



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

June 19, 2014

Re: House Bill 14-1061

Dear Judge,

We write to notify you that House Bill 14-1061 (HB 14-1061) was signed into law by Governor Hickenlooper and became effective on Friday May 9, 2014. This new law – which relates to court-ordered monetary payments – has important implications for every court of record in this state. The American Civil Liberties Union of Colorado (ACLU) is proud to have supported HB 14-1061, and we are committed to ensuring state-wide compliance with its requirements. That is why we are reaching out to every municipal court in Colorado to provide notice of the new legislation and its mandates, and have enclosed a copy of the law for your reference. In short, and as will be detailed further below, **HB 14-1061 prohibits Colorado courts from issuing warrants for failure to pay money. It also requires courts to provide due process protections to any individuals accused of failure to pay who may be subject to imprisonment for such failure.**

For the last two years, the ACLU of Colorado has been researching cases of impoverished Coloradoans who were sent to jail for failing to pay money. We found that many municipal courts in Colorado were issuing bench warrants upon a defendant's failure to pay, without considering whether the defendant had the ability to pay. Some of these warrants, known most commonly as "failure to pay" warrants, ordered that defendants be brought before the court to explain their failure to pay. Others, known most commonly as "pay-or-serve" warrants, demanded either immediate payment or imprisonment to "serve out" the debt owed.

As you likely know, jailing poor people who are unable to pay violates long-standing constitutional principles established by the United States Supreme Court. In 1983, when a probationer was jailed for failing to make a court-ordered monetary payment, the Supreme Court held: "if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it." *Bearden v. Georgia*, 461 U.S. 660, 667 (1983). To protect poor people from being jailed for inability to pay, the Court held that a sentencing court "must inquire" into a defendant's reasons for nonpayment, and if a defendant cannot pay despite a good faith effort to do so, the court "must consider" other measures of punishment. 461 U.S. at 672.

More recently, in *Turner v. Rogers*, 131 S. Ct. 2507 (2011), the Supreme Court laid out specific guidelines regarding the procedures the Due Process Clause requires courts to adopt to avoid incarcerating indigent persons for failing to make court-ordered payments. The Court

explained that a defendant must “receive clear notice that his ability to pay would constitute the critical question” in determining whether he would be incarcerated for failure to pay. *Id.* at 2520. Further, courts must hold a hearing at which the defendant responds to questions seeking information about his or her ability to pay. *Id.* Finally, a court may not resort to incarceration for failure to pay unless it has made an express finding that the defendant has the ability to pay the amount owed. *Id.*

The Colorado Constitution provides equally strong protections against jailing indigent people for failure to pay, by mandating that “[n]o person shall be imprisoned for debt.” COLO. CONST., Art. II, Sec. 12. Courts, however, are not powerless in the face of a defendant’s willful failure to pay a court-ordered fine. The Colorado Supreme Court has made clear that the “constitutional provision against imprisonment for debt does not prohibit the punishment of a contempt by imprisonment for refusing to obey the lawful orders or decrees of court.” *Harvey v. Harvey*, 384 P.2d 265, 266 (Colo. 1963). In such a case, the defendant “is not imprisoned for debt, but because of his refusal to obey the lawful order of the court.” *Id.*

Importantly, it is well established that a court may not find an individual in contempt when he does not have the ability to comply with the court’s order. *See, e.g., Turner*, 131 S. Ct. at 2511; *Hicks v. Feiock*, 485 U.S. 624, 638 n. 9 (1988); *Shillitani v. United States*, 384 U.S. 364, 371 (1966). Poor people who do not have the money to pay their fines do not have the ability to comply with the court’s order to pay and, therefore, cannot be found in contempt of court. That is why *Turner*, a contempt-of-court case, requires notice, a hearing on ability to pay, and an express finding by the judge on a defendant’s ability to pay. 131 S. Ct. at 2511. Such “procedures [] assure a fundamentally fair determination of the critical incarceration-related question, whether the [defendant] is able to comply with the [court] order” to pay. *Id.* at 2512.

To address some Colorado courts’ failure to provide due process protections to defendants who fail to pay, the Colorado legislature, with near-unanimous support, enacted HB 14-1061, which amends Section 18-1.3-702 of the Colorado Revised Statutes. The new statute prohibits Colorado courts of record from issuing bench warrants for failure to pay money. HB 14-1061, Section (2)(a) (“In no event shall the court issue a warrant for failure to pay money.”).

Importantly, the bill also mandates: “When a defendant is unable to pay a monetary amount due without undue hardship to himself or herself or his or her dependents, the court shall not imprison the defendant for his failure to pay.” HB 14-1061, Section (3)(a). What this means in practice is that your court may not order a person to jail for failure to pay – whether through a finding of contempt of court, imposition of a suspended sentence, revocation of probation, or through any other means, unless:

the court has made findings on the record, after providing notice to the defendant and a hearing, that the defendant has the ability to comply with the court’s order to pay a monetary amount due without undue hardship to the defendant or the defendant’s dependents and that the defendant has not made a good faith effort to comply with the order.

HB 14-1061, Section (3)(c).

Additionally, any determination by your court that an individual is in contempt of court for failure to pay may not result in incarceration unless the “court provided all procedural protections mandated in Rule 107 of Colorado Rules of Civil Procedure or Rule 407 of Colorado Rules of County Court Civil Procedure.” HB 14-1061, Section (3)(b). This provision, and the statute as a whole, “applies to all courts of record in Colorado, including . . . municipal courts.” HB 14-1061, Section (5).

We acknowledge that HB 14-1061 applies only to sentences entered and hearings conducted after the effective date of the act. Nevertheless, in light of the law cited in this letter and the public policy of the state of Colorado as memorialized in HB 14-1061, we strongly urge your court to immediately quash all currently-active warrants for failure to pay.

We hope this letter has been helpful as you consider the impact of HB 14-1061 on your courtroom procedures. We trust you will ensure your municipal court is in compliance with the requirements of the new law, as well as the constitutional mandates underpinning it.

Sincerely,



Rebecca T. Wallace
Staff Attorney, ACLU of Colorado



Mark Silverstein
Legal Director, ACLU of Colorado

Cc: Town/City Attorney

Encl.