

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1425

By: Daniels

AS INTRODUCED

An Act relating to court fines and costs; amending 22 O.S. 2011, Section 983, as amended by Section 2, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2019, Section 983), which relates to failure to pay fines, costs, fees or assessments; modifying requirements for payment of fines, costs, fees or assessments; requiring district attorney to provide itemized list of certain costs to a defendant prior to sentencing; requiring certain statements by defendant for plea agreements; requiring certain hearing; authorizing court to order installment payments; authorizing request for payment plan, modification or reduction in payments; authorizing collection of certain costs as judgment in civil action; prohibiting incarceration for default; providing exception; requiring consideration of certain factors; requiring notice and hearing before certain sentence conversion; establishing procedures for certain hearing; authorizing court to take certain actions for defendant unable to pay amount owed; prohibiting imposition of costs and fees under certain circumstances; authorizing incarceration for willful nonpayment; establishing requirements for certain incarceration; authorizing court clerk to take certain collection actions; establishing certain allocation formula; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 983, as
2 amended by Section 2, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2019,
3 Section 983), is amended to read as follows:

4 Section 983. A. ~~Any defendant found guilty of an offense in~~
5 ~~any court of this state may be imprisoned for nonpayment of the~~
6 ~~fine, cost, fee, or assessment when the trial court finds after~~
7 ~~notice and hearing that the defendant is financially able but~~
8 ~~refuses or neglects to pay the fine, cost, fee, or assessment. A~~
9 ~~sentence to pay a fine, cost, fee, or assessment may be converted~~
10 ~~into a jail sentence only after a hearing and a judicial~~
11 ~~determination, memorialized of record, that the defendant is able to~~
12 ~~satisfy the fine, cost, fee, or assessment by payment, but refuses~~
13 ~~or neglects so to do.~~

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

18 C. ~~In addition, the district court or municipal court, within~~
19 ~~one hundred twenty (120) days from the date upon which the person~~
20 ~~was originally ordered to make payment, may send notice of~~
21 ~~nonpayment of any court ordered fine and costs for a moving traffic~~
22 ~~violation to the Department of Public Safety with a recommendation~~
23 ~~of suspension of driving privileges of the defendant until the total~~
24 ~~amount of any fine and costs has been paid. Upon receipt of payment~~

1 ~~of the total amount of the fine and costs for the moving traffic~~
2 ~~violation, the court shall send notice thereof to the Department, if~~
3 ~~a nonpayment notice was sent as provided for in this subsection.~~
4 ~~Notices sent to the Department shall be on forms or by a method~~
5 ~~approved by the Department.~~

6 D. Prior to the court's hearing on sentencing or other final
7 order, the district attorney shall disclose to the defendant an
8 itemized list of all restitution, fines, costs, fees and assessments
9 owed or to be owed by the defendant, including any costs, fees and
10 assessments imposed during the pre-adjudication process.

11 B. If case disposition is to be the result of a plea agreement,
12 the recommendation of the district attorney shall reflect the
13 ability of the defendant to pay the amounts contained in the
14 itemized list of restitution, fines, fees, costs and assessments,
15 along with a statement by the defendant regarding his or her ability
16 to pay either immediately upon sentencing or other final order, or
17 through installments.

18 C. The court shall conduct a hearing at time of sentencing or
19 other final order to determine the defendant's immediate ability to
20 pay restitution, fines, costs, fees and assessments. The court may
21 order these to be paid in installments and shall set the amount and
22 date for each installment. The court shall instruct the defendant
23 that, if at any time the defendant is unable to pay any financial
24 obligations ordered by the court, the defendant has the right to

1 appear before the court to present evidence regarding ability to pay
2 the amount due and to request the imposition of a payment plan, a
3 modification of a payment plan, or with regard to fines, costs, fees
4 and assessments, a reduction in the amount owed or waiver of
5 payment.

