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## Land of the Free, If You Can Afford It: Reforming Mayor's Courts in Ohio

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# LAND OF THE FREE, IF YOU CAN AFFORD IT: REFORMING MAYOR’S COURTS IN OHIO

LUCIA LOPEZ-HISIJOS\*

## ABSTRACT

Unlike most states in America, Ohio has a unique system of punishing minor misdemeanors and ordinance violations through municipal institutions called mayor’s courts. In 2017, Ohio had 295 of these courts, and they heard nearly 300,000 cases. But these are not normal courts. Ohio’s mayor’s courts do not conduct ability to pay hearings and can jail defendants who fail to pay court fines. With the author’s original research into Ohio’s mayor’s courts, this Note argues that these institutions can function like modern-day debtor’s prisons and violate indigent defendants’ constitutional right to Due Process. Ultimately, this Note proposes a model bill for the Ohio legislature that promotes more oversight and promises to save the constitutionality of these municipal institutions.

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\*J.D. Candidate, May 2020, Cleveland-Marshall College of Law at Cleveland State University. I am sincerely grateful for my husband, David, for his brainstorming, proofreading, and unwavering support. I promise never to say the words "mayor’s court" again. Also, thank you to all those who listened patiently during the production of this Note (especially Ms. Mary Walsh). Thank you to Professor Lazarus, who has championed me from the moment I stepped foot at Cleveland-Marshall and to Professor Emerita Susan Becker who has become an inspiration and a lifelong mentor. Most importantly, I want to dedicate this Note to my daughters, Iria and Paloma -- may your laughs always be contagious and brighten dark times.

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## I. INTRODUCTION

A man is driving home from work when he notices flashing lights in his rearview mirror. The police officer cites him, and the citation orders him to appear in municipal mayor’s court at a later date. When he appears at the time and place the ticket requires, the magistrate presiding renders a verdict: guilty of having an “exhaust system emit a loud, cracking or chattering noise unusual to its normal operation.”<sup>1</sup> His car was too loud, evidently, and now he owes a fine and court costs for this infraction.

To some people, this fine may not significantly impact their bank account, but for others, it may be more than they currently have in their bank accounts. The court does not have any type of payment system or financing options. As a result, the magistrate informs defendants that they must return to court to see him every other week until the defendant can come up with the money to pay the fine and costs in full, and all at once. Also, the magistrate says, every time that a person continues the case by having to return to pay, the court will assess a continuance fee.

Maybe the defendant goes back for the first few times, but going to court requires missing work, and after a few weeks it is easy to start missing the mandated court dates. For some, the lights in their rearview mirror appear again, and this time, they are arrested and taken to jail. The Parma Heights Mayor’s Court routinely issues bench warrants for those who have been unable to pay their court costs.

A measly \$25 fine and court costs of \$90 owed to the Parma Heights Mayor’s Court may seem like a preposterous reason to jail a person *for four days*, but unfortunately for one Parma Heights man, this scenario was not hypothetical.<sup>2</sup> For \$115, four days of his life were spent behind bars, even though his offense was only a minor traffic violation. His treatment is no exception—this case is representative of a larger body of such cases where the poor are incarcerated for undue lengths of time simply on account of their inability to settle bills levied by the mayor’s courts of Ohio.

But how can something so blatantly unfair and arguably unconstitutional happen? Unlike the vast majority of states in America, Ohio has a system of punishing minor

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<sup>1</sup> PARMA HEIGHTS, OHIO, CODE OF ORDINANCES § 331.35 (2018).

<sup>2</sup> Email from Lucia Lopez, Assoc. Editor, Cleveland State Law Review., to Colleen Gross, Custodian of Records, North Royalton PD (Nov. 8, 2018) (on file with author). *See also* CITY OF PARMA HEIGHTS MAYOR’S COURT ONLINE DOCKETING AND TICKET PAYMENT SYSTEM, <http://www.ohioticketpayments.com/parmahts/DocketSearch.php> (last visited Jan. 28, 2019).

misdemeanors and ordinance violations through municipal institutions called mayor's courts.<sup>3</sup> The purpose of this Note is to outline the reasons why the mayor's courts operate unconstitutionally by not conducting ability to pay hearings, detail the costs of this practice, and propose what should be done to remediate it.

To show just how the statutory scheme of Ohio's mayor's courts have been known to violate indigent defendants' constitutional right to Due Process, Part II of this Note first examines the origins of mayor's courts in Ohio as well as the doctrine surrounding the abolishment of debtor's prisons. Part III, then, analyzes the current operation of mayor's courts, the financial incentives that charging exorbitant court costs create for Ohio's towns, and the worrisome lack of oversight exercised over mayor's courts. Part III also discusses how the author's original research into mayor's court shows that the fear of modern-day debtor's prisons is not imaginary. Part IV outlines a proposed bill for introduction into the Ohio legislature. Additionally, Part IV assesses why the proposed bill will likely find more success than past attempts to oversee mayor's courts. Part V briefly concludes.

## II. BACKGROUND

This section first explores a short history of mayor's courts in Ohio. Next, it discusses how mayor's courts would operate if the statutes governing mayor's courts were actually followed. Lastly, it details the past constitutional challenges to the statutes.

In 2017, 295 mayor's courts across Ohio heard 288,370 cases.<sup>4</sup> In theory, mayor's courts are meant to be a convenient and efficient way to quickly move defendants through the legal system in a community setting, and to alleviate the burden on municipal courts of hearing minor cases. That these institutions are named "courts" is somewhat of a misnomer. Mayor's courts are not courts of record, do not have a presiding judge, do not provide legal representation, and are not under the purview of Ohio's judicial system.<sup>5</sup> Instead, they are statutory courts that any municipality with 200 or more residents, not in the same region as a municipal court, may establish.<sup>6</sup>

Some people argue that mayor's courts handle minor violations that have little impact on a defendant's life, but the truth of the matter is that they are operating as courts-de-facto without the due process rights that traditional courts of record are required to provide to defendants. To name a few: public defenders are not appointed to those who cannot afford legal counsel at mayor's courts hearings, there are no transcripts of court proceedings, and a not-guilty plea requires an entire appeal *de novo*

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<sup>3</sup> OHIO REV. CODE ANN. § 1905 (2019).

<sup>4</sup> THE SUP. CT. OF OHIO, 2017 MAYOR'S COURTS SUMMARY, 1–5, <http://www.supremecourt.ohio.gov/Publications/mayorscourt/mayorscourtreport17.pdf>. [hereinafter MAYOR'S COURTS SUMMARY].

<sup>5</sup> *Judicial System Structure*, THE SUP. CT. OF OHIO, [www.supremecourt.ohio.gov/JudSystem/default.asp](http://www.supremecourt.ohio.gov/JudSystem/default.asp) (last visited Jan. 21, 2020); MAYOR'S COURTS SUMMARY, *supra* note 4, at 1.

<sup>6</sup> OHIO REV. CODE ANN. § 1905.01. A couple of municipalities that do not meet these requirements have been exempted and can also operate mayor's courts in Ohio.

to a municipal court.<sup>7</sup> Furthermore, mayor's courts are presided over by either a magistrate (who need only have three years of legal practice after law school) or the city's actual Mayor who need not meet *any* academic requirements.<sup>8</sup> And much unlike traditional courts, the cities that run mayor's courts have a vested financial interest in the outcome of the cases adjudicated: the revenues collected from fines at mayor's courts partly fund city budgets.<sup>9</sup> To learn how this extra-judicial system came into existence, this Note next looks at the history of their establishment.

### A. History of Mayor's Courts

Although mayor's courts are fairly rare in the United States, Ohio has a long tradition of such courts.<sup>10</sup> They were not formally recognized before 1815 but have existed in some form or another since Cincinnati incorporated its mayor's court into its city charter.<sup>11</sup> By 1819, these quasi-judicial powers were already expanding considerably.<sup>12</sup>

City courts or mayor's courts continued to operate widely in Ohio, but it was not until 1905 that they were codified into Chapter 1905 of the Ohio Revised Code.<sup>13</sup> Chapter 1905 establishes mayor's courts, provides requirements and guidelines for operation, and sets forth jurisdictional boundaries both geographically and with regard to subject matter jurisdiction.<sup>14</sup>

Although Chapter 1905 does not require municipalities to establish mayor's courts, it grants them the option to do so if they wish, provided they meet two requirements: the city cannot be located within the boundaries of an already-existing municipal court, and the city must have a population of at least 200 residents.<sup>15</sup>

Large sections of Chapter 1905 are devoted to describing the types of cases that mayor's courts are able to adjudicate.<sup>16</sup> Municipal ordinance violations, moving traffic violations that occur within the confines of the city's borders, and a person's first operating a vehicle under the influence (OVI) offense are just some of the cases

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<sup>7</sup> MAYOR'S COURTS SUMMARY, *supra* note 4, at 1; *Id.* § 1905.25.

