



1 *Gross v. State* . . . 312 F2d. 1279 (US App Ct Illinois, 1963).

2 4. Numerous Courts have overturned debtor's prison schemes as unconstitutional. The  
3 courts have held that the defendant's inability to pay precludes imprisonment for either civil or  
4 criminal contempt. If the party does not have the money, it cannot be coerced – nor can it be  
5 extorted from third parties. This is true whether the party chose to frustrate the court Order or  
6 whether the inability is unintentional. See: *Rohleder*, 424 S.W.2d at 892; *Lynch v. Lynch*, 342  
7 MD. 509, 677 A.2d 584 (1996); *Jones v. Hargrove*, 516 So.2d 1354 (Miss. 1987); *Wilborn v.*  
8 *Wilborn*, 258 So.2d 804 (Miss 1972); *In re: Nichols*, 749 So.2d 68 (Miss 1999); *Ex parte Rojo*,  
9 925 S.W.2d 654 (Tex. 1996) (citing *In re Dustman*, 538 S.W.2d at 410); *Going v. Going*, 148  
10 Ten. At 256, 256 S.W. 890 (1923); *State ex rel. Alderson v. Gentry*, 1990 WL 2976 (Tenn. Ct.  
11 App 1990); *Moss v. Moss*, LLR No. 9609060.CA (September 25, 1996).

12 5. Art. I § 21 of the Michigan Constitution states: “No person shall be imprisoned for  
13 debt arising out of or founded on contract, express or implied, except in cases of fraud or breach  
14 of trust.”

15 6. The Michigan Supreme Court, using extraordinarily harsh terms, struck down a  
16 statute because it permitted the jailing of a person for failure to fix his sidewalk even though he  
17 was “so poor and indigent as to receive support from his charitable neighbors.” *City of Port*  
18 *Huron v. Jenkinson*, 77 Mich. 414, 420 (1889). The Court held:

19 No legislative or municipal body has the power to impose the duty of performing an  
20 act upon any person which it is impossible to perform, and then make his  
21 nonperformance of such a duty a crime for which he may be punished by both fine  
22 and imprisonment. . . . It is hardly necessary to say these two sections of the statute  
23 are unconstitutional and void. . . . They are obnoxious to our constitution and laws  
24 [and] are a disgrace to the legislation of the state. [*Id.* At 419-420].” (Emphasis  
25 added).

26 7. In a parallel line of reasoning, the Court held that “If the court’s purpose is to  
27 preserve its authority by punishing past misconduct through the imposition of an unconditional  
28 and fixed sentence, the proceedings are criminal. If instead of punishing past misconduct, the

1 court seeks to compel future compliance through the imposition of a sanction of indefinite  
2 duration terminable upon compliance or inability to comply, the proceedings are civil.” *Williams*  
3 *International Corp. v. Smith*, 144 Mich App 257, 262-263, leave granted 425 Mich 852 (1986).  
4 See also, *Spalter v. Wayne Circuit Judge*, 35 Mich App 156, 160-161 (1971). Regardless of  
5 whether proceedings are civil or criminal, a defendant that cannot comply cannot be imprisoned.

6 8. In applying the Statute, MCL § 750.165(4) reads in pertinent part:

7 The court may suspend the sentence of an individual convicted under this section if  
8 the individual files with the court a bond in the amount and with the sureties the  
9 court requires. At a minimum, the bond must be conditioned on the individual's  
10 compliance with the support order. If the court suspends a sentence under this  
11 subsection and the individual does not comply with the support order or another  
12 condition on the bond, the court may order the individual to appear and show cause  
13 why the court should not impose the sentence and enforce the bond. After the  
14 hearing, the court may enforce the bond or impose the sentence, or both, or may  
15 permit the filing of a new bond and again suspend the sentence . . . .”

