

**FINAL
FISCAL NOTE**

Drafting Number: LLS 14-0700	Date: June 10, 2014
Prime Sponsor(s): Rep. Salazar Sen. Guzman	Bill Status: Signed into Law
	Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: ELIMINATE PRISON FOR INABILITY TO PAY FINES

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures		
FTE Position Change		
Appropriation Required: None.		

** This summary shows changes from current law under the bill for each fiscal year.*

Summary of Legislation

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. This bill clarifies procedures related to monetary payments imposed as part of a sentence. It clarifies that the court's designated official may direct how a defendant satisfies the obligation and requires that the designated official report to the court on any failure to pay. When the court imposes a monetary payment as part of a sentence, it must notify the defendant that if he or she is unable to make the payment, he or she must contact the court's designated official or appear before the court to explain why he or she is unable to pay. If the defendant has the ability to pay but willfully chooses not to, the defendant may be imprisoned for failure to comply with the court's order.

The bill clarifies that inability to pay without undue hardship is not grounds for imprisonment for failure to pay. Except in the case of a corporation, if the defendant fails to pay, the court may consider a motion to impose part or all of a suspended sentence, revoke probation, or may institute proceedings for contempt of court. The court may not take any of these actions unless it has made findings on the record, after providing notice to the defendant and a hearing, that the defendant has not made a good faith effort to comply with the order. If the defendant fails to appear at the hearing after receiving notice, the court may issue a warrant for his or her arrest for failure to appear, but not for failure to pay money.

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 payment is made and must specify a maximum period of imprisonment. The bill removes language that allows a defendant to apply to the court for resentencing and clarifies that collection of a monetary amount may proceed in the same manner as collection for a judgment in a civil action.

Background

In state courts, collections investigators are employed to assist persons who are not indigent but are otherwise unable to pay fines immediately. The collections investigators are authorized to establish and alter payment plans as necessary. If a person fails to make payments and does not take steps to amend his or her payment plan, the court may issue a failure to pay (FTP) warrant. In the past year, there were about 160,000 payment plans in effect, but only 850 FTP warrants issued by state courts. The amended bill conforms to current practice for state trial courts.

In municipal courts, there are no uniform guidelines requiring payment plans, although in practice many such courts conduct a hearing and the judge may establish a payment plan for the person if he or she is unable to pay and does not qualify for a waiver. As of this writing, no information was available about the number of payment plans in effect or FTP warrants issued in the past year from municipal courts.

Local Government Impact

This bill could affect local governments in three ways. First, to the extent that municipal courts are not establishing payment plans and directly issuing FTP warrants for failure to pay, workload could increase. Second, to the extent that this bill increases payment plans and reduces the issuance of FTP warrants, local jail costs could be reduced. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$51.45 to house state inmates. Third, the bill requires notice of process at the time of sentencing, which will increase costs for local government courts. For instance, the City of Aurora noted that providing such notice costs about \$30 per case, for an annual total of about \$24,000.

Effective Date

The bill was signed into law by the Governor and took effect on May 9, 2014. It applies to sentences entered and to hearings for failure to make monetary payments conducted on or after this date.

State and Local Government Contacts

Corrections
Judicial

Counties
Municipalities

District Attorneys
Sheriffs