

1 ~~B. After a judicial determination that the defendant is able to~~
2 ~~pay the fine, cost, fee, or assessment in installments, the court~~
3 ~~may order the fine, cost, fee, or assessment to be paid in~~
4 ~~installments and shall set the amount and date for each installment.~~

5 ~~C. In addition, the district court or municipal court, within~~
6 ~~one hundred twenty (120) days from the date upon which the person~~
7 ~~was originally ordered to make payment, may send notice of~~
8 ~~nonpayment of any court ordered fine and costs for a moving traffic~~
9 ~~violation to the Department of Public Safety with a recommendation~~
10 ~~of suspension of driving privileges of the defendant until the total~~
11 ~~amount of any fine and costs has been paid. Upon receipt of payment~~
12 ~~of the total amount of the fine and costs for the moving traffic~~
13 ~~violation, the court shall send notice thereof to the Department, if~~
14 ~~a nonpayment notice was sent as provided for in this subsection.~~
15 ~~Notices sent to the Department shall be on forms or by a method~~
16 ~~approved by the Department.~~

17 ~~D. Prior to the court's hearing on sentencing or other final~~
18 ~~order, the district attorney shall disclose to the defendant an~~
19 ~~itemized list of all restitution, fines, costs, fees and assessments~~
20 ~~owed or to be owed by the defendant including any costs, fees and~~
21 ~~assessments imposed during the pre-adjudication process.~~

22 ~~B. If case disposition is to be the result of a plea agreement,~~
23 ~~the recommendation of the district attorney shall reflect the~~
24 ~~ability of the defendant to pay the amounts contained in the~~

1 itemized list of restitution, fines, fees, costs and assessments,
2 along with a statement by the defendant regarding his or her ability
3 to pay either immediately upon sentencing or other final order, or
4 through installments.

5 C. The court shall conduct a hearing at time of sentencing or
6 other final order to determine the defendant's immediate ability to
7 pay restitution, fines, costs, fees and assessments. The court may
8 order these to be paid in installments and shall set the amount and
9 date for each installment. The court shall instruct the defendant
10 that, if at any time the defendant is unable to pay any financial
11 obligations ordered by the court, the defendant has the right to
12 appear before the court to present evidence regarding ability to pay
13 the amount due and to request the imposition of a payment plan, a
14 modification of a payment plan, or with regard to fines, costs, fees
15 and assessments, a reduction in the amount owed or waiver of
16 payment.

17 D. Notwithstanding any other provision of the Oklahoma
18 Statutes, costs, fees and assessments shall not be considered a
19 penalty for the underlying offense. Any costs, fees and assessments
20 due may be collected in the same manner as a judgment in a civil
21 action. No person shall be incarcerated for being in default of
22 payment of court-imposed costs, fees or assessments, unless held in
23 contempt of court for willful refusal or neglect of payment. The
24 determination by the court of the defendant's inability or

1 willfulness to make the payments shall be made in compliance with
2 the procedures described in this section.

3 E. In determining willful refusal or neglect to pay or
4 inability to pay restitution, fines, costs, fees or assessments, the
5 court shall consider:

6 1. Undue hardship to the defendant or to the legal dependents
7 of the defendant;

8 2. The defendant has not made a good faith effort to comply
9 with the order;

10 3. The present employment of the defendant;

11 4. The earning capacity of the defendant;

12 5. The availability and convertibility of any existing assets
13 owned by the defendant;

14 6. Whether and to what extent the defendant has outstanding
15 debts and liabilities;

16 7. The health of the defendant, including mental and behavioral
17 health issues that diminish the defendant's ability to pay;

18 8. Access to transportation;

19 9. Public assistance, including but not limited to, state
20 administered general assistance, temporary family assistance, aid to
21 the elderly, blind or disabled, SNAP benefits and supplemental
22 social security; and

23 10. Any other relevant issues as determined by the court.
24

1 F. 1. Any defendant sentenced, or upon final disposition,
2 ordered to pay restitution or fines may be incarcerated for non-
3 payment when the trial court finds after notice and hearing that the
4 defendant is financially able but refuses or neglects to pay the
5 restitution or fines. A sentence to pay restitution or fines may be
6 converted into a jail sentence only after a hearing and a judicial
7 determination, memorialized of record, that the defendant is able to
8 pay restitution or fines by payment but refuses or neglects to do
9 so.

