

# Debtors' prisons on the rise as COVID-19 ravages the southern United States

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On July 6, 55-year-old Charles Anderson spent his last day in Marion County Jail. He was arrested 28 days prior for unpaid debts regarding his failure to make monthly payments and fees associated with three court cases dating back to 2003. Upon his arrest, he was jailed with three other men in a 6-by-10-foot cell.

After a long period of unemployment, Anderson found a job working as a carpenter two weeks prior to his arrest. He had intended to resume payments toward the court-ordered debts that have haunted him from a 2003 conviction on methamphetamine trafficking.

On June 9, in the town of Winfield, a police officer pulled Anderson over for running a stop sign on his way to help his new boss fix a flat tire. The officer then issued him a ticket for driving without a seat belt and a warning for failing to adhere to the stop sign. However, he was arrested and taken to jail in Hamilton, which was built in 1979 and meant to house 86 men and women, but it is often overcapacity at more than 120 people. According to Anderson, he was fed nothing but white bread, bologna and peanut butter for the 28 days he was incarcerated.

According to the arrest report, Anderson was arrested on three counts of "failure to pay." Like so many others before him, he was ultimately charged with failing to appear at a payment review hearing, which in his case was held in November 2018.

Anderson was only able to be free of Marion County's debtors' prison because Linda Jacobs, his indigent 72-year-old mother, cashed her monthly \$1,400 Social Security check on July 3, arriving at the circuit clerk's office in the county seat of Hamilton on July 6 and paid \$1,000 toward his court-ordered debts totaling more than \$2,500. As a result of his arrest, his vehicle was towed, and his mother had to pay more than \$200 to retrieve it.

Jacobs, in an attempt to raise the necessary funds, placed the family's tractor, Bush Hog mower and a small boat up for sale. She even offered to sell her three Yorkshire terriers, but Anderson rejected that.

In an interview with AL.com on July 2, Jacobs noted, "I offered to pay \$300, and they called and told the judge, and the judge said he had to pay \$1,000 to get out. They take away your freedom, they lock you up, and you pay or they keep you locked up. It's not right."

Marion County in northwest Alabama, according to a 2019 United States Census Bureau report, has a population of 29,709, of which 94 percent are white, 3.9 percent black, 2.7 percent Hispanic or Latino, 0.4 percent American Indian and 0.3 percent Asian. The median household income is \$35,930, and it has an unemployment rate of 3.1 percent (up from 2.2 percent in May), according to a 2021 Alabama Department of Labor report.

As a result of the coronavirus pandemic and declining hourly wages,

several people remain incarcerated in Marion County Jail because they dared to commit the crime of being poor and have neither family nor friends with the financial resources to purchase their freedom. Prior to the pandemic, Alabama was rated among the poorest states in the country; in the city of Birmingham, the poverty rate is over 28 percent.

One man arrested in Winfield, Alabama, has been jailed since March on three counts of failure to pay court-ordered debts. According to a court document, he would be released from custody immediately upon payment of \$2,819.70. Another man met a similar fate, being held in custody since he was arrested in April for failure to pay "court costs, fines and restitution of: \$4,182.56."

The incarceration of people over unpaid debts, particularly when these "debtors" do not have the wherewithal to pay, violates federal laws and constitutional protections against the operation of debtors' prisons. From the colonial era to the 1830s, the United States regularly jailed people for failure to pay their debts.

Imprisonment for indebtedness was so commonplace that two signatories of the Declaration of Independence, James Wilson, later an Associate Justice of the Supreme Court, and Robert Morris, a personal friend of President George Washington, were sentenced for failure to pay loans.

However, debtors' imprisonment could turn into a life sentence for those without positions which grant certain privileges. In myriad jurisdictions, debtors were not to be freed from bondage until funds were acquired in full, or they had worked off the debt through years of penal labor. As a result of economic turmoil which ravaged Southern and Northern states and colonies alike, many languished in prison, dying even more impoverished than they were prior to their arrest.

After the War of 1812, so many Americans were indebted that prisons held five times as many people on charges of debt than actual crimes. Between 1821 and 1849, 12 states outlawed debtors' prisons. With the advent of bankruptcy law, citizens were granted a means of escaping insuperable debt, while creditors were made to share some of the risk associated in lending funds. Bankruptcy laws were revised in 1841, 1867 and 1898, eventually requiring payment of as much debt as the debtor could afford while absolving the balance.

Over the course of the 20th century, the US Supreme Court affirmed that it was a violation of constitutional rights to incarcerate those too financially straitened to repay their debts. In 1970, in *Williams v. Illinois*, the high court decided maximum prison terms could not be extended on account of the defendant failing to pay court costs or fines. In 1971, in *Tate v. Short*, it was ruled that defendants who are too destitute to pay their fines may not be jailed. Most significantly, the 1983 decision in *Bearden v. Georgia* compelled

judges to distinguish between debtors who are “too poor to pay” and those who have the financial ability but “willfully” refuse to do so.

