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HOUSE BILL 14-1061

BY REPRESENTATIVE(S) Salazar, Becker, Buckner, Fischer, Foote, Ginal, Hamner, Hullinghorst, Kagan, Kraft-Tharp, Labuda, Lebsock, Melton, Mitsch Bush, Moreno, Peniston, Pettersen, Rosenthal, Ryden, Schafer, Scott, Singer, Tyler, Vigil, Williams, Young;
also SENATOR(S) Guzman, Aguilar, Crowder, Heath, Hodge, Johnston, Jones, Kefalas, King, Newell, Nicholson, Steadman, Tochtrop, Todd, Ulibarri, Zenzinger, Carroll.

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

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 ~~fine upon an individual~~ SENTENCE THAT INCLUDES THE PAYMENT OF A MONETARY AMOUNT, the court may direct as follows:

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

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

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

~~(c)~~ (III) That the defendant pay a specified portion of the fine at designated periodic intervals, and in such case the court may also direct that the fine be remitted to a designated official who shall report to the court on any failure to comply with the order 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;

~~(d)~~ (IV) ~~Where~~ WHEN the defendant is sentenced to a period of probation as well as PAYMENT OF a fine MONETARY AMOUNT, that payment of the fine 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) ~~Where~~ WHEN the court imposes a fine SENTENCE THAT INCLUDES PAYMENT OF ANY MONETARY AMOUNT, the sentence COURT shall provide that, except in the case of a corporation INSTRUCT THE DEFENDANT AS FOLLOWS:

(a) If AT ANY TIME the defendant fails IS UNABLE to pay the fine in accordance with the direction of the court, MONETARY AMOUNT DUE, the defendant shall be imprisoned until the fine is satisfied or the defendant is released as provided in subsections (3) and (6) of this section. This

~~provision shall be added at the time sentence is pronounced. If the defendant fails to pay a fine as directed, the court may issue a warrant for his or her arrest~~ 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 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, 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 COLORADO RULES OF CIVIL PROCEDURE OR RULE 407 OF 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.

~~(3)~~ (4) ~~When the court directs that the defendant be imprisoned until the fine is satisfied,~~ 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) ~~Where~~ WHEN the ~~fine~~ MONETARY AMOUNT was imposed for a felony, the period shall not exceed one year;

(b) ~~Where~~ WHEN the ~~fine~~ 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) ~~Where~~ WHEN the ~~fine~~ 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;

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

~~(d)~~ (e) ~~Where~~ WHEN a sentence of imprisonment ~~as well as~~ AND a ~~fine~~ 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.

~~(4)~~ ~~Where the defendant is unable to pay a fine imposed by the court, the defendant may at any time apply to the court for resentencing. If the court is satisfied that the defendant is unable to pay the fine, the court shall:~~

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

~~(b) Lower the amount of the fine; or~~

~~(c) Where the sentence consists of probation or imprisonment and~~

~~a fine, revoke the portion of the sentence imposing the fine, or~~

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

~~(5) Notwithstanding that the defendant was imprisoned for failure to pay a fine or that he or she has served the period of imprisonment imposed, a fine may be collected in the same manner as a judgment in a civil action. The district attorney may, in his or her discretion, and shall, upon order of the court, institute proceedings to collect such fine. THIS SECTION APPLIES TO ALL COURTS OF RECORD IN COLORADO, INCLUDING BUT NOT LIMITED TO MUNICIPAL COURTS.~~

~~(6) If it satisfactorily appears to the district court of the judicial district in which a person is confined that such person is confined in jail or in a correctional facility or other place of confinement, for any fine or costs of prosecution for any criminal offense, including any violation of a municipal ordinance, and has no estate whatever with which to pay such fine and costs, or costs only, it is the duty of the court to discharge such person from further imprisonment for the fine and costs. Nothing in this subsection (6) shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment. The court shall hear without delay any application made under this subsection (6). 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.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Morgan Carroll
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO