



Hon. Chief Justice Maureen O'Connor
Ohio Supreme Court
65 S. Front St.
Columbus, OH 43215

Dear Chief Justice O'Connor:

We write to express our concern that across Ohio, numerous courts have adopted a policy of jailing individuals who fail to pay fines and court costs, without conducting any hearing into their ability to pay or honoring their right to counsel. The ACLU of Ohio has received many complaints about this troubling, illegal, and unconstitutional practice, which leaves low-income Ohioans mired in modern-day debtors' prisons. Today, the ACLU is writing to seven courts around the state where we have found specific evidence that debtors' prisons practices are in use. We write to you, in your capacity as supervisor of the Ohio judiciary, Ohio Const. art. IV, § 05(A)(1), to urge you take corrective action.

The Constitutions of both Ohio and the United States of America prohibit the use of jail to compel the payment of debt. The Constitution of Ohio categorically states that "[n]o person shall be imprisoned for debt in any civil action." Article I § 15. This prohibition extends to court costs billed to defendants in criminal cases. *Strattman v. Studt*, 253 N.E.2d 749 (Ohio 1969). The United States Constitution likewise prohibits jailing defendants who are unable to pay fines assessed against them. *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971). While courts are permitted to incarcerate those who *willfully* refuse to pay fines, those who lack the resources to meet their court-imposed financial obligations cannot be incarcerated for failing to do so. To jail those who cannot afford to pay fines would produce an "impermissible discrimination that rests on ability to pay," forbidden by the Equal Protection Clause of the Fourteenth Amendment. *Williams*, 399 U.S. at 241, 244. Accordingly, the U.S. Supreme Court has made clear that no individual may be incarcerated for failure to pay fines unless the court first "inquire[s] into the reasons for the failure to pay." *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

The Ohio Revised Code codifies this constitutional command at § 2947.14. *See State v. Meyer*, 124 Ohio App. 3d 373, 377, 706 N.E.2d 378, 380 (1997) (noting § 2947.14 protects the rights guaranteed by *Williams* and *Tate*); *Alkire v. Irving*, 330 F.3d 802, 819 (6th Cir. 2003) (finding requirements of § 2947.14 and Fourteenth Amendment to be coextensive). It plainly prohibits incarceration for failure to pay a fine except where the court first conducts a hearing and determines that the defendant's failure to pay the fines imposed was willful. This section is both specific and comprehensive. It provides:

If a fine is imposed as a sentence or a part of a sentence, the court or magistrate that imposed the fine may order that the offender be committed to

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the jail or workhouse until the fine is paid or secured to be paid, or the offender is otherwise legally discharged, *if the court or magistrate determines at a hearing that the offender is able, at that time, to pay the fine but refuses to do so.* The hearing required by this section shall be conducted at the time of sentencing.

Ohio Rev. Code § 2947.14(A) (emphasis added). Additionally, at a hearing into an individual's indigency status, "the offender has the right to be represented by counsel and to testify and present evidence as to the offender's ability to pay the fine." § 2947.14(B). This hearing must be "supported by findings of fact set forth in a judgment entry that indicate the offender's income, assets, and debts, as presented by the offender, and the offender's ability to pay." *Id.*

Unless these requirements are satisfied, the court may neither issue an arrest warrant for the debtor, § 2947.14(C), nor commit him to jail for failure to pay, § 2947.14(D). If, after a full § 2947.14 indigency hearing, a debtor's failure to pay is judged to be willful, the outstanding fine must be reduced by fifty dollars for each day of confinement. *Id.*

