

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading

LLS NO. 14-0700.02 Jerry Barry x4341

HOUSE BILL 14-1061

HOUSE SPONSORSHIP

Salazar,

SENATE SPONSORSHIP

Guzman,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING SENTENCES IMPOSING MONETARY PAYMENTS IN**
102 **CRIMINAL ACTIONS, AND, IN CONNECTION THEREWITH,**
103 **ELIMINATING PRISON SENTENCES FOR PERSONS WHO ARE**
104 **UNABLE TO PAY CRIMINAL MONETARY PENALTIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law provides that part of a criminal sentence must include a sentence to prison if an individual criminal defendant fails to pay a fine. The bill changes this requirement so that the sentence must include notice

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

that if a defendant willfully fails to pay a fine, cost, restitution, or other monetary payment (monetary payment), the court may hold the person in contempt of court and sentence the person to prison.

The bill provides that when the court imposes a monetary payment as part of the sentence, the court must notify the defendant that if he or she is unable to pay the amount ordered, the defendant may ask the court for a waiver or change in the payment. The bill establishes procedures for when a criminal defendant may be held in contempt of court for willful failure to make a monetary payment.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 18-1.3-702
3 as follows:

4 **18-1.3-702. Monetary payments - due process required.**

5 (1) (a) When the court imposes a ~~fine upon an individual~~ SENTENCE THAT
6 INCLUDES THE PAYMENT OF A MONETARY AMOUNT, the court may direct
7 as follows:

8 (a) (I) That the defendant pay the entire MONETARY amount of the
9 ~~fine~~ at the time sentence is pronounced;

10 (b) (II) That the defendant pay the entire MONETARY amount of
11 ~~the fine~~ at some later date;

12 (c) (III) That the defendant pay a ~~specified portion of the fine at~~
13 ~~designated periodic intervals, and in such case the court may also direct~~
14 ~~that the fine be remitted to a designated official who shall report to the~~
15 ~~court on any failure to comply with the order~~ AS DIRECTED BY THE COURT
16 OR THE COURT'S DESIGNATED OFFICIAL THE MONETARY AMOUNT:

17 (A) AT A FUTURE DATE CERTAIN IN ITS ENTIRETY;

18 (B) BY PERIODIC PAYMENTS WHICH MAY INCLUDE PAYMENTS AT
19 INTERVALS, REFERRED TO IN THIS SECTION AS A "PAYMENT PLAN"; OR

20 (C) BY OTHER PAYMENT ARRANGEMENT AS DETERMINED BY THE

1 COURT OR THE COURT'S DESIGNATED OFFICIAL;

2 (d) (IV) ~~Where~~ WHEN the defendant is sentenced to a period of
3 probation as well as PAYMENT OF a ~~fine~~ MONETARY AMOUNT, that
4 payment of the ~~fine~~ MONETARY AMOUNT be MADE a condition of
5 probation.

6 (b) A COURT'S DESIGNATED OFFICIAL SHALL REPORT TO THE COURT
7 ON ANY FAILURE TO PAY.

8 (c) AS USED IN THIS SECTION, "COURT'S DESIGNATED OFFICIAL"
9 INCLUDES, BUT IS NOT LIMITED TO, A "COLLECTIONS INVESTIGATOR" AS
10 DEFINED IN SECTION 18-1.3-602 (1).

11 (2) ~~Where~~ WHEN the court imposes a ~~fine~~ SENTENCE THAT
12 INCLUDES PAYMENT OF ANY MONETARY AMOUNT, the ~~sentence~~ COURT
13 shall ~~provide that, except in the case of a corporation~~ INSTRUCT THE
14 DEFENDANT AS FOLLOWS:

