

116TH CONGRESS
2D SESSION

S. 3375

To amend the State Justice Institute Act of 1984 to provide technical assistance and training to State and local courts to improve the constitutional and equitable enforcement of fines, fees, and monetary bail, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2020

Mr. SCHATZ (for himself, Mr. WYDEN, Mr. JONES, Mr. BLUMENTHAL, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the State Justice Institute Act of 1984 to provide technical assistance and training to State and local courts to improve the constitutional and equitable enforcement of fines, fees, and monetary bail, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Justice Improve-
5 ment Act”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) The Supreme Court of the United States
2 has repeatedly held that the government may not in-
3 carcerate an individual solely because of the inability
4 of the individual to pay a fine or fee.

5 (2) In 2019, the United States Court of Ap-
6 peals for the Fifth Circuit ruled that it is unconsti-
7 tutional to imprison people for failing to pay fines
8 and fees without inquiring into their ability to pay.
9 The Fifth Circuit also ruled that it is unconstitu-
10 tional for judges to determine ability to pay when
11 court debts help pay court budgets.

12 (3) Under section 3142 of title 18, United
13 States Code, Federal judicial officers may not im-
14 pose a financial condition that results in the pretrial
15 detention of an individual.

16 (4) In 2017, a report by United States Com-
17 mission on Civil Rights evaluated evidence that—

18 (A) 47 states increased their fines and fees
19 in recent years, including fines and fees im-
20 posed on juveniles;

21 (B) in Virginia, 1 in 6 drivers had license
22 revoked as a result of an inability to pay court
23 fines and fees;

1 (C) in New Jersey, 42 percent of sus-
2 pended drivers lost their jobs as a result of the
3 suspension;

4 (D) in the 50 cities with the highest pro-
5 portion of revenues from fines, the median size
6 of the African-American population in each city
7 was greater than 5 times the median in the
8 United States;

9 (E) in Washington, Latinos received higher
10 fine assessments than non-Latino Whites for
11 similar offenses;

12 (F) 10 counties in California detained ap-
13 proximately 700 people per month for an aver-
14 age of 3 days as a result of a failure to pay and
15 driving with a suspended license; and

16 (G) according to the Department of Jus-
17 tice on the investigation of the Ferguson Police
18 Department, revenue collection, not public safe-
19 ty, was the primary impetus behind the collec-
20 tion of fines and fees.

21 (5) There is no clear evidence that fines and
22 fees are an effective crime deterrent.

23 (6) Defendants released from custody with no
24 financial penalty return to court at the same rate as
25 defendants released on financial bond.

1 (7) The burden of fines and fees is dispro-
2 tionately shouldered by low-income communities and
3 communities of color, which in turn aggravates and
4 perpetuates poverty and racial inequalities.

5 (8) Cities with larger Black populations fine
6 residents more on a per capita basis and are more
7 reliant on fines. A 1 percent increase in a Black
8 population is associated with a 5 percent increase in
9 per capita revenue from fines and a 1 percent in-
10 crease in share of total revenue from fines.

11 (9) In addition, data on the extent to which in-
12 dividuals are jailed or otherwise penalized because of
13 their inability to pay fee-only offenses are insuffi-
14 ciently developed, preventing a full picture of the
15 pervasiveness of targeted fees, as well as the repet-
16 itive impact on individuals from both low-income
17 communities and communities of color.

18 (10) Decisions regarding pretrial release or de-
19 tention adds financial stress to individuals unable to
20 pay monetary bail and the jails holding those unable
21 to pay.

22 (11) Individuals gave up necessities like rent,
23 food, medical bills, car payments, and child support,
24 in order to pay down their court debt.

1 (12) Thirty-eight percent of people surveyed
2 committed a crime to pay off their court debt.

3 (13) Driver's licenses are often suspended auto-
4 matically when cases are transferred to private col-
5 lectors and are not restored until debts are paid in
6 full.

7 (14) Thirty States continue to require payment
8 of all legal financial obligations before voting rights
9 are restored, effectively disenfranchising individuals
10 because of an inability to pay.

11 (15) Many jurisdictions across the country rely
12 on fines and fees as a primary revenue source.

