

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 25, 2014  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB14-1061 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:  
3 "SECTION 1. In Colorado Revised Statutes, **amend** 18-1.3-702  
4 as follows:  
5 **18-1.3-702. Monetary payments - due process required.**  
6 (1) (a) When the court imposes a ~~fine upon an individual~~ SENTENCE THAT  
7 INCLUDES THE PAYMENT OF A MONETARY AMOUNT, the court may direct  
8 as follows:  
9 (a) (I) That the defendant pay the entire MONETARY amount ~~of the~~  
10 ~~fine~~ at the time sentence is pronounced;  
11 (b) (II) That the defendant pay the entire MONETARY amount ~~of the~~  
12 ~~fine~~ at some later date;  
13 (c) (III) That the defendant pay a ~~specified portion of the fine at~~  
14 ~~designated periodic intervals, and in such case the court may also direct~~  
15 ~~that the fine be remitted to a designated official who shall report to the~~  
16 ~~court on any failure to comply with the order~~ AS DIRECTED BY THE COURT  
17 OR THE COURT'S DESIGNATED OFFICIAL THE MONETARY AMOUNT:  
18 (A) AT A FUTURE DATE CERTAIN IN ITS ENTIRETY;  
19 (B) BY PERIODIC PAYMENTS WHICH MAY INCLUDE PAYMENTS AT  
20 INTERVALS, REFERRED TO IN THIS SECTION AS A "PAYMENT PLAN"; OR  
21 (C) BY OTHER PAYMENT ARRANGEMENT AS DETERMINED BY THE  
22 COURT OR THE COURT'S DESIGNATED OFFICIAL;  
23 (d) (IV) ~~Where~~ WHEN the defendant is sentenced to a period of  
24 probation as well as PAYMENT OF a ~~fine~~ MONETARY AMOUNT, that  
25 payment of the ~~fine~~ MONETARY AMOUNT be MADE a condition of  
26 probation.

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

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

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

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

19 (b) IF THE DEFENDANT HAS THE ABILITY TO PAY THE MONETARY  
20 AMOUNT AS DIRECTED BY THE COURT OR THE COURT'S DESIGNEE BUT  
21 WILLFULLY FAILS TO PAY, THE DEFENDANT MAY BE IMPRISONED FOR  
22 FAILURE TO COMPLY WITH THE COURT'S LAWFUL ORDER TO PAY PURSUANT  
23 TO THE TERMS OF THIS SECTION.

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

26 (a) WHEN A DEFENDANT IS UNABLE TO PAY A MONETARY AMOUNT  
27 DUE WITHOUT UNDUE HARDSHIP TO HIMSELF OR HERSELF OR HIS OR HER  
28 DEPENDENTS, THE COURT SHALL NOT IMPRISON THE DEFENDANT FOR HIS  
29 OR HER FAILURE TO PAY;

30 (b) EXCEPT IN THE CASE OF A CORPORATION, IF THE DEFENDANT  
31 FAILED TO PAY A MONETARY AMOUNT DUE, THE COURT, WHEN  
32 APPROPRIATE, MAY CONSIDER A MOTION TO IMPOSE PART OR ALL OF A  
33 SUSPENDED SENTENCE, MAY CONSIDER A MOTION TO REVOKE PROBATION,  
34 OR MAY INSTITUTE PROCEEDINGS FOR CONTEMPT OF COURT. WHEN  
35 INSTITUTING CONTEMPT OF COURT PROCEEDINGS, THE COURT, INCLUDING  
36 A MUNICIPAL COURT, SHALL PROVIDE ALL PROCEDURAL PROTECTIONS  
37 MANDATED IN RULE 107 OF COLORADO RULES OF CIVIL PROCEDURE OR  
38 RULE 407 OF COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE.

