

Modern Day Debtor's Prisons and the Issues Surrounding Debt Imprisonment

By Kaio Deeter

In Sherwood, Arkansas, because of a \$29 check with insufficient funds in 2001, Nikki Petree was imprisoned with 25 total days in jail, and forced to pay a total of \$640 to the city. More recently in Valley, Alabama, an 82-year old woman was arrested for \$77 in unpaid garbage bills. Finally, in 2011, Robin Sanders was arrested and jailed because of a lawsuit filed against her, concerning an unpaid \$730 debt for a medical bill. Sanders was never notified of the court date or the lawsuit as a whole, and was eventually arrested and jailed for missing her court date. The common problem in these nonsensical arrests are the way in which courts find loopholes and gaps in the law, creating unfair arrests concerning debt.

The term “debtors prison”, usually associated with pre-twentieth century Europe, refers to the imprisonment of people who are incarcerated because of an inability or refusal to pay debt. In 1800s Europe, someone could be imprisoned indefinitely for fines less than €100 until they worked out a way to pay the debt. While debtors' prisons were abolished in 1833 by the United States congress, 200 years later, they are still relevant in today's society. In America's modern society, criminal justice systems are returning to debtors' prisons through gaps in the law concerning criminal justice debt and LFO's (Legal Financial Obligations), creating negative consequences that have substantially affected many people through unjust means. The loopholes in which courts use to justify debtors' prisons should be investigated and cracked down upon by state and federal regulators, in order to finally abolish the immoral practice of arresting and jailing upon unpaid debt.

Debtors' prisons have always been a severe punishment of the past. First used in medieval Europe, through coercive means, these prisons forgoed essential resources and took

away the lives of innocent victims in debt. Congress abolished the practice under federal law in 1833 with almost all states following suit through the next 50 years. In 1983, the supreme court once again prohibited forms of debtors' prisons in the case *Bearden vs. Georgia*, stating that “a sentencing court must inquire into the reasons for the failure to pay.” A court is only allowed to imprison someone if they are *willfully* opposed to paying off the debt while having the resources. Otherwise, the court argues, this “would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine,” violating the 14th amendment by denying liberty without fairness and due process. These laws and rulings by both the legislative and executive branches should inhibit the practice of debtors prisons, yet they are still present today.

Because of the way courts try to conceal the means in which they use debtors' prisons, exact numbers for the amount of cases concerning debt are difficult to accurately measure. This is mainly due to courts omitting data, whether intended or not. Out of the 49 states who report data on court cases, only two in 2018 included data on debt-related cases (Texas is the most consistent state in including information on different cases). While data on the government level is hard to come by, many studies search through court records to find real numbers. In a Harvard-Stanford study, “Forgotten but not gone: A multi-state analysis of modern-day debt imprisonment”, there are about an estimated 8,000 bookings related to debt in Wisconsin, with 38,000 in Texas. Assuming similar findings in other states, there are hundreds of thousands of these bookings per year. While not all of the cases examined by the Harvard study concerned the specific example of debtors prisons, these numbers are still staggering. For reference the amount of bookings related to violent crimes (murder and nonnegligent manslaughter, rape, robbery, and aggravated assault) is about 300,000, similar to the estimate for debt-related cases. Additionally,

in 2021, debt collection lawsuits represented more than 50% of civil litigation cases (cases where either side looks for monetary compensation instead of an arrest). This percentage has doubled since 1993, only 20 years ago. Even as the amount of debt cases almost matches the amount of violent crimes, debt is often avoided and left behind in discussion.

There are two main ways in which courts are able to incarcerate someone based on debt, often concerning criminal justice debt (LFO's) and civil contempt of court. One of the most common ways is through the imprisonment of people with unpaid criminal justice debt, or Legal Financial Obligations. Criminal justice debt includes some fines, court costs, restitution (compensation for victims of an offense, i.e. property damage or medical expenses), probation or parole fees (usually concerning supervision or drug testing), and public defender debt (when a plaintiff or victim uses a public lawyer). All these factors can lead to a large amount of LFOs, putting someone in large debt. As this usually affects people who previously were accused of breaking the law, many have little resources to pay off the debt. These LFOs are rising too, with a 2014 National Public Radio study showing that in 2010, 48 states had significantly increased criminal justice debt from 2009. On the legal side, courts are able to sidestep the previous regulations, by claiming that unpaid court debts are considered "civil contempt of court". Civil contempt of court usually refers to situations where the judge or judging process is disrespected in some way, yet courts use this to their advantage. In this way, once a LFO is left unpaid for a certain amount of time, the person is imprisoned, creating a cycle of debt and imprisonment. It is not just the individual courts' fault either, as there is a more general problem with the system. In California, a study in 1978 showed that the government covered only one seventh of annual court costs. While significant efforts have been made since 1978 to raise this number, courts are still often underfunded, sometimes as much as 60% in the early 21st century. This leaves courts in a

position to exploit citizens in order to find ways to fund themselves, resulting in more criminal justice debt and fees that end in imprisonment. There are problems with the fundamental systems, allowing the existence of modern day debtors prisons.

The second common scheme is through defendants who do not show up for a debt related hearing. Oftentimes, as with Robin Sanders, the defendant is not aware of the hearing in which they are punished for not attending. Coincidentally, the majority of these absences concern debt cases. In this situation, the judge often issues a “bench warrant”, entailing that when an individual does not follow court rules, the judge calls for their arrest. In the past decade, a surprising 70% of debt collection hearings result in default judgment for the plaintiff, because the defendant does not show up. The unawareness of hearing dates by defendants is largely due to the fact that in debt-related hearings, plaintiffs are usually expected to notify the defendant, instead of the court doing so. Almost every time, these cases are organization vs. an individual who owes debt, meaning the large organizations do not inform defendants.. In fact, 54% of business vs. individual cases are debt related. To make things even worse, in business vs. individual cases, public lawyers are not available, and debt-owing defendants most likely lack resources to afford legal representation. This causes many defendants to be intimidated by the legalities of these cases, believing their case to be futile, resulting in an absence from court. In both this method and the previous method, courts ignore the 1983 Bearden vs. Georgia ruling, allowing the imprisonment of an individual due to debt.