13 (16) A 2019 analysis of fine revenues found
14 that—

15 (A) fines are a critical source of funding,
16 at times accounting for more than half of all
17 general revenues;

18 (B) fines and fees account for more than
19 10 percent of general fund revenues for nearly
20 600 jurisdictions, and in at least 284 of those,
21 the share exceeded 20 percent, while another 80
22 governments reported even higher fines ac-
23 counting for more than half of general reve-
24 nues;

1 (C) annual revenues exceeding \$100 for
2 every adult resident, while 363 exceeded \$200
3 per adult in all the governments analyzed;

4 (D) the States with the highest fines and
5 fees revenue are Arkansas, Georgia, Louisiana,
6 New York, Oklahoma, and Texas; and

7 (E) jurisdictions where fines and forfeit-
8 ures accounted for more than 20 percent of
9 general fund revenues recorded a median house-
10 hold income of only \$39,594.

11 (17) The dependency on fines and fees creates
12 a harmful incentive for courts to levy fines and fees
13 on indigent individuals regardless of the severity of
14 the crime.

15 (18) However, some jurisdictions spent more
16 than the revenue they raised collecting fees, there-
17 fore losing money through this system.

18 (19) In some jurisdictions like New Orleans the
19 cost of incarcerating individuals unable to pay fines,
20 fees, and monetary bail exceeded the revenue gen-
21 erated from those practices.

22 (20) Some jurisdictions in Texas and New Mex-
23 ico spent 41 cents of every dollar of revenue they
24 raise from fees and fines on in-court hearings and
25 jail costs alone.

1 (21) In almost every State and the District of
 2 Columbia, juvenile courts impose court costs, fines,
 3 and fees on youth, their families, or both. These
 4 costs may increase recidivism, increase the potential
 5 of future jail or prison time, exacerbate racial in-
 6 equality, and increase the economic and emotional
 7 distress of low-income families.

8 (22) Imposing fines and fees on minors and
 9 their families is ineffective as a revenue-generating
 10 measure, often because minors in the criminal jus-
 11 tice system come from indigent families. Imposing
 12 these fines and fees increases recidivism and eco-
 13 nomic and emotional hardship on families.

14 (b) PURPOSE.—The purpose of this Act is to create
 15 a grant program to provide technical assistance and train-
 16 ing to State and local courts to—

17 (1) improve the constitutional and equitable en-
 18 forcement of fines, fees, and monetary bail;

19 (2) improve practices regarding the use of fines
 20 and fees and their equitable enforcement when used;
 21 and

22 (3) collect data to better understand the re-
 23 search and best practices of State and local courts
 24 on a Federal level.

1 **SEC. 3. DEFINITIONS.**

2 Section 202 of the State Justice Institute Act of 1984
3 (42 U.S.C. 10701) is amended—

4 (1) in paragraph (7), by striking “and” at the
5 end;

6 (2) in paragraph (8), by striking the period at
7 the end and inserting a semicolon; and

8 (3) by adding at the end the following:

9 “(9) ‘constitutionally adequate notice’ means a
10 citation or summons that adequately informs an in-
11 dividual of—

12 “(A) the precise offense with which the in-
13 dividual is charged;

14 “(B) the amount currently owed by the in-
15 dividual and other possible penalties;

16 “(C) consequences for nonpayment;

17 “(D) the method and means for accepting
18 payments;

19 “(E) the date of any court hearing;

20 “(F) the availability of alternate means of
21 payment;

22 “(G) the rules and procedures of the court;

23 “(H) the rights of the individual as a liti-
24 gant; and

25 “(I) whether the individual is required to
26 appear in court in person;

1 “(10) ‘fees’—

2 “(A) means monetary fees that are im-
3 posed for the costs of fine surcharges or court
4 administrative fees; and

5 “(B) includes additional late fees, pay-
6 ment-plan fees, interest added if an individual
7 is unable to pay a fine in its entirety, collection
8 fees, and any additional amounts that do not
9 include the fine;

10 “(11) ‘fines’ means monetary fines imposed for
11 punishment;

12 “(12) ‘monetary bail’ means a payment of
13 money or purchase of a surety bond to obtain the re-
14 lease from jail; and

15 “(13) ‘surcharge’ means a monetary amount
16 added to a fine as a flat amount or a percentage.”.

17 **SEC. 4. CONSTITUTIONAL ENFORCEMENT OF FINES AND**
18 **FEES AND MONETARY BAIL.**

19 (a) DUTIES OF THE INSTITUTE.—Section 203(b) of
20 the State Justice Institute Act of 1984 (42 U.S.C.
21 10702(b)) is amended—

22 (1) in paragraph (3), by striking “and” at the
23 end;

24 (2) in paragraph (4), by striking the period at
25 the end and inserting “; and”; and

1 (3) by adding at the end the following:

2 “(5) assist State and local courts in the con-
3 stitutional and equitable enforcement of fines and
4 fees.”.

