



Hon. Kent L. North
Bryan Municipal Court
1399 E. High St.
Bryan, OH 43506

Dear Judge North:

We write to express our concern about the Bryan Municipal Court's practice of jailing individuals for failure to pay fines and court costs, without regard to their indigency. State and federal law require that, before jailing an individual for failure to pay, a court must determine at a hearing that the individual has the ability to pay and willfully refuses to do so. This letter details the scope of the problem and explains how the Bryan Municipal Court can comply with that law.

The United States Constitution has long prohibited the use of debtors' prisons to incarcerate defendants who cannot afford to pay fines and court costs. *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971). In such situations, nonpayment is involuntary; thus, to imprison the indigent individual where his higher-income counterpart could avoid imprisonment would create "an impermissible discrimination that rests on ability to pay." *Williams*, 399 U.S. at 241. The Equal Protection Clause of the Fourteenth Amendment bars such discrimination. *Id.* at 244. Accordingly, before a court may incarcerate an individual who has failed to pay fines, it "must inquire into the reasons for the failure to pay." *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

Ohio has codified this requirement in Ohio Rev. Code § 2947.14, which explicitly requires a judge to conduct an indigency hearing at the time of sentencing if the defendant will be subject to jail time for failure to pay fines. *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 that requirements of § 2947.14 and Fourteenth Amendment are coextensive). That provision states:

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 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.

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org



Ohio Rev. Code § 2947.14(A) (emphasis added). It also states that, at such a hearing, “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). If the court does determine that the defendant has the ability to pay the fine and thus may be properly sentenced to jail time, “the determination shall 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.* Only after a compliant hearing may an arrest warrant be issued. § 2947.14(C).

Finally, “[n]o person shall be ordered to be committed to a jail or workhouse or otherwise be held in custody in satisfaction of a fine imposed as the whole or a part of a sentence” unless the above-described process has first been followed. § 2947.14(D). In the event that a person is committed in accordance with that process, the total amount she owes must be reduced by fifty dollars for each day she serves in jail. *Id.*

Nonetheless, in Williams County, defendants have repeatedly been committed to jail in a process that flouts the requirements of the statute and the Constitution. The Bryan Municipal Court uses civil contempt proceedings to circumvent the requirements of § 2947.14 and jail these individuals for failure to pay fines and court costs, a workaround explicitly prohibited by the Ohio Supreme Court, with regard to costs, *In re Buffington*, 89 Ohio App. 3d 814, 816 (1993), and by Ohio appellate courts, with regard to fines, *City of Alliance v. Kelly*, 548 N.E.2d 952 (Ohio Ct. App. 5th Dist. 1988); *State v. Swift*, 2005-Ohio-1595 (2d Dist.).

Analysis of the Court’s docket alongside records produced in response to ACLU public records requests reveal that, in the one and a half month period between July 15 and August 31, 2012, at least four individuals served time in the Corrections Center of Northwest Ohio based on a charge of contempt for failure to pay fines and costs. These individuals received letters threatening them with jail time for contempt of court if they failed to pay, and dockets in their cases explicitly state that a “warrant was issued for defendant for payment of fines.” We have found no evidence that any of these individuals received the hearing required by § 2947.14.

Indeed, we have located no evidence that the judge or any other court official makes any inquiry into the reasons that an individual has failed to pay before sentencing her to jail. Even when the court has actual notice of the defendant’s indigency, as demonstrated by her representation by the public defender, there is still no inquiry whatsoever into her ability to pay the fines levied against her. Although both § 2947.14 and the Constitution guarantee the right to counsel at proceedings of this kind, there is no evidence that the court informs individual defendants of their right to representation. *Turner v. Rogers*, 131 S. Ct. 2507 (2011) (finding right to counsel in civil contempt proceedings based on child support arrearage where party is never informed that ability to pay will be crucial question).

Finally, when the Court has illegally and unconstitutionally charged defendants with contempt for failure to pay fines and fees, it has simultaneously added warrant fees to the total amounts owed by defendants. This practice clearly violates the law.

In order to bring its practices in compliance with the law, the Bryan Municipal Court must make clear that no individual will face jail time for unpaid fines unless it has first been determined at a formal § 2947.14 hearing that she is not indigent. The Court may never sentence anyone to jail time based on unpaid costs. *Buffington*, 89 Ohio App. 3d at 815 (“A judgment for costs is a civil, not a criminal, obligation, and may be collected only by the methods provided for the collection of civil judgments.”) (citation and internal marks omitted).

It is our sincere hope that we can avoid instituting litigation over these issues. Accordingly, we urge you to take corrective action expeditiously. In particular, we ask that you promulgate a written policy detailing your compliance with the above-cited law. We further ask that you create a document to be distributed to all defendants who currently owe fines and costs and those who are in the future sentenced to pay fines or obligated to pay costs, informing them in clear, simple terms of their rights pursuant to § 2947.14, including the right to counsel. Finally, we ask that you remove from the total amounts owed by defendants any costs and fees charged to them as a result of contempt charges based on failure to pay fines and costs.

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,



Christine Link
Executive Director
ACLU of Ohio



Rachel Goodman
Staff Attorney
ACLU Racial Justice
Program



Eric Balaban
Senior Staff Counsel
ACLU National Prison
Project

CC: Chief Justice Maureen O'Connor, Ohio Supreme Court