16 9. Thereby, MCL § 750.165(4) provides for conditional sentencing which allows those  
17 defendants, by whatever fate, in a financial position to pay the bond (a debt which is 25% of their  
18 arrears) to retain their freedom, and those that cannot face incarceration and additional sanctions;  
19 and,

20 10. MCL § 750.165 is a debtor’s prison scheme where one’s liberty is conditioned,  
21 explicitly so, upon an act, and wherein the Defendants’ inability to meet the condition, i.e. pay  
22 the alleged debt, costs them their freedom. For the enforcement of private debt Defendants are  
23 incarcerated without the keys to their release.

#### 24 VIOLATES DUE PROCESS & EQUAL PROTECTION

25 11. The controlling question under this ground for Issuance of the Writ is; whether it is  
26 fundamentally unfair to prosecute & maintain a conviction against Petitioner for an alleged  
27 violation of MCL § 750.165 when from the very onset of the family law related case, from  
28 whence the alleged Order for Support emanated, to the arrest and prosecution, Michigan laws are

implemented in Discriminatory fashion against males in the enforcement of stereotypes, the aggrandizement of state employee political careers, and the raking in of Title IV-D Federal Block Grant Funds to the State.

12. Petitioner is male.

13. The Fourteenth Amendment to the United States Constitution states in pertinent part: “. . . 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.” Article 1, § 17 of the Michigan Constitution states: “No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.”

14. The U.S. Supreme Court held that “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *United States v Salerno*, 481 US 739, 746; 107 S Ct 2095; 95 L Ed 697 (1987).

15. Only a few decades ago our nation was rampant with family law statutes that explicitly expressed the then dominant position of our society that mothers were the natural sole custodian, and that father’s had to be coerced into taking on their allotted singular role of “provider.” Statutes, both State & Federal, were literally titled the “Dead Beat Dad” law(s).

16. Those statutes had to be struck down as unconstitutional relics of the past and discriminatory.

17. The hearts and minds of humankind are not purified by the striking down of their prejudices that have been institutionalized in statutes and procedures. As a prime example, *Brown v Board of Education* was required nearly 90 years after the civil war settled the rights of African Americans. Though we struck down the “Dead beat Dad” laws, the prejudices and singular dimension stereotypes of “male provider” continue.

18. From observation, information & belief, mothers are still routinely awarded sole custody of their children in contested cases at a rate exceeding 10:1; men are regularly denied access to their children without a finding that they are unfit, unwilling, or unable to parent, while this is not so for women (See *In re Troxel*, 530 U.S. 57); these very same men are brought before

our courts on show cause hearings and prosecuted under MCL § 750.165 at rates at or exceeding 4:1, and receive sentences averaging 1.4 times more than that of women so charged (based upon Michigan Dept. of Corrections statistics).

19. This discrimination is funded, and the State given an incentive, under Title IV-D of the Social Security Act. Under this Act the states receive funding for the rate of support orders, collection of current support, and the collection of arrears. The counties receive an additional incentive from the State for the rate of paternity orders and cost effectiveness per case.

20. The monies that flow to the State under Title IV-D's child support system can and do exceed the expenditures in the majority of the states, thereby representing a profit for the state in creating single parent families. Michigan's excess inflow of IV-D funds resulted in a profit of \$34,000,000.00 in 1996, and \$43,000,000.00 in 1998, a profit of \$77,000,000.00 in two years.

21. The outstanding child support owed by fathers is not an indication that fathers are unfit, unwilling, or unable to parent, but rather, a testament of the continued Discrimination against them and the violation of our children's corresponding right to access to both parents for a profit!

### **PRAYER FOR RELIEF**

WHEREFORE, Petitions Prays this Honorable Court to:

1. Strike down MCL § 750.165(4) as an Unconstitutional Debtor's Prison Scheme, and a disgrace to the legislation of the state;

2. Memorialize as Absolutely Void the Alleged Criminal Conviction for Violation of Petitioner/Defendant's Due Process and Equal Protection Rights;

3. Grant such other Relief as the Court Deems Appropriate and/or Necessary for the protection of Petitioner's Rights under the United States & Michigan Constitutions.