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2 93rd General Assembly  
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4

# A Bill

HOUSE BILL 1673

5 By: Representative A. Collins  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING A DEFENDANT'S ABILITY OR INABILITY  
9 TO PAY A FINE OR FEE; AND FOR OTHER PURPOSES.  
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### Subtitle

11 CONCERNING A DEFENDANT'S ABILITY OR  
12 INABILITY TO PAY A FINE OR FEE.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 16-13-701 is amended to read as follows:  
20 16-13-701. Scope – ~~Definition~~ Definitions.

21 (a) The procedures established by this subchapter shall apply to the  
22 assessment and collection of all fines, however designated, imposed by  
23 circuit courts and district courts for criminal convictions, traffic  
24 convictions, civil violations, and juvenile delinquency adjudications and  
25 shall be utilized to obtain prompt and full payment of all fines.

26 (b) As used in this subchapter, ~~"fine"~~:

27 (1) "Ability to pay inquiry" means a court inquiry sufficient to  
28 determine whether a defendant is able to pay a fine and includes without  
29 limitation inquiry into the defendant's income, expenses, and liquid assets;

30 (2) "Able to pay" means that the resources of the defendant are  
31 sufficient to pay a fine and provide the defendant and his or her dependents  
32 with a reasonable subsistence compatible with health and decency; and

33 (3) "Fine" means a monetary penalty imposed by a court,  
34 including without limitation:

35 ~~(1)~~(A) A monetary fine;

36 ~~(2)~~(B) Court costs;



- 1                   ~~(3)~~(C) Court-ordered restitution;
- 2                   ~~(4)~~(D) Probation fees;
- 3                   ~~(5)~~(E) Supervision fees;
- 4                   ~~(6)~~(F) Public service supervisory fees; and
- 5                   ~~(7)~~(G) Other court-ordered fees.

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7           SECTION 2. Arkansas Code § 16-13-702 is amended to read as follows:

8           16-13-702. Imposition of fine – Ability-to-pay inquiry – Immediate  
 9 payment generally required.

10           (a)(1)(A) Notwithstanding any other mandatory sentencing requirement  
 11 under law, a fine shall not be imposed before an ability-to-pay inquiry is  
 12 conducted by the court, unless the defendant waives the ability-to-pay  
 13 inquiry and demonstrates that he or she is able to pay under subdivision  
 14 (a)(1)(B) of this section.

15           (B) A defendant may waive the ability-to-pay inquiry and  
 16 demonstrate that he or she is able to pay by entering a plea of guilty or  
 17 nolo contendere and paying as a bond an amount equal to the fine in lieu of  
 18 appearing in court as authorized by law.

19           (2) If a court determines that a defendant is not able to pay  
 20 the fine, the court may reduce the amount of the fine to an amount that the  
 21 defendant is able to pay or allow the defendant to perform community service  
 22 at an hourly rate not less than the state minimum wage as credit against the  
 23 fine or complete an educational program in lieu of paying the fine.

24           (3) If the court determines that the defendant is able to pay  
 25 the fine but that requiring the defendant to make immediate payment in full  
 26 would cause a severe and undue hardship for the defendant and the defendant’s  
 27 dependents, the court may authorize payment of the fine by means of  
 28 installment payments in accordance with § 16-13-704 if the court also finds  
 29 that the defendant is able to pay any installment fees that are required by  
 30 law.

31           ~~(a)(1) When a court has imposed a fine, as described in § 16-13-701,~~  
 32 ~~the imposition of such a fine constitutes~~

33           (b)(1) Except when a court has authorized installment payments in  
 34 accordance with § 16-13-704, the imposition of a fine constitutes an order to  
 35 pay the full amount of the fine in accordance with this subchapter.

36           ~~(2) Following imposition of the fine~~ When the full amount of a

1 fine is due following the imposition of a fine, the court shall inform the  
 2 defendant that full payment of the fine is due immediately and shall inquire  
 3 of the defendant what arrangements he or she has made to comply with the  
 4 court's order to pay the fine.

5 (3) Without utilizing the provisions of § 16-13-704, the court  
 6 may allow the defendant a period of time, not to extend beyond the time of  
 7 the close of the clerk's office on the following day, within which to return  
 8 to the court and tender payment of the fine.

9 (4)(A)(i) If the defendant fails to appear as directed, the  
 10 court shall issue an order of arrest.

11 (ii) The arrest order shall be carried out by the  
 12 sheriff.

13 (B) The court may also, upon the defendant's failure to  
 14 appear, utilize any of the enforcement mechanisms authorized by this  
 15 subchapter.

16 ~~(5)(A) If the defendant claims an inability to pay the fine, the~~  
 17 ~~court shall inquire into the defendant's ability to pay and shall make a~~  
 18 ~~determination of the defendant's financial ability to pay the fine.~~

19 ~~(B) If the court finds that the defendant has the~~  
 20 ~~financial ability to make immediate payment of the fine in full, the court~~  
 21 ~~shall order him or her to pay the fine.~~

22 ~~(C) Failure or refusal to pay as ordered by the court~~  
 23 ~~shall subject the defendant to imprisonment, as provided in § 16-13-703.~~

24 ~~(b)(1)(c)(1)~~ When a corporation is sentenced to pay a fine or costs,  
 25 it is the duty of the person authorized to make disbursement from the assets  
 26 of the corporation to pay the fine or costs.