10 2. The court shall send a notice to the defendant by U.S. mail
11 to his or her last known mailing address, and by electronic mail or
12 text message to defendant's electronic mail address or cellular
13 phone number, stating that:

14 a. the court will conduct a hearing at a specified time,
15 place and date to determine if the defendant has
16 willfully refused or neglected to pay restitution or
17 fines, or is unable to pay the amount owed,

18 b. the defendant may present evidence at the hearing to
19 show his or her inability to pay the restitution or
20 fines, and

21 c. if the defendant fails to appear at the hearing for
22 failure to pay restitution or fines, a warrant for
23 failure to appear may be issued for the arrest of the
24 defendant. The court shall conduct the hearing within

1 three (3) business days after the arrest of the
2 defendant.

3 3. After a judicial determination that the defendant is able to
4 pay the restitution or fines in installments, the court may order
5 the restitution or fines to be paid in installments and shall set
6 the amount and date for each installment.

7 G. If the court finds that the failure to pay restitution or
8 fines was not willful and that defendant is unable to pay the amount
9 owed, the court may:

10 1. Adjust the terms of payment of restitution or fines;

11 2. Lower the amount of the fines;

12 3. Waive the fines upon a finding by the court that the
13 defendant is unable to pay and that such status is unlikely to
14 change in the foreseeable future, or that the fines are preventing
15 the defendant from obtaining basic necessities;

16 4. Order the defendant to perform community service in lieu of
17 a payment of the fine; or

18 5. Enter a civil judgment for all or a portion of the unpaid
19 fines to be paid either in whole or in installments.

20 H. Upon the finding of the court that failure to pay
21 restitution, fines, costs, fees or assessments was not willful, no
22 costs, fees or assessments attributable to the notice or hearing
23 held under this subsection or subsection D of this section shall be
24 ordered by the court.

1 I. If the court finds that nonpayment of restitution or fines
2 was willful, a defendant may be incarcerated in the county jail for
3 a term not to exceed thirty (30) days. The defendant shall be
4 credited with an amount as specified by the court, not less than
5 Fifty Dollars (\$50.00) per day for time served for nonpayment of
6 finances. The court may release the defendant upon satisfactory
7 arrangements to bring the defendant into compliance. If the
8 defendant remains in noncompliance after ninety (90) days from
9 release, the defendant may again be served with notice as provided
10 in subsection F of this section and the court may again determine if
11 the noncompliance is willful and order the defendant incarcerated as
12 provided in this subsection.

13 J. If the defendant fails to pay court-imposed restitution,
14 finances, costs, fees or assessments, after a civil judgment for non-
15 willful failure to pay for at least six (6) months, the court clerk
16 may retain an agent to collect, or institute proceedings to collect,
17 or establish an in-house collection procedure to collect all moneys
18 owed. If an agent is used, the court clerk shall request the county
19 purchasing agent to utilize normal competitive bidding procedures
20 applicable to the county to select and retain the agent.

21 K. The following allocation formula shall be used for moneys
22 paid into the court: payments shall first be credited toward
23 satisfying restitution, then fines. Once restitution and fines have
24

1 been paid, payments shall be credited towards the court-imposed
2 costs, fees and assessments.

3 L. The Court of Criminal Appeals shall implement procedures and
4 rules consistent with the provisions of this section for methods of
5 establishing payment plans of fines, costs, fees, and assessments by
6 indigents, which procedures and rules shall be distributed to all
7 district courts and municipal courts by the Administrative Office of
8 the Courts.

9 SECTION 2. This act shall become effective November 1, 2020.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
11 February 26, 2020 - DO PASS AS AMENDED
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