Federal imprisonment for debt was abolished in 1833, although some, particularly Southern states were allowed to continue imprisoning debtors, even leasing prisoners, who could not buy their freedom, out to plantation owners, effectively continuing slavery after the Civil War.

In places like Marion County, the justice system has a consistent stream of low-income people in and out of jail for failing to pay their debts. “In my opinion, [it is a] debtors’ prison because I owe money and you’re [going to] lock me up for it,” Charles Anderson told the media. Reflecting the impact of the social crisis on the thinking of workers, Anderson continued, “How is this the United States, where we’re supposed to have more freedoms than anywhere else in the world, and we’re incarcerating people for not having money?”

Marion County Sheriff Kevin Williams, in an interview with AL.com on July 7, said he does not draft the laws but is tasked with enforcing them, including issuing arrests for unpaid debts in accordance with judges’ orders. “If you’re sitting here and you can’t pay your fines, but you’re court-ordered to pay them, how do you fix that? How do you make them pay other than to throw them behind bars?”

According to court records, debtors have remained jailed for weeks or months in the Marion County Jail due to indigence. Marion County has incorporated a practice which relies on failure-to-appear charges, issuing arrest warrants to people with unpaid debts before demanding payment for their release. Moreover, court records also reveal many people never receive a letter informing them of their payment review hearings.

Hamilton resident Daniel Ables, another victim of this vendetta against the working class, sat in Marion County Jail for more than four months without an appearance before a judge to have his case heard.

On February 22, a Marion County deputy arrested the 41-year-old Hamilton resident on an outstanding warrant for failing to appear at a March 2020 hearing regarding a plan to pay down his court-ordered debts pertaining to a 2009 drug case. Typical in Marion County, Ables’ arrest warrant had two boxes checked. The first of which stated, “[y]ou may release the accused person without taking the accused person before a judge or magistrate,” and the second, “[i]f the person posts a cash bond in the amount of \$1915.60 with the court clerk.” However, the “bond” equaled the exact total of all the defendant’s fines, fees and restitution owed at the time.

When interviewed by AL.com during a jailhouse phone call, Ables said if he were wealthy, this would not have happened. “It’s extortion. That’s pretty much what it is, is it not? They’re [going to] lock me up and hold me here for a year or some crap just because I can’t pay? What would you call it?”

Ables’ family members tried for months to raise the amount of money the county was demanding for his release but found themselves too short. Shortly after his arrest, Ables’ girlfriend offered to pay \$700 toward his court-ordered debts but was informed if the amount was not the full \$2,000, he would remain jailed.

District Attorney Scott Slatton confirmed via email that Ables was cleared to be released after he had requested “judicial review as to why Inmate Ables had been in jail for 5 months.”

A Zoom hearing was held on the morning of July 8 to review Ables’ case. His required monthly court-ordered debt payment was reduced from more than \$100 to \$60, or \$20 for each of the three cases on

which he still owes fines, fees and restitution. According to three court filings, Ables is not required to begin making the payments until October.

After a review of the case, Slatton claimed going forward, his office “will seek judicial review of any inmate being held for [‘failure to appear’] for payments longer than the quarter in which they should have appeared on a docket.” After 137 days, Ables was released from Marion County Jail custody, paying nothing to secure his release following the hearing.

In response to a query on why some people remain in jail for longer than 90 days awaiting a court hearing, Williams directed all inquiries to the judges on their respective cases and the circuit clerk’s office.

When the inquiries were followed up, Marion County Circuit Judge Daryl Burt, who signed the orders stating that Anderson and Ables could be released if they paid off their court-ordered debts, did not respond to myriad requests for comment, including from Circuit Clerk Denise Mixon.

Cody Cutting, an attorney at the Southern Center for Human Rights who litigates cases related to the criminalization of poverty in the southern United States, said there is no justification for the imprisonment of impoverished, like Anderson, and is unequivocally unacceptable. “If someone who is arrested can avoid incarceration by paying if they’re able to pay their entire court debt, but someone who is unable to pay that court debt through no fault of their own is forced to languish in jail for months, that violates the Constitution.”

The Southern Center for Human Rights and the Southern Poverty Law Center have found that judges in Alabama consistently jail people for “failure to pay” without conducting inquiries or investigation into a debtor’s ability to make payments.

“It could not be clearer that it is unconstitutional to jail someone for failing to pay a fine if the ability to pay that fine is beyond that person’s control,” Cutting said. “In spite of how clear that constitutional command is, it’s completely apparent that jailing people for being poor is common practice in courts across the South.”



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