



Mag. Jeffrey T. Kirby
Kelly Sizemore, Clerk of Court
Springboro Mayor's Court
320 W. Central Ave
Springboro, OH 45066

Dear Sir and Madam:

We write to express our concern about the Springboro Mayor's 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 Springboro Mayor's 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.

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

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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 Warren County, defendants have repeatedly been committed to jail in a process that flouts the requirements of the statute and the Constitution. Individuals who are assessed fines on an underlying offense are immediately assigned a "recall hearing date" where they must explain why they have failed to pay their fines and costs in their entirety. The date for these hearings is typically one week after conviction. If the individual has paid, they do not need to come to the Mayor's Court. Individuals who do not pay by that date, however, are issued bench warrants which expressly state that they are for failure to pay fines and costs. Once the debtor is arrested, or comes to Mayor's Court on her own volition, the bench warrant is recalled and the court schedules a new "recall hearing."

It is obvious that such a truncated and perfunctory process does not and cannot comply with the straightforward requirements of § 2947.14. Indeed, there is no evidence that the magistrate or any other court official makes any inquiry into the reasons that an individual has failed to pay before sentencing her 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, there is evidence in the Court's files that some defendants have sworn affidavits of indigency, permitting their representation by the public defender. Yet, even in these cases, there is no sign that the Mayor's Court provided those individuals with counsel for this purpose or assessed whether they had the ability to pay their costs and fines.

Further, it appears that individuals jailed for failure to pay fines and costs are not receiving 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 and related mileage 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 Springboro's use of debtor's

prison practices be justified from a fiscal perspective, as the cost of one day of confinement is sixty-eight dollars.

In order to bring its practices in compliance with the law, the Springboro Mayor's 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. 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 for 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



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