments and outstanding employee debts by offsetting pay. It furthermore establishes the timing and guidelines for the recovery of such overpayments.

This section also allows the District of Columbia Courts to provide uniforms for employees whose responsibilities warrant the wearing of uniforms.

Section 3. Authorities of Court Services and Offender Supervision Agency

This section authorizes the Court Services and Offender Supervision Agency to offer programmatic incentives to sentenced offenders.

It also makes permanent the authority of the agency to accept and solicit monetary and nonmonetary gifts and to accept and use reimbursements from the District of Columbia.

Section 4. Authorities of Public Defender Service

This section authorizes the Public Defender Service to accept and use volunteer services, public grants, and private donations.

It also clarifies that members of the Board of Trustees for the Public Defender Services are employees of the Public Defender Service.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Congressional Budget Office confirmed that S. 1629 contains no intergovernmental or private-sector mandates as defined in UMRA.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 2, 2015.

Hon. RON JOHNSON ,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1629, the District of Columbia Courts, Public Defender Service, and Court Services and Offender Supervision Agency Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

S. 1629—District of Columbia Courts, Public Defender Service, and Court Services and Offender Supervision Agency Act of 2015

S. 1629 would make changes to the District of Columbia Official Code that governs the D.C. Courts system. Under current law, the budget of the D.C. Courts system, including the Public Defender Service (PDS) and the Court Services and Offender Service Agency (CSOSA), is funded by federal appropriations; thus, its expenditures are recorded in the federal budget. Among other changes, the bill would allow the D.C. Courts System to collect debts and erroneous payments owed by its employees and to purchase uniforms for non-judicial employees. The bill also would allow CSOSA to operate incentive programs for offender education, accept and spend gifts, and receive reimbursement from the D.C. government for the use of office space in D.C. Courts facilities. Finally, the bill would allow PDS to use unpaid volunteers. Based on information provided by the District of Columbia Courts, PDS, and CSOSA, CBO estimates that the proposed changes would have an insignificant effect on discretionary spending.

Enacting the legislation would affect direct spending because it would authorize CSOSA to accept and spend monetary gifts. Therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would not be significant. Enacting S. 1629 would not affect revenues.

S. 1629 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1629 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA OFFICIAL CODE

* * * * *

TITLE 2—GOVERNMENT ADMINISTRATION

* * * * *

CHAPTER 16—PUBLIC DEFENDER SERVICE

* * * * *

SEC. 2—1603. BOARD OF TRUSTEES.

(a) * * *

* * * * *

(d) For the purposes of any action brought against the trustees of the Service, they shall be deemed to be [employees of the District of Columbia] *employees of the Service*.

* * * * *

SEC. 2—1607. APPROPRIATIONS; PUBLIC GRANTS AND PRIVATE CONTRIBUTIONS.

(a) * * *

(b) Upon approval of the Board of Trustees, [the Service may accept public grants and private contributions made to assist it] *the Service may accept and use public grants, private contributions, and voluntary and uncompensated (gratuitous) services to assist it* in carrying out the provisions of this chapter.

* * * * *

TITLE 11—ORGANIZATION AND JURISDICTION OF THE COURTS

* * * * *

CHAPTER 17—ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

* * * * *

Subchapter II—Courts Personnel

* * * * *

§ 11—1733. Collection, compromise, and waiver of employee debts and erroneous payments

(a) COLLECTION OF DEBTS AND ERRONEOUS PAYMENTS MADE TO EMPLOYEES.—

(1) **AUTHORITY TO COLLECT.**—*If the Executive Officer determines that an employee or former employee of the District of Columbia Courts is indebted to the District of Columbia Courts because of an erroneous payment made to or on behalf of the employee or former employee, or any other debt, the Executive Officer may collect the amount of the debt in accordance with this subsection.*

(2) **TIMING OF COLLECTION.**—*The Executive Officer may collect a debt from an employee under this subsection in monthly installments or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay of the employee.*

(3) **SOURCE OF DEDUCTIONS.**—*The Executive Officer may make a deduction under paragraph (2) from any wages, salary, compensation, remuneration for services, or other authorized pay, including incentive pay, back pay, and lump sum leave payments, but not including retirement pay.*

(4) **LIMIT ON AMOUNT.**—*In making deductions under paragraph (2) with respect to an employee, the Executive Officer—*

