

From: BlakeTenney2@aol.com
Sent: Sunday, November 29, 2015 8:46 AM
To: ADMcomment
Cc: chairman@gop.com
Subject: Possible no Jail for Penniless Perpetrators? (Adm file# 2015-12)

Crime: The Missing Link. (Beg'n 11-29-15)

State's high court to consider rule banning 'pay or stay' sentencing

By Jameson Cook
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The state Supreme Court will consider adopting court rules that will force judges to refrain from "pay or stay" sentencing of poor defendants.

The high court says in an order released Wednesday that it will take comments on amendments to 10 court rules that would ban the jailing of low-income defendants who fail to pay court fees, known as pay-or-stay sentencing.

Comments will accepted until March 1, after which a public hearing will be set on the issue, court officials say.

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said. The Supreme Court then could adopt the rules changes.

The proposals drew praise from Michael J. Steinfec, legal director for the American Civil Liberties Union of Michigan, which has been fighting what he called "debtors prison" for several years.

"It's been a long time coming, but we are thrilled that the Supreme Court has finally stepped in and proposed rules to abolish the sentencing of poor people to jail if they are too poor to pay their fines," Steinfec said Wednesday. "If adopted, the rules will provide clear guidance to judges throughout the state that they can't send people to jail unless they make a determination that the person has the ability to pay."

The ACLU says incarcerating poor defendants without the ability to pay creates an unfair, two-tier system of justice. The rules would not impact defendants who have the ability to pay; they could still be incarcerated for failure to pay under the rules.

The proposed new rules require the judge to determine whether a defendant's indigency and court fines, costs, fees or restitution would cause "hardship." Hardship is determined "if the defendant or his or her immediate family would be deprived of funds needed for basic living necessities such as food, shelter, clothing, necessary medical expenses or child support," says the "staff comment" section of

the proposal.

The rules would adhere to existing law that has been in place for decades. Judges across the nation have been barred from jailing poor defendants for failure to pay since a 1983 U.S. Supreme Court decision, Bearden v. Georgia.

But the ACLU of Michigan has cited many cases in Michigan in recent years in which judges failed to make a determination and incarcerated a poor defendant for failure to pay.

The ACLU earlier this year filed a legal action against Judge Carl Gerds of 38th District Court in Eastpointe, claiming he has incarcerated poor defendants who could not pay their fines or costs without assessing their ability to pay.

Gerds' attorney, Thomas Rombach, at a hearing earlier this month in Macomb County Circuit Court said his client denies illegally jailing poor defendants but agreed to refrain from doing so in the future.

Judge James Maceroni took the matter under advisement and asked the parties to try to work out an agreement. The next hearing is set for Jan. 22.

The ACLU also questioned whether the case of the late David Stojewski was the result of a pay-or-stay sentence. Stojewski, 32, of Roseville, died in June 2011 following a 17-day stay at the Macomb County Jail after he was incarcerated by a 39th District Court Judge because he failed to pay \$772 in accumulated fines and costs for a traffic ticket. Stojewski's family has filed a federal lawsuit against the county, the jail and its officials and employees, and the jail's medical provider and its employees.

Passage of court rules on the topic gained momentum this year after the Ability to Pay Workgroup, formed by the high court, agreed in April that a judge must determine and apply ability to pay on an individual basis.

Judges may have differing philosophies regarding ability to pay and may weigh facts in a given case differently. The workgroup says in its report's conclusion, "A judge's discretion is tempered by the confidence of the law and should be exercised with fairness and restraint."

The group in its report provides "tools" for a judge in determination of a person's ability to pay and enforcement alternatives.

Judges should consider

the defendant's employment status and history, employability and earning ability, "the willfulness of the defendant's failure to pay," financial resources and "basic living expenses," including child support, according to the proposed court rules.

Alternatives to the jail-or-fine scenario include "a payment plan; modification of any existing payment plan; or waiver of part of all of the amount of money owed to the extent permitted by law," proposed court rules say.

Steinberg said the court rule changes would clarify matters.

"Court rules are important because they set right on the judge's desk," he said. "They spell it out in detail. We always thought that court rules would go a long way to abolishing a two-tier system of justice."

The public can send comments to the Office of Administrative Counsel by writing at P.O. Box 36052, Lansing, MI 48909, or by email to ADMcomment@courts.mi.gov. Refer to ADM File No. 2015-12.

Comments will be posted at the Proposed & Recently Adopted Orders on Admin Matters page.

My comment: In this article is described Possible Waivers of Jail Time for Perpetrators of various crimes IF they can't pay their Fines and Costs.

In this article, what is not asked, but should be asked, is: 'does this mean a poor man can keep committing crime but never go to jail?'

NOT mentioned in this article is: is there a provision for the man (or woman) who has no money to pay any fines but keeps breaking the law and never goes to jail?

IS the Public's Interests Protected under this Proposed Change of Rules? Will the Public wind up with *increased harm* to it due to these proposed no-jail-for-those-with-out money Court Rules, be they increased automobile accidents, increased incidents of public urination, increased pandering, broken windows, Public nuisance, indecent exposure - and more - or worse? WILL requirements for a Complete Dossier : (a file containing detailed records on a particular person or subject), an extensively-documented "Probation Report" on Each and Every Misdemeanor Perpetrator be more Burdensome than - a simple 2 or so days in jail, for example? Will the Financial Weight upon the Judicial System - that of Extensively Evaluating every single case of law breaker events just as though they were Capital Offenses - WILL the Financial Weight upon the Judicial System unduly and UNFAIRLY **crush** the Public's Best Interests and put **Priorities** on behalf of Convicted-but-Penniless Perpetrators? Shall the Greater, Overall Good of Society in General be Subservient^(1.) to the over-Indulgence of Law-breakers?

The missing link in this article: at What Point is Jail the Penalty? This citizen has READ this article and cannot find **that Missing Link**.

(1.) Subsर्वient: submissive, obedient, compliant. . . docile, passive, meek (Per MSW synonyms)

Respectfully submitted, I am,
Blake Tenney, citizen with input

Title: Possible no Jail for Penniless Perpetrators?

E mailed this entry Sunday morning, November 29, 2015, 9:00 A. M. EST.