

The unwavering voice for public defense

Mr. Bill Thompson
Clerk
Supreme Court of Missouri
207 West High Street
Jefferson City, Missouri 65101

October 9, 2014

Mr. Bill Thompson:

I write on behalf of The National Association for Public Defense (NAPD), which engages all public defense professionals to address the grave systemic failure to provide the constitutional right to counsel, and to collaborate for solutions that bring meaningful access to justice for poor people.

NAPD is the only national legal membership organization dedicated exclusively to the needs and concerns of public defenders and their clients, and has no full time staff – NAPD’s projects are all undertaken by advocates who represent indigent clients in courts throughout the country. We are writing to you to discuss the unconstitutional incarceration of truly indigent people for their failure to pay ordered fees, fines and costs. By this letter we urge you to consider changing the rules in municipal courts that are currently violating both State and Federal law.

We understand that there are numerous municipalities in the county and that there may be some confusion amongst the judiciary as to what process, if any, the court must provide to a defendant before incarcerating the person for failure to pay on a warrant or setting a bond at the amount of that fine. We recognize that there may be no coordinated oversight of the system, and therefore no holistic view of the impact of these policies on already marginalized communities – and largely communities of color. We urge you to meet with the legal team consisting of law professors from Saint Louis University School of Law and attorneys with ArchCity Defenders to discuss a change to the local rules or the issuance of an Administrative order that all courts provide the constitutionally-mandated due process protection that is required before any person is deprived of their freedom.

As a policy matter, incarceration of the poor for failure to pay or numerous warrants set at the fine level serves to entrench poverty (often generationally), disenfranchises the community in a way that undermines public safety and destroys public confidence in the justice system, and

generates additional costs to the court and jail system, which is ultimately counterproductive to the governmental interest in collecting fees.¹

It is clear that in some Missouri courtrooms, warrants are issued and citizens are incarcerated for their failure to pay without any judicial inquiry into whether the individual has the ability to pay. As a result, people are spending time behind bars simply because they are poor. This practice continues despite the fact that it is forbidden by the United States Constitution. Additionally, it is contrary to the sacred principles of American democracy and the commitment to provide equal access to justice.

As the Supreme Court has repeatedly recognized, to deprive a defendant of his freedom, "simply because, through no fault of his own, he cannot pay" – "is contrary to the fundamental fairness required by the Fourteenth Amendment." *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). Incarceration on this basis re-establishes debtor's prison, which has long been outlawed in this country and repeatedly condemned by the Supreme Court.

A judicial system that prides itself on justice for all cannot maintain a structure in which people with means pay their fines and move on with their lives, while the poor go to jail. Addressing unfairness that occurs on a routine basis in the judicial system is not only an obligation of the courts, but is the right thing to do to show the community that fairness can and will be restored for the citizens it serves.

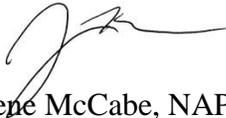
NAPD currently has 52 member organizations and individual members from all 50 states, creating a community of more than 8,500 public defense advocates from around the country. We hope that you aggressively pursue strategies to bring your criminal justice system into compliance with the law. We are confident that this effort will make your system more cost-effective and begin to restore the public trust that is prerequisite to both safe streets and strong communities.

On a personal note, as a Colorado State Public Defender, our state struggled with a similar problem, where municipal courts were jailing citizens when they did not pay their court ordered fees and fines. The cost to the taxpayers was great and the loss of liberty to citizens meant the loss of jobs, housing, and stability. The legislature recognized the courts were spending far more time incarcerating people for unpaid fees than they would have collected and further amplifying the fiscal impact by taking people out of the workforce, out of jobs and spending abilities. Today, courts are required to follow the State and Federal rules and provide the constitutional guarantees to citizens before a jail sentence for failure to pay is ever imposed and community service hours are recommended over jail time.

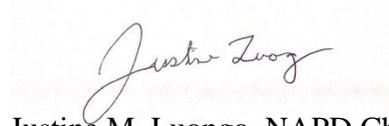
On behalf of both myself and the National Association for Public Defense, please be assured that many of our members stand ready to help in this effort, and would be grateful of the opportunity to communicate with you further as you develop strategies to move forward.

¹ Mark Silverstein, See American Civil Liberties Union, *In For a Penny: The Rise of America's New Debtors' Prisons* (October 2010), available at: <http://www.aclu.org/prisoners-rights-racial-justice/penny-rise-americas-new-debtorsprisons>, accessed October 10, 2012; Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010),

Sincerely,

A handwritten signature in black ink, appearing to read 'Janene McCabe', with a long horizontal flourish extending to the right.

Janene McCabe, NAPD Member
Director of Technical Litigation, Colorado Deputy State Public Defender

A handwritten signature in black ink, appearing to read 'Justine Luongo', with a long horizontal flourish extending to the right.

Justine M. Luongo, NAPD Chair, Impact Committee
Deputy Attorney-in-Charge, Legal Aid Society of New York