39 (c) THE COURT SHALL NOT FIND THE DEFENDANT IN CONTEMPT OF  
40 COURT, NOR IMPOSE A SUSPENDED SENTENCE, NOR REVOKE PROBATION,  
41 NOR ORDER THE DEFENDANT TO JAIL FOR FAILURE TO PAY UNLESS THE  
42 COURT HAS MADE FINDINGS ON THE RECORD, AFTER PROVIDING NOTICE TO

1 THE DEFENDANT AND A HEARING, THAT THE DEFENDANT HAS THE ABILITY  
2 TO COMPLY WITH THE COURT'S ORDER TO PAY A MONETARY AMOUNT DUE  
3 WITHOUT UNDUE HARDSHIP TO THE DEFENDANT OR THE DEFENDANT'S  
4 DEPENDENTS AND THAT THE DEFENDANT HAS NOT MADE A GOOD FAITH  
5 EFFORT TO COMPLY WITH THE ORDER. IF THE DEFENDANT FAILS TO APPEAR  
6 AT THE HEARING REFERENCED IN THIS PARAGRAPH (c) AFTER RECEIVING  
7 NOTICE, THE COURT MAY ISSUE A WARRANT FOR HIS OR HER ARREST FOR  
8 FAILURE TO APPEAR. IN NO EVENT SHALL THE COURT ISSUE A WARRANT  
9 FOR FAILURE TO PAY MONEY.

10 ~~(3)~~ (4) ~~When the court directs that the defendant be imprisoned~~  
11 ~~until the fine is satisfied,~~ IF THE COURT FINDS A DEFENDANT IN CONTEMPT  
12 OF COURT FOR WILLFUL FAILURE TO PAY, THE COURT MAY DIRECT THAT  
13 THE DEFENDANT BE IMPRISONED UNTIL THE MONETARY PAYMENT  
14 ORDERED BY THE COURT IS MADE, BUT the court shall specify a maximum  
15 period of imprisonment subject to the following limits:

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

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

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

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

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

31 ~~(4)~~ ~~Where the defendant is unable to pay a fine imposed by the~~  
32 ~~court, the defendant may at any time apply to the court for resentencing. If~~  
33 ~~the court is satisfied that the defendant is unable to pay the fine, the court~~  
34 ~~shall:~~

35 ~~(a) Adjust the terms of payment; or~~

36 ~~(b) Lower the amount of the fine; or~~

37 ~~(c) Where the sentence consists of probation or imprisonment and~~  
38 ~~a fine, revoke the portion of the sentence imposing the fine; or~~

39 ~~(d) Revoke the entire sentence imposed and resentence the~~  
40 ~~defendant. Upon a resentencing, the court may impose any sentence it~~  
41 ~~originally could have imposed; except that the amount of any fine~~  
42 ~~imposed shall not be in excess of the amount the defendant is able to pay.~~

1           (5) ~~Notwithstanding that the defendant was imprisoned for failure~~  
2 ~~to pay a fine or that he or she has served the period of imprisonment~~  
3 ~~imposed, a fine may be collected in the same manner as a judgment in a~~  
4 ~~civil action. The district attorney may, in his or her discretion, and shall,~~  
5 ~~upon order of the court, institute proceedings to collect such fine. THIS~~  
6 ~~SECTION APPLIES TO ALL COURTS OF RECORD IN COLORADO, INCLUDING~~  
7 ~~BUT NOT LIMITED TO MUNICIPAL COURTS.~~

8           (6) ~~If it satisfactorily appears to the district court of the judicial~~  
9 ~~district in which a person is confined that such person is confined in jail~~  
10 ~~or in a correctional facility or other place of confinement, for any fine or~~  
11 ~~costs of prosecution for any criminal offense, including any violation of~~  
12 ~~a municipal ordinance, and has no estate whatever with which to pay such~~  
13 ~~fine and costs, or costs only, it is the duty of the court to discharge such~~  
14 ~~person from further imprisonment for the fine and costs. Nothing in this~~  
15 ~~subsection (6) shall authorize any person to be discharged from~~  
16 ~~imprisonment before the expiration of the time for which he or she may~~  
17 ~~be sentenced to be imprisoned as part of his or her punishment. The court~~  
18 ~~shall hear without delay any application made under this subsection (6).~~  
19 ~~NOTHING IN THIS SECTION PREVENTS THE COLLECTION OF A MONETARY~~  
20 ~~AMOUNT IN THE SAME MANNER AS A JUDGMENT IN A CIVIL ACTION.~~

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

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

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