



INSTITUTE *for*
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POVERTY

UNIVERSITY OF WISCONSIN-MADISON

Access to Justice for Low- Income Litigants in Civil Cases

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Webinar, March 26, 2014

Outline

- I. What is the “Justice Gap?”
- II. Civil Gideon & Self-Represented Litigant Movements
- III. Access to justice initiatives
- IV. Turner v. Rogers, 2011
- V. Debtors’ prisons
- VI. Judicial engagement approach to SRLs
- VII. International perspectives on access to justice

What is the “Justice Gap?”

At most 20% of the legal needs of low-income communities are met and the vast majority of low-income civil litigants are unrepresented.

Legal Services Corporation, *Documenting the Justice Gap in America*, 2009

What is the “Justice Gap?”

For every client served by civil legal aid offices, one potential client was turned away.

Nationwide, for every 6,415 people who meet legal aid requirements, there is only one legal aid attorney available to meet their needs .

Legal Services Corporation, *Documenting the Justice Gap in America*, 2009

Existing Right to Counsel in Civil Cases

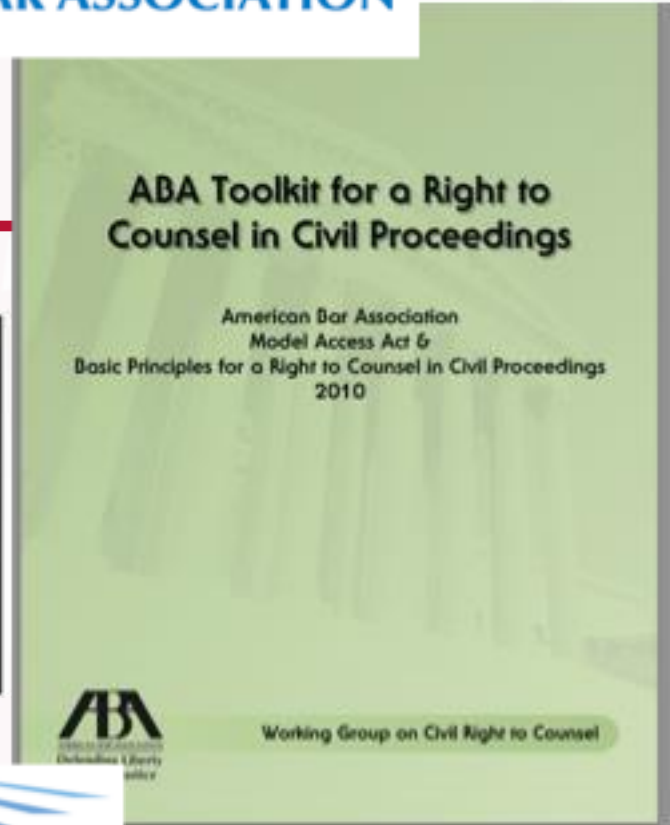
- There are hundreds of existing state laws that provide for a civil right to counsel.
- Origin of right to counsel laws vary
- Most laws fall into one of three areas:
 - Family law
 - Involuntary commitment
 - Medical treatment
- Appointed counsel often lacks adequate training and experience, caseload limits, and adequate compensation to ensure competent representation.



THE UNITED STATES DEPARTMENT OF JUSTICE



THE ACCESS TO JUSTICE INITIATIVE



ABA Toolkit for a Right to Counsel in Civil Proceedings

American Bar Association Model Access Act & Basic Principles for a Right to Counsel in Civil Proceedings 2010



Working Group on Civil Right to Counsel

August 2013

ACCESS TO JUSTICE:

ENSURING MEANINGFUL ACCESS TO COUNSEL IN CIVIL CASES

Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee

Endorsed by: National Coalition for a Civil Right to Counsel, National Legal Aid & Defender Association, Maryland Legal Aid Bureau, Inc., National Center for Access to Justice at Cardozo Law School, Brennan Center for Justice, Center for Law and Social Policy, Sargent Shriver National Center on Poverty Law, Columbia Law School Human Rights Institute, Washington University School of Law Program on Human Rights and the Global Economy

NCCRC National Coalition for a Civil Right to Counsel



United Nations Human Rights Office of the High Commissioner for Human Rights



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ABA Recommendation 112A

RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

Adopted by ABA House of Delegates, 2006.

Pro Se Legal Assistance Innovations

- Court navigators & facilitators
- Self-help centers & hotlines
- Simplified court forms and “how to” packets
- Lawyer-for-a-day programs & clinics
- Technological and online resources
- Judicial and court staff education on SRL issues
- Law libraries & librarians
- Non-lawyer advocates
- Unbundled legal services

Justice Index

- National Center for Access to Justice's 50-state survey of Americans' ability to use the justice system. Released in 2/2014.
- States evaluated on 4 key issues: attorney access, self-representation, language assistance, disability assistance.
- Each state was on a 100-point scale. National average of 48.7, with range from 23.7 (Oklahoma) to 69.4 (Minnesota).
- <http://www.justiceindex.org/>

Turner v. Rogers (SCOTUS, 2011)

- Michael Turner sought right to counsel
- Summary of Facts
 - Delinquent child support obligor in SC
 - OTSC hearing on why he should not be held in civil contempt for failure to pay child support
 - Held in contempt and incarcerated for 12 months
 - Revolving door experience
 - At least 6 contempts for nonpayment of support
 - Over \$20,000 in arrearages

South Carolina's Legal Process

- Civilly incarcerated child support debtors are 13-16% of SC jail population
- Automated OTSC enforcement process
- No right to counsel
- Hearings are cursory and last a few minutes
- No judicial findings on ability to pay in Turner's case

Low-Income NC Parents and CSE

- Federal OCSE Data (2008)
 - Half of child support debt in US owed by parents with with less than \$10,000 annual income
 - On average, these parents owe \$20,000 in arrearages
 - 70% of these arrearages owed to state, not families
- Why?

SCOTUS *Turner* decision

- 5-4 decision
- Unanimous rejection of Civil Gideon claim
 - Due process clause does not provide a categorical right to counsel in a civil contempt proceeding for nonpayment of child support even though there is risk of imprisonment
- 5-Justice majority ruled that Turner's constitutional right to due process had been violated in South Carolina's civil contempt proceeding

Turner's Substitute Procedural Safeguards

States must provide unrepresented litigants with “substitute procedural safeguards”

- Notice that ability to pay is a critical issue
- Form to elicit relevant financial information
- Opportunity for a hearing
- Express findings by court on ability to pay

Critique: no empirical basis for ruling

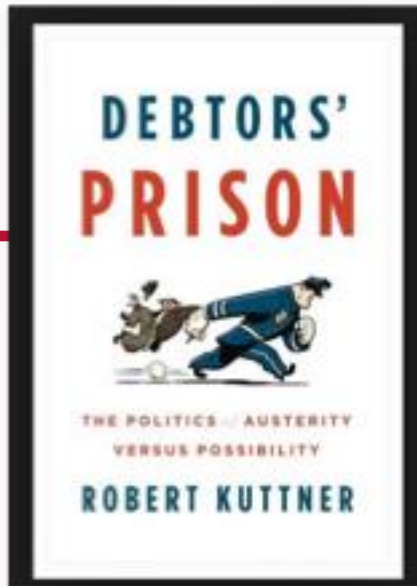
Implications of Turner Decision

- Increased awareness of debtors' prisons
- Judicial engagement approach required
- Is *Turner* a landmark decision for self-represented litigants?
- Resolving Turner's unanswered questions
 - Post-Turner class action litigation in Georgia, *Miller, et al. v. Deal, et al.*, Case No. 2011-cv-198121 (Fulton County Superior Court)

CRIMINAL JUSTICE DEBT:
A BARRIER TO REENTRY

Alicia Bannon
Mitali Nagrecha
Rebekah Diller

Brennan Center for Justice at New York University School of Law



The Outskirts of Hope



How Ohio's Debtors' Prisons Are
Ruining Lives and Costing Communities

A Report by the American Civil Liberties Union of Ohio

April 2013



IN FOR A PENNY

The Rise of America's New Debtors' Prisons



Debtors' Prison—Prisoners'
Accumulation of Debt as a
Barrier to Reentry

By Kirsten D. Livingston and Vicki Turetzky

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In the old days, when people were too poor to pay a debt they went there to "debtors' prison." Of course, the practice of jailing people for having unpaid debts was always unreasonable and, eventually, found to be unconstitutional. Today we have revived the same between prison and debt—often with a twist. Today "debtor's prison" describes the buildup of debt during a person's prison stay. Most people are poor when incarcerated. Over behind bars, they accumulate significant additional debt due to continued financial and child support obligations. Courts, corrections departments, and parole and probation agencies levy a range of cost recovery and punitive sanctions, while parents in prison face mounting child support obligations that they lack the ability to pay. While sending a person to prison because of the person's poverty is unconstitutional, there is no prohibition against piling on debt during a prison stay.

