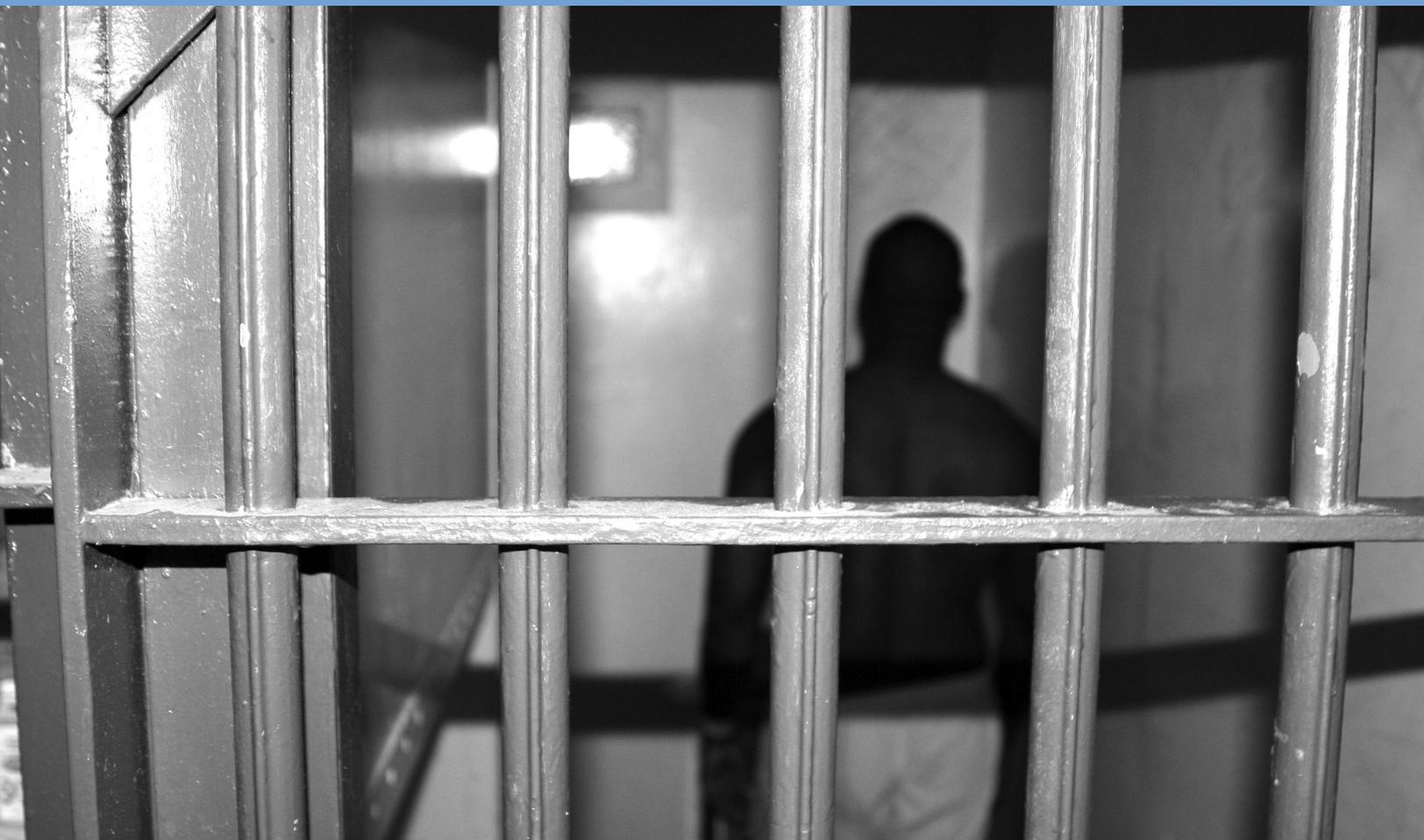


IN FOR A PENNY

The Rise of America's New Debtors' Prisons



A report by the
American Civil Liberties Union

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AMERICAN CIVIL LIBERTIES UNION