<sup>8</sup> *Id.* § 1905.01(A), .05.,.20.

<sup>9</sup> *Id.* § 1905.32,

<sup>10</sup> *Mayor's Court Testimony: Before the S. Judiciary Comm. on Civil Justice*, 127th Gen. Assem. (2008) (statement by Thomas J. Moyer, then Chief Justice of Ohio Supreme Court), available at [http://www.supremecourt.ohio.gov/PIO/Speeches/2008/mayorscts\\_120208.asp](http://www.supremecourt.ohio.gov/PIO/Speeches/2008/mayorscts_120208.asp) [hereinafter *Mayor's Court Testimony*]; CARRINGTON T. MARSHALL, *A HISTORY OF THE COURTS AND LAWYERS OF OHIO* 507 (1934).

<sup>11</sup> MARSHALL, *supra* note 10.

<sup>12</sup> *Id.*

<sup>13</sup> *See* OHIO REV. CODE ANN. § 1905.

<sup>14</sup> *See id.* §§ 1905.01–1905.38.

<sup>15</sup> *Id.* § 1905.01.

<sup>16</sup> *See id.* § 1905.01–1905.033.

the Ohio Revised Code permits mayor's courts to hear.<sup>17</sup> Expressly prohibited from adjudication are offenses that deal with domestic violence and all felonies.<sup>18</sup>

Section 1905.05 further explicates the requirements for the administrators of justice in mayor's courts.<sup>19</sup> Mayor's courts can be administered by either the town's mayor, in which case she is not required to have a legal background but must attend training designed by the Ohio Supreme Court, or by a magistrate appointed by the mayor who is required to have been admitted to the practice of law in Ohio and have had a least three years of legal practice prior to her appointment as magistrate.<sup>20</sup> The training administered by the Supreme Court of Ohio at the request of the Ohio Legislature is six hours long.<sup>21</sup>

This section of the Ohio Revised Code also requires that magistrates be compensated with a fixed annual salary and not one variable upon the monetary proceeds collected from fines they impose on defendants.<sup>22</sup> This requirement was added to the Ohio Revised Code as a result of the Supreme Court of the United States' ruling in *Tumey v. Ohio*, which held that the "possible temptation" of increasing fines for the magistrates' or mayors' own financial gain was enough of a due process violation to make it unconstitutional.<sup>23</sup> But, as this Note later discusses, merely fixing the magistrate's or mayor's salary does not reach all possible temptations that come from charging defendants.

Chapter 1905 of the Ohio Revised Code also discusses the types of punishments that can be imposed by magistrates or mayors in charge of these courts.<sup>24</sup> They can suspend drivers' licenses, impose fines and court costs, mandate community service, block vehicle registration, and confine or commit defendants until fines are paid or arranged to be paid, amongst other things.<sup>25</sup>

Furthermore, mayor's courts do not provide public defenders as counsel to defendants, so defendants who wish to retain counsel but are not able to afford it, will be transferred to municipal courts.<sup>26</sup> All appeals from mayor's courts will be tried *de novo* at the municipal court to which they are transferred.<sup>27</sup> While this may seem like an adequate solution to a lack of legal counsel, this Note later discusses why merely

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<sup>17</sup> *Id.* § 1905.01.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § 1905.05.

<sup>20</sup> *Id.*

<sup>21</sup> MAY. R. 29–34, available at <https://www.supremecourt.ohio.gov/JCS/mayors/rules.pdf>.

<sup>22</sup> OHIO REV. CODE ANN. § 1905.21.

<sup>23</sup> *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

<sup>24</sup> OHIO REV. CODE ANN. §§ 1905.28–1905.36.

<sup>25</sup> *Id.* §§ 1905.26–1905.32, 1905.201–1905.202.

<sup>26</sup> See *infra* Section III.A.3.

<sup>27</sup> OHIO REV. CODE ANN. § 1905.25.

allowing an appeal *de novo* is not enough to ensure that defendants are afforded their rights throughout the entire legal proceeding.

As of 2004, partly in response to citizen, judicial, and legislative complaints, more oversight has been imposed on mayor's courts.<sup>28</sup> The Ohio Legislature began requiring that all mayor's courts register with the Supreme Court of Ohio and provide quarterly reports detailing the number of cases filed, pending, and terminated in the mayor's court.<sup>29</sup> This numerical data is about as much data as there is available with regard to mayor's courts since most mayor's courts do not keep or even make transcripts of court proceedings.<sup>30</sup>

Because several of the characteristics of mayor's courts are suspect, it is not surprising that the courts, including the highest court in the land, have weighed in. The next section will discuss the ways in which the courts have constrained mayor's courts, though not sufficiently.

### B. Past Constitutional Challenges

Not long after mayor's courts began operating, their constitutionality was challenged in the Supreme Court of the United States.<sup>31</sup> More specifically, mayor's courts have been repeatedly challenged for violating the Fourteenth Amendment to the U.S. Constitution, which provides that,

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>32</sup>

In *Williams v. Illinois*, Willie Williams was convicted of petty theft and was sentenced to a year imprisonment as well as a \$500 fine.<sup>33</sup> An Illinois law said that if Williams did not pay his fine, then he must stay behind bars past the year of imprisonment until he paid off the fine.<sup>34</sup> The law credited Williams with \$5 towards the fine for each day he spent imprisoned.<sup>35</sup> In the end, Williams spent a total of 101 days imprisoned beyond the original term.<sup>36</sup> The Court reasoned that while the statute

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<sup>28</sup> See MAYOR'S COURTS SUMMARY, *supra* note 4, at 1.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Ohio Mayor's Courts at a Glance*, ACLU OHIO, [https://www.acluohio.org/wp-content/uploads/2019/04/OhioMayorsCourtsAtAGlance\\_FINAL\\_2019-0415.pdf](https://www.acluohio.org/wp-content/uploads/2019/04/OhioMayorsCourtsAtAGlance_FINAL_2019-0415.pdf) (last visited Jan. 21, 2020).

<sup>31</sup> *Tumey v. Ohio*, 273 U.S. 510, 514–15 (1927).

<sup>32</sup> U.S. CONST. amend. XIV, § 1.

<sup>33</sup> *Williams v. Illinois*, 399 U.S. 235, 236 (1970).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

appeared neutral on its face, the way it was applied was “invidious discrimination” because Williams was treated differently as a poor person than he would have been had he not been poor.<sup>37</sup> The Court then ruled that imprisoning defendants for longer than the statutory maximum because of an inability to pay violates the Equal Protection Clause of the Fourteenth Amendment.<sup>38</sup>

Not long after the ruling in *Williams*, the Supreme Court of the United States heard the case of Preston Tate.<sup>39</sup> Tate had nine traffic offenses which equaled \$425 in fines.<sup>40</sup> He could not pay the fines, so he was sent to “work off” his fines also at a rate of \$5 per day for a total of 85 days imprisonment.<sup>41</sup> The Court held that even when an offense is punishable with only fines, imprisonment for inability to pay violates the Equal Protection clause in the same way as *Williams*.<sup>42</sup> In other words, courts cannot imprison defendants due to inability to pay.

*Bearden v. Georgia* implicated the due process clause into the violations in addition to Equal Protection.<sup>43</sup> In that case, Mr. Bearden was sentenced to three years of probation and also fined \$750 for committing a robbery. Not long after, Mr. Bearden lost his job and stopped paying.<sup>44</sup> Because he stopped paying, the court revoked his probation and sentenced him to two years of imprisonment.<sup>45</sup> In this case, the Due Process and Equal Protection Clauses are “intertwined.”<sup>46</sup> Bearden was treated differently than other similarly-situated people because he was poor. As such, he could not realistically escape jailtime and his Equal Protection rights were violated.<sup>47</sup>

Additionally, this situation implicated procedural due process rights because Bearden was not given a proper hearing to assess his financial situation before the court imprisoned him for not paying his fine.<sup>48</sup> Most importantly, *Bearden* established that courts must conduct hearings to distill whether defendants are not paying fines because they are not able to or because they are unwilling to *before* imprisoning them.<sup>49</sup> Imprisoning defendants solely because they cannot pay their fines is plainly

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<sup>37</sup> *Id.* at 242.

<sup>38</sup> *Id.* at 243.

<sup>39</sup> Tate v. Short, 401 U.S. 395, 396 (1971).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 396–97.

<sup>42</sup> *Id.* at 397–99.

<sup>43</sup> Bearden v. Georgia, 461 U.S. 660, 666–67 (1983).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 663.

<sup>46</sup> *Id.* at 665.

<sup>47</sup> *Id.* at 672–73.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*



unconstitutional.<sup>50</sup> The foregoing review of case law applies to all courts in the United States, but the specific subject of mayor's courts in Ohio and the concerns related to conflicts of interest has produced more jurisprudence that this Note discusses next.

