POVERTY DOCKET

In these desperate economic times, the Michigan ACLU has focused on a disturbing trend — criminal punishment of Michiganders because they are poor. All across Michigan, residents are being thrown in jail, kept in jail or convicted for the simple reason that they have little or no income or assets. What follows is a summary of several cases on our poverty docket. For the full legal docket, please go to www.aclumich.org/courts/legal-dockets

Reforming the Broken Indigent Defense System

For decades, leaders in the state have recognized that Michigan's system of representing poor individuals accused of crimes is broken. In February 2007, the ACLU, working with its coalition partners, filed a critically important class action against the state to fix this longstanding problem. The state responded by asking the court to dismiss the case, contending that the counties, not the state, were responsible for any deficiencies in the system. In May 2007, Ingham County Circuit Judge Laura Baird rejected the state's argument. She ruled that the state is responsible for insuring constitutionally adequate criminal defense and simply because Michigan has delegated its responsibility to the counties, it is not "off the hook" when the system fails. Judge Baird also granted the ACLU's request to certify the case as a class action. The state has appealed to the Michigan Court of Appeals and oral argument were held in December 2008. At stake is nothing less than the legitimacy of our criminal justice system. *Duncan v. Hunter.* Attorneys (partial list): Frank Eaman, Julie North, Emily Chiang, Robin Dahlberg, Elizabeth Kennedy, Mark Granzotto, and Mark Fancher.

Judge Refuses to Appoint Appellate Counsel, Defying U.S. Supreme Court Decision

In the 2005 landmark ACLU case *Halbert v. Michigan*, the United States Supreme Court ruled that Michigan is constitutionally required to provide appointed counsel to indigent defendants on appeal from a guilty plea. Despite this clear holding, some judges have continued to deny appellate counsel, reasoning that the defendant "waived" appointment of counsel by pleading guilty. The latest problems arise from Saginaw County, where Circuit Judge Robert L. Kaczmarek has denied a defendant appointed counsel to challenge her conviction on appeal. *People v. Holden.* Attorney: Terry Flanagan.

Indigent Defendant Denied Counsel Because His Mother Posted Bond

In Berrien County, Judge Dennis M. Wiley revoked the appointment of counsel for Dajour Harvey, an 18-year-old indigent defendant charged with home invasion. Bond had been set at $10,000 cash or surety. Dajour's mother paid a bail bondsman $250 to get her son out on bond. When Judge Wiley learned that Dajour was released, he told Dajour that if "mommy" could afford to post bond, then she could also afford to hire him a lawyer. Meanwhile, Judge Wiley placed Dajour on an electronic tether while he was out on bail and ordered Dajour to pay a tether fee of $12 per day. When Dajour failed to pay the fee because he could not afford it, he was taken back to jail. *People v. Harvey.* Attorney: Terry Flanagan.

Deadbeat Mom: Strict Liability for Failure to Pay Child Support

As a result of being mentally disabled, indigent, and unemployed, Selesa Likine is unable to pay court-ordered child support in the amount of $1,131 per month. In 2004, the Michigan Court of Appeals held the state statute making it a felony not to pay child support was a strict liability offense, meaning that financial inability to pay is no defense. Ms. Likine was subsequently charged and convicted in Oakland County Circuit Court of non-payment of

child support because she is too poor to pay and too ill to work. The ACLU is providing direct representation to Ms. Likine on appeal, challenging the strict liability statute as unconstitutional. *People v. Likine.* Attorney: David Moran.

The New Debtors' Prisons: Mother Sent to Jail for not Paying Her Son's Juvenile Detention Fee

In Escanaba, Edwina Nowlin was held in contempt of court and sentenced to jail for 30 days by Judge Robert E. Goebel, Jr., because she could not afford to pay $104 to reimburse the court for the "care" of her son, who had been sentenced to a juvenile detention facility. Ms. Nowlin, who has never been convicted of any crime, was destitute, unemployed, and homeless. Although she explained to the judge that she could not possibly afford to pay $104 per month to the juvenile detention facility, the judge nonetheless sent her to prison for violating the court order that she make those payments. The judge also denied her request for a court-appointed lawyer. The ACLU filed a motion for reconsideration on her behalf, and Ms. Nowlin was finally released after 28 days behind bars for being poor. Ms. Nowlin's case and the ACLU's work on her behalf were featured on the editorial page of the *New York Times*, which described her treatment as "both barbaric and unconstitutional." *In re Victor Lee Nowlin.* Attorney: Karl Numinen.

Judge Threatens to Send Indigent Defendant to Jail for Failure to Pay Probation Supervision Fee

In yet another example of being punished for being poor, a defendant on probation in Wayne County was charged with violating his probation and threatened with jail time because he could not afford to pay a $120 "supervision fee" for his probation. The defendant, David Sutton, was disabled and indigent, surviving on $262 per month in disability payments. He was originally sentenced to one year probation for "attempted false report of a felony" and "attempted insurance fraud," and his probation was extended for four additional years because he could not afford to pay the fee. Although Sutton complied with every other condition of his probation, Wayne County Circuit Judge Daniel P. Ryan threatened to send him to jail for not paying the fee. The ACLU represented Mr. Sutton at his probation revocation hearing, and Judge Ryan agreed to terminate probation without requiring Sutton to pay the fee. *People v. Sutton.* Attorney: Michael J. Steinberg.

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