15 (a) If AT ANY TIME the defendant ~~fails~~ IS UNABLE to pay the ~~fine~~
16 ~~in accordance with the direction of the court,~~ MONETARY AMOUNT DUE,
17 the defendant ~~shall be imprisoned until the fine is satisfied or the~~
18 ~~defendant is released as provided in subsections (3) and (6) of this~~
19 ~~section. This provision shall be added at the time sentence is pronounced.~~
20 ~~If the defendant fails to pay a fine as directed, the court may issue a~~
21 ~~warrant for his or her arrest~~ MUST CONTACT THE COURT'S DESIGNATED
22 OFFICIAL OR APPEAR BEFORE THE COURT TO EXPLAIN WHY HE OR SHE IS
23 UNABLE TO PAY THE MONETARY AMOUNT; AND

24 (b) IF THE DEFENDANT HAS THE ABILITY TO PAY THE MONETARY
25 AMOUNT AS DIRECTED BY THE COURT OR THE COURT'S DESIGNEE BUT
26 WILLFULLY FAILS TO PAY, THE DEFENDANT MAY BE IMPRISONED FOR
27 FAILURE TO COMPLY WITH THE COURT'S LAWFUL ORDER TO PAY PURSUANT

1 TO THE TERMS OF THIS SECTION.

2 (3) INCARCERATION FOR FAILURE TO PAY IS PROHIBITED ABSENT
3 PROVISION OF THE FOLLOWING PROCEDURAL PROTECTIONS:

4 (a) WHEN A DEFENDANT IS UNABLE TO PAY A MONETARY AMOUNT
5 DUE WITHOUT UNDUE HARDSHIP TO HIMSELF OR HERSELF OR HIS OR HER
6 DEPENDENTS, THE COURT SHALL NOT IMPRISON THE DEFENDANT FOR HIS
7 OR HER FAILURE TO PAY;

8 (b) EXCEPT IN THE CASE OF A CORPORATION, IF THE DEFENDANT
9 FAILED TO PAY A MONETARY AMOUNT DUE, THE COURT, WHEN
10 APPROPRIATE, MAY CONSIDER A MOTION TO IMPOSE PART OR ALL OF A
11 SUSPENDED SENTENCE, MAY CONSIDER A MOTION TO REVOKE PROBATION,
12 OR MAY INSTITUTE PROCEEDINGS FOR CONTEMPT OF COURT. WHEN
13 INSTITUTING CONTEMPT OF COURT PROCEEDINGS, THE COURT, INCLUDING
14 A MUNICIPAL COURT, SHALL PROVIDE ALL PROCEDURAL PROTECTIONS
15 MANDATED IN RULE 107 OF COLORADO RULES OF CIVIL PROCEDURE OR
16 RULE 407 OF COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE.

17 (c) THE COURT SHALL NOT FIND THE DEFENDANT IN CONTEMPT OF
18 COURT, NOR IMPOSE A SUSPENDED SENTENCE, NOR REVOKE PROBATION,
19 NOR ORDER THE DEFENDANT TO JAIL FOR FAILURE TO PAY UNLESS THE
20 COURT HAS MADE FINDINGS ON THE RECORD, AFTER PROVIDING NOTICE TO
21 THE DEFENDANT AND A HEARING, THAT THE DEFENDANT HAS THE ABILITY
22 TO COMPLY WITH THE COURT'S ORDER TO PAY A MONETARY AMOUNT DUE
23 WITHOUT UNDUE HARDSHIP TO THE DEFENDANT OR THE DEFENDANT'S
24 DEPENDENTS AND THAT THE DEFENDANT HAS NOT MADE A GOOD FAITH
25 EFFORT TO COMPLY WITH THE ORDER. IF THE DEFENDANT FAILS TO APPEAR
26 AT THE HEARING REFERENCED IN THIS PARAGRAPH (c) AFTER RECEIVING
27 NOTICE, THE COURT MAY ISSUE A WARRANT FOR HIS OR HER ARREST FOR

1 FAILURE TO APPEAR. IN NO EVENT SHALL THE COURT ISSUE A WARRANT
2 FOR FAILURE TO PAY MONEY.

3 ~~(3)~~ (4) ~~When the court directs that the defendant be imprisoned~~
4 ~~until the fine is satisfied;~~ IF THE COURT FINDS A DEFENDANT IN CONTEMPT
5 OF COURT FOR WILLFUL FAILURE TO PAY, THE COURT MAY DIRECT THAT
6 THE DEFENDANT BE IMPRISONED UNTIL THE MONETARY PAYMENT
7 ORDERED BY THE COURT IS MADE, BUT the court shall specify a maximum
8 period of imprisonment subject to the following limits:

9 (a) ~~Where~~ WHEN the ~~fine~~ MONETARY AMOUNT was imposed for
10 a felony, the period shall not exceed one year;

11 (b) ~~Where~~ WHEN the ~~fine~~ MONETARY AMOUNT was imposed for
12 a misdemeanor, the period shall not exceed one-third of the maximum
13 term of imprisonment authorized for the misdemeanor;

14 (c) ~~Where~~ WHEN the ~~fine~~ MONETARY AMOUNT was imposed for
15 a petty offense, a traffic violation, or a violation of a municipal ordinance,
16 any of which is punishable by a possible jail sentence, the period shall not
17 exceed fifteen days;

18 ~~(c.5)~~ (d) There shall be no imprisonment in those cases ~~where~~
19 WHEN no imprisonment is provided for in the possible sentence; and

20 ~~(d)~~ (e) ~~Where~~ WHEN a sentence of imprisonment ~~as well as~~ AND
21 a ~~fine~~ MONETARY AMOUNT was imposed, the aggregate of the period and
22 the term of the sentence shall not exceed the maximum term of
23 imprisonment authorized for the offense.

24 ~~(4)~~ ~~Where the defendant is unable to pay a fine imposed by the~~
25 ~~court, the defendant may at any time apply to the court for resentencing. If~~
26 ~~the court is satisfied that the defendant is unable to pay the fine, the court~~
27 ~~shall:~~

1 ~~(a) Adjust the terms of payment; or~~
2 ~~(b) Lower the amount of the fine; or~~
3 ~~(c) Where the sentence consists of probation or imprisonment and~~
4 ~~a fine, revoke the portion of the sentence imposing the fine; or~~
5 ~~(d) Revoke the entire sentence imposed and resentence the~~
6 ~~defendant. Upon a resentence, the court may impose any sentence it~~
7 ~~originally could have imposed; except that the amount of any fine~~
8 ~~imposed shall not be in excess of the amount the defendant is able to pay.~~
9 ~~(5) Notwithstanding that the defendant was imprisoned for failure~~
10 ~~to pay a fine or that he or she has served the period of imprisonment~~
11 ~~imposed, a fine may be collected in the same manner as a judgment in a~~
12 ~~civil action. The district attorney may, in his or her discretion, and shall,~~
13 ~~upon order of the court, institute proceedings to collect such fine. THIS~~
14 ~~SECTION APPLIES TO ALL COURTS OF RECORD IN COLORADO, INCLUDING~~
15 ~~BUT NOT LIMITED TO MUNICIPAL COURTS.~~
16 ~~(6) If it satisfactorily appears to the district court of the judicial~~
17 ~~district in which a person is confined that such person is confined in jail~~
18 ~~or in a correctional facility or other place of confinement, for any fine or~~
19 ~~costs of prosecution for any criminal offense, including any violation of~~
20 ~~a municipal ordinance, and has no estate whatever with which to pay such~~
21 ~~fine and costs, or costs only, it is the duty of the court to discharge such~~
22 ~~person from further imprisonment for the fine and costs. Nothing in this~~
23 ~~subsection (6) shall authorize any person to be discharged from~~
24 ~~imprisonment before the expiration of the time for which he or she may~~
25 ~~be sentenced to be imprisoned as part of his or her punishment. The court~~
26 ~~shall hear without delay any application made under this subsection (6).~~
27 ~~NOTHING IN THIS SECTION PREVENTS THE COLLECTION OF A MONETARY~~

1 AMOUNT IN THE SAME MANNER AS A JUDGMENT IN A CIVIL ACTION.

2 **SECTION 2. Applicability.** This act applies to sentences entered
3 and to hearings for failure to make monetary payments conducted on or
4 after the effective date of this act.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.