6 D. Notwithstanding any other provision of the Oklahoma
7 Statutes, costs, fees and assessments shall not be considered a
8 penalty for the underlying offense. Any costs, fees and assessments
9 due may be collected in the same manner as a judgment in a civil
10 action. No person shall be incarcerated for being in default of
11 payment of court-imposed costs, fees or assessments, unless held in
12 contempt of court for willful refusal or neglect of payment. The
13 determination by the court of the defendant's inability or
14 willfulness to make the payments shall be made in compliance with
15 the procedures described in this section.

16 E. In determining willful refusal or neglect to pay or
17 inability to pay restitution, fines, costs, fees or assessments, the
18 court shall consider:

19 1. Undue hardship to the defendant or to the legal dependents
20 of the defendant;

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

23 3. The present employment of the defendant;

24 4. The earning capacity of the defendant;

1 5. The availability and convertibility of any existing assets
2 owned by the defendant;

3 6. Whether and to what extent the defendant has outstanding
4 debts and liabilities;

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

7 8. Access to transportation;

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

12 10. Any other relevant issues as determined by the court.

13 F 1. Any defendant sentenced, or upon final disposition,
14 ordered to pay restitution or fines may be incarcerated for non-
15 payment when the trial court finds after notice and hearing that the
16 defendant is financially able but refuses or neglects to pay the
17 restitution or fines. A sentence to pay restitution or fines may be
18 converted into a jail sentence only after a hearing and a judicial
19 determination, memorialized of record, that the defendant is able to
20 pay restitution or fines by payment but refuses or neglects to do
21 so.

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

3 a. the court will conduct a hearing at a specified time,
4 place and date to determine if the defendant has
5 willfully refused or neglected to pay restitution or
6 finest, or is unable to pay the amount owed,

7 b. the defendant may present evidence at the hearing to
8 show his or her inability to pay the restitution or
9 finest, and

10 c. if the defendant fails to appear at the hearing for
11 failure to pay restitution or fines, a warrant for
12 failure to appear may be issued for the arrest of the
13 defendant. The court shall conduct the hearing within
14 three (3) business days after the arrest of the
15 defendant.

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

20 G. If the court finds that the failure to pay restitution or
21 finest was not willful and that defendant is unable to pay the amount
22 owed, the court may:

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

24 2. Lower the amount of the fines;

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

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

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

9 H. Upon the finding of the court that failure to pay
10 restitution, fines, costs, fees or assessments was not willful, no
11 costs, fees or assessments attributable to the notice or hearing
12 held under this subsection or subsection D of this section shall be
13 ordered by the court.

14 I. If the court finds that nonpayment of restitution or fines
15 was willful, a defendant may be incarcerated in the county jail for
16 a term not to exceed thirty (30) days. The defendant shall be
17 credited with an amount as specified by the court, not less than
18 Fifty Dollars (\$50.00) per day for time served for nonpayment of
19 fines. The court may release the defendant upon satisfactory
20 arrangements to bring the defendant into compliance. If the
21 defendant remains in noncompliance after ninety (90) days from
22 release, the defendant may again be served with notice as provided
23 in subsection F of this section and the court may again determine if
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1 the noncompliance is willful and order the defendant incarcerated as
2 provided in this subsection.

3 J. If the defendant fails to pay court-imposed restitution,
4 finest, costs, fees or assessments, after a civil judgment for non-
5 willful failure to pay for at least six (6) months, the court clerk
6 may retain an agent to collect, or institute proceedings to collect,
7 or establish an in-house collection procedure to collect all moneys
8 owed. If an agent is used, the court clerk shall request the county
9 purchasing agent to utilize normal competitive bidding procedures
10 applicable to the county to select and retain the agent.

11 K. The following allocation formula shall be used for moneys
12 paid into the court: payments shall first be credited toward
13 satisfying restitution, then fines. Once restitution and fines have
14 been paid, payments shall be credited towards the court-imposed
15 costs, fees and assessments.

16 L. The Court of Criminal Appeals shall implement procedures and
17 rules consistent with the provisions of this section for methods of
18 establishing payment plans of fines, costs, fees, and assessments by
19 indigents, which procedures and rules shall be distributed to all
20 district courts and municipal courts by the Administrative Office of
21 the Courts.

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

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