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EXECUTIVE SUMMARY

In October 1980, Danny Bearden was sentenced to three years of probation and ordered to pay \$750 in fines and restitution for burglary and receiving stolen property, \$200 of which was due almost immediately. Mr. Bearden borrowed enough money from his parents to make a partial payment to the court, but soon fell behind when he was laid off from his job about a month after his conviction. Mr. Bearden, who was illiterate and had not attended school beyond the ninth grade, was unable to find work again. In June 1981, his probation was revoked because he had been unable to pay the \$550 he still owed the court, and he was sentenced to serve the remainder of his probation term in prison. For two years, he languished behind bars. But in 1983, the Supreme Court of the United States issued a decision that set him free. The Court ruled that imprisoning a probationer who, through no fault of his own, had been unable to pay his debts despite making bona fide efforts to do so violated the Equal Protection Clause of the Fourteenth Amendment. The Court held that sentencing courts must inquire into a defendant's reasons for failing to pay a fine or restitution before sentencing him to serve time in prison; to imprison someone merely because of his poverty would be fundamentally unfair.¹

Today, courts across the United States routinely disregard the protections and principles the Supreme Court established in *Bearden v. Georgia* over twenty years ago. In the wake of the recent fiscal crisis, states and counties now collect legal debts more aggressively from men and women who have already served their criminal sentences, regardless of whether they are able to pay these debts. In this report, *In For A Penny: The Rise of America's New Debtors' Prisons*, the ACLU presents the results of its yearlong investigation into our modern-day "debtors' prisons." The report shows how, day after day, indigent defendants are imprisoned for failing to pay legal debts they can never hope to manage. In many cases, poor men and women end up jailed or threatened with jail though they have no lawyer representing them. These sentences are illegal, create hardships for men and women who already struggle with re-entering society after being released from prison or jail, and waste resources in an often fruitless effort to extract payments from defendants who may be homeless, unemployed, or simply too poor to pay.

Key Findings

The ACLU investigated the assessment and collection of legal financial obligations (LFOs)—a general term that includes all fines, fees, and costs associated with a criminal sentence—in five states: Louisiana, Michigan, Ohio, Georgia and Washington. The following are the ACLU's key findings on the damage debtors' prisons do to our citizens, our local and state economies, and our criminal justice system:

Debtors' Prisons Come With Devastating Human Costs

Incarceration has a devastating effect on men and women whose only remaining crime is that they are poor. Upon release, they face the daunting prospect of having to rebuild their lives yet again. Even for those men and women with unpaid LFOs who do not end up back behind bars, their substantial legal debts pose a significant, and at times insurmountable, barrier as they attempt to re-enter society. They see their incomes reduced, their credit ratings worsen, their prospects for housing and employment dim, and their chances of ending up back in jail or prison increase. Many must make hard choices each month as they attempt to balance their needs and those of their families with their LFOs. They also remain tethered to the criminal justice system—sometimes decades after they complete their sentences—and live under constant threat of being sent back to jail or prison, solely because they cannot pay what has become an unmanageable legal debt. This report highlights the experiences of dozens of men and women who have been ensnared in the criminal justice system, some of whom ended up incarcerated, merely because they were too poor to manage their LFOs:

- In **Louisiana**, the ACLU profiles Sean Matthews, a homeless construction worker who was assessed \$498 in fines and costs when he was convicted of possession of marijuana in 2007. He was arrested two years later after failing to pay his LFOs, and spent five months in jail at a cost of more than \$3,000 to the City of New Orleans. We also profile Gregory White, a homeless man who was arrested for stealing \$39 worth of food from a local grocery store. He was assessed \$339 in fines and fees, which were later converted into a community service sentence after he was jailed because he could not pay his fines. Mr. White spent a total of 198 days in jail because he was unable to pay his LFOs and could not afford the bus fare to complete his community service. In all, his incarceration cost the City over \$3,500.
- In **Michigan**, the ACLU profiles Kawana Young, a single mother of two young sons, who was arrested in March 2010 for failing to pay LFOs connected with several minor traffic offenses. Ms. Young was ordered to pay \$300 or spend three days in jail for one of her offenses. She was unable to pay, having been recently laid off and unable to find work again, but the judge refused to allow her to pay on a payment schedule and remanded her back to jail for three days. Because she was sent back to jail, Ms. Young was charged a booking fee and a daily fee for her room and board, LFOs she would not have incurred had she been able to pay her \$300 fine on the day she was sentenced. We also profile Walter Riepen. In late 2009, Mr. Riepen was sentenced to 30 days in jail and probation for a misdemeanor. Within days of his release, he received a letter from a private collections agency working for the state that contained a bill for \$60 per day for his jail stay, for a total of \$1260. Mr. Riepen's only income is a monthly social security disability payment, he has no funds to pay down the \$1260 for his room and board, and he lives under the threat of being sent back to prison due to his unpaid LFOs.

