

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0700.02 Jerry Barry x4341

HOUSE BILL 14-1061

HOUSE SPONSORSHIP

Salazar,

SENATE SPONSORSHIP

Guzman,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING SENTENCES IMPOSING MONETARY PAYMENTS IN
102 CRIMINAL ACTIONS, AND, IN CONNECTION THEREWITH,
103 ELIMINATING PRISON SENTENCES FOR PERSONS WHO ARE
104 UNABLE TO PAY CRIMINAL MONETARY PENALTIES.

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 provides that part of a criminal sentence must include a sentence to prison if an individual criminal defendant fails to pay a fine. The bill changes this requirement so that the sentence must include notice

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.

that if a defendant willfully fails to pay a fine, cost, restitution, or other monetary payment (monetary payment), the court may hold the person in contempt of court and sentence the person to prison.

The bill provides that when the court imposes a monetary payment as part of the sentence, the court must notify the defendant that if he or she is unable to pay the amount ordered, the defendant may ask the court for a waiver or change in the payment. The bill establishes procedures for when a criminal defendant may be held in contempt of court for willful failure to make a monetary payment.

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. Fines, costs, restitution, and other monetary**
5 **payments - methods of payment.** (1) When the court imposes a
6 SENTENCE THAT INCLUDES A FINE, COST, RESTITUTION, OR OTHER FORM OF
7 MONETARY PAYMENT, ~~upon an individual~~, the court may direct as follows:

8 (a) That the defendant pay the entire MONETARY amount ~~of the~~
9 ~~fine~~ at the time sentence is pronounced;

10 (b) That the defendant pay the entire MONETARY amount ~~of the~~
11 ~~fine~~ at some later date;

12 (c) That the defendant pay a specified portion of the ~~fine~~
13 MONETARY AMOUNT at designated periodic intervals, REFERRED TO IN
14 THIS SECTION AS A "PAYMENT PLAN", and in such case the court may also
15 direct that the ~~fine~~ MONETARY PAYMENTS be remitted to a designated
16 official who shall report to the court on any failure to comply with the
17 order;

18 (d) Where the defendant is sentenced to a period of probation as
19 ~~well as a fine~~ AND A MONETARY PAYMENT, that payment of the ~~fine~~ ~~be~~
20 MONETARY AMOUNT IS a condition of probation.

1 (2) ~~Where~~ WHEN the court imposes A SENTENCE THAT INCLUDES
2 a fine, COST, RESTITUTION, OR OTHER FORM OF MONETARY PAYMENT:

3 (a) THE COURT SHALL INSTRUCT THE DEFENDANT AT THE TIME THE
4 SENTENCE IS IMPOSED THAT IF AT ANY TIME THE DEFENDANT IS UNABLE TO
5 PAY THE MONETARY AMOUNT, THE DEFENDANT HAS THE RIGHT TO APPEAR
6 BEFORE THE COURT TO PRESENT EVIDENCE OF INABILITY TO PAY THE
7 AMOUNT DUE AND TO REQUEST A WAIVER OF PAYMENT TO THE EXTENT
8 PERMITTED BY LAW, THE IMPOSITION OF A PAYMENT PLAN, OR A
9 MODIFICATION OF AN EXISTING PAYMENT PLAN; AND

10 (b) The sentence shall provide that, except in the case of a
11 corporation, if the defendant WILLFULLY fails to pay the ~~fine~~ MONETARY
12 AMOUNT in accordance with the direction of the court, the defendant ~~shall~~
13 MAY BE FOUND IN CONTEMPT OF COURT, AS PROVIDED IN SUBSECTION (5)
14 OF THIS SECTION, FOR FAILURE TO COMPLY WITH THE COURT'S LAWFUL
15 ORDER TO PAY. IN SUCH A CASE, THE DEFENDANT MAY be imprisoned until
16 the ~~fine~~ PAYMENT is ~~satisfied~~ MADE or the defendant is released as
17 provided in ~~subsections (3) and~~ SUBSECTION (6) of this section. This
18 provision shall be added at the time sentence is pronounced. ~~If the~~
19 ~~defendant fails to pay a fine as directed, the court may issue a warrant for~~
20 ~~his or her arrest.~~

21 (3) ~~When the court directs that the defendant be imprisoned until~~
22 ~~the fine is satisfied, the court shall specify a maximum period of~~
23 ~~imprisonment subject to the following limits:~~

24 (a) ~~Where the fine was imposed for a felony, the period shall not~~
25 ~~exceed one year;~~