5 (b) PURPOSES OF GRANTS.—

6 (1) IN GENERAL.—Section 206(a) of the State
7 Justice Institute Act of 1984 (42 U.S.C. 10705(a))
8 is amended—

9 (A) in paragraph (6), by striking “and” at
10 the end;

11 (B) in paragraph (7), by striking the pe-
12 riod at the end and inserting a semicolon; and

13 (C) by adding at the end the following:

14 “(8) provide technical assistance and training
15 to State and local courts to develop and implement
16 best policies and practices for the constitutional and
17 equitable enforcement of fines and fees that incor-
18 porate guidance that—

19 “(A) courts should not incarcerate or issue
20 an arrest warrant for an individual for the non-
21 payment of a fine or fee without first con-
22 ducting an ability-to-pay determination and es-
23 tablishing that the failure to pay was inten-
24 tional;

1 “(B) courts should consider alternatives to
2 incarceration for defendants who are currently
3 unable to pay fines and monetary bail;

4 “(C) courts should not condition access to
5 a judicial hearing on the prepayment of a fine
6 or fee or a promise of future payment of a fine
7 or fee;

8 “(D) courts should provide constitutionally
9 adequate notices and counsel in cases in which
10 a fine or fee will be imposed;

11 “(E) courts should not initiate driver’s li-
12 cense suspension procedures for nonpayment of
13 a fine or fee;

14 “(F) if courts choose to issue an arrest
15 warrant or suspend a driver’s license as a
16 means of coercing an individual to pay a fine or
17 fee owed to the court, courts should not do so
18 if the individual has not been afforded constitu-
19 tionally adequate procedural protections;

20 “(G) courts should determine the ability to
21 pay of an individual at sentencing prior to de-
22 termining a constitutional and equitable fine
23 and fee;

24 “(H) courts should reduce and waive fines
25 and fees if the court has discretion in cases

1 where the imposition of fines and fees would be
2 unconstitutional and inequitable or cause undue
3 hardship to the individual;

4 “(I) courts should avoid adopting manda-
5 tory fines and fees for misdemeanors and traf-
6 fic-related and other low-level offenses and in-
7 fractions;

8 “(J) courts should grant judges the au-
9 thority and discretion to modify sanctions after
10 sentencing if the circumstances of the defend-
11 ant change, including that the ability of the de-
12 fendant to pay a fine or fee becomes a hard-
13 ship;

14 “(K) courts should adopt education re-
15 quirements for judges and court personnel on
16 issues related to all relevant constitutional and
17 procedural principles relating to fines and fees;

18 “(L) courts should not impose a fine, fee,
19 or any other penalty for the participation of an
20 individual in community service programs or
21 other alternative sanctions;

22 “(M) if courts utilize community service
23 programs or alternative service sanctions, best
24 practice and standards for those programs
25 should be used, including fair wage attribution,

1 caps on number of hours performed, and per-
2 missible activities of service;

3 “(N) courts should not order or extend
4 probation or other court-ordered supervision ex-
5 clusively for the purpose of collecting fines, fees,
6 or costs;

7 “(O) courts should not charge interest on
8 payment plans entered into by a defendant, re-
9 spondent, or probationer; and

10 “(P) courts should consider the use of
11 community service credits such as completing
12 community service hours, domestic violence
13 counseling, and drug treatment programs, as an
14 alternative to payments; and

15 “(9) provide technical assistance and training
16 to State and local courts to develop and implement
17 best policies and practices for the constitutional en-
18 forcement of monetary bail that incorporate guid-
19 ance that—

20 “(A) courts should not employ monetary
21 bail or bond practices that cause defendants to
22 remain incarcerated solely because they cannot
23 afford to pay for their release;

24 “(B) courts should not impose monetary
25 bail—

1 “(i) as prepayment of anticipated
2 fines and fees; or

3 “(ii) as a method for collecting past-
4 due fines and fees;

5 “(C) courts should eliminate and prohibit
6 the use of monetary bail schedules;

7 “(D) courts should impose a monetary pre-
8 trial release option if it is the least restrictive
9 pretrial release option available;

10 “(E) courts should only detain an indi-
11 vidual if there is clear and convincing evidence
12 that the individual poses a serious imminent
13 risk of—

14 “(i) a danger to the community; or

15 “(ii) flight;

16 “(F) courts should safeguard against un-
17 constitutional practices by court staff and pri-
18 vate contractors; and

19 “(G) courts should not pass the costs of
20 pretrial release and electronic monitoring to the
21 defendant, probationer, or parolee, and if the
22 court determines that electronic monitoring is
23 necessary, any associated costs should belong to
24 the jurisdiction.”.