- In **Ohio**, the ACLU profiles Howard Webb, who was thrown in jail no fewer than four times over a six-year period for failing to pay \$2,882.36 in LFOs assessed for various criminal and traffic offenses. During these years, Mr. Webb, a dishwasher earning \$7 per hour, entered into several payment plans, made some payments, signed up for community service, and also wrote numerous letters to the court asking for early release so that he could keep his employment and make payments. The court denied all his requests, noting that it would only release him “if the court receives all the money he owes.” In all, Mr. Webb served 330 days in jail. Had the judge followed state law requiring that Mr. Webb be credited for \$50 a day toward his LFO debt for each day he was incarcerated, his time in jail would have covered \$16,500 in fines—more than five times what he owed in LFOs. We also profile Yolanda Twitty, who was assessed \$251 in fines and costs for unauthorized use of property, a fourth-degree misdemeanor that carries a maximum sentence of 30 days. Ms. Twitty was arrested four different times when she was unable to pay her LFOs. She served a total of 35 days in jail without receiving any credit toward her debt, five days longer than the maximum sentence she could have received for her underlying offense.
- In **Georgia**, the ACLU profiles “Beth,” who was arrested and placed on probation at \$40 a month when she was a juvenile after she stole some school supplies. Though Beth suffers from mental illness and was under her mother’s care, she was transferred to the adult probation system when she turned seventeen. Her probation officer refused to keep Beth’s mother—who had paid her probation charges and made sure she kept all of her appointments and court appearances—informed of Beth’s obligations. Beth missed several LFO payments and court appearances and was arrested for violating her probation. Without an attorney present, the judge ordered that Beth be jailed without determining if she had the means to pay her probation fees. Beth was released only after her mother came up with enough money to get her out. Overall, Beth has been charged \$4,000 plus probation fees and had her social security disability income revoked for missing LFO payments. We also profile Ora Lee Hurley, who was found to be in violation of probation and sentenced to a jail diversion facility for a minimum of 120 days or until she paid back a \$705 fine from a 1990 drug possession conviction. Ms. Hurley remained locked up eight months after she completed her 120-day sentence solely because she was unable to pay her fine.

“The Constitution is completely ignored. If you’re never exposed to it, you think everything’s okay. That’s where we were for a long time, and then one day . . .”

— JANE RIEPEN, whose husband was charged \$1260 for the costs of his incarceration

- In **Washington**, the ACLU profiles four men and women as they struggle to manage their legal debts. One of them is “Nick,” a 38-year-old African American man who has struggled with drug addiction and mental health problems since he was a teenager. Nick accumulated a total of \$3,178 in LFO debt to the state, for which he established a monthly payment plan. After failing to make two monthly payments totaling \$60, Nick was incarcerated for two weeks in the county jail at a cost to the county of approximately \$1,720. We also profile “Lisa,” whose legal debts have grown to over \$60,000 due to the state’s interest penalty on unpaid LFOs. Though she has been crime-free for nine years, Lisa has been arrested and incarcerated four times because of her unpaid LFOs, including two times when she was not provided with an attorney before the judge ordered her to be jailed. On one occasion, she was jailed even though she told the judge that her lights had recently been turned off in her apartment because she did not have the money to pay her electricity bill. Lisa now works with current and ex-offenders in a re-entry program. Because she remains under court supervision for her LFOs, she was denied access several times to local detention facilities to speak with her clients.

Debtors’ Prisons Waste Taxpayer Money and Resources

“I mean \$30 a month . . . it’s just the fact that it’s indefinite. How am I going to pay all that back? I owe child support, I owe LFOs, and I owe other bills. I can’t get a clean slate. I understand I committed a crime, I did my time. Okay. I understand that. But, to come after someone from 1991, 1992, 1997, that’s ridiculous.”

