

1 SB166  
2 176863-1  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 11-JAN-18

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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.