27 (2) If such disbursements require approval of the board of  
 28 directors, it is the duty of the board to authorize disbursements to pay the  
 29 fine or costs.

30 (3) Failure to comply with the duties imposed by this subsection  
 31 shall render the person or directors subject to imprisonment under § 16-13-  
 32 703.

33  
 34 SECTION 3. Arkansas Code § 16-13-703 is amended to read as follows:  
 35 16-13-703. Imprisonment.

36 (a) When a defendant sentenced to pay a fine defaults in the payment

1 thereof, or of any installment, the court, upon its own motion or that of the  
2 prosecuting attorney, may require him or her to show cause why he or she  
3 should not be imprisoned for nonpayment.

4 (b) The court may issue a warrant of arrest or summons for his or her  
5 appearance.

6 (c)(1) ~~Unless the defendant shows that his or her default was not~~  
7 ~~attributable to a purposeful refusal to obey the sentence of the court or to~~  
8 ~~a failure on his or her part to make a good faith effort to obtain the funds~~  
9 ~~required for payment, the court may order the defendant imprisoned in the~~  
10 ~~county jail or other authorized institution designated by the court until the~~  
11 ~~fine or specified part thereof is paid~~ A defendant may be imprisoned for  
12 failure to pay a fine only after the court inquires into the reasons for the  
13 defendant's failure to pay, an opportunity is given for introduction of  
14 evidence by the prosecuting attorney and the defendant, and the court finds  
15 that it has been clearly demonstrated that the defendant purposely failed to  
16 pay the fine and not as a result of the defendant's indigency.

17 (2)(A) The period of imprisonment shall not exceed one (1) day  
18 for each forty dollars (\$40.00) of the fine, thirty (30) days if the fine was  
19 imposed upon conviction of a misdemeanor, or one (1) year if the fine was  
20 imposed upon conviction of a felony, whichever is the shorter period.

21 (B) The total amount of fines owed shall not automatically  
22 be reduced by the period of imprisonment, but the court may credit forty  
23 dollars (\$40.00) for each day of imprisonment against the total fine,  
24 excluding any amount owed for restitution, the defendant has been sentenced  
25 to pay.

26 (3) This subsection is in addition to the revocation options  
27 contained in § 16-93-308.

28 (4) If the court rejects a defendant's claim that he or she is  
29 not able to pay the fine due to a change in circumstances since the  
30 imposition of the fine or his or her default was not attributable to a  
31 purposeful refusal to obey the sentence of the court, the docket shall  
32 include a written explanation of the basis for the determination of the  
33 court.

34 (d) If the court determines that the default in payment of the fine is  
35 not attributable to the causes specified in subsection (c) of this section,  
36 the court may enter an order allowing the defendant additional time for

1 payment, reducing the amount of each installment, ~~or~~ revoking the fine or the  
 2 unpaid portion ~~thereof~~ of the fine in whole or in part, allowing the  
 3 defendant to perform community service at an hourly rate not less than the  
 4 state minimum wage as a credit against the fine or complete an educational  
 5 program in lieu of paying the fine.

6  
 7 SECTION 4. Arkansas Code § 16-13-704 is amended to read as follows:  
 8 16-13-704. Installment payments—~~Definition.~~

9 (a)(1) ~~If the court concludes that the defendant has the ability to~~  
 10 ~~pay the fine, but that requiring the defendant to make immediate payment in~~  
 11 ~~full would cause a severe and undue hardship for the defendant and the~~  
 12 ~~defendant's dependents, the court may authorize payment of the fine by means~~  
 13 ~~of installment payments in accordance with this subchapter.~~

14 ~~(2)(A)~~ When a court authorizes payment of a fine by means of  
 15 installment payments, it shall issue, without a separate disclosure hearing,  
 16 an order that the fine be paid in full by a date certain and that in default  
 17 of payment, the defendant must appear in court to explain the failure to pay.

18 ~~(B)(2)~~ In fixing the date of payment, the court shall issue an  
 19 order which will complete payment of the fine as promptly as possible without  
 20 creating a severe and undue hardship for the defendant and the defendant's  
 21 dependents.

22 (3) When a person is authorized to pay a fine on an installment  
 23 basis, any court cost assessed under § 9-15-202(d) or § 16-10-305(h) shall be  
 24 collected from the initial installment payment first.

25 (b)(1)(A) In addition to the fine and any other assessments authorized  
 26 by this subchapter, an installment fee of five dollars (\$5.00) per month  
 27 shall be assessed on each person who is authorized to pay a fine on an  
 28 installment basis.

29 (B) This fee shall be collected in full each month in  
 30 which a defendant makes an installment payment.

31 (C) This fee shall accrue each month that a defendant does  
 32 not make an installment payment and the fine has not been paid in full.

33 (2)(A)(i) One-half ( $\frac{1}{2}$ ) of the installment fee collected in  
 34 circuit court shall be remitted by the tenth day of each month to the  
 35 Administration of Justice Funds Section of the Office of Administrative  
 36 Services of the Department of Finance and Administration, on a form provided

1 by that office, for deposit into the Judicial Fine Collection Enhancement  
2 Fund established by § 16-13-712.

3 (ii) The other half of the installment fee shall be  
4 remitted by the tenth day of each month to the county treasurer to be  
5 deposited into a fund entitled the "circuit court automation fund" to be used  
6 solely for circuit court-