

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 16-0972.01 Jerry Barry x4341

**HOUSE BILL 16-1311**

**HOUSE SPONSORSHIP**

**Salazar,**

**SENATE SPONSORSHIP**

**Carroll and Marble,**

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

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**A BILL FOR AN ACT**

101 **CONCERNING COURT ORDERS REQUIRING PAYMENT OF MONETARY**  
102 **AMOUNTS.**

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**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.*

SENATE  
3rd Reading Unamended  
May 2, 2016

SENATE  
2nd Reading Unamended  
April 29, 2016

HOUSE  
3rd Reading Unamended  
April 8, 2016

HOUSE  
Amended 2nd Reading  
April 7, 2016

! 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.

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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, INCLUDING FOOD STAMPS,  
5 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, MEDICAID, OR  
6 SUPPLEMENTAL SECURITY INCOME BENEFITS;

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

10 (VI) WHETHER THE DEFENDANT RESIDES IN PUBLIC HOUSING;

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

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

16 ~~(4)~~ (5) If the court finds a defendant in contempt of court for  
17 willful failure to pay, the court may direct that the defendant be  
18 imprisoned until the monetary payment ordered by the court is made, but  
19 the court shall specify a maximum period of imprisonment subject to the  
20 following limits:

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

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

26 (c) When the monetary amount was imposed for a petty offense,  
27 a traffic violation, or a violation of a municipal ordinance, any of which

1 is punishable by a possible jail sentence, the period shall not exceed  
2 fifteen days;

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

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

9 ~~(5)~~ (6) This section applies to all courts of record in Colorado,  
10 including but not limited to municipal courts.

11 ~~(6)~~ (7) Nothing in this section prevents the collection of a  
12 monetary amount in the same manner as a judgment in a civil action.

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

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