While the law leaves no doubt that constitutionally adequate indigency hearings are mandatory in this state, the ACLU has discovered that Ohioans unable to pay costs and fines are routinely, and often repeatedly, committed to jail through a process that lacks even the pretense of compliance with state and federal law. Our investigation, spurred by the complaints of individual, wrongfully-jailed Ohioans, reveals a deeply troubling pattern of conduct. In disregard of the requirements of *Bearden* and § 2947.14, courts across the state have adopted a policy of jailing defendants who fail to pay court costs and fines—without determining whether these defendants were too poor to pay their court-imposed debts. Some courts attempt to circumvent the requirements of § 2947.14 through the mechanism of civil contempt, although this practice is prohibited. *City of Alliance v. Kelly*, 548 N.E.2d 952 (Ohio Ct. App. 5th Dist. 1988) (prohibited with respect to fines); *In re Buffington*, 89 Ohio App. 3d 814 (1993) (prohibited with respect to costs).

The ACLU bases its conclusions on publicly available online docket reports, court records obtained under Ohio's Sunshine Law, in-person observation of court proceedings, and interviews with numerous Ohioans ensnared in this debtors' prison system. The results are dismaying. In the eleven counties investigated by the ACLU, at least seven courts regularly use jail time as punishment for inability to pay fines. There is no evidence that these courts conduct § 2947.14 hearings, as mandated by law. The following is an initial and non-exhaustive overview of the practices in these courts, based in part on public records covering the one and a half month period from July 15, 2012 to August 31, 2012:

- In Cuyahoga County, the Parma Municipal Court is systematically jailing individuals for failure to pay costs and fines, with more than 45 people jailed on these illegal charges during this one and a half month period. Each warrant used to arrest and jail an individual owing fines is clearly labeled "Warrant for Failure to Pay Fines," and online docket reports show that the court routinely assesses

further fees and charges against individuals struggling to pay their fines. There is no evidence that the Parma Court has conducted even a single § 2947.14 indigency hearing. Compounding this illegal policy, the Parma Court routinely fails to grant the fifty dollar credit required by § 2947.14(D) for each day spent in jail.

- In Erie County, during this same period, at least 75 people were jailed by the Sandusky Municipal Court for failure to pay fines. Booking reports from the Erie County Jail include "Fines Warrant" language and docket entries from the court explicitly state "Fine bench warrant issued on defendant." Even where individuals have been represented by the public defender in their underlying criminal proceedings as a result of indigency, the Court still jails them for failure to pay fines. Indeed, prominently placed signs inform all court visitors that "ALL FINES MUST BE PAID IN FULL IN ORDER FOR BENCH WARRANTS TO BE RECALLED." We have found no evidence that anyone received a § 2947.14 hearing or that those sentenced to jail receive the statutory credit against their fines for jail time.
- Booking reports and court dockets from Richland County's Mansfield Municipal Court show similar debtors' prison practices. During the same one and a half month period, at least five people were jailed for failure to pay court costs and fees, and these jailings lasted an average of about thirty days. Worse, individuals unable to pay their fines face not only this significant jail time, but an additional \$250 "contempt fine" added to the amount owed originally. The Mansfield Court does not consistently offer the required statutory credit against fines for jail time, and we have found no evidence that anyone has ever received a proper § 2947.14 hearing.
- In Warren County, both the Springboro Mayor's Court and the Springboro Police Department issue warrants which explicitly state that they are based on failure to pay fines and costs. Individuals struggling to meet their debt obligations face a punishing cycle of arrest warrants, "recall hearings," and jail time, with the Court jailing at least one person five times in twelve months. We have found no evidence that the Court has ever conducted a § 2947.14 indigency hearing—even for defendants who have sworn affidavits of indigency for public defense purposes.
- In Williams County, individuals who owe fines receive letters threatening them with contempt of court and jail time if they fail to make payments by a certain date. Court dockets state explicitly that a "warrant was issued for defendant for payment of fines," and the Court adds a \$25 warrant fee to the total amount owed when such an illegal warrant is issued. We have found no evidence that any of these individuals received the hearing required by § 2947.14.
- Hamilton County goes so far as to post their illegal policy on their website: Those who fail to pay on time "should expect to be arrested and incarcerated until the

fine is paid, or the jail time is done." See *How to Pay Fines*, available at <http://www.hamilton-co.org/municipalcourt/pay.htm>. The website makes no mention of the fact that those unable to pay will not be arrested or jailed. It further states that individuals jailed pursuant to this policy will be credited thirty dollars against their fines for each day served in jail, a credit that is substantially smaller than the fifty dollars required by § 2947.14(D).