### *C. Jurisprudence on Ohio Mayor's Courts*

In *Tumey v. Ohio*, Ed Tumey was convicted by the Mayor of North College Hill, Ohio for possessing liquor in violation of the Prohibition Act that existed at the time.<sup>51</sup> Tumey argued his due process rights were violated because the mayor benefitted financially from Tumey's conviction when he received \$12 from the fine imposed.<sup>52</sup> The Court agreed and went on to say that,

every procedure which would offer a *possible temptation* to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process.<sup>53</sup>

In a seeming reversal just one year later, the Supreme Court of the United States ruled that a mayor could be an impartial arbiter and thus be consistent with the due process that the constitution requires.<sup>54</sup> In *Dugan v. Ohio*, the defendant was convicted of possessing alcohol in violation of prohibition much like in *Tumey*.<sup>55</sup> The court distinguished *Tumey* by pointing out that, in the present case, the mayor was not profiting personally from the conviction, whereas the mayor in *Tumey* earned \$12 from Tumey's conviction.<sup>56</sup> It further explicated that even though the mayor's salary is paid from funds to which accumulated fines flow, it is still not enough to violate due process because it is a general fund, and the mayor would receive his salary regardless of whether or not the defendant was convicted.<sup>57</sup>

Forty years later, the Supreme Court of the United States returned to the *Tumey* holding and ruled that the way in which Monroeville operated its mayor's court failed the "possible temptation" test outlined in *Tumey*.<sup>58</sup> The Court arrived at this conclusion by positing that a statutory requirement of an impartial judge was not

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<sup>50</sup> *Id.*

<sup>51</sup> *Tumey v. Ohio*, 273 U.S. 510, 515 (1927).

<sup>52</sup> *Id.* at 531–32.

<sup>53</sup> *Id.* at 532.

<sup>54</sup> *Dugan v. Ohio*, 277 U.S. 61, 65 (1928).

<sup>55</sup> *Id.* at 62.

<sup>56</sup> *Id.* at 64.

<sup>57</sup> *Id.* at 65.

<sup>58</sup> *Ward v. Village of Monroeville*, 409 U.S. 57, 59–62 (1972).

enough to ensure that a defendant actually receive an impartial judgment.<sup>59</sup> The fact that the Mayor of Monroeville has both executive and partisan powers as well as judicial powers is already suspect.<sup>60</sup> The Court further explained that factoring in the revenues delivered by the mayor's courts were a substantial part of the city's budget, and it is clear that there is a "possible temptation" to forget about the defendant's guilt and focus on the city budget.<sup>61</sup> The Court said that a "possible temptation" may exist not only when the mayor has a direct personal pecuniary interest but also when "the mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court."<sup>62</sup>

The Supreme Court of the United States has not rendered a decision with regard to mayor's courts in Ohio since *Ward*, but both the United States District Court for the Northern District of Ohio as well as the United States Court of Appeals for the Sixth Circuit have continued to restrict the role of mayor's courts ever since.<sup>63</sup> In *Rose v. Village of Peninsula*, the United States District Court for the Northern District of Ohio clarified that even in instances where the mayor's court *does not* provide a substantial amount of the city budget's revenue, a defendant's due process rights *can* be violated.<sup>64</sup> It concluded that the substantiality of the revenue generation is just one factor to consider in deciding whether due process rights have been violated.<sup>65</sup> Mostly, the Court focused on the fact that "inadequate separation of powers in a mayor-judge *may* occur . . . the ultimate test is whether the impartiality of a mayor-judge may reasonably be questioned, given the combination and level of his or her executive and judicial powers."<sup>66</sup>

In 1999, the United States Court of Appeals for the Sixth Circuit, in *DePiero v. City of Macedonia*, further whittled down the requirement for a due process violation to be found.<sup>67</sup> The Mayor of Macedonia held executive powers that he did not exercise, and, thus, he argued that there was no conflict between powers because his judicial and executive powers were sufficiently devoid of conflict.<sup>68</sup> The Court of Appeals for the Sixth Circuit reiterated and reapplied the *Tumey* principle that actual

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<sup>59</sup> *Id.* at 61.

<sup>60</sup> *Id.* at 58.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 60.

<sup>63</sup> See *DePiero v. City of Macedonia*, 180 F.3d 770 (6th Cir. 1999); *Rose v. Village of Peninsula*, 875 F.Supp. 442 (N.D. Ohio 1995).

<sup>64</sup> *Rose*, 875 F.Supp. at 452.

<sup>65</sup> *Id.* at 453.

<sup>66</sup> *Id.* at 452.

<sup>67</sup> *DePiero*, 180 F.3d at 790.

<sup>68</sup> *Id.* at 782.

temptation is not required for the violation of due process.<sup>69</sup> The mere *possibility* of temptation is sufficient.<sup>70</sup>

Despite the number of restrictions of power placed on mayor's courts, no court has gone so far as to require their abolishment. Nearly half of all the sections that began as part of Chapter 1905 of the Ohio Revised Code have since been repealed in part due to legislation and in part due to judicial restrictions.<sup>71</sup> The Ohio Legislature has on more than one occasion attempted to abolish mayor's courts, but these efforts have failed.<sup>72</sup> It is possible that legislators may have sensed the lack of political cover available to them as they sought to curtail the powers of town mayors in their own districts.<sup>73</sup> Even so, elected leaders have supported an abolishment or complete restructuring of mayor's courts in order to place them under the purview of the judiciary, including perhaps most notably the late Chief Justice Thomas J. Moyer of the Supreme Court of Ohio and the current Chief Justice Maureen O'Connor.<sup>74</sup>

#### D. Field Research Methods

The author of this Note spent four months following the dockets of several mayor's courts in Ohio. Because there are no transcripts or recordings of what occurs at mayor's courts, the author visited mayor's courts hearings in five municipalities and conducted telephone interviews with the clerks of two of the courts.

First, the author performed general research on the matter of mayor's courts. After visiting the Parma Heights Mayor's Court in October of 2018, the author looked closer at this particular court. Upon examining all docket entries from October 2017 to October 2018 and cross-referencing the responsive docket entries with jail records, the author found at least eight instances where bench warrants were issued for defendants due to non-payment.<sup>75</sup> One defendant in particular was jailed for four days.<sup>76</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Ward v. Village of Monroeville*, 409 U.S. 57, 61–62 (1972).

<sup>72</sup> Paul Revelson, *Nothing But Trouble: The Ohio Legislature's Failed Attempts to Abolish Mayor's Courts*, 35 U. DAYTON L. REV. 223, 223 (2010).

<sup>73</sup> See Justin Conley & Rebecca McKinsey, *Ohio's Mayor's Courts, Big Business*, THE COLUMBUS DISPATCH (July 22, 2012), <https://www.dispatch.com/content/stories/local/2012/07/22/big-business.html>; Michael McIntyre, *Linndale Mayor's Court Leads in Per Capita Traffic Cases*, THE PLAIN DEALER (July 23, 2008), [http://blog.cleveland.com/metro/2008/07/linndale\\_mayors\\_court\\_leads\\_in.html](http://blog.cleveland.com/metro/2008/07/linndale_mayors_court_leads_in.html).

<sup>74</sup> *Mayor's Court Testimony*, *supra* note 10.

<sup>75</sup> Email from Colleen Gross, Custodian of Records, North Royalton Police Department, to Lucia Lopez, Assoc. Editor, Cleveland State Law Review (Oct. 19, 2018, 10:16 EST) (on file with author).

<sup>76</sup> Email from Colleen Gross, Custodian of Records, North Royalton Police Department, to Lucia Lopez, Assoc. Editor, Cleveland State Law Review (Nov. 8, 2018, 6:48 EST) (on file with author).

While one would hope that mayor's courts' real violations of constitutional rights would galvanize legislators to act in spite of mayors' likely opposition to the abolishment of such courts, this has not happened. For this reason, this Note posits a model bill to modify the current statutory framework in Part IV so that it conforms to constitutional requirements.

### III. ANALYSIS

The following section of this Note demonstrates how the lack of oversight of mayor's courts and conflicts of interest have created an environment where debtor's prisons are not only a hypothetical nightmare, but a reality. To illustrate, this Note uses the Parma Heights Mayor's Court's current procedures and practices as a case study.

#### A. Lack of Oversight

##### 1. Mayor's Courts Operate Under Little Supervision

The Ohio Supreme Court does not have control over mayor's courts in the way it does over other courts of record. This is because mayor's courts are statutory—that is, created, administered, and potentially abolished by the Legislature of Ohio.<sup>77</sup> But just as the judicial branch is not supposed to legislate from the bench, the legislative branch should not adjudicate from the Ohio Legislature.

