



Hon. Russell Mock, Presiding Judge  
Hamilton County Municipal Court  
1000 Main Street  
Cincinnati, OH 45202

Dear Judge Mock:

We write to express our concern about the Hamilton County Municipal Court's apparent policy 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 how the Hamilton County 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

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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 Hamilton County, we are concerned that defendants are being committed to jail in a process that flouts the requirements of the statute and the Constitution. The Hamilton County Municipal Court states the following:

Stay to Pay: When a court imposes a fine, it often will allow the fine and costs to be paid on a later date by granting a "stay to pay." If so, the fine and costs may be paid anytime before, or on, the stay date the same way All Other Fines are paid. *If the amount due is not paid and the defendant does not appear in court on the stay date, the judge can be expected to issue a CAPIAS requiring the arrest and incarceration of the defendant until the fine is paid or "served" in jail at the rate of \$30 per day.* If you have a CAPIAS outstanding solely because you failed to pay a fine, you can have the CAPIAS canceled by paying the fine the same way All Other Fines are paid. If you chose not to pay the fine, you should expect to be arrested and incarcerated until the fine is paid, or the jail time is done.

*Available at* <http://www.hamilton-co.org/MunicipalCourt/pay.htm> (emphasis added). That policy, as articulated, violates the law for two reasons. First, it makes no mention of the indigency hearing required by § 2947.14, which exists to prevent individuals who cannot afford to pay their fines from being incarcerated on that basis. Second, if that hearing is duly performed and an individual is found to be non-indigent, he may be incarcerated for failure to pay. However, § 2947.14(D) explicitly states that he must be credited fifty dollars, and not thirty dollars, for each day he is incarcerated.

In order to bring its practices in compliance with the law, the Hamilton County 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).

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 and amend your website so that it complies with this policy. 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.

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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Christine Link  
Executive Director  
ACLU of Ohio



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Rachel Goodman  
Staff Attorney  
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Program



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Eric Balaban  
Senior Staff Counsel  
ACLU National Prison  
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CC: Chief Justice Maureen O'Connor, Ohio Supreme Court