

CHAPTER 343

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 16-1311

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also SENATOR(S) Carroll and Marble, Aguilar, Guzman, Heath, Kefalas, Merrifield, Newell, Steadman.

AN ACT**CONCERNING COURT ORDERS REQUIRING PAYMENT OF MONETARY AMOUNTS.**

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

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

18-1.3-702. Monetary payments - due process required. (1) (a) When the court imposes a sentence, ENTERS A JUDGMENT, OR ISSUES AN ORDER that ~~includes~~ OBLIGATES the ~~payment of~~ DEFENDANT TO PAY a monetary amount, the court may direct as follows:

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

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

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

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

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

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

(IV) When the defendant is sentenced to a period of probation as well as payment

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

of a monetary amount, that payment of the monetary amount be made a condition of probation.

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

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

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

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

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

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

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

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

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

(c) The court shall not find the defendant in contempt of court, nor impose a suspended sentence, nor revoke probation, nor order the defendant to jail for failure to pay unless the court has made findings on the record, after providing notice to the defendant and a hearing, that the defendant has the ability to comply with the court's order to pay a monetary amount due without undue hardship to the defendant or the defendant's dependents and that the defendant has not made a good-faith effort to comply with the order. If the defendant fails to appear at the hearing referenced in this paragraph (c) after receiving notice, the court may issue a warrant for his or her

arrest for failure to appear. ~~In no event shall the court issue a warrant for failure to pay money.~~

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

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

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

(I) WHETHER THE DEFENDANT IS EXPERIENCING HOMELESSNESS;

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

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

(IV) WHETHER THE DEFENDANT HAS QUALIFIED FOR AND IS RECEIVING ANY FORM OF PUBLIC ASSISTANCE, INCLUDING FOOD STAMPS, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, MEDICAID, OR SUPPLEMENTAL SECURITY INCOME BENEFITS;

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

(VI) WHETHER THE DEFENDANT RESIDES IN PUBLIC HOUSING;

(VII) WHETHER THE DEFENDANT'S FAMILY INCOME IS LESS THAN TWO HUNDRED PERCENT OF THE FEDERAL POVERTY LINE, ADJUSTED FOR FAMILY SIZE; AND

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

~~(4)~~ (5) If the court finds a defendant in contempt of court for willful failure to

pay, the court may direct that the defendant be imprisoned until the monetary payment ordered by the court is made, but the court shall specify a maximum period of imprisonment subject to the following limits:

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

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

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

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

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

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

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

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

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

Approved: June 10, 2016