Although state legislators can amend or repeal the statutory existence of mayor's courts, they are not capable of regulating the day to day operations of mayor's courts. In fact, in 2004, these legislators asked the Supreme Court of Ohio to start keeping track of mayor's court caseloads even though the court has absolutely no power in enforcing any regulations.<sup>78</sup> If a mayor's court does not submit a quarterly report, the Supreme Court simply acknowledges that it did not receive one.<sup>79</sup> It cannot remove a magistrate or mayor from the bench, cannot close down the mayor's court, and cannot issue sanctions.<sup>80</sup> The statute which governs mayor's courts does state that a "mayor or municipal corporation who fails to comply with the general law on registering and reporting under this section shall not conduct a mayor's court." However, no enforcement mechanism exists.

Each city sets their own policies for appointing a magistrate if the mayor does not want to exercise her right to be the arbiter of the town's mayor's court. Most often, the magistrate who takes the place of the mayor is appointed or hired by the mayor of the city and is evaluated in his or her job performance by the mayor of the city.

The state legislature exercises no power over this decision and while the community-at-large elects the mayor of the city, they do not directly vote on whom she appoints as magistrate in the way that municipal and common pleas judges are

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<sup>77</sup> See generally OHIO REV. CODE ANN. § 1905 (2019).

<sup>78</sup> See *id.* §1905.033 (2019); MAYOR'S COURTS SUMMARY, *supra* note 4, at 1.

<sup>81</sup> MAYOR'S COURTS SUMMARY, *supra* note 4, at 2.

<sup>80</sup> *Id.*

democratically-elected in Ohio.<sup>81</sup> In other words, it is up to each individual mayor to remain impartial and maintain integrity in their selection. And unlike most government employees, whose work is evaluated by a supervisor, mayors' performance is judged by the people of the town in that people will either opt to re-elect or not re-elect them for another term.

Arguably, a universal metric for evaluating a mayor's performance is how much revenue the city generates and can devote toward itself. So, the more funds the mayor's court raises, the better the revenue for the city, and the better off the mayor's political prospects. While it is true that a mayor might not have direct control over this if she does not oversee the mayor's court, she still maintains vast control over the magistrate who serves at her pleasure. And in the words of the *Tumey* court, there is a "possible temptation" to look the other way in administering justice for the benefit of the municipality's finances.

## 2. Lack of Transparency in Proceedings

In addition to the fact that the appointment and evaluation of magistrates requires supreme public trust in the mayor's integrity and benevolence, the substance of the mayor's courts proceedings also requires the public's blind trust. After all, mayor's courts do not have court reporters. Nothing said during a hearing is memorialized other than the plea of the defendant and the magistrate's finding if the defendant pleads no contest.<sup>82</sup> This leaves very little room to know exactly what transpires in any one hearing.

Procedural history including the charge, arresting officer, plea, disposition, and administrative actions such as whether bench warrants were issued is available, but often incomplete.<sup>83</sup> This lack of documentation violates the public's trust in the transparency, accountability, and verifiable justness of the actions undertaken by its government. With incomplete, inaccurate, or nonexistent records of a court's proceedings, how is the public to know whether the mayor or magistrate is doing what he or she is statutorily required to do, such as whether he is informing defendants of their rights to plead not guilty and be transferred to the relevant municipal court?

In addition to the ethical questions raised by the court's widespread lack of records, this practice raises practical problems as well: it has even caused problems for the municipal courts that receive the cases as appeals *de novo* and then struggle to contextualize them due to lack of supporting documentation of basic facts surrounding the case.<sup>84</sup> Take, for example, the mere fact that whether a person has standing to appeal requires knowledge of what happened in the court below. In *State v. Bixby*,

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<sup>81</sup> OHIO CONST. art. IV, § 6.

<sup>82</sup> See CITY OF PARMA HEIGHTS MAYOR'S COURT ONLINE DOCKETING AND TICKET PAYMENT SYSTEM, <http://www.ohioticketpayments.com/parmahts/DocketSearch.php> (last visited Nov. 28, 2018).

<sup>83</sup> Telephone Interview with Nora Neel, Parma Heights Assistant Court Clerk (Nov. 26, 2018).

<sup>84</sup> *State v. Bixby*, No. 2017-CA-11, 2017 Ohio App. LEXIS 4259 (Ohio Ct. App. Sept. 29, 2017).

defendant Lori Bixby received a fine on June 2, 2016 for speeding.<sup>85</sup> In October of 2016, she attempted to appeal that finding to the local municipal court.<sup>86</sup> She was denied that option because she had not filed the notice of appeal within ten days of the mayor's court judgment.<sup>87</sup> She appealed this decision to the Second District Court of Appeals of Ohio which also denied her appeal because she had not filed it in time.<sup>88</sup>

Bixby argued that she did not file on time because she was not told of her rights of appeal during the mayor's courts proceeding to which the Court simply said, "We have no transcript reflecting what occurred in the Mayor's Court on June 2, 2016. Absent such a record, we would be required to presume regularity of the court proceedings . . ."<sup>89</sup> In other words, since there are no transcripts of mayor's courts proceedings, we must assume that mayors and magistrates have given fair notice of appeals process to everyone.

What exactly takes place during a 'regular' court proceeding is elusive as all mayor's courts differ in the proceedings. Presuming regularity is assuming a legal fiction, and this fiction unfortunately enabled a miscarriage of justice, namely that Bixby was denied her right to appeal. This is an appalling result that becomes more worrisome when combined with the fact that a public defender is not available for mayor's courts defendants unable to afford their own counsel. A public defender would ensure that the defendant is aware of her rights and counsel her on whether to appeal and on what timeline.

### 3. Lack of Legal Representation

Right to counsel is available only when a defendant is charged with a crime that leads to actual imprisonment.<sup>90</sup> Because mayor's courts can accept only guilty or no contest pleas, legal representation is not available to defendants if they cannot afford it. If a defendant wishes to plead not guilty to the charge, they are transferred to the nearest municipal court. Presumably, the rationale is that since the charges brought in mayor's courts are relatively minor and an appeal *de novo* is available, the lack of representation does not violate a defendant's rights. But while the initial charge of a traffic violation may not carry the possibility of imprisonment, the subsequent charge of "failure to pay fine within time given" that the Parma Heights Mayor's Court issues as a matter of policy *did* carry a jail term for at least eight people in just one year.<sup>91</sup> As such, defendants should have access to counsel, if not at the first hearing, then surely at the second hearing once the charge for "failure to pay within time given" is imposed and the possibility of jail time arises.

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<sup>85</sup> *Id.* ¶2.

<sup>86</sup> *Id.* ¶4.

<sup>87</sup> *Id.* ¶5.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* ¶6.

<sup>90</sup> *Scott v. Illinois*, 440 U.S. 367, 373–74 (1979).

<sup>91</sup> Telephone Interview with Nora Neel, Parma Heights Assistant Court Clerk (Nov. 26, 2018).

The author of this Note observed a court session at the North Royalton Mayor's Court on September 27, 2018.<sup>92</sup> One of the defendants summoned had an "Operating a Vehicle Under the Influence" charge as well as "drug abuse," "possession of drug paraphernalia," and "slow speed" charges. Given the defendant's history and the charges before him, the magistrate of the court revealed that he was required to impose that the defendant forfeit his license for an undetermined amount of time.<sup>93</sup> Defendant was employed as a delivery truck driver and he was concerned that this action would not only make him lose his driving privileges, but also his job.<sup>94</sup> Regardless, defendant said multiple times that he "just wanted to get this [the court proceeding and dealing with the charges before him] over with."<sup>95</sup> Anyone with any legal background in the room was likely thinking that it would be wiser to plead not guilty and go to the municipal court so that he could be provided with counsel since he said he could not afford it.<sup>96</sup> But, without the advice of counsel, the defendant made a life-altering choice that could have ended much differently had he had a fierce advocate.<sup>97</sup>

This anecdotal evidence shows just how important counsel is even before attending a mayor's court hearing. Imagine that the defendant pled guilty in mayor's court and realized eleven days later that that was a mistake upon losing his job. Because appeals must be filed within ten days,<sup>98</sup> he would be entirely without recourse. This entire situation could be avoided if counsel were provided from the beginning of a defendant's journey through the criminal justice system, even an extra-judicial one.

Some might argue that requiring counsel for the parties in a mayor's court could lead down a slippery slope that would require all parties in all types of hearings to have access to counsel. But that is not the case here because while administrative hearings adjudicating unemployment benefits or veteran's benefits are impactful, they do not have the ability to result in jail time.

#### 4. Lack of Legal Acumen Goes Beyond Defendant

To run for office as a judge in Ohio, candidates must have six years of legal practice, be a resident of the district or county, and be under 70 years of age.<sup>99</sup> For a mayor's court magistrate position, one needs half the legal experience and need not be

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<sup>92</sup> See CITY OF NORTH ROYALTON MAYOR'S COURT ONLINE DOCKETING AND TICKET PAYMENT SYSTEM, <http://www.ohioticketpayments.com/parmahts/DocketSearch.php> (last visited Nov. 28, 2018).

