

117TH CONGRESS
1ST SESSION

H. R. 5646

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 and fees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2021

Mr. NADLER introduced the following bill; which was 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 and fees, 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 dispropor-
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) Individuals gave up necessities like rent,
19 food, medical bills, car payments, and child support,
20 in order to pay down their court debt.

21 (11) Thirty-eight percent of people surveyed
22 committed a crime to pay off their court debt.

23 (12) Driver's licenses are often suspended auto-
24 matically when cases are transferred to private col-

1 lectors and are not restored until debts are paid in
2 full.

3 (13) Thirty States continue to require payment
4 of all legal financial obligations before voting rights
5 are restored, effectively disenfranchising individuals
6 because of an inability to pay.

7 (14) Many jurisdictions across the country rely
8 on fines and fees as a primary revenue source.

9 (15) A 2019 analysis of fine revenues found
10 that—

11 (A) fines are a critical source of funding,
12 at times accounting for more than half of all
13 general revenues;

14 (B) fines and fees account for more than
15 10 percent of general fund revenues for nearly
16 600 jurisdictions, and in at least 284 of those,
17 the share exceeded 20 percent, while another 80
18 governments reported even higher fines ac-
19 counting for more than half of general reve-
20 nues;

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

1 (D) the States with the highest fines and
2 fees revenue are Arkansas, Georgia, Louisiana,
3 New York, Oklahoma, and Texas; and

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

8 (16) The dependency on fines and fees creates
9 a harmful incentive for courts to levy fines and fees
10 on indigent individuals regardless of the severity of
11 the crime.

12 (17) However, some jurisdiction spent more
13 than the revenue they raised collecting fees, there-
14 fore losing money through this system.

15 (18) In some jurisdictions like New Orleans,
16 the cost of incarcerating individuals unable to pay
17 fines, fees, and monetary bail exceeded the revenue
18 generated from those practices.

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

23 (20) In almost every State and the District of
24 Columbia, juvenile courts impose court costs, fines,
25 and fees on youth, their families, or both. These

1 costs may increase recidivism, increase the potential
2 of future jail or prison time, exacerbate racial in-
3 equality, and increase the economic and emotional
4 distress of low-income families.

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

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

14 (1) improve the constitutional and equitable en-
15 forcement of fines and fees;

16 (2) improve practices regarding the use of fines
17 and fees and their equitable enforcement when used;
18 and

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

22 **SEC. 3. DEFINITIONS.**

23 Section 202 of the State Justice Institute Act of 1984
24 (42 U.S.C. 10701) is amended—

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

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

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

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

9 “(A) the precise offense with which the in-
10 dividual is charged;

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

13 “(C) consequences for nonpayment;

14 “(D) the method and means for accepting
15 payments;

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

17 “(F) the availability of alternate means of
18 payment;

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

20 “(H) the rights of the individual as a liti-
21 gant; and

22 “(I) whether the individual is required to
23 appear in court in person;

24 “(10) ‘fees’—

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

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

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

11 “(12) ‘surcharge’ means a monetary amount
 12 added to a fine as a flat amount or a percentage.”.

13 **SEC. 4. CONSTITUTIONAL ENFORCEMENT OF FINES AND**
 14 **FEES.**

15 (a) DUTIES OF THE INSTITUTE.—Section 203(b) of
 16 the State Justice Institute Act of 1984 (42 U.S.C.
 17 10702(b)) is amended—

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

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

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

23 “(5) assist State and local courts in the con-
 24 stitutional and equitable enforcement of fines and
 25 fees.”.

1 (b) PURPOSES OF GRANTS.—

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

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

7 (B) in paragraph (7), by striking the pe-
8 riod at the end and inserting “; and”; and

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

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

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

21 “(B) courts should consider alternatives to
22 incarceration for defendants who are currently
23 unable to pay fines;

24 “(C) courts should not condition access to
25 a judicial hearing on the prepayment of a fine

1 or fee or a promise of future payment of a fine
2 or fee;

3 “(D) courts should provide constitutionally
4 adequate notices and counsel in cases in which
5 a fine or fee will be imposed;

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

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

15 “(G) courts should determine the ability to
16 pay of an individual at sentencing prior to de-
17 termining a constitutional and equitable fine
18 and fee;

19 “(H) courts should reduce and waive fines
20 and fees if the court has discretion in cases
21 where the imposition of fines and fees would be
22 unconstitutional and inequitable or cause undue
23 hardship to the individual;

