



Hon. Deanna O'Donnell
Hon. Timothy P. Gilligan
Hon. Kenneth R. Spanagel
Marty Vittardi, Clerk of Courts
Edward J. Fink, Magistrate

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SHARES



Dear Sirs and Madam:

We write to express our concern about the Parma 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 Parma 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 her 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.

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 Parma, defendants have repeatedly been committed to jail in a process that flouts the requirements of the statute and the Constitution. Analysis of the Parma Municipal Court’s docket alongside records produced in response to ACLU public records requests and reports from individuals who have been caught in this system reveal that debtor’s prisons practices in Parma are widespread. Indeed, during the one and a half months between July 15, 2012 and August 31, 2012, there is definitive evidence that at least 45 people served time in the Parma Detention Center for failure to pay fines and costs. 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 even one debtor received the hearing required by § 2947.14.

Indeed, there is 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 him to jail. Thus, there is 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. There is also no evidence that the individual is informed of his 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).

The Parma Municipal Court’s website makes this policy explicit. In a Frequently Asked Questions document posted there, the following text appears:

If a defendant does not want to pay a fine, can the defendant choose to perform community service instead of paying the fine?

The judge or magistrate may order the defendant to perform community service. The choice is not the defendant's. If the Court has assessed a fine which the defendant must pay, *then the defendant must pay it.*

Will the Court grant extensions to defendants who owe fines and court costs?

Although defendants who request time to pay due to financial trouble might be given some initial period after their sentence is imposed in which to pay their fines and costs, *they are expected to pay the fines and costs as ordered. the judge or magistrate may or may not grant defendants additional time to pay.* [sic] A warrant for the defendant's arrest may be issued if fines and court costs are not paid when they are due.

Available at <http://www.parmamunicourt.org/info.asp?pageId=54> (emphasis added). By omitting any reference to the required indigency hearing, even in a discussion of individuals in "financial trouble," the Court indicates that it regularly fails to perform such hearings. It also misleads indigent individuals as to their legal rights.

Further, it appears that many individuals jailed by the Parma Court for failure to pay fines and costs are denied the fifty-dollar credit that § 2947.14(D) requires for each day spent in jail. This injury is compounded by the fact that the Court charges those caught in its illegal system various fees for the privilege, including warrant fees, debt collection fees, and "payment hearing notice fees." Debtors may therefore leave jail deeper in debt than they entered it. Time spent in jail also jeopardizes employment, which, ironically, makes it still less likely that indigent individuals will be able to pay their fines. Neither can Parma's use of debtors' prisons be justified from a fiscal perspective, as the cost of one day of confinement ranges from fifty-five to seventy-five dollars.

In order to bring its practices in compliance with the law, the Parma 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. *In re 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). The Parma Municipal Court must also cease assessing illegal, supplemental fees against debtors struggling to pay their fines, and, where such fees have already been assessed, the Court must subtract them from the total amount 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. This document should replace the website text detailed above. 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,



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ACLU of Ohio



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