Copies of the letters we are sending today to these courts are enclosed herewith.

We believe that with proper guidance from your office, Ohio's lower courts will take the steps required to ensure that all parties appearing before them enjoy the rights mandated by Ohio and federal law. Indeed, since the ACLU began a public investigation into these issues in the Norwalk Municipal Court, in Huron County, that court has substantially altered its treatment of low-income and indigent defendants. These changes were both long overdue and sorely needed—with no fewer than 256 people jailed for failing to pay costs and fines between May and October of 2012, Huron County stood out as the epicenter of debtors' prison practices in Ohio.

Previously, individuals who owed fines in the Norwalk Municipal Court encountered a perfunctory civil contempt proceeding that all but ensured jail time for those unable to pay promptly. Although facing imprisonment, they were not informed of their statutory and constitutional right to counsel. See § 2947.14; *Turner v. Rogers*, 131 S. Ct. 2507 (2011) (finding right to counsel in civil contempt proceeding based on unpaid child support, where party is never informed that ability to pay will be crucial question). Instead, they were simply informed of the total amount owed and, without any inquiry into their financial situations, assigned arbitrary monthly payment plans. They were then sentenced to ten-day jail terms suspended to several months in the future, which they served if they failed to timely pay in accordance with the often unaffordable schedule. Many individuals caught in this system remained in it for years, serving multiple ten-day sentences, often on the basis of fines from underlying offenses years or decades old.

Now, following the ACLU investigation, the Norwalk Municipal Court has undertaken some efforts to limit the most egregious of these practices. The Court has cancelled many contempt proceedings based on failure to pay fines and costs, and has, in many cases, ordered that individuals previously incarcerated for failure to pay fines and fees retroactively receive the statutory fifty dollars per day reduction in fines for the time they served in jail. These developments are positive, but still fall short of § 2974.14 standards: there is no evidence that the Court has conducted even a single § 2974.14-compliant indigency hearing, and it has not disavowed the practice of using contempt proceedings to collect fines and costs in the future.

The Ohio courts are a "system designed to aid the poorest members of our society." *Disciplinary Counsel v. Holland*, 106 Ohio St. 3d 372, 377 (2005). As this Court has recognized, ignoring the obligations of § 2947.14 causes grave damage to this principle. *Ohio State Bar Assn. v. Goldie*, 119 Ohio St. 3d 428, 431 (2008) (disciplining judge for failure to follow "procedures required to determine [a defendant's] ability to

pay assessed fines before sending him to jail"). Moreover, the use of debtors' prisons is not a sensible use of limited taxpayer money. In the jurisdictions described above, the daily confinement costs range from fifty-five to seventy-five dollars, so the costs of incarcerating an impoverished defendant multiple times will frequently exceed the small amount of money the court could ever successfully collect from that person.

Accordingly, we respectfully request that you take the corrective action needed to bring the practices of Ohio's lower courts into compliance with Ohio and federal law, through the promulgation of an Administrative Order, rule of practice or procedure, or other appropriate form of uniform guidance. Ohio's constitution vests this Court with powers of "general superintendence over all courts of the state," Ohio Const. art. IV, §5(A), and, pursuant to this power, we urge you to take appropriate measures to ensure that all of Ohio's lower court judges properly discharge their judicial responsibilities. Ohio Code of Judicial Conduct. Rule 2.12(B).

We thank you for your attention to this important matter. We are available to meet at your convenience in order to discuss it further.

Sincerely,



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Enclosures.