<sup>93</sup> Visit to North Royalton Mayor's Court, September 27, 2018.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> OHIO REV. CODE ANN. § 1905.23 (2019).

<sup>99</sup> OHIO CONST. art. IV, § 6(c); OHIO REV. CODE ANN. § 1907.13.

elected.<sup>100</sup> Worse yet, a mayor who wishes to serve as the adjudicator in her mayor's court needs no legal training or practice experience.<sup>101</sup> And yet, the magistrates and mayors who oversee mayor's courts proceedings adjudicate some of the exact same offenses as municipal court judges. Presumably, the Legislature thought such underqualification on the part of magistrates and mayors was not worrisome because the appellate review standard is so high, but this is no excuse.

Presumably to mitigate this lack of knowledge about the legal system, the Supreme Court of Ohio was asked to gather reports and write training materials for mayor's courts.<sup>102</sup> These were adopted by the Ohio Legislature to train mayors and magistrates.<sup>103</sup> Their ambitions for what mayors and magistrates would learn in six hours of initial training were also quite aspiring. Below is a summary of the main areas this training is said to cover, although it hardly seems possible to cover even a single one of them thoroughly enough in six hours to impart the degree of detailed knowledge of the law a private citizen should reasonably expect their arbiter of justice to possess before trying and sentencing them for violating a law or ordinance:

(a) The general principles of law applicable to the hearing and determination of the prosecution of alcohol- or drug-related traffic offenses, including, but not limited to, the elements required to establish the existence of an alcohol- or drug-related traffic offense, and arrest, due process, and other constitutional issues presented in the hearing and determination of the prosecution of alcohol or drug related traffic offenses;

(b) The procedural requirements applicable to the hearing and determination of prosecutions of alcohol or drug related traffic offenses, including, but not limited to, all of the following;

(i) Use of the Ohio Uniform Traffic Ticket, as prescribed in the Ohio Traffic Rules, as the complaint and summons for alcohol or drug related traffic offenses;

(ii) Requirements relative to the initial appearance of the defendant, including the requirement that defendant be informed of his constitutional and statutory rights;

(iii) Consideration and disposition of pretrial motions, including motions to suppress evidence;

(iv) Applicable discovery rules;

(v) Procedures for the pretrial suspension of the operator's license of the defendant.

(c) Defenses that may be raised by defendants charged with alcohol-or drug-related traffic offenses;

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<sup>100</sup> OHIO REV. CODE ANN. §1905.05.

<sup>101</sup> *See id.* §1905.01.

<sup>102</sup> MAY. R., available at <https://www.supremecourt.ohio.gov/JCS/mayors/rules.pdf>.

<sup>103</sup> OHIO REV. CODE ANN. § 1905.03.



(d) Evidentiary issues presented in the hearing and determination of prosecutions of alcohol- or drug-related traffic offenses, including, but not limited to, the admissibility of breath, blood, and urine test results and the admissibility of field test results and other evidence;

(e) Considerations relative to the sentencing of persons convicted of alcohol- or drug-related traffic offenses, including, but not limited to, the sanctions required and allowed to be imposed under state law or local ordinance, the disposition of fines and costs imposed under state law or local ordinance, and the procedures required to ensure the proper reporting of violations to the Ohio Bureau of Motor Vehicles;

(f) Ethical considerations relative to the hearing and determination of prosecutions involving alcohol- or drug-related traffic offenses.<sup>104</sup>

Clearly, no one could learn all of these subjects in only six hours, especially if they had no prior legal training. Even a single one of these subjects is too much to cover in six hours. For instance, a legal ethics course alone is covered as part of a law school education over the course of more than 30 instructional hours.<sup>105</sup>

### *B. Fiscal Incentives for Abuse*

The combination of incentives to charge court costs for funding the city government and the lack of familiarity or willingness to follow court rulings on the part of mayors and magistrates has created a perfect storm for imposing excessive costs on defendants.

#### 1. Excessive Court Costs

City officials set the mayor's court fees, fines, and costs with some minor limitations.<sup>106</sup> This means that what someone might pay for a misdemeanor in North Royalton, Ohio might be different than what one might pay in Parma Heights, Ohio, even though the two towns are only about seven miles apart.<sup>107</sup>

Both in their bench card and in *Strattman v. Studt*, the Supreme Court of Ohio has expressed that court costs and fees are civil infractions while fines are criminal sanctions.<sup>108</sup> This is important, as it is on the basis of this distinction that it is unconstitutional to imprison defendants for owing *court costs and fees*. On the other

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<sup>104</sup> MAY. R. 3, available at <https://www.supremecourt.ohio.gov/JCS/mayors/rules.pdf>.

<sup>105</sup> *Managing Director's Guidance Memo*, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE B. 21 (2015).

<sup>106</sup> Robert Higgs, *How Much Will Your Speeding Ticket Cost? In Northeast Ohio it Depends on Where You're Stopped: At Any (Court) Cost*, CLEVELAND.COM (Nov. 28, 2016), [https://www.cleveland.com/metro/index.ssf/2016/11/how\\_much\\_will\\_your\\_speeding\\_ti.html](https://www.cleveland.com/metro/index.ssf/2016/11/how_much_will_your_speeding_ti.html).

<sup>107</sup> *Id.*

<sup>108</sup> *Strattman v. Studt*, 253 N.E.2d 749, 753–54 (Ohio 1969).

hand, imprisonment is legal for inability to pay *finer* and the defendant is compensated \$50 per day toward their fines for each day they are imprisoned.<sup>109</sup> The rationale is that one can either pay a fine or be imprisoned in order to pay back their “debt” to society. This is precisely why fines are not meant to be revenue drivers, but punitive measures.

Returning to the hypothetical in the introduction to this Note, we see that not only was the defendant improperly imprisoned because no determination was made on whether he could pay, but even if all of his costs were fines alone (\$115), he should not have been jailed for four days. In fact, only \$25 of the total cost were fines meant to be punitive. Thus, he only should have been jailed for half a day if he were trying to ‘pay down the fine.’ Instead, he spent four days behind bars *and* paid all \$115 upon his release. In other words, he ‘paid his debt’ to society more than six times over.

## 2. Financial Gain to Cities and the Separation of Powers

Perhaps the most well-known mayor’s court is the now-defunct Linndale Mayor’s Court. It was covered widely in local Cleveland news.<sup>110</sup> The Linndale police were notorious for a speed trap on their very small stretch of highway from which the city derived 80 percent of its one-million-dollar budget.<sup>111</sup>

While Linndale’s financial gain from fines and costs was exorbitant, it is not entirely unlike other towns in Ohio. In just ten months of operation, the Cuyahoga Falls Mayor’s Court made \$222,800 in revenue, while North Olmsted has made over one million dollars since its inception, and in 2017 Ontario, Ohio brought in \$338,259.<sup>112</sup> Parma Heights brought in \$32,070 in just May of 2018.<sup>113</sup> In other words, towns in Ohio that have a mayor’s court tend to accrue quantifiable material benefits. Even if these courts were originally established out of a sense of justice, the citizens and leadership of these towns quickly come to understand the financial benefits of a mayor’s court operation.

The separation of powers which typically prevents the use of the criminal justice system for financial gain is not present in the mechanism of mayor’s courts. The town’s mayor controls the police, the prosecutor, and the magistrate. In the case of mayor’s courts, if a mayor decides that it is time to increase revenue, she can order the chief of police to make more arrests, the prosecutor to take fewer deals and dismiss fewer charges, and the magistrate to charge the highest court costs and fines available. Although a mayor may not always exercise such powers, the mere existence of such combination of powers violates the *Tumey* test for potential conflicts.

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<sup>109</sup> *Id.* at 101–02.

<sup>110</sup> Conley & McKinsey, *supra* note 73.

<sup>111</sup> Erick Trickey & Mark Demarino, *Greetings from Lindale*, CLEVELAND MAGAZINE (July 21, 2011), <https://clevelandmagazine.com/in-the-cle/the-read/articles/greetings-from-linndale>.

<sup>112</sup> Peter Krouse, *Case Against Mayor’s Courts Evidenced in North Olmsted*, CLEVELAND.COM (Jan. 11, 2019), [https://www.cleveland.com/metro/2017/12/case\\_against\\_mayors\\_courts\\_evi.html](https://www.cleveland.com/metro/2017/12/case_against_mayors_courts_evi.html).

<sup>113</sup> *See* Parma Heights Council Meeting Minutes (June 11, 2018), <http://parmaheightsoh.gov/en-US/council-meeting-minutes.aspx>.