1 (2) REGULATIONS.—Not later than 90 days
 2 after the date of the enactment of this Act, the Ex-
 3 ecutive Director of the State Justice Institute shall
 4 promulgate regulations to implement the amend-
 5 ments made by paragraph (1), including—

6 (A) the information that shall be included
 7 in an application for funding under section 206
 8 of the State Justice Institute Act of 1984 (42
 9 U.S.C. 10705); and

10 (B) any other requirements applicable to
 11 grantees under that section.

12 (c) RECORDS AND REPORTS.—Section 211(a) of the
 13 State Justice Institute Act of 1984 (42 U.S.C. 10710(a))
 14 is amended—

15 (1) by striking “The Institute” and inserting
 16 “(1) IN GENERAL.—The Institute”; and

17 (2) by adding at the end the following

18 “(2) REPORT ON FINES, FEES, AND MONETARY
 19 BAIL.—

20 “(A) IN GENERAL.—The Institute shall re-
 21 quire that a recipient of a grant awarded for
 22 the purpose described in paragraph (8) of sec-
 23 tion 206(a) shall submit to the Institute an an-
 24 nual report that includes, for the previous 12-
 25 month period—

1 “(i) the number of new admissions to
2 jail or prison due to failures to pay fines
3 or fees;

4 “(ii) the number of new admissions to
5 jail or prison due to failure to appear when
6 the underlying offense is a failure to pay
7 a fine or fee;

8 “(iii) the number and type of alter-
9 natives considered for defendants who are
10 unable to pay fees and fines;

11 “(iv) the number of times a judicial
12 hearing was contingent upon the prepay-
13 ment of fines and fees, including hearing
14 fees if the court deems the defendant ineli-
15 gible for a fee waiver;

16 “(v) the number of times constitu-
17 tionally adequate notices were provided to
18 counsel in cases in which a fine or fee will
19 be imposed;

20 “(vi) the number of times an arrest
21 warrant or driver’s license suspension was
22 used as a means of coercing an individual
23 to pay a fine or fee owed to the court;

24 “(vii) the number of additional fees
25 imposed by the department of motor vehi-

cles to get a driver’s license reinstated or
suspension lifted;

“(viii) the number of times monetary
bail practices were used that caused de-
fendants to stay incarcerated due to their
inability to pay a fine or fee;

“(ix) the number of times voter dis-
enfranchisement was used as a result of an
individual’s inability to pay a fine or a fee
owed to the court;

“(x) a disaggregation of the data de-
scribed in this subparagraph by race, gen-
der, and disability status; and

“(xi) any other additional statistical
data that the Director determines should
be collected and reported.

“(B) REPORT TO CONGRESS.—The Insti-
tute shall submit to the Bureau of Justice Sta-
tistics and to the Committee on Appropriations
and Committee on the Judiciary of the Senate
and the Committee on Appropriations and the
Committee on the Judiciary of the House of
Representatives an annual report on the data
submitted under subparagraph (A).”.

(d) STUDY.—

1 (1) IN GENERAL.—Not later than 3 years after
2 the date on which grants are first awarded for the
3 purpose described in paragraph (8) of section 206(a)
4 of the State Justice Institute Act of 1984, as added
5 by subsection (b) of this section, the Executive Di-
6 rector of the State Justice Institute shall conduct a
7 study on the effectiveness such grants on the con-
8 stitutional enforcement of targeted fines, fees, and
9 monetary bail by State and local courts.

10 (2) REPORT.—Not later than 180 days after
11 the date on which the Executive Director of the
12 State Justice Institute completes the study under
13 paragraph (1), the Executive Director shall submit
14 to Congress a report on the study and any policy
15 recommendations that the Executive Director deter-
16 mines are appropriate.

17 (e) AUTHORIZATION OF APPROPRIATIONS.—Section
18 215 of the State Justice Institute Act of 1984 (42 U.S.C.
19 10713) is amended, in the first sentence by striking
20 “\$7,000,000 for each of fiscal years 2005, 2006, 2007,
21 and 2008” and inserting “\$27,000,000 for each of fiscal
22 years 2021 through 2026, of which \$20,000,000 shall be
23 authorized to be appropriated for grants under paragraph
24 (8) of section 206(a)”.

○