(A) *except as provided in subparagraph (B), may not deduct more than 20 percent of the disposable pay of the employee for any period; and*

(B) *upon consent of the employee, may deduct more than 20 percent of the disposable pay of the employee for any period.*

(5) **COLLECTIONS AFTER EMPLOYMENT.**—*If the employment of an employee ends before the Executive Officer completes the collection of the amount of the employee's debt under this subsection, deductions may be made—*

(A) *from later non-periodic government payments of any nature due the former employee, except retirement pay; and*

(B) *without regard to the limit under paragraph (4)(A).*

(b) NOTICE AND HEARING REQUIRED.—

(1) **IN GENERAL.**—*Except as provided in paragraph (3), prior to initiating any proceedings under subsection (a) to collect any debt from an individual, the Executive Officer shall provide the individual with—*

(A) *a written notice, not later than 30 days before the date on which the Executive Officer initiates the proceeding, that informs the individual of—*

(i) *the nature and amount of the debt determined by the District of Columbia Courts to be due;*

(ii) *the intention of the Courts to initiate a proceeding to collect the debt through deductions from pay; and*

(iii) *an explanation of the rights of the individual under this section;*

(B) *an opportunity to inspect and copy Court records relating to the debt;*

(C) an opportunity to enter into a written agreement with the Courts, under terms agreeable to the Executive Officer, to establish a schedule for the repayment of the debt; and
 (D) an opportunity for a hearing in accordance with paragraph (2) on the determination of the Courts—

(i) concerning the existence or the amount of the debt; and

(ii) in the case of an individual whose repayment schedule is established other than by a written agreement under subparagraph (C), concerning the terms of the repayment schedule.

(2) PROCEDURES FOR HEARINGS.—

(A) AVAILABILITY OF HEARING UPON REQUEST.—Except as provided in paragraph (3), the Executive Officer shall provide a hearing under this paragraph if an individual, not later than 15 days after the date on which the individual receives a notice under paragraph (1)(A), and in accordance with any procedures that the Executive Officer prescribes, files a petition requesting the hearing.

(B) BASIS FOR HEARING.—A hearing under this paragraph shall be on the written submissions unless the hearing officer determines that the existence or amount of the debt—

(i) turns on an issue of credibility or ceracity; or

(ii) cannot be resolved by a review of the documentary evidence.

(C) STAY OF COLLECTION PROCEEDINGS.—The timely filing of a petition for hearing under subparagraph (A) shall stay the commencement of collection proceedings under this section.

(D) INDEPENDENT OFFICER.—An independent hearing officer appointed in accordance with regulations promulgated under subsection (e) shall conduct a hearing under this paragraph.

(E) DEADLINE FOR DECISION.—The hearing officer shall issue a final decision regarding the questions covered by the hearing at the earliest practicable date, and not later than 60 days after the date of the hearing.

(3) EXCEPTION.—Paragraphs (1) and (2) shall not apply to routine intra-Courts adjustment of pay that is attributable to a clerical or administrative error or delay in processing pay documents that occurred within the 4 pay periods preceding the adjustment or to any adjustment that amounts to not more than \$50, if at the time of the adjustment, or as soon thereafter as practical, the Executive Officer provides the individual—

(A) written notice of the nature and amount of the adjustment; and

(B) a point of contact for contesting the adjustment.

(c) COMPROMISE.—

(1) AUTHORITY TO COMPROMISE CLAIMS.—The Executive Officer may—

(A) compromise a claim to collect an debt under this section if the amount involved is not more than \$100,000; and

(B) suspend or end collection action on a claim described in subparagraph (A) if the Executive Officer determines that—

(i) no person liable on the claim has the present or prospective ability to pay a significant amount of the claim; or

(ii) the cost of collecting the claim is likely to be more than the amount recovered.

(2) *EFFECT OF COMPROMISE.*—A compromise under this subsection shall be final and conclusive obtained by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact.

(3) *NO LIABILITY OF OFFICIAL RESPONSIBLE FOR COMPROMISE.*—An accountable official shall not be liable for an amount paid or for the value of property lost or damaged if the amount or value is not recovered because of a compromise under this subsection.

(d) *WAIVER OF CLAIM.*—

(1) *AUTHORITY TO WAIVE CLAIMS.*—Upon application from a person liable on a claim to collect a debt under this section, the Executive Officer may, with written justification, waive the claim if collection would be—

(A) against equity;

(B) against good conscience; and

(C) not in the best interests of the District of Columbia Courts.

