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Rock County considers practice of jailing people because they can't pay fines

By [Frank Schultz](#)

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JANESVILLE—Rock County officials on Thursday considered whether they are violating people's rights by jailing them for not paying fines.

The U.S. Department of Justice sent local court officials a letter last month, reminding them that if a person is in jail only because he is too poor to pay, that's a violation of his constitutional rights.

Courts have found the practice a violation of the 14th Amendment's requirement of equal protection under the law.

“The Supreme Court has repeatedly held that the government may not incarcerate an individual solely because of inability to pay a fine or fee,” according to the March 14 letter from the department's Civil Rights Division.

The letter noted that not only is the practice illegal, but it leads people with low incomes into increasing debt and could mean the loss of jobs and being trapped in poverty.

The issue gained national prominence in the federal investigation of practices in Ferguson, Missouri.

Officials at Rock County's Criminal Justice Coordinating Committee on Thursday didn't have any information on numbers of people who might be sitting in the Rock County Jail only because they could not pay their fines.

Eric Nelson, who runs the local office of the state Public Defender, noted that the letter said judges must hold indigency hearings to determine whether a person can pay the fine. No such hearings are held here.

“That's kind of a glaring issue that needs to be looked at,” Nelson said.

If the person can't pay, the judge must consider imposing alternative punishments, such as community service, the letter states.

Nelson said he remembered the local courts once held indigency hearings, but they no longer do.

None of the county's circuit court judges, who are members of the committee, attended the meeting Thursday.

Judge Alan Bates recently attended a training session with other local officials on this topic in Colorado and discussed it with the other judges, said District Attorney David O'Leary.

O'Leary said judges routinely impose jail time for those who don't pay fines.

They sit out the fines in jail at a rate of \$52 a day, said Sheriff Robert Spoden.

Spoden noted that some nonviolent offenders qualify for the jail's Workenders Program, in which they pay off their fines by performing community service on weekends but being free during the week to keep their jobs and support their families.

It wasn't clear what percentage of those in jail for fines qualify for Workenders.

Nelson noted offenders have 60 days to pay, and those who can't meet that deadline can set up payment plans with the clerk of courts office.

But payment plans are not allowed for people who have no income, Nelson said.

The extent of the problem remains unknown, but officials are working to extract that data from their records, said Elizabeth Pohlman McQuillen, criminal justice system analyst for the county.

State and county officials have been discussing the issue as part of their evidence-based decision making committees, an effort to change practices to increase fairness and improve outcomes for offenders in the criminal justice system.

O'Leary said the local committee will come to county officials at some point with a recommendation to address the problem.

O'Leary noted another aspect of the problem is people accused of crimes who are held on cash bonds. If these defendants post the bonds, they are set free pending trial. If they do not, they sit in jail.

One model being considered nationally is to keep people in jail without bond if they are a threat to flee or dangers to the community but otherwise to set them free without bond, O'Leary said.