— NICK, who was imprisoned for two weeks for failing to pay \$60 worth of fines

Imprisoning those who fail to pay fines and court costs is a relatively recent and growing phenomenon: States and counties, hard-pressed to find revenue to shore up failing budgets, see a ready source of funds in defendants who can be assessed LFOs that must be repaid on pain of imprisonment, and have grown more aggressive in their collection efforts. Courts nationwide have assessed LFOs in ways that clearly reflect their increasing reliance on funding from some of the poorest defendants who appear before them. For example, courts in rural Michigan counties are more aggressive in assessing and collecting court costs and defender fees—which go directly into county coffers—than fines, which are deposited into a statewide fund. Because many court and criminal justice systems are inadequately funded, judges view LFOs as a critical revenue stream. In New Orleans, for example, LFOs account for almost two-thirds of the criminal court’s general operating budget. One town in Ohio with a population of 60 collected more than \$400,000 in one year in LFOs assessed in its mayor’s court, one

of many largely unregulated traffic and municipal ordinance courts in the state with a well-earned reputation for assessing exorbitant fines and fees to pad local budgets.

Although states and counties view LFOs as much-needed revenue, they do not systematically gather and produce data showing that their efforts to collect unpaid legal debts actually make money. In fact, incarcerating indigent defendants unable to pay their LFOs often ends up costing much more than states and counties can ever hope to recover. In one two-week period this May, 16 men in New Orleans were sentenced to serve jail time when they could not pay their LFOs. If they served their complete sentences, their incarceration would cost the City of New Orleans over \$1,000 more than their total unpaid legal debts. In Washington, one man was jailed for two weeks for missing \$60 in LFO payments. In Ohio, a woman was held in jail for over a month for an unpaid legal debt of \$250.

Incarcerating indigent men and women only diminishes their ability to repay their legal debts, and the disruption in their lives and the lives of their families and loved ones can lead to increased public costs when they are forced to use social welfare programs to survive. Even when defendants are not incarcerated, the costs of collection efforts can make seeking unpaid LFOs cost-ineffective, since issuing warrants, conducting hearings, and using collections agents and law enforcement officials to locate and detain debtors all cost money.

Debtors' Prisons Undermine Our Criminal Justice System

This new push for revenue has also undermined the integrity of the court system. The former chief judge of the New Orleans criminal court acknowledged that it creates an appearance of impropriety when judges must rely in part on collecting LFOs from poor defendants to keep their courts running. Judges in that court were pressured by their colleagues to collect LFOs, and those who collected less than their “fair share” were provided with fewer operating funds. In Ohio, the late chief justice of the Ohio Supreme Court called for the elimination of local mayor’s courts, recognizing “the inherent conflict in a system that permits the person responsible for the fiscal well-being of a community to use judicial powers to produce income that supports th[at] well being.” Additionally, Ohio’s state disciplinary counsel took the extraordinary step of disciplining one of its judges for repeatedly imprisoning poor defendants who could not pay their LFOs despite their best efforts to do so.

The imposition of LFOs—particularly the “pay-to-stay” and booking fees charged once a defendant is incarcerated—disproportionally affects racial and ethnic minorities, because they are disproportionately represented among the prisoner population. In 2007, 38% of the nation’s 1.5 million prison inmates were black and 21% were Hispanic,² despite the fact that these groups only represent 12% and 15% of the general population, respectively.³

But racial disparities exist at every stage of our criminal justice system, not just in our prisons and jails. The U.S. Court of Appeals for the Ninth Circuit recently recognized that in Washington State, the criminal justice system is “infected with racial bias.”⁴ The court found that African-Americans and Latinos in the state were disproportionately arrested for drug possession and delivery, far more likely to be searched, and less likely to be released without bail than their white counterparts.⁵ These same disparities extend to the assessment of LFOs: In Washington, Hispanic defendants generally receive higher LFOs than white defendants convicted of similar offenses, and persons convicted of drug offenses receive significantly higher LFOs than those convicted of violent crimes.