(2) *LIMITATIONS ON AUTHORITY.*—The Executive Officer may not waive a claim under this subsection if the Executive Officer—

(A) determines that there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, the former employee, or any other person that has an interest in obtaining a waiver of the claim; or

(B) receives the application for waiver later than 3 years after the later of the date on which the erroneous payment was discovered or the date of enactment of this section, unless the claim involves money owed for Federal health benefits, Federal life insurance, or Federal retirement benefits.

(3) *DENIAL OF APPLICATION FOR WAIVER.*—A decision by the Executive Officer to deny an application for a waiver under this subsection shall be the final administrative decision of the District government.

(4) *REFUND OF AMOUNTS ALREADY COLLECTED AGAINST CLAIM SUBSEQUENTLY WAIVED.*—If the Executive Officer waives a claim against an employee or former employee under this section after the District of Columbia Courts have been reimbursed for the claim in whole or in part, the Executive Officer shall provide the employee or former employee a refund of the amount of the reimbursement upon application for the refund, if the Executive Officer receives the application not later than 2 years after the effective date of the waiver.

(5) *EFFECT ON ACCOUNTS OF COURTS.*—In the audit and settlement of accounts of any accountable official, full credit shall

be given for any amounts with respect to which collection by the District of Columbia Courts is waived under this subsection.

(6) *VALIDITY OF PAYMENTS.—An erroneous payment or debt, the collection of which is waived under this subsection, shall be a valid payment for all purposes.*

(7) *NO EFFECT ON OTHER AUTHORITIES.—Nothing contained in this subsection shall be construed to affect the authority of the District of Columbia under any other statute to litigate, settle, compromise, or waive any claim of the District of Columbia.*

(e) *REGULATIONS.—The authority of the Executive Officer under this section shall be subject to regulations promulgated by the Joint Committee.*

Subchapter III—Duties and Responsibilities

* * * * *

SEC. 11—1742. PROPERTY AND DISBURSEMENT.

(a) * * *

(b) The Executive Officer shall be responsible for the procurement of necessary equipment, supplies, and services for the courts and shall have power, subject to applicable law, to reimburse the District of Columbia government for services provided and to contract for such equipment, supplies, and services as may be necessary. *In carrying out the authority under the preceding sentence, the Executive Officer may purchase uniforms to be worn by non-judicial employees of the District of Columbia Courts whose responsibilities warrant the wearing of uniforms if the cost of furnishing a uniform to an employee during a year does not exceed the amount applicable for the year under section 5901(a)(1) of title 5, United States Code (relating to the uniform allowance for employees of the Government of the United States).*

* * * * *

NATIONAL CAPITAL REVITALIZATION AND SELF-GOVERNMENT IMPROVEMENT ACT OF 1997

* * * * *

TITLE XI—DISTRICT OF COLUMBIA REVITALIZATION

* * * * *

Subtitle C—Criminal Justice

* * * * *

CHAPTER 3—OFFENDER SUPERVISION AND PAROLE

* * * * *

SEC. 11233. COURT SERVICES AND OFFENDER SUPERVISION AGENCY.

(a) * * *

(b) **DIRECTOR.—**

(1) * * *

(2) **POWERS AND DUTIES OF DIRECTOR.—**The Director shall—

(A) * * *

* * * * *

(F) develop and operate intermediate **[sanctions]** *sanc-
tions and incentives*;

* * * * *

(3) ACCEPTANCE OF GIFTS.—

[(A) AUTHORITY TO ACCEPT GIFTS.—During fiscal years 2006 through 2008, the Director may accept and use gifts in the form of—

[(i) in-kind contributions of space and hospitality to support offender and defendant programs; and

[(ii) equipment and vocational training services to educate and train offenders and defendants.]

(A) AUTHORITY TO ACCEPT GIFTS.—The Director may accept, solicit, and use on behalf of the Agency any monetary or nonmonetary gift, donation, bequest, or use of facilities, property, or services for the purpose of aiding or facilitating the work of the Agency.

* * * * *

(4) REIMBURSEMENT FROM DISTRICT GOVERNMENT.—**[**During fiscal years 2006 through 2008, the Director] *The Director* may accept and use reimbursement from the District government for space and services provided, on a cost reimbursable basis.