

Debtors' prisons on the rise in the US

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27 October 2010

Both the American Civil Liberties Union (ACLU) and the Brennan Center for Justice released reports in early October on a disturbing trend in the American justice system: the abuse of jail sentences and probation to collect more money in fines for cash-strapped courts.

The ACLU report, "In For a Penny: The Rise of America's New Debtor's Prisons," focuses on interviews and personal stories in the five states they predicted to be the worst offenders (Louisiana, Michigan, Ohio, Georgia, and Washington). The Brennan Center report, "Criminal Justice Debt: A Barrier to Reentry," covers ten states in addition to the five in the ACLU report (California, Texas, Florida, New York, Pennsylvania, Illinois, Arizona, North Carolina, Virginia, Alabama and Missouri) and provides more detailed statistics on a wider array of abuses.

In each of the 15 states examined (covering 60 percent of all state criminal filings), courts placed special "user fees" on defendants to generate revenue.

These fees differ from other legal financial obligations because their sole, express purpose is to put money into the state's budget instead of punishing the criminal or giving the victim restitution. As many states face budget cuts, they are turning increasingly to these types of fees to fund their court systems. In one example, the district court of Orleans Parish in Louisiana, the ACLU estimated that these fees totaled almost two thirds of the court's general fund.

This method of funding the courts is thoroughly regressive, fully placing the burden on the poor who constitute the vast majority of defendants. The National Center for State Courts estimates that 80 to 90 percent of all criminal defendants qualify for indigent defense programs due to their financial inability to afford legal counsel. The regressive nature of these fees is compounded by widespread failure to enforce longstanding constitutional protections of the poor.

The United States inherited a tradition of incarceration for private debts from colonial times. By the 1830s, it had reached such absurd proportions that in some states there were three to five times as many people imprisoned for debt as for actual crimes. Imprisonment for debt was abolished under federal law in 1833, but many states continued the practice.

In particular, Southern states would imprison debtors and lease prisoners out to plantation owners as a means of effectively perpetuating slavery after the Civil War. More recently, however, the US Supreme Court has ruled that prison can only be used as a means to collect debts "when a person has the *ability* to make payments but refuses to do so," according to the Brennan Center.

In one such ruling, *Bearden v. Georgia* (1983), the Supreme Court ruled that courts cannot revoke a defendant's probation for failure to pay a fine that the defendant made a bona fide effort to pay. Like many of the other rulings of the high court on this matter, it is routinely ignored in an effort to squeeze more revenue from defendants.

According to Supreme Court rulings, the only legal way to imprison someone for debt is to demonstrate that a defendant had the means to pay and willfully did not. Yet it has become common for courts to arrest and jail a debtor and only check their ability to pay on appeal.

The Brennan Center noted that in all 15 states its report examined, individuals have been arrested for missing a court-ordered debt payment or failing to appear at a debt-related proceeding. Only after a few days in jail was a hearing granted to determine whether the individual willfully missed his or her obligations. This practice is particularly disturbing because every state except Ohio assessed mandatory fees without taking into consideration ability to pay.

Jailing someone before determining that person's ability to pay is not only inhumane and contrary to

legal standards, but frequently disrupts the debtor's ability to earn money. In one perverse example in Michigan described by the ACLU, Louis Kalman fell behind on his child support payments of \$75 a week, despite paying what he could. At the time he was brought to trial, he was responsible for his elderly and sick father while earning \$200 a week, \$100 of which went to rent.

Despite documentary evidence that Mr. Kalman had been trying to increase his hours at work to full-time employment and a plea from the mother of his children that the court "not put Mr. Kalman in prison because simply as a practical matter it means she gets no money," the court sentenced him to a prison term of two to four years. The court further ordered that the child support payments continue to accrue while he was in prison.

In addition to jail time, many states have started charging fees for being in prison, being on probation and parole, and even using a public defender. All but one of the states examined in the reports assessed some form of penalty on anyone incapable of paying their fees immediately. These penalties can include anything from a flat \$300 civil assessment for falling behind in payments to a fee for simply entering into a payment plan.

Other states assess excessive collection fees totaling a certain percent of the amount due. Florida authorizes a collection fee of 40 percent of the total debt, while Alabama only allows 30 percent. Telling in the case of Alabama is that state usury laws prohibit interest rates over 8 percent for private debts.

These fees can create a situation of runaway debt, where no matter how hard someone tries to pay it down, the debt keeps growing. The story of a woman referred to as Lisa, interviewed by the ACLU, provides a perfect example of this phenomenon.

A former drug addict in King County, Washington, she was convicted on four felony counts nine years ago. Although she has not committed any new crimes in the past nine years, her inability to make sufficient payments combined with the mandatory 12 percent interest rate on all unpaid legal financial obligations in Washington has caused her debt to balloon to \$60,000.

In addition to this excessive financial burden, Lisa has been imprisoned three different times in the past nine years, for a total of 40 days, solely for nonpayment

of her legal debts. She understandably feels overwhelmed by the situation and told the ACLU about her debt, "It's just like a nightmare, you know? Like is this ever going to go away? And the only thing, I keep hearing the judge say 'if you have to pay \$20 for the rest of your life, that is what you are going to be doing.' "

At the root of this systematic exploitation is an attempt to pad state coffers. Both the ACLU and the Brennan Center acknowledge state budget cuts, under the impact of the financial crisis, as the driving force for these efforts to raise funds through the courts. However, refunding court and public defender systems is the last thing on the minds of Republican and Democratic politicians who continue their calls for austerity.

The ACLU's report can be found here:

The Brennan Center report can be found here:



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