In fact, former Chief Justice Thomas Moyer of the Supreme Court of Ohio expertly highlighted this problem. In 2008, the Ohio Legislature put forth House Bill 154, which attempted to restructure mayor's courts to decrease the potential for conflicts of interest.<sup>114</sup> In a speech to the general assembly supporting the bill, Chief Justice Moyer commented that opponents to the bill had urged him that the bill would force layoffs and hurt city budgets.<sup>115</sup> In response, he commented "that is an interesting argument, even if it were true, when the issue is perception of impartiality."<sup>116</sup> Chief Justice Thomas Moyer was saying that worrying about having to lay employees off due to lack of revenue from the mayor's courts precisely proves the point that the courts are using their extra-judicial powers as revenue-drivers instead of arbitrating justice.

### C. Modern Day Debtor's Prisons

The lack of oversight and impartiality as well as the excessive court costs imparted by mayor's courts have created modern-day debtor's prisons despite the fact that imprisonment due to inability to pay was declared unconstitutional in the *Williams-Tate-Bearden* trilogy of cases.<sup>117</sup> In other words, it goes against our founding values as a country to allow people to be jailed for their inability to pay. The *Williams-Tate-Bearden* holdings have not quite reached the ears of many judges in Ohio. Indeed, the Ohio Supreme Court issued a resolution in 2014 reaffirming that judges were not to imprison defendants for lack of payment of court costs and fees.<sup>118</sup>

Since statutes and case law are sometimes difficult to synthesize and apply, the Supreme Court of Ohio issues "bench cards" to provide guidance to lower courts on how they should be ruling to comply with precedent and the law. In 2017, the Ohio Supreme Court revised its bench card to more fully discuss the alternatives to imprisonment for inability to pay.<sup>119</sup> The bench card re-iterates what the Supreme Court of Ohio declared in *Strattman*: court costs and fees are civil infractions and thus cannot result in imprisonment.<sup>120</sup> Fines are punitive and thus can be substituted for imprisonment at a rate of \$50 credit per day toward defendant's fines or community service **only** after an ability to pay determination has been made.<sup>121</sup> Since mayor's courts do not answer to the Supreme Court of Ohio, it has no power to ensure that mayor's courts follow the bench card guidance and thus to ensure that no defendants

<sup>114</sup> H.B. 154, 127th Gen. Assemb., Reg. Sess. (Ohio 2008).

<sup>115</sup> *Mayor's Court Testimony*, *supra* note 10.

<sup>116</sup> *Id.*

<sup>117</sup> *Tate v. Short*, 401 U.S. 395, 397–98 (1971).

<sup>118</sup> *Id.* at 389–99. *See also* Memorandum from the Supreme Court of Ohio Office of Judicial Services on the Collection of Court Costs and Fines in Adult Trial Courts (May 2017) (on file with Supreme Court of Ohio).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*; *Strattman v. Studt*, 253 N.E.2d 749, 754 (Ohio 1969).

<sup>121</sup> *See* Memorandum from the Supreme Court of Ohio, *supra* note 118.

are jailed for inability to pay.<sup>122</sup> As a result, mayor's courts continue to penalize defendants for minor violations on the basis of their inability to pay by issuing warrants for their arrest and/or forfeiture of their driver's licenses as well as other allowable punishments such as blocks preventing the procurement of vehicle registration, or the assessment of *additional* misdemeanor charges, fines, costs, or fees.

Perhaps due to the Ohio Supreme Court's guidance for its courts, not all mayor's courts choose to issue bench warrants for inability to pay. For example, North Royalton Mayor's Court chooses to revoke defendants' driver's licenses instead.<sup>123</sup> On October 10, 2018, the author of this Note spoke to the North Royalton Clerk of Courts,<sup>124</sup> who explained that revoking defendants' driver's licenses has been just as effective as jailing them for inability to pay.<sup>125</sup> This is not all that surprising since people often need their driver's licenses for countless activities, including getting to work so that they can pay fines issued by mayor's courts.

As an important note, although revoking defendants' licenses for failure to pay is not technically unconstitutional in the way that jailing them is, it is still very coercive.<sup>126</sup> In March of 2016, the Department of Justice issued a "Dear Colleague Letter" to state judiciaries laying out several constitutional principles which should be considered when the decision of incarcerating an indigent defendant is made.<sup>127</sup> One of those suggestions reminds readers that issuing driver's license forfeitures can be just as a coercive as imprisoning defendants.<sup>128</sup> In fact, as a response to the concerns raised in the letter, the state of Mississippi decided to reinstate the driver's licenses of defendants who had them forfeited as a result of inability to pay court costs and fines.<sup>129</sup> Furthermore, the state of Mississippi removed the \$100 license reinstatement fine that was previously required before a defendant could get their license back.<sup>130</sup> Ohio issues a large amount of license suspensions relative to the size of its

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<sup>122</sup> *Id.*

<sup>123</sup> Telephone Interview with Darlene J. Thomas, Clerk of Courts, North Royalton Mayor's Court (Oct. 10, 2018).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Letter from U.S. Department of Justice, Civil Rights Division, Office for Access to Justice to Colleague (Mar. 14, 2016), available at [https://www.tmcec.com/files/7614/8517/9751/00\\_-\\_Regan\\_\\_Robby\\_BINER\\_Special\\_Session.pdf](https://www.tmcec.com/files/7614/8517/9751/00_-_Regan__Robby_BINER_Special_Session.pdf).

<sup>127</sup> *Id.* at 2.

<sup>128</sup> *Id.* at 7.

<sup>129</sup> Press Release, Southern Poverty Law Center, SPLC reaches agreement with Mississippi to reinstate over 100,000 driver's licenses suspended for non-payment of fines (Dec. 19, 2017), <https://www.splcenter.org/news/2017/12/19/splc-reaches-agreement-mississippi>.

<sup>130</sup> *Id.*

population.<sup>131</sup> With the obvious problems that come with not having the ability to drive in a state with limited public transport also comes another problem: there is a reinstatement fee to get a license back which only adds to the tally of fines and costs that the defendant could not pay for in the first place.<sup>132</sup>

Unlike North Royalton's Mayor's Court, Parma Heights' Mayor's Court employs both driver license forfeiture and bench warrants to force defendants to pay.<sup>133</sup> On October 27, 2018, the author of this Note spoke with the Parma Heights Clerk of Courts, who explained that after judgment has been rendered at a mayor's court hearing, the magistrate encourages defendants to pay before leaving that day.<sup>134</sup> If that is not possible, the magistrate requires that the defendant come back to the next hearing (often two weeks later) to ensure that the defendant still cannot pay.<sup>135</sup> As long as defendants keep showing up to their appointments every two weeks or so, no bench warrant or license forfeiture will be issued.<sup>136</sup> Also noteworthy is the fact that anytime a continuance is requested in order to pay at the next hearing date, the court assesses an additional \$10 fee.<sup>137</sup> In other words, each time the defendant has to delay payment to the next mayor's court meeting because they cannot pay, they incur an *additional* \$10 fee.

But imagine the burden of having to leave work every two weeks to meet with a magistrate at an undetermined time (there are no appointments and mayor's court hearings typically take several hours) who will ensure that you are still poor enough to forgo your fines; or, alternatively, having to find childcare to meet with a magistrate.<sup>138</sup>

This practice of requiring defendants to return time and again, not allowing children, and charging more and more fees every time criminalizes the poverty of defendants. Sometimes, after several court appearances, defendants cannot sustain returning to the court and stop showing up. At that point Parma Heights Mayor's Court

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<sup>131</sup> Sara Dorn, *East Cleveland, Cleveland Heights Among Top 15 Courts in Ohio to Issue Most License Suspensions*, CLEVELAND.COM (Apr. 28, 2017), <https://www.cleveland.com/metro>.

<sup>132</sup> Ohio Bureau of Motor Vehicles, *Driver License/Identification Card Related Fees* (2018), <https://www.bmv.ohio.gov/links/bmv-all-fees.pdf>.

<sup>133</sup> Telephone interview with Parma Heights Court Clerk Trish James (Oct. 12, 2018).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> According to the magistrate's instructions to defendants during an October 27, 2018 mayor's court hearing. Court observation at Parma Heights Mayor's Court (Oct. 18, 2018).

