



Hon. John Ridge
Pamela G. Boss, Clerk of Court
Norwalk Municipal Court
45 N. Linwood Ave
Norwalk, OH 44857

Dear Sir and Madam:

We write to express our concern about the Norwalk Municipal Court's policy of jailing individuals for failure to pay fines and court costs, without regard to their indigency. We have received numerous complaints concerning this illegal and unconstitutional policy, and we are hopeful that it will not continue under the Court's new leadership. Although the Court has in recent months, taken steps toward correcting the problem, we remain concerned that it has established no protocol for holding the indigency hearings required by state and federal law. This letter details the scope of the problem and explains how the Norwalk 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.

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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 Norwalk, defendants have routinely and repeatedly been committed to jail for ten days at a time in a process that flouts the requirements of the statute and the Constitution. The Court used 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 Norwalk Municipal Court’s docket alongside records produced in response to ACLU public records requests, in combination with reports from individuals who have been caught in this system, reveal that the practice was longstanding and widespread. Indeed, during the six-month period from May 2012 until October 2012, 258 people served time in the Huron County Jail based on a charge of contempt for failure to pay fines and costs.¹ During the same time period, 1,017 contempt charges based on failure to pay fines and costs were set for hearing in the Norwalk Municipal Court, with many individuals balancing multiple contempt charges.

These proceedings begin when the Court issues a notice to appear to an individual who owes fines and court costs, which instructs her to appear in court on a particular day to face contempt charges. The underlying fines and costs sometimes stem from years-old or decades-old criminal cases, and thus the address to which the Court mails the Notice may be outdated or inaccurate. Nonetheless, if an individual fails to appear for the scheduled court date, the Court issues a warrant for his arrest on charges of failure to appear.

If he does appear in court, he first speaks to a clerk who informs him of the amount he owes and, without inquiry into his finances, offers him a payment plan whereby he will be required to pay between ten and fifty dollars each month toward the amount owed. Later, the judge enters the courtroom and informs the individual of his

¹ This number was derived by cross-checking Huron County Jail booking reports with docket information published online by the Norwalk Municipal Court.

obligation to comply with the payment plan. Until recently, the judge would simultaneously issue a ten-day suspended sentence for contempt of court, with the jail term to begin four months or more in the future. The individual would be instructed that, if he did not remain current with the payment plan, he would have to serve the jail time; the dockets noted that "upon payment of fine & costs, defendant may be purged of contempt."

At no time in the period we examined did the judge or any other court official make any inquiry into the reasons that the individual has failed to pay the fines and costs. Thus, there was no consideration of ability to pay, as required by the Constitution, and no attempt whatsoever to provide the formal indigency hearing required by § 2947.14. Furthermore, individuals were never informed of their right to counsel at these proceedings, as required by both § 2947.14 and the Constitution. *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).

If a person did not pay the assigned amount each month, regardless of whether she could afford to do so, she was required to report to jail on the date selected by the court. If she did not, the Court would issue a warrant and the sheriff's department would seek her out for arrest. If she could not come up with the money to pay the outstanding fines and costs—now higher as a result of contempt costs, warrant fees, and sheriff's fees—she spent ten days in jail. Upon release, in what was perhaps the most egregious piece of the Court's practice, a person who cannot afford to pay her fines and costs found herself in the same position in which she started, except owing more money to the Court. Having received no credit against her fines for the time she spent in jail, as § 2947.14(D) requires, she would receive another notice to appear weeks later, thus placing her at the beginning of the cycle again. It has not been uncommon for individuals caught in this system to remain in it for years and to be sentenced to serve 10-day sentences three or four times, if not more. It is worth noting that Norwalk's use of debtor's prison cannot be justified from a fiscal perspective, as the cost of one day of confinement is fifty-eight dollars.

In recent months, as the ACLU's investigation of these practices has intensified, the Norwalk Municipal Court has apparently begun to realize the error of its ways. It has retroactively awarded, in many cases, a credit of fifty dollars per day served in jail toward the fines and costs for individuals who have been detained. The Court sometimes states explicitly on the docket and on judgment entry forms that this credit comports with the requirements of § 2947.14. Of course, these credits do not and cannot so comply. The thrust of § 2947.14 is the requirement that each individual threatened with jail based on unpaid fines be provided with a complete, formal indigency hearing at which he is represented by counsel and given the opportunity to present evidence about his financial status. Only once it has been determined, after such a hearing, that the individual is not indigent may he be committed to jail and credited fifty dollars per day he spends detained.

There is no evidence that anyone committed to jail for unpaid fines and costs by the Norwalk Municipal Court has ever been provided with a § 2947.14 hearing. Thus,

these detentions violate the statute regardless of whether the detainees are given credit against their fines ex post. Further, the award of this credit does not affect the reality that each individual's rights under the Constitution were also violated. Going forward, the Norwalk Municipal Court can comply with the law only by conducting indigency hearings *before* jailing people based on unpaid fines. It may never sentence them 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).

Additionally, while as of late the Court has cancelled numerous contempt proceedings based on failure to pay fines and costs, the Court has not disavowed the practice of using contempt proceedings to collect fines and costs. Indeed, in dismissing some contempt charges, the court has noted on some dockets that "contempt may be refiled" and other times explicitly set a new 10-day suspended sentence. Most judgment entries require those owing fines and costs to appear for review hearings in the future and threaten them with arrest if they fail to pay and fail to appear:

Given its history, in order to bring its practices in compliance with the law, the Norwalk 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, and additionally, that no one will ever face jail time based on failure to pay costs. The Court must do so regardless of whether it is currently jailing Ohioans based on their failure to pay fines and court costs.

Further, at each stage of the process in which the Court has illegally and unconstitutionally charged defendants with contempt for failure to pay fines and fees, it has simultaneously added contempt costs, warrant fees, sheriff fees and police department fees to the total amounts owed by defendants. In order to bring its practices in compliance with the law, the Norwalk Municipal Court must be sure these illegal costs and fees from the total amounts owed.

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