While these two factors may not exactly directly break any laws, it takes away from the essence of the justice systems, imparting injustice on a legal system meant to promote justice. To further this, racial gaps in debt-related cases are also present. Through 57 counties in Texas, a 2023 study by Harvard and Stanford researchers shows that Black individuals make up 14% of

the population under the poverty line (the group most influenced by debt), while making up 29% of Failure to Appear or Failure to Pay debt-related cases in these areas. With similar results from the same study in Wisconsin, the data shows that Black individuals are overrepresented in debtors' prisons. Other demographics, including Hispanic and Caucasian individuals are fairly represented and underrepresented respectively relative to their respective populations under the poverty line. This adds another dimension to the race vs. poverty question as African-Americans are already overrepresented under the poverty line relative to their overall population. These studies expose the nature of debt in the justice system, and how courts target already disadvantaged people (usually those that are in debt or financially unstable), and exploit them in debt related cases.

The simple solution for modern day debtors prisons is for state or federal law to crack down on debtors' prisons and create more specific rules and regulations preventing them. This includes investigating why courts attempt to imprison off of debt. As mentioned before, the incentives for judges and courts to require fines is to help support themselves financially. Instead of investing so much into law enforcement that deals with mostly non-civil cases, using the money to fund and regulate courts could solve the 20% of cases which are civil and mostly related to debt. Fortunately, some changes to funding have been made, most notably using Workload-based Allocation and Funding Methodology (2013) to attempt to equitably allocate court funding to each state. While this helped improve the previous chronic underfunding, the persistence of court debt shows either more funding is necessary or another solution must be found. The FTC (Federal Trade Commission) also recommended ways to solve this problem including adopting regulations requiring debt collectors to be more forthcoming on information to the court and to the defendants. From 2009-2019, 12 states enacted changes through court

rules and legislation, to help all debt claim litigants. Examples include having the court notify the defendant about hearings instead of the debt collection organization notifying, and requiring the plaintiff to become more forthcoming about the details and proof of the debt. While these regulations are helping, other states, and potentially on the federal level, need to follow suit and focus more on debt-related cases which are often left behind. Courts also need to be more consistent in enforcing the 1983 *Bearden vs. Georgia* ruling, which directly prohibits debtors prisons. This ruling is often ignored when debtors' prisons are allowed. Ultimately, debt imprisonment and debt related cases should require more attention and more regulations if they are to be removed.

Like many ideas in American history, debtor's prisons were meant to be outlawed in the past. Yet more than a century later, these unjust practices still haunt the judicial system. The resurgence of debtors' prisons in modern society is a disheartening reality that challenges the principles of justice and fairness within our legal system. Despite historical efforts to abolish such practices, the loopholes and gaps in the law have allowed courts to exploit individuals, leading to unjust arrests and incarcerations over small unpaid debts. A small, insignificant debt should not upend the lives of people like Nikki Petree, and Robin Sanders. The alarming statistics, racial disparities, and the erosion of fundamental legal rights highlight the urgent need for comprehensive reforms. State and federal regulations must address these issues head-on, cracking down on the deceptive practices of courts and implementing stringent reforms to protect individuals from the unjust consequences of debt-related cases. By revisiting and reinforcing the 1983 *Bearden vs. Georgia* ruling, enforcing consistent standards, and prioritizing the rights of individuals over financial incentives, society can work towards a legal system that truly upholds justice, equality, and the well-being of all citizens. The troubling legacy of debtors' prisons must

finally be abolished to ensure that our legal system serves the principles it was designed to uphold.

Bibliography

<https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/financing-californias-court-system#:~:text=However%2C%20the%20State%20still%20only,control%20can%20mean%20organizational%20control.>

<https://www.pewtrusts.org/en/research-and-analysis/articles/2023/09/18/debt-collection-cases-continued-to-dominate-civil-dockets-during-pandemic#:~:text=Debt%20claims%20cases%20range%20from, and%20are%20depicted%20in%20teal.>

<https://www.communitylegalaid.org/node/1725/we-still-have-debtors-prisons-2022>

<https://truthout.org/articles/these-seven-states-still-operate-debtors-prisons/>

<https://news.harvard.edu/gazette/story/2023/09/how-common-is-debt-imprisonment-in-u-s-today/#:~:text=The%20data%20presented%20an%20order,day%20in%20jail%20in%20both>

<https://policylab.hks.harvard.edu/debtors-prisons/data/>

<https://finesandfeesjusticecenter.org/articles/us-debtors-prisons/>

https://www.aclu.org/sites/default/files/field_document/InForAPenny_web.pdf

<http://alabamaappleseed.org/fines-and-fees/talking-trash-why-is-the-tiny-alabama-city-of-valley-arresting-people-for-unpaid-trash-bills/>

https://www.huffpost.com/entry/this-mother-was-arrested-seven-times-and-just-spent-35-days-in-jail-because-she-bounced-a-28-check_n_57c46389e4b0cdfc5ac855dd

<https://www.cbsnews.com/news/poor-defendants-say-they-face-modern-day-debtors-prison/>

<https://www.justice.gov/usao-sdal/page/file/918356/download>

<https://finesandfeesjusticecenter.org/articles/bearden-v-georgia/>

<https://supreme.justia.com/cases/federal/us/461/660/>