

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

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)~~ IF THE DEFENDANT LACKS THE PRESENT ABILITY TO PAY THE
20 MONETARY AMOUNT DUE WITHOUT UNDUE HARDSHIP TO THE DEFENDANT
21 OR THE DEFENDANT'S DEPENDENTS, THE COURT SHALL NOT JAIL THE
22 DEFENDANT FOR FAILURE TO PAY; AND

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

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

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

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

16 (c) The court shall not find the defendant in contempt of court, nor
17 impose a suspended sentence, nor revoke probation, nor order the
18 defendant to jail for failure to pay unless the court has made findings on
19 the record, after providing notice to the defendant and a hearing, that the
20 defendant has the ability to comply with the court's order to pay a
21 monetary amount due without undue hardship to the defendant or the
22 defendant's dependents and that the defendant has not made a good-faith
23 effort to comply with the order. If the defendant fails to appear at the
24 hearing referenced in this paragraph (c) after receiving notice, the court
25 may issue a warrant for his or her arrest for failure to appear. ~~In no event~~
26 ~~shall the court issue a warrant for failure to pay money.~~

27 (d) THE COURT SHALL NOT ACCEPT A DEFENDANT'S GUILTY PLEA

1 FOR CONTEMPT OF COURT FOR FAILURE TO PAY OR FAILURE TO COMPLY
2 WITH THE COURT'S ORDER TO PAY A MONETARY AMOUNT UNLESS THE
3 COURT HAS MADE FINDINGS ON THE RECORD THAT THE DEFENDANT HAS
4 THE ABILITY TO COMPLY WITH THE COURT'S ORDER TO PAY A MONETARY
5 AMOUNT DUE WITHOUT UNDUE HARDSHIP TO THE DEFENDANT OR THE
6 DEFENDANT'S DEPENDENTS AND THAT THE DEFENDANT HAS NOT MADE A
7 GOOD-FAITH EFFORT TO COMPLY WITH THE ORDER; AND

8

9 (e) THE COURT SHALL NOT ISSUE A WARRANT FOR FAILURE TO PAY
10 MONEY, FAILURE TO APPEAR TO PAY MONEY, OR FAILURE TO APPEAR AT
11 ANY POST-SENTENCING COURT APPEARANCE WHEREIN THE DEFENDANT
12 WAS REQUIRED TO APPEAR IF HE OR SHE FAILED TO PAY A MONETARY
13 AMOUNT; HOWEVER, A COURT MAY ISSUE AN ARREST WARRANT OR
14 INCARCERATE A DEFENDANT RELATED TO HIS OR HER FAILURE TO PAY A
15 MONETARY AMOUNT ONLY THROUGH THE PROCEDURES DESCRIBED IN
16 PARAGRAPHS (a) TO (d) OF THIS SUBSECTION (3).

17 (4) (a) FOR PURPOSES OF THIS SECTION, A DEFENDANT OR A
18 DEFENDANT'S DEPENDENTS ARE CONSIDERED TO SUFFER UNDUE HARDSHIP
19 IF HE, SHE, OR THEY WOULD BE DEPRIVED OF MONEY NEEDED FOR BASIC
20 LIVING NECESSITIES, SUCH AS FOOD, SHELTER, CLOTHING, NECESSARY
21 MEDICAL EXPENSES, OR CHILD SUPPORT. IN DETERMINING WHETHER A
22 DEFENDANT IS ABLE TO COMPLY WITH AN ORDER TO PAY A MONETARY
23 AMOUNT WITHOUT UNDUE HARDSHIP TO THE DEFENDANT OR THE
24 DEFENDANT'S DEPENDENTS, THE COURT SHALL CONSIDER:

25 (I) WHETHER THE DEFENDANT IS EXPERIENCING HOMELESSNESS;

26 (II) THE DEFENDANT'S PRESENT EMPLOYMENT, INCOME, AND
27 EXPENSES;

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

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

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

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

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

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

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

17 ~~(4)~~ (5) If the court finds a defendant in contempt of court for
18 willful failure to pay, the court may direct that the defendant be
19 imprisoned until the monetary payment ordered by the court is made, but
20 the court shall specify a maximum period of imprisonment subject to the
21 following limits:

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

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

27 (c) When the monetary amount was imposed for a petty offense,

1 a traffic violation, or a violation of a municipal ordinance, any of which
2 is punishable by a possible jail sentence, the period shall not exceed
3 fifteen days;

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

6 (e) When a sentence of imprisonment and a monetary amount was
7 imposed, the aggregate of the period and the term of the sentence shall
8 not exceed the maximum term of imprisonment authorized for the
9 offense.

10 ~~(5)~~ (6) This section applies to all courts of record in Colorado,
11 including but not limited to municipal courts.

12 ~~(6)~~ (7) Nothing in this section prevents the collection of a
13 monetary amount in the same manner as a judgment in a civil action.

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

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