Debtors' Prisons Are Alive and Well in America

Incarceration of child support debtors is part of a broader set of policies that, in the words of Ehrenreich, "rob the poor."



July 30, 2013 | The concept of a debtors' prison is usually deemed a thing of the past, something out of a Dickens novel. But just this past June and July, New Jersey counties conducted one of their twice-annual raids to arrest people who are behind in child support payments. After the raids several New Jersey county sheriffs' offices issued press releases proudly announcing the number of deadbeat parents they'd locked up.



Photo Credit: Kallin/Shutterstock.com



A report by the
American Civil Liberties Union

OCTOBER 2013



Judge's Role in Access to Justice

- Current movement among states to amend their judicial codes to address self-represented litigants.
- 24 states and D.C. have language in their judicial code that is similar or identical to 2007 ABA Model Rule 2.2 and Comment 4
- Several states, including Wisconsin, are currently considering such amendments.

ABA Model Code of Judicial Conduct

Impartiality and Fairness

Rule 2.2: A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment 4: It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Proposed Amendment to WI Judicial Code

- Pending petition to amend to state's Code of Judicial Conduct, filed 9/2013 by WI Access to Justice Comm.
- Proposed new rule: "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge shall also afford to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to the law. It is consistent with this rule for a judge to make reasonable efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard."
- The petition lists examples of reasonable steps a judge may take in the exercise of such discretion.

Cont., Examples of What Judges Can Do

- Construe pleadings to facilitate consideration of the issues raised.
- Provide information or explanation about the pleadings.
- Explain legal concepts in everyday language.
- Ask neutral questions to elicit or clarify information.
- Modify the traditional order of taking evidence.
- Permit narrative testimony.
- Allow litigants to adopt their pleadings as their sworn testimony.
- Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
- Inform litigants what will be happening next in the case and what is expected of them.

State Initiatives

**SOUTHERN
CENTER FOR
HUMAN
RIGHTS**



Georgia Deprives Children As Indigent Parents Languish In Debtors' Jail For Inability To Pay Child Support



ACLU

AMERICAN CIVIL LIBERTIES UNION

BECAUSE FREEDOM

KEY ISSUES

ACTION

HOME › CRIMINAL LAW REFORM

Court Takes Swift Action to End Debtors' Prison

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Ohio Supreme Court Creates Bench Card After ACLU Investigation Found Courts Jailing People Too Poor to Pay Fines

February 5, 2014

International A2J Issues and Initiatives

OPINION

U.S. Justice Gap is Under International Scrutiny

U.N. committee wants answers about this country's disparity in access to civil legal services.

Risa E. Kaufman, *The National Law Journal*

March 03, 2014 | 0 Comments

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United Nations European HQ in Geneva

Photo: alandj / iStockphoto.com

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Money > Consumer rights


How to represent yourself in court

Proposed changes to legal aid will remove whole areas from the scheme, leaving many people little choice but to go it alone



Jon Robins

The Observer, Saturday 6 August 2011 17.59 EDT

 Jump to comments (12)



Legal aid could be removed from areas such as divorce and child support if the Legal Aid bill goes through parliament. Photograph: Martin Argles for the Guardian