26 (b) ~~Where the fine was imposed for a misdemeanor, the period~~
27 ~~shall not exceed one-third of the maximum term of imprisonment~~

1 authorized for the misdemeanor;

2 ~~(c) Where the fine was imposed for a petty offense, a traffic~~
3 ~~violation, or a violation of a municipal ordinance, any of which is~~
4 ~~punishable by a possible jail sentence, the period shall not exceed fifteen~~
5 ~~days;~~

6 ~~(c.5) There shall be no imprisonment in those cases where no~~
7 ~~imprisonment is provided for in the possible sentence; and~~

8 ~~(d) Where a sentence of imprisonment as well as a fine was~~
9 ~~imposed, the aggregate of the period and the term of the sentence shall~~
10 ~~not exceed the maximum term of imprisonment authorized for the~~
11 ~~offense.~~

12 ~~(4) (3) Where~~ WHEN the defendant is unable to pay a fine
13 MONETARY PAYMENT imposed by the court ~~the defendant may at any time~~
14 ~~apply to the court for resentence. If the court is satisfied that the~~
15 ~~defendant is unable to pay the fine~~ WITHOUT MANIFEST HARDSHIP, THE
16 COURT SHALL NOT IMPRISON THE DEFENDANT FOR HIS OR HER FAILURE TO
17 PAY, BUT the court shall MAY:

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

19 (b) WAIVE THE MONETARY PAYMENT TO THE EXTENT PERMITTED
20 BY LAW;

21 ~~(b) (c) Lower the amount of the fine; or~~ MONETARY PAYMENT TO
22 THE EXTENT PERMITTED BY LAW;

23 (d) ORDER THE DEFENDANT TO PERFORM COMMUNITY SERVICE IN
24 LIEU OF THE MONETARY PAYMENT, OR LOWER OR WAIVE ANY MONETARY
25 PAYMENTS RELATED TO PERFORMANCE OF COMMUNITY SERVICE TO THE
26 EXTENT PERMITTED BY LAW; OR

27 ~~(e) (e) Where the sentence consists of probation or imprisonment~~

1 and a fine, revoke the portion of the sentence imposing the ~~fine~~; or
2 MONETARY PAYMENT TO THE EXTENT PERMITTED BY LAW.

3 ~~(d) Revoke the entire sentence imposed and resentence the~~
4 ~~defendant. Upon a resentence, the court may impose any sentence it~~
5 ~~originally could have imposed, except that the amount of any fine~~
6 ~~imposed shall not be in excess of the amount the defendant is able to pay.~~

7 ~~(5) (4) Notwithstanding that the defendant was imprisoned for~~
8 ~~failure to pay a fine or that he or she has served the period of~~
9 ~~imprisonment imposed, A fine, COST, RESTITUTION, OR OTHER FORM OF~~
10 ~~MONETARY PAYMENT may be collected in the same manner as a judgment~~
11 ~~in a civil action. The district attorney may, in his or her discretion, and~~
12 ~~shall, upon order of the court, institute proceedings to collect such fine.~~

13 ~~(6) (5) (a) If it satisfactorily appears to the district court of the~~
14 ~~judicial district in which a person is confined that such A COURT SHALL~~
15 ~~NOT SENTENCE ANY person is confined in TO A jail, or in a correctional~~
16 ~~facility, or other place of confinement, for any FAILURE TO PAY A fine, or~~
17 ~~costs of prosecution COST, RESTITUTION, OR OTHER FORM OF MONETARY~~
18 ~~PAYMENT for any criminal offense, including any violation of a municipal~~
19 ~~ordinance, and has no estate whatever with which to pay such fine and~~
20 ~~costs, or costs only, it is the duty of the court to discharge such person~~
21 ~~from further imprisonment for the fine and costs. Nothing in this~~
22 ~~subsection (6) shall authorize any person to be discharged from~~
23 ~~imprisonment before the expiration of the time for which he or she may~~
24 ~~be sentenced to be imprisoned as part of his or her punishment. The court~~
25 ~~shall hear without delay any application made under this subsection (6)~~
26 ~~UNLESS THE COURT FINDS THE DEFENDANT IN CONTEMPT OF COURT FOR A~~
27 ~~WILLFUL FAILURE TO PAY SUCH MONETARY PAYMENT PURSUANT TO THIS~~

1 SUBSECTION (5).

2 (b) BEFORE A HEARING ON CONTEMPT OF COURT FOR NONPAYMENT
3 OF A MONETARY PAYMENT, THE DEFENDANT MUST RECEIVE PERSONAL
4 SERVICE OF AN ORDER INDICATING THAT:

5 (I) THE COURT WILL CONDUCT A HEARING AT A SPECIFIED TIME
6 AND DATE ON WHETHER TO FIND THE DEFENDANT IN CONTEMPT OF COURT
7 FOR WILLFUL FAILURE TO PAY THE MONETARY AMOUNT;

8 (II) THE DEFENDANT'S ABILITY TO PAY THE MONETARY AMOUNT
9 WILL BE THE CRITICAL ISSUE DETERMINED BY THE JUDGE AT THE HEARING;

10 (III) THE DEFENDANT MAY PRESENT EVIDENCE AT THE HEARING TO
11 SHOW HIS OR HER INABILITY TO PAY THE MONETARY AMOUNT;

12 (IV) IF THE DEFENDANT FAILS TO APPEAR AT THE HEARING, A
13 WARRANT FOR FAILURE TO APPEAR MAY BE ISSUED FOR HIS OR HER
14 ARREST.

15 (c) IF THE DEFENDANT FAILS TO APPEAR AT THE HEARING AFTER
16 RECEIVING THE NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION
17 (5), THE COURT MAY ISSUE A WARRANT FOR HIS OR HER ARREST FOR
18 FAILURE TO APPEAR, BUT THE COURT SHALL NOT ISSUE A WARRANT FOR
19 FAILURE TO PAY.

20 (d) THE COURT SHALL NOT FIND THE DEFENDANT IN CONTEMPT OF
21 COURT FOR WILLFUL FAILURE TO PAY UNLESS THE COURT MAKES FINDINGS
22 ON THE RECORD THAT THE DEFENDANT HAS THE ABILITY TO COMPLY WITH
23 THE COURT'S ORDER TO PAY THE MONETARY AMOUNT WITHOUT MANIFEST
24 HARDSHIP TO THE DEFENDANT OR THE DEFENDANT'S DEPENDENTS AND
25 THAT THE DEFENDANT HAS NOT MADE A GOOD FAITH EFFORT TO COMPLY
26 WITH THE ORDER.

27 (6) IF, AFTER NOTICE AND A HEARING AS DESCRIBED IN

1 SUBSECTION (5) OF THIS SECTION, THE COURT FINDS A DEFENDANT IN
2 CONTEMPT OF COURT FOR WILLFUL FAILURE TO PAY AND DIRECTS THAT
3 THE DEFENDANT BE IMPRISONED UNTIL THE MONETARY PAYMENT IS MADE,
4 THE COURT SHALL SPECIFY A MAXIMUM PERIOD OF IMPRISONMENT
5 SUBJECT TO THE FOLLOWING LIMITS:

6 (a) WHERE THE MONETARY PAYMENT WAS IMPOSED FOR A FELONY,
7 THE PERIOD SHALL NOT EXCEED ONE YEAR;

8 (b) WHERE THE MONETARY PAYMENT WAS IMPOSED FOR A
9 MISDEMEANOR, THE PERIOD SHALL NOT EXCEED ONE-THIRD OF THE
10 MAXIMUM TERM OF IMPRISONMENT AUTHORIZED FOR THE MISDEMEANOR;

11 (c) WHERE THE MONETARY PAYMENT WAS IMPOSED FOR A PETTY
12 OFFENSE, A TRAFFIC VIOLATION, OR A VIOLATION OF A MUNICIPAL
13 ORDINANCE, ANY OF WHICH IS PUNISHABLE BY A POSSIBLE JAIL SENTENCE,
14 THE PERIOD SHALL NOT EXCEED FIFTEEN DAYS;

15 (d) THERE SHALL BE NO IMPRISONMENT IN THOSE CASES WHERE NO
16 IMPRISONMENT IS PROVIDED FOR IN THE POSSIBLE SENTENCE; AND

17 (e) WHERE A SENTENCE OF IMPRISONMENT AND A MONETARY
18 PAYMENT WAS IMPOSED, THE AGGREGATE OF THE PERIOD AND THE TERM
19 OF THE SENTENCE SHALL NOT EXCEED THE MAXIMUM TERM OF
20 IMPRISONMENT AUTHORIZED FOR THE OFFENSE.

21 (7) THIS SECTION APPLIES TO ALL COURTS OF RECORD IN
22 COLORADO, INCLUDING BUT NOT LIMITED TO MUNICIPAL COURTS.

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

26 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.