<sup>138</sup> *Mayor's Court*, CITY OF BROOKLYN, <http://www.brooklynohio.gov/en-US/mayors-court.aspx> (last visited Nov. 28, 2018). The Brooklyn mayor's court makes it abundantly clear that children are not welcome: "The court has no facilities to accommodate children. Courtroom activities are not appropriate for children. It is unwise and inappropriate to have your child with you in a courtroom when you are involved in a court proceeding . . . make arrangements for child care ahead of time." *Id.*

may issue a bench warrant for the arrest of the defendant.<sup>139</sup> In an interview on November 26, 2018, the assistant court clerk indicated that whether defendants with warrants are actively pursued by the Parma Heights police depends on the police department's current staffing and resources.<sup>140</sup>

The author of this Note conducted research by looking through the online docket system of the Parma Heights Mayor's Court and reviewing all entries which culminated with the charge of "Failure to Pay Fine within Time Given" for the period of October 1, 2017 to October 1, 2018. This research revealed that at least nine defendants have been jailed for the charge of "Failure to Pay Fine within Time Given."<sup>141</sup> More shocking perhaps is the fact that minor traffic violations can land defendants behind bars. In fact, six out of the nine defendants jailed for inability to pay by the Parma Heights Mayor's Court had committed minor traffic violations, such as speeding or not wearing a seat belt.<sup>142</sup> In other words, if you speed, get caught, and have enough funds to pay for the fine, it is a minor traffic offense. If you do not have the funds to pay for the fine, you will be assessed more fees, be charged with a misdemeanor, and be jailed depending on current Parma Heights police staffing ratios. The latter is precisely the type of punishment that the *Bearden* court ruled violates Equal Protection and Due Process rights when they held that courts must conduct hearings to distill whether defendants are not paying fines because they are not able to or because they are unwilling to *before* imprisoning them.

#### IV. PROPOSED SOLUTION

Given the clear violations of the Fourteenth Amendment taking place in Ohio's mayor's courts, we turn to the question of what might be done about it. Indeed, there are a variety of options, and these range from citizens requesting more transparency from these courts at the local level to creating legislation to abolish mayor's courts altogether.

On the more extreme end of the spectrum of possible options is abolishing mayor's courts altogether, but this option is unlikely to succeed. Several members of the Ohio Legislature attempted to do so during the 127<sup>th</sup> General Assembly in 2007, introducing a bill proposing that "[all] mayors' courts . . . cease to exist at the end of the day on December 31, 2008."<sup>143</sup> The bill died upon introduction.<sup>144</sup> A similar bill was later introduced in the Ohio Senate, and it too, quickly perished.<sup>145</sup> Since then, there have been no serious attempts to completely abolish mayor's courts. It is likely that these failures demonstrate how some limited degree of opposition to mayor's court does

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<sup>139</sup> PARMA HEIGHTS ONLINE DOCKETING, *supra* note 82.

<sup>140</sup> Telephone interview with Parma Heights Assistant Court Clerk Nora Neel (Nov. 26, 2018).

<sup>141</sup> PARMA HEIGHTS ONLINE DOCKETING, *supra* note 82.

<sup>142</sup> *Id.*

<sup>143</sup> H.B. 154, 127th Gen. Assemb., Reg. Sess. (Ohio 2007).

<sup>144</sup> *Id.*

<sup>145</sup> S.B. 252, 127th Gen. Assemb., Reg. Sess. (Ohio 2007).

indeed resonate across the state, but this opposition has not been of a type and degree sufficient to overcome the inertia mayor's courts have. In many cases, there are clear reasons why legislators might prefer the status quo: legislators are supposed to represent the people of their district who may currently be benefitting from the revenue mayor's courts generate. Thus, it would be politically unwise to legislate away a long-standing system which had been, until that point, a financial boon for the constituency.

Other less-drastic proposals, which have sought to tweak how mayor's courts operate rather than abolish them altogether, have had slightly more success.<sup>146</sup> One bill attempted to establish more thorough oversight of the courts and proposed that Ohio's Attorney General be able to dissolve mayor's courts in instances where courts habitually operated outside of statutory compliance.<sup>147</sup> The bill did not have widespread support and it languished in the Judiciary Committee.<sup>148</sup> Although mayor's court reform is justified, this bill was probably not the best proposal to do so, as its language lacked specificity and it did not call for section 1905.30 of the Ohio Revised Code to be repealed.<sup>149</sup>

This section essentially codifies into law a violation of the right to due process as outlined in *Bearden* because it does not properly specify that a hearing must be conducted to determine ability to pay.<sup>150</sup> For that reason, even if the bill had been successful, it would not have triggered a constitutional violation correction by the attorney general because, under the statute, it is allowable to jail defendants for inability to pay without a hearing.<sup>151</sup> In other words, the unsuccessful bill tried to reform mayor's court without reckoning with the language of section 1905.30, or the fundamental reason mayor's courts act unconstitutionally at this time.

Furthermore, since the last time that major reform has been proposed in regard to mayor's courts, the courts have been given the authority to punitively take away people's car registrations.<sup>152</sup> As such, there is no longer even a practical unconstitutional reason to continue to jail defendants for inability to pay. Because the warnings of the Supreme Court of the United States in various holdings and the warnings of the Supreme Court of Ohio in various bench cards and memos have not been heeded, the most effective solution must come from the legislative branch. As such, this Note proposes the following model bill for introduction in the Ohio Legislature as well as annotations for why these provisions are needed.

1) *Section 1905.30 of the Ohio Revised Code is hereby repealed.*

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<sup>146</sup> H.B. 303, 128th Gen. Assemb., Reg. Sess. (Ohio 2009).

<sup>147</sup> *Id.*

<sup>148</sup> *Status Report of Legislation H.B. 303*, 128th Gen. Assemb., Reg. Sess. (Ohio 2009), [lsc.state.oh.us/coderev/hou128.nsf/House+Bill+Number/0303?OpenDocument](https://lsc.state.oh.us/coderev/hou128.nsf/House+Bill+Number/0303?OpenDocument).

<sup>149</sup> Ohio H.B. 303.

<sup>150</sup> *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

<sup>151</sup> *Id.*

<sup>152</sup> OHIO REV. CODE ANN. § 1905.30 (2019).

Section 1905.30 currently reads: “When a fine is the whole or part of a sentence, the mayor's court may order the person sentenced to remain confined in the county jail, workhouse, or prison of the municipal corporation, until the fine is paid or secured to be paid, or the offender is legally discharged.” As discussed earlier in this Note, the Supreme Court of Ohio has ruled that it is in violation of the Equal Protection Clause and of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution to deny a person’s liberty interest for their inability to pay.<sup>153</sup> This section is still current, but nonetheless many municipalities have local ordinances—such as the one in Parma Heights—that make failure to pay a fine by a certain deadline a misdemeanor of the third degree, punishable for up to 60 days incarceration.<sup>154</sup> This section should therefore be repealed immediately.

2) *A section should be added and should read: all hearings taking place in mayor’s courts in Ohio shall be recorded by stenograph in detail, audio-recorded, or recorded in a manner superior to audio or stenograph.*

Rule 11 of the Supreme Court’s recommended procedures for mayor’s courts states that all proceedings must be audio recorded.<sup>155</sup> However, because the Supreme Court has no actual authority over mayor’s courts, it cannot enforce this rule. As such, many mayor’s courts hearings are not recorded in any manner. This creates a functional problem, as well as a clear lack of transparency that lends itself to abuses of authority. It can be easily remedied by requiring the recording of such proceedings in the same manner they would be recorded if mayor’s courts were courts of record. Admittedly, easy remedies are not always inexpensive. But with the advances in technology and digital archiving, it is possible to render such recordings. It would be up to each individual mayor’s court to determine if the cost of recording the sessions is worth the benefits that the mayor’s court delivers.

3) *A) Section 1905.033 shall be amended to specify that a municipality’s mayor shall not adjudicate the proceedings of the town’s mayor’s court. B) In order to run a mayor’s court, a town must hire a magistrate who shall comply with the requirements already delineated in Section 1905.05 to include a juris doctor degree, three years of experience, and the training requirements stipulated by the Supreme Court of Ohio.*

The Supreme Court in *Tumey v. Ohio* expressed concern about the potential for due process violations when it said,

every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the

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<sup>153</sup> See *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); *Bearden*, 461 U.S. 660.

<sup>154</sup> OHIO REV. CODE ANN. § 1905.202.

<sup>155</sup> *Off the Record: Profiteering and Misconduct in Ohio’s Mayor’s Courts*, AMERICAN CIVIL LIBERTIES UNION OF OHIO (April 2019), [https://www.acluohio.org/wp-content/uploads/2019/05/Report\\_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts\\_FINAL\\_2019-0520.pdf](https://www.acluohio.org/wp-content/uploads/2019/05/Report_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts_FINAL_2019-0520.pdf) [hereinafter ACLU REPORT].



defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process.<sup>156</sup>

The court was referring to the possibility that because there is a pecuniary interest in issuing fines and court costs to help the town's revenue, and mayors are, by virtue of their position, interested in doing so, there was a possible temptation to forget the high burden of proof that is required of criminal offenses such as the misdemeanors that mayor's courts adjudicate.<sup>157</sup>

Currently, only about ten percent of mayor's courts have a mayor as the presiding officer.<sup>158</sup> Because of the high possibility of temptation, it is more appropriate to always ensure that another person administers justice. This is not a perfect solution. Magistrates can also have conflicts of interest because they often answer to the town's mayor and must follow their guidance. However, it is still a large step forward to prohibit mayors from serving as the town's dual executive and judicial officers.

