

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0972.01 Jerry Barry x4341

HOUSE BILL 16-1311

HOUSE SPONSORSHIP

Salazar,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING COURT ORDERS REQUIRING PAYMENT OF MONETARY
102 AMOUNTS.

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 establishes procedures for when a sentence includes the payment of a monetary amount. The bill clarifies that the procedures also apply whenever a court enters a judgment or issues an order obligating a defendant to pay an amount to the court.

The bill modifies the procedures by requiring notice to a defendant that if he or she is unable to pay:

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.

! The defendant may appear in court and request a reduction in the amount or an alternative sentence that does not involve incarceration; and

! The court will not jail or otherwise punish the defendant for his or her inability to pay.

The bill also prohibits a court from:

! Accepting a guilty plea for contempt of court for failure to pay unless the court finds that the defendant has the ability to pay and the payment will not be an undue hardship on the defendant or the defendant's dependents; or

! Issuing a warrant for failure to pay money or to appear when ordered to pay money unless the existing procedural provisions are followed.

The bill specifies what undue hardship means and lists items a court shall consider in determining undue hardship. It provides that there is a rebuttable presumption if certain conditions are met.

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 sentence, ENTERS A JUDGMENT, OR
6 ISSUES AN ORDER that ~~includes~~ OBLIGATES the payment of DEFENDANT TO
7 PAY a monetary amount, the court may direct as follows:

8 (I) That the defendant pay the entire monetary amount at the time
9 sentence is pronounced;

10 (II) That the defendant pay the entire monetary amount at some
11 later date;

12 (III) That the defendant pay as directed by the court or the court's
13 designated official: ~~the monetary amount:~~

14 (A) At a future date certain in its entirety;

15 (B) By periodic payments, which may include payments at
16 intervals, referred to in this section as a "payment plan"; or

1 (C) By other payment arrangement as determined by the court or
2 the court's designated official;

3 (IV) When the defendant is sentenced to a period of probation as
4 well as payment of a monetary amount, that payment of the monetary
5 amount be made a condition of probation.

6 (b) A court's designated official shall report to the court on any
7 failure to pay.

8 (c) As used in this section, "court's designated official" includes,
9 but is not limited to, a "collections investigator" as defined in section
10 18-1.3-602 (1).

11 (2) When the court imposes a sentence, ~~that includes payment of~~
12 ENTERS A JUDGMENT, OR ISSUES AN ORDER THAT OBLIGATES A DEFENDANT
13 TO PAY any monetary amount, the court shall instruct the defendant as
14 follows:

15 (a) If at any time the defendant is unable to pay the monetary
16 amount due, the defendant must contact the court's designated official or
17 appear before the court to explain why he or she is unable to pay the
18 monetary amount; ~~and~~

19 (b) A DEFENDANT WHO IS UNABLE TO PAY A MONETARY AMOUNT
20 DUE MAY APPEAR BEFORE THE COURT TO REQUEST A REDUCTION OF THE
21 AMOUNT OF THE MONETARY PAYMENT OR AN ALTERNATIVE SENTENCE
22 OTHER THAN INCARCERATION;

23 (c) IF THE DEFENDANT LACKS THE PRESENT OR NEAR FUTURE
24 ABILITY TO PAY THE MONETARY AMOUNT DUE WITHOUT UNDUE HARDSHIP
25 TO THE DEFENDANT OR THE DEFENDANT'S DEPENDENTS, THE COURT SHALL
26 NOT JAIL OR OTHERWISE PUNISH THE DEFENDANT FOR FAILURE TO PAY;
27 AND

1 ~~(b)~~ (d) If the defendant has the ability to pay the monetary amount
2 as directed by the court or the court's designee but willfully fails to pay,
3 the defendant may be imprisoned for failure to comply with the court's
4 lawful order to pay pursuant to the terms of this section.

5 (3) Incarceration for failure to pay is prohibited absent provision
6 of the following procedural protections:

7 (a) When a defendant is unable to pay a monetary amount due
8 without undue hardship to himself or herself or his or her dependents, the
9 court shall not imprison the defendant for his or her failure to pay;

10 (b) Except in the case of a corporation, if the defendant failed to
11 pay a monetary amount due AND THE RECORD INDICATES THAT THE
12 DEFENDANT HAS WILLFULLY FAILED TO PAY THAT MONETARY AMOUNT,
13 the court, when appropriate, may consider a motion to impose part or all
14 of a suspended sentence, may consider a motion to revoke probation, or
15 may institute proceedings for contempt of court. When instituting
16 contempt of court proceedings, the court, including a municipal court,
17 shall provide all procedural protections mandated in rule 107 of THE
18 Colorado rules of civil procedure or rule 407 of THE Colorado rules of
19 county court civil procedure.

20 (c) The court shall not find the defendant in contempt of court, nor
21 impose a suspended sentence, nor revoke probation, nor order the
22 defendant to jail for failure to pay unless the court has made findings on
23 the record, after providing notice to the defendant and a hearing, that the
24 defendant has the ability to comply with the court's order to pay a
25 monetary amount due without undue hardship to the defendant or the
26 defendant's dependents and that the defendant has not made a good-faith
27 effort to comply with the order. If the defendant fails to appear at the

1 hearing referenced in this paragraph (c) after receiving notice, the court
2 may issue a warrant for his or her arrest for failure to appear. ~~In no event~~
3 ~~shall the court issue a warrant for failure to pay money.~~

