



Hon. Erich O'Brien
Sandusky Municipal Court
222 Meigs Street
Sandusky, OH 44870

Dear Judge O'Brien:

We write to express our concern about the Sandusky 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 Sandusky 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

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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 Erie County, defendants have repeatedly been committed to jail through processes that flouts the requirements of the statute and the Constitution. Analysis of the Sandusky Court's docket alongside records produced in response to ACLU public records requests reveal that debtor's prisons practices in Sandusky are widespread. Indeed, during the one and a half month period between July 15, 2012 and August 31, 2012, there is definitive evidence that at least 75 people served time in the Erie County Jail based on charges such as "Back Fines Warrant," "Bench Warrant," "Contempt of Court," or "Charge Fines warrant." These bookings constituted nearly 12% of the court's total bookings for this time period. 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). In fact, notices prominently posted in the Sandusky Courthouse make plain the court's policy, informing visitors that: "ALL FINES MUST BE PAID IN FULL IN ORDER FOR BENCH WARRANTS TO BE RECALLED."

Compounding this illegal policy, the ACLU investigation found no evidence that wrongfully jailed Erie County debtors receive the fifty-dollar credit for each day of jail time served that § 2947.14(D) plainly requires. This injury is compounded by the fact that debtors are often assessed additional fees, such as "Sandusky P.D. Fees" or "deferred payment fees." at various stages of the process. They 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 Sandusky's use of debtor's prisons be justified from a fiscal perspective, as the cost of one day of confinement is sixty dollars.

In order to bring its practices in compliance with the law, the Sandusky 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 814, 815 (1993) (“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). Finally, the Sandusky Municipal Court must 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. Finally, we ask that you remove from the total amounts owed by defendants any costs and fees charged to them as a result of warrants 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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CC: Chief Justice Maureen O'Connor, Ohio Supreme Court