Legal Aid, Sentencing and Punishment of Offenders Act 2012

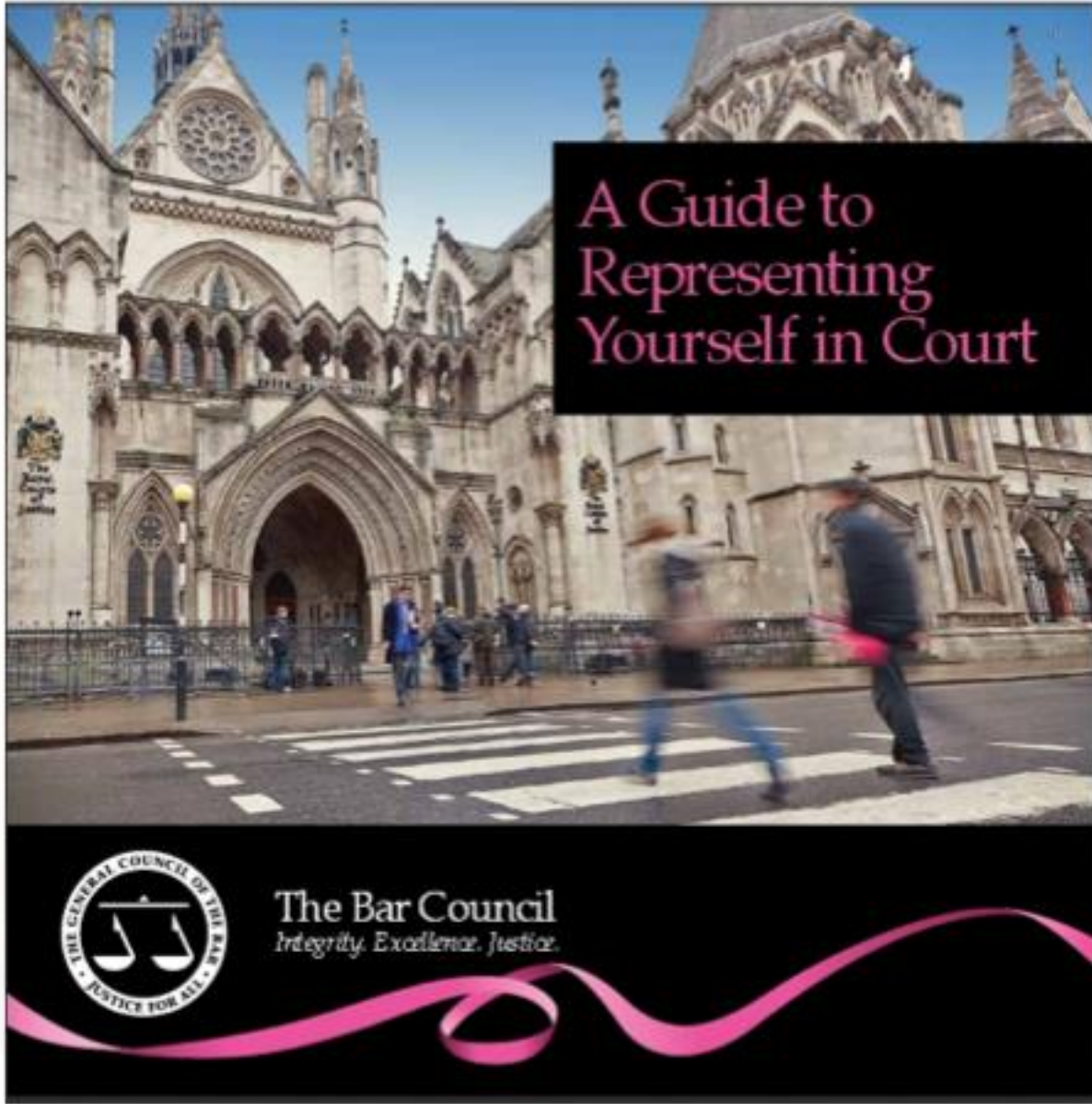
2012 CHAPTER 10

An Act to make provision about legal aid; to make further provision about funding legal services; to make provision about costs and other amounts awarded in civil and criminal proceedings; to make provision about referral fees in connection with the provision of legal services; to make provision about sentencing offenders, including provision about release on licence or otherwise; to make provision about the collection of fines and other sums; to make provision about bail and about remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; to make provision about the rehabilitation of offenders; to create new offences of threatening with a weapon in public or on school premises and of causing serious injury by dangerous driving; to create a new offence relating to squatting; to increase penalties for offences relating to scrap metal dealing and to create a new offence relating to payment for scrap metal; and to amend section 76 of the Criminal Justice and Immigration Act 2008.

[1st May 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

United Kingdom A2J



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