

1 **STATE OF MICHIGAN**
2 **RE: JOHN DOE / MCL § 750.165**

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4 JOHN DOE,
5 Petitioner/Defendant,
6 v.
7 MICHIGAN DEPARTMENT OF
8 CORRECTIONS; & THE OFFICE OF THE
9 ATTORNEY GENERAL,
10 Respondents/Plaintiff.

CASE No.:
**PETITION FOR WRIT OF
HABEAS CORPUS**
CASE No.: XXXX-XXXXXX-FH

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12 TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY OF
13 INTEREST IN THIS ACTION:

14 YOU ARE HEREBY NOTICED THAT PETITIONER, JOHN DOE, Sues out this
15 Petition for Writ of Habeas Corpus to the Court of Appeals, Hall of Justice, 925 W. Ottawa
16 Street, P.O. Box 30022, Lansing, Michigan 48909-7522, on the following Grounds:

17 **GROUND'S FOR ISSUING THE WRIT**

18 **DEBTOR'S PRISON**

19 1. MCL § 750.165 is in violation of the Fifth, Sixth, & Fourteenth Amendments of
20 the United States Constitution and violates Art. I § 21 of the Michigan Constitution as a Debtor's
21 Prison Scheme.

22 2. The Fourteenth Amendment to the United States Constitution states in pertinent
23 part: “. . . nor shall any State deprive any person of life, liberty, or property, without due process
24 of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

25 3. The United States Supreme Court has held that once a criminal defendant is
26 sentenced to probation for a crime, it violates the Fourteenth Amendment to revoke his probation
27 and sentence him to jail if he lacks the resources to pay it. *Bearden v. Georgia*, 461 U.S. 660,
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1 667-668 (1983); See also *Banks v. United States*, 614 F.2d 95, 100 n.13 (6th Cir., 1980); and,
2 *Gross v. State* . . . 312 F2d. 1279 (US App Ct Illinois, 1963).

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

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

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

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

27 7. In a parallel line of reasoning, the Court held that “If the court’s purpose is to
28 preserve its authority by punishing past misconduct through the imposition of an unconditional
and fixed sentence, the proceedings are criminal. If instead of punishing past misconduct, the
court seeks to compel future compliance through the imposition of a sanction of indefinite
duration terminable upon compliance or inability to comply, the proceedings are civil.” *Williams*

1 *International Corp. v. Smith*, 144 Mich App 257, 262-263, leave granted 425 Mich 852 (1986).

2 See also, *Spalter v. Wayne Circuit Judge*, 35 Mich App 156, 160-161 (1971).

3 8. In applying the Statute, MCL § 750.165(4) reads in pertinent part:
4 The court may suspend the sentence of an individual convicted under this section
5 if the individual files with the court a bond in the amount and with the sureties the
6 court requires. At a minimum, the bond must be conditioned on the individual's
7 compliance with the support order. If the court suspends a sentence under this
8 subsection and the individual does not comply with the support order or another
9 condition on the bond, the court may order the individual to appear and show
10 cause why the court should not impose the sentence and enforce the bond. After
11 the hearing, the court may enforce the bond or impose the sentence, or both, or
12 may permit the filing of a new bond and again suspend the sentence

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

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitions Prays this Honorable Court to:

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

21 2. Grant other such Relief the Court deems appropriate and/or necessary for the
22 protection of Petitioner's Rights under the United States & Michigan Constitutions.
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