4 (d) THE COURT SHALL NOT ACCEPT A DEFENDANT'S GUILTY PLEA
5 FOR CONTEMPT OF COURT FOR FAILURE TO PAY OR FAILURE TO COMPLY
6 WITH THE COURT'S ORDER TO PAY A MONETARY AMOUNT UNLESS THE
7 COURT HAS MADE FINDINGS ON THE RECORD THAT THE DEFENDANT HAS
8 THE ABILITY TO COMPLY WITH THE COURT'S ORDER TO PAY A MONETARY
9 AMOUNT DUE WITHOUT UNDUE HARDSHIP TO THE DEFENDANT OR THE
10 DEFENDANT'S DEPENDENTS AND THAT THE DEFENDANT HAS NOT MADE A
11 GOOD-FAITH EFFORT TO COMPLY WITH THE ORDER;

12 (e) IF THE DEFENDANT FAILS TO APPEAR AT A HEARING
13 CONDUCTED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3) AFTER
14 RECEIVING NOTICE, THE COURT MAY ISSUE A WARRANT FOR THE
15 DEFENDANT'S ARREST FOR FAILURE TO APPEAR; AND

16 (f) THE COURT SHALL NOT ISSUE A WARRANT FOR FAILURE TO PAY
17 MONEY, FAILURE TO APPEAR TO PAY MONEY, OR FAILURE TO APPEAR AT
18 ANY POST-SENTENCING COURT APPEARANCE WHEREIN THE DEFENDANT
19 WAS REQUIRED TO APPEAR IF HE OR SHE FAILED TO PAY A MONETARY
20 AMOUNT. A COURT MAY ISSUE AN ARREST WARRANT OR INCARCERATE A
21 DEFENDANT RELATED TO HIS OR HER FAILURE TO PAY A MONETARY
22 AMOUNT ONLY THROUGH THE PROCEDURES DESCRIBED IN PARAGRAPHS (a)
23 TO (e) OF THIS SUBSECTION (3).

24 (4) (a) FOR PURPOSES OF THIS SECTION, A DEFENDANT OR A
25 DEFENDANT'S DEPENDENTS ARE CONSIDERED TO SUFFER UNDUE HARDSHIP
26 IF HE, SHE, OR THEY WOULD BE DEPRIVED OF MONEY NEEDED FOR BASIC
27 LIVING NECESSITIES, SUCH AS FOOD, SHELTER, CLOTHING, NECESSARY

1 MEDICAL EXPENSES, OR CHILD SUPPORT. IN DETERMINING WHETHER A
2 DEFENDANT IS ABLE TO COMPLY WITH AN ORDER TO PAY A MONETARY
3 AMOUNT WITHOUT UNDUE HARDSHIP TO THE DEFENDANT OR THE
4 DEFENDANT'S DEPENDENTS, THE COURT SHALL CONSIDER:

5 (I) WHETHER THE DEFENDANT IS EXPERIENCING HOMELESSNESS;

6 (II) THE DEFENDANT'S PRESENT EMPLOYMENT, INCOME, AND
7 EXPENSES;

8 (III) THE DEFENDANT'S OUTSTANDING DEBTS AND LIABILITIES,
9 BOTH SECURED AND UNSECURED;

10 (IV) WHETHER THE DEFENDANT HAS QUALIFIED FOR AND IS
11 RECEIVING ANY FORM OF PUBLIC ASSISTANCE;

12 (V) THE AVAILABILITY AND CONVERTIBILITY, WITHOUT UNDUE
13 HARDSHIP TO THE DEFENDANT OR THE DEFENDANT'S DEPENDENTS, OF ANY
14 REAL OR PERSONAL PROPERTY OWNED BY THE DEFENDANT; AND

15 (VI) ANY OTHER CIRCUMSTANCES THAT WOULD IMPAIR THE
16 DEFENDANT'S ABILITY TO PAY.

17 (b) THERE IS A REBUTTABLE PRESUMPTION OF UNDUE HARDSHIP IF:

18 (I) THE DEFENDANT RESIDES IN PUBLIC HOUSING OR RECEIVES
19 PUBLIC ASSISTANCE, SUCH AS FOOD STAMPS, TEMPORARY ASSISTANCE FOR
20 NEEDY FAMILIES, MEDICAID, OR SUPPLEMENTAL SECURITY INCOME; OR

21 (II) THE DEFENDANT'S FAMILY INCOME IS LESS THAN TWO
22 HUNDRED PERCENT OF THE FEDERAL POVERTY LINE, ADJUSTED FOR FAMILY
23 SIZE.

24 ~~(4)~~ (5) If the court finds a defendant in contempt of court for
25 willful failure to pay, the court may direct that the defendant be
26 imprisoned until the monetary payment ordered by the court is made, but
27 the court shall specify a maximum period of imprisonment subject to the

1 following limits:

2 (a) When the monetary amount was imposed for a felony, the
3 period shall not exceed one year;

4 (b) When the monetary amount was imposed for a misdemeanor,
5 the period shall not exceed one-third of the maximum term of
6 imprisonment authorized for the misdemeanor;

7 (c) When the monetary amount was imposed for a petty offense,
8 a traffic violation, or a violation of a municipal ordinance, any of which
9 is punishable by a possible jail sentence, the period shall not exceed
10 fifteen days;

11 (d) There shall be no imprisonment in those cases when no
12 imprisonment is provided for in the possible sentence; and

13 (e) When a sentence of imprisonment and a monetary amount was
14 imposed, the aggregate of the period and the term of the sentence shall
15 not exceed the maximum term of imprisonment authorized for the
16 offense.

17 ~~(5)~~ (6) This section applies to all courts of record in Colorado,
18 including but not limited to municipal courts.

19 ~~(6)~~ (7) Nothing in this section prevents the collection of a
20 monetary 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.