Debtors’ Prisons Create a Two-Tiered System of Justice

The courts’ newfound vigor in assessing and collecting LFOs has done more than just tarnish their reputation and integrity. It has created a two-tiered system of justice in which the poorest defendants are punished more harshly than those with means. Although courts attempt to collect LFOs from indigent and affluent defendants alike, those who can afford to pay their legal debts avoid jail, complete their sentences, and can move on with their lives. Those unable to pay end up incarcerated or under continued court supervision. Perversely, they also often end up paying much more in fines and fees than defendants who can pay their LFOs. Poor defendants who are re-arrested and incarcerated for failing to pay their LFOs face added costs, such as warrant fees, as well as booking and jail “pay-to-stay” fees. Some states and counties have particularly insidious penalties reserved for the poor: To make up for budget shortfalls, some counties in Georgia aggressively pursue fines and fees in their traffic courts, and refer those defendants who cannot immediately pay to private probation supervision companies, which charge monthly fees that often double or triple the amount of money a probationer would have paid had he or she been able to afford the fine. In Washington State, all unpaid legal debts are subject to 12% interest. Since most Washington defendants who have been convicted of a felony cannot afford to pay their legal debts in full, and must resort to making small periodic payments, this interest penalty can turn what starts as a modest fine into a lifetime debt: a criminal defendant who is assessed the average LFO for a felony and who makes a typical monthly payment on that LFO would still have a legal debt, and would remain ensnared in the criminal justice system and under threat of imprisonment, 30 years after his conviction.

Recommendations

At the end of each state section, the ACLU has made recommendations to state and local officials to remedy the most serious abuses that have resulted from debtors' prisons in that particular jurisdiction. These recommendations seek to ensure that the following principles are adhered to:

1. Defendants should not be incarcerated for failing to pay fines, fees, and costs that they cannot afford, and must be afforded the same protections as civil judgment debtors.
2. Courts must consider a defendant's ability to pay when determining whether to assess fines, fees, and costs, and when deciding whether a failure to pay is willful.
3. States should repeal all laws that may result in poor defendants being punished more severely than defendants charged with the same offenses who have means. This includes statutes authorizing courts to charge fees to indigent defendants who are appointed counsel, and statutes that impose penalties or interest on unpaid LFOs.
4. Consistent guidelines regarding determination of indigence and policies for assessing and collecting LFOs should be implemented in every jurisdiction to guard against arbitrary or racially skewed discrepancies in punishment.
5. Judges and other court officials should receive training in and comply with federal and state laws that prohibit incarceration of defendants who are too poor to pay LFOs and require a determination of ability to pay before incarceration. Judges should appoint counsel to defendants at proceedings to determine whether to impose or modify LFOs, or whether to sanction defendants for nonpayment. Defendants should be given the opportunity to repay their debts through alternative methods such as community service.
6. All jurisdictions should collect and publish data regarding the assessment and collection of LFOs, the costs of collections (including the cost of incarceration), and how collected funds are distributed, broken down by race, type of crime, geographical location, and type of court.
7. Courts should be adequately funded so they do not have to rely on the collection of LFOs for a substantial portion of their operating budgets.

The federal government also has a role to play to ensure that the constitutional guarantees announced in *Bearden* are consistently followed. Therefore, the ACLU calls on the U.S. Congress to hold oversight hearings on the rise in debtors' prisons.

- 1 See *Bearden v. Georgia*, 461 U.S. 660, 662-63, 668-69 (1983).
- 2 THE SENTENCING PROJECT, *FACTS ABOUT PRISONS AND PRISONERS* (2009) (citing Bureau of Justice Statistics), available at <http://www.sentencingproject.org/doc/publications/inc.factsaboutprisons.pdf>.
- 3 U.S. CENSUS BUREAU, *POPULATION ESTIMATES PROGRAM* (2007).
- 4 *Farrakhan v. Gregoire*, 590 F.3d 989, 1010 (9th Cir. 2010), *reh'g granted*, 603 F.3d 1072 (9th Cir. 2010).



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The term “debtors’ prison” evokes for many a dark chapter in America’s distant past. The sad truth is that debtors’ prisons are flourishing today, more than two decades after the Supreme Court prohibited imprisoning those who are too poor to pay their legal debts. In this era of shrinking budgets, state and local governments have turned aggressively to using the threat and reality of imprisonment to squeeze revenue out of the poorest defendants who appear in their courts. These modern-day debtors’ prisons impose devastating human costs, waste taxpayer money and resources, undermine our criminal justice system, are racially skewed, and create a two-tiered system of justice.

This report seeks to describe the realities of today’s debtors’ prisons through the experiences of dozens of men and women from across the country who have been ensnared in the criminal justice system because they were too poor to manage their legal debts. This report also seeks to provide state and local governments and courts with a more sensible path, one where they no longer will be compelled to fund their criminal justice systems on the backs of the poor, and where the promise of equal protection under the law for the poor and affluent alike will finally be realized.

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