24 “(I) courts should avoid adopting manda-
25 tory fines and fees for misdemeanors and traf-

1 fic-related and other low-level offenses and in-
2 fractions;

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

9 “(K) courts should adopt education re-
10 quirements for judges and court personnel on
11 issues related to all relevant constitutional and
12 procedural principles relating to fines and fees;

13 “(L) courts should not impose a fine, fee,
14 or any other penalty for the participation of an
15 individual in community service programs or
16 other alternative sanctions;

17 “(M) if courts utilize community service
18 programs or alternative service sanctions, best
19 practice and standards for those programs
20 should be used, including fair wage attribution,
21 caps on number of hours performed, and per-
22 missible activities of service;

23 “(N) courts should not order or extend
24 probation or other court-ordered supervision ex-

1 exclusively for the purpose of collecting fines, fees,
2 or costs;

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

6 “(P) courts should consider the use of
7 community service credits such as completing
8 community service hours, domestic violence
9 counseling, and drug treatment programs, as an
10 alternative to payments.”.

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

16 (A) the information that shall be included
17 in an application for funding under section 206
18 of the State Justice Institute Act of 1984 (42
19 U.S.C. 10705); and

20 (B) any other requirements applicable to
21 grantees under that section.

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

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

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

4 “(2) REPORT ON FINES AND FEES.—

5 “(A) IN GENERAL.—The Institute shall re-
6 quire that a recipient of a grant awarded for
7 the purpose described in paragraph (8) of sec-
8 tion 206(a) shall submit to the Institute an an-
9 nual report that includes, for the previous 12-
10 month period—

11 “(i) the number of new admissions to
12 jail or prison due to failures to pay fines
13 or fees;

14 “(ii) the number of new admissions to
15 jail or prison due to failure to appear when
16 the underlying offense is a failure to pay
17 a fine or fee;

18 “(iii) the number and type of alter-
19 natives considered for defendants who are
20 unable to pay fees and fines;

21 “(iv) the number of times a judicial
22 hearing was contingent upon the prepay-
23 ment of fines and fees, including hearing
24 fees if the court deems the defendant ineli-
25 gible for a fee waiver;

1 “(v) the number of times constitu-
2 tionally adequate notices were provided to
3 counsel in cases in which a fine or fee will
4 be imposed;

5 “(vi) the number of times an arrest
6 warrant or driver’s license suspension was
7 used as a means of coercing an individual
8 to pay a fine or fee owed to the court;

9 “(vii) the number of additional fees
10 imposed by the department of motor vehi-
11 cles to get a driver’s license reinstated or
12 suspension lifted;

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

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

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

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

4 “(B) WAIVER.—The Director shall have
5 discretion to waive statistical data reporting re-
6 quirements under subparagraph (A) that are
7 not available to a recipient of a grant.

8 “(C) REPORT TO CONGRESS.—The Insti-
9 tute shall submit to the Bureau of Justice Sta-
10 tistics and to the Committee on Appropriations
11 and Committee on the Judiciary of the Senate
12 and the Committee on Appropriations and the
13 Committee on the Judiciary of the House of
14 Representatives an annual report on the data
15 submitted under subparagraph (A).”.

16 (d) STUDY.—

17 (1) IN GENERAL.—Not later than 3 years after
18 the date on which grants are first awarded for the
19 purpose described in paragraph (8) of section 206(a)
20 of the State Justice Institute Act of 1984, as added
21 by subsection (b) of this section, the Executive Di-
22 rector of the State Justice Institute shall conduct a
23 study on the effectiveness such grants on the con-
24 stitutional enforcement of targeted fines and fees by
25 State and local courts.

1 (2) REPORT.—Not later than 180 days after
2 the date on which the Executive Director of the
3 State Justice Institute completes the study under
4 paragraph (1), the Executive Director shall submit
5 to Congress a report on the study and any policy
6 recommendations that the Executive Director deter-
7 mines are appropriate.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—Section
9 215 of the State Justice Institute Act of 1984 (42 U.S.C.
10 10713) is amended, in the first sentence by striking
11 “\$7,000,000 for each of fiscal years 2005, 2006, 2007,
12 and 2008” and inserting “\$27,000,000 for each of fiscal
13 years 2022 through 2027, of which \$20,000,000 shall be
14 authorized to be appropriated for grants under paragraph
15 (8) of section 206(a)”.

○