*4) A section should be added to read: in cases of contempt of court or failure to pay fines within time given, mayor's courts shall not impose additional fines or incarcerate defendants before first conducting an adequate hearing determining defendant's ability to pay.*

Again, the Supreme Court of the United States has determined that it is a violation of the Fourteenth Amendment to jail defendants who are unable to pay. Although the jurisprudence is very clear, it appears that mayor's courts have found themselves immune from its judicial enforcement. As a result, it is imperative to legislate a change to the statute which requires a hearing on defendant's inability to pay before the defendant is incarcerated for any amount of time.

*5) A) Section 1905.33 which specifies the annual reporting requirements owed to the Supreme Court of Ohio shall be amended to mandate reporting on number of defendants jailed for lack of payment. B) For each defendant jailed for inability to pay or contempt of court, mayor's courts must provide a report outlining what steps were taken to determine defendant's ability to pay and the hearings' findings.*

Because mayor's courts themselves keep limited records and provide to the Supreme Court of Ohio even fewer records, there is very little transparency. It is precisely because of the lack of transparency that mayor's courts have been able to violate constitutional rights so readily. As a result, any new legislation must ensure that whenever a defendant's constitutional rights are at stake, a record of the proceedings be made and reported. This will not only hold mayor's courts accountable to themselves and to the Supreme Court, but it will also allow the Attorney General to ensure compliance and act accordingly.

*6) A) The Ohio Attorney General shall have the power to dissolve any mayor's court by serving a notice of non-compliance on the mayors of the municipal*

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<sup>156</sup> *Tumey v. Ohio*, 273 U.S. 510, 511 (1927).

<sup>157</sup> *Id.*

<sup>158</sup> ACLU REPORT, *supra* note 155.

*corporation if the mayor and magistrate of the court have not complied with the training and education requirements of section 1901.031, or the reporting requirements of section 1901.033 have not been met. B) The notice shall be explicit in informing the mayor that the mayor's court is operating unlawfully and will be dissolved in 90 days if corrective action is not taken. Upon dissolution, all cases shall be transferred to the jurisdictionally-appropriate municipal court and all pleadings, orders, entries, dockets, bonds, papers, records, money, property, and persons shall be surrendered to the municipal court.*

Because mayor's courts are statutorily-established courts, they work at the pleasure of the legislature. Clearly, the legislature cannot perform day-to-day oversight over mayor's courts adherence to the statutory provisions. After all, the legislature does not have policing powers. But the attorney general does. In much the same way that the state auditor's office periodically audits mayor's courts' financial records, the state attorney general must perform a similar audit as it relates to the substantive matters of the mayor's courts.

Not only must the attorney general be able to access reporting information such as that provided by section 5 of this model bill, but the office must actively attempt to discover any wrongdoing. Furthermore, it must have the power to dissolve mayor's courts and deprive the municipality of their revenue if violations are found. This will encourage self-policing for the mayor's courts and will create an actual system of recourse which has been lacking since the establishment of mayor's courts.

#### A. Counterarguments

While the fact that mayor's courts have effectively created modern-day's debtor's prisons is appalling, there are some who argue that mayor's courts are good for a town's economic well-being and that any adjustments to the statute might not just be economically inconvenient, but might actually violate the Ohio Constitution's Home Rule Amendment.<sup>159</sup> Others argue that incarcerating defendants for inability to pay their fines is punishment deserved because it would never had happened had they not violated the law in the first place.

The Home Rule Amendment reads, "*Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.*"<sup>160</sup> The argument that mayor's courts have Home Rule protection is misguided and plainly incorrect. Not even the abolishment of mayor's courts violates a municipality's Home Rule rights. Article IV of the Ohio Constitution delineates that judicial powers are vested in the Supreme Court, Courts of Appeals, Common Pleas courts and other courts which may be established by law. Municipalities and towns do not have authority to pass laws and as such do not have authority over judicial entities. Only the legislative branch can create statutory

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<sup>159</sup> Revelson, *supra* note 72 (discussing how the abolishment of mayor's courts could violate the home rule authority).

<sup>160</sup> OHIO CONST. art. XVIII, §3.

courts.<sup>161</sup> Moreover, the Supreme Court of Ohio has already ruled that statutory courts like mayor's courts are completely under the purview of the state Legislature.

In 2014, when the Ohio Legislature wanted to abolish the mayor's court located in the village of Linndale after receiving many complaints that Linndale was a 'speed trap,' the Legislature changed the requirements needed to establish a mayor's court so that Linndale (and two other cities) no longer met the threshold requirements.<sup>162</sup> The Village of Linndale challenged the statutory change claiming that it violated the rights afforded to them under the Home Rule amendment.<sup>163</sup> The Supreme Court of Ohio resoundingly denied this claim and reaffirmed that the Legislature can abolish or change statutory provisions as they relate to statutory courts as they see fit.<sup>164</sup>

Another claim by opponents of mayor's court reform is that cities depend on mayor's court revenue for funding their budgets.<sup>165</sup> And yet, 48 states in the United States have figured out how to run their towns without needing to run mayor's courts. Indeed, Louisiana and Ohio are the only states with mayor's courts.<sup>166</sup> As Chief Justice of the Supreme Court of Ohio Maureen O'Connor has said, "courts are centers of justice, not automatic teller machines whose purpose is to generate revenue for governments."<sup>167</sup> In other words, it is not the job of the justice system to fund cities. The Supreme Court of Ohio's bench card puts it best when it says, "the purpose of [fines and court costs] is not to generate revenue for the local municipality, county or the State of Ohio."<sup>168</sup> Moreover, if magistrates or mayors are claiming fear of losing employees or even their own jobs if fine revenue is low or non-existent, then they are actually admitting that this thought process enters into their decision-making and renders them anything but impartial when rendering judgment.

But despite the flaws in these arguments about the function of mayor's courts, there are actual benefits to them. For one, they keep justice "local." A defendant does not have to travel to the Court of Common Pleas in Downtown Cleveland to speak to a judge about their small conviction. Also, the small-town setting does have the potential of allowing a fair and perhaps longer hearing. And this is precisely why this Note does not argue for the abolishment of mayor's courts, but merely for ensuring that they are in line with the constitutional rights due to all persons in the United States. The passage of a bill like the model bill outlined in this Note will ensure that communities may have the benefits potentially found in mayor's courts without sacrificing the U.S. Constitution.

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<sup>161</sup> OHIO CONST. art. IV, §01.

<sup>162</sup> *Linndale v. State*, 19 N.E.3d 935, 947 (Ohio 2014).

<sup>163</sup> *Id.* at 939.

<sup>164</sup> *Id.* at 945.

<sup>165</sup> Revelson, *supra* note 72.

<sup>166</sup> Higgs, *supra* note 106.

<sup>167</sup> Letter from Maureen O'Connor, Chief Justice, Supreme Court of Ohio, to the Judges of the State of Ohio (Jan. 29, 2018), <https://www.supremecourt.ohio.gov/SCO/justices/oconnor/finesFeesBailLetter.pdf>.

<sup>168</sup> See Memorandum from the Supreme Court of Ohio, *supra* note 118.

## V. CONCLUSION

Imagine if the defendant in the hypothetical at the beginning of this Note had actually received his day in a court that did not profit from charging him. His fine would have only been \$25 (or perhaps even less). He certainly would not have lost four days of freedom. Neither would the other eight people at the hands of the Parma Heights Mayor's Court. Imagine the scale of this problem when considering there are 295 mayor's courts in Ohio.

Not only are mayor's courts violating the constitutional rights of the defendants they see, punishing poverty, and profiting off of people's minor violations; they are doing so extra-judicially by ignoring the precedent set by the Supreme Court of the United States and the warnings issued by the Supreme Court of Ohio. Towns simply should not derive their budgets from fines and court costs on their own people as it violates the tenets that the United States Constitution holds dear—the separation of powers.

Furthermore, while city governments may not be as glamorous as state or national government entities, they still hold the power to impact their constituents' lives through excessive fining, suspending licenses, and through forcing defendants who have committed inconsequential offenses to show up at hearings repeatedly instead of being able to carry out whatever tasks make them valuable members of the community. These bureaucratic burdens cost taxpayers' dollars in the way of the very expensive practice of jailing defendants, and it is for little to no return on investment: someone who could not pay \$115 would not suddenly produce more funds by virtue of sitting behind bars.

For these reasons and plenty more, the Ohio legislature must act to end all constitutional violations in mayor's courts and to establish a system of oversight that ensures compliance. It is time for the Ohio Legislature to see that, as they currently stand, mayor's courts are imprisoning debtors due to their indigency and have thus created modern-day debtor's prisons.