COSCA Position Paper: End of Debtors’ Prisons

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COSCA Position Paper Development

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Legal Context - Bearden v. Georgia (1983)

- U.S. Supreme Court held that courts cannot revoke probation for failure to pay a fine without first looking at facts to demonstrate the defendant:
  - Had the ability to pay;
  - Willfully refused to pay; and
  - Had access to adequate alternatives to jail for non-payment
Overview of the Problem

- Use of fees has increased as a substitute for adequate funding of courts and other governmental entities.
- The problem is especially acute in limited jurisdiction courts.
- Use of private collection agencies can increase abuse.
Recommendation: Streamline and Strengthen Court’s Assessment of Ability of Defendant to Pay

- This recommendation supports the requirements in the Bearden case
- Need a more accurate way to determine ability to pay
- Some states have developed guidelines or standard procedures to determine ability to pay
- Others are working on automated tools
Recommendation: Adopt Evidence Based Practices that Reduce Failure to Appear and Improve Compliance

1. Simplify and Clarify Court Debt. Produce easy to understand fee schedules and publish in a transparent manner.


3. Eliminate Additional Fees for Supervision and the Extension of Supervision Solely to Collect Payment.
Recommendation: Expand and Improve Access to Alternatives to Satisfy Debt

1. Expand the use of Community Service. Accomplished through use of non-profits and community courts

2. Expand the Use of Day Fines. Sets the fine based on an offender’s daily income and the gravity of the offense

3. Provide Options for Alternative Non-Financial Ways to Satisfy Debt. These may focus on alternatives that will benefit the individual and the community
Recommendation: Ensure judges have the Authority to Modify, Mitigate or Waive Fees

- Many states have mandated that judges impose certain financial obligations.
- These laws or rules should be reformed to ensure judges have enough discretion to comply with Bearden requirements.
Recommendation: When Necessary Impose Jail Time for Willful Refusal to Pay

- Those who willfully refuse, but have the means to pay, have earned the consequence of incarceration.
- Range of sanctions are available in this circumstance.
- If incarceration occurs, ensure credit is provided at a reasonable rate for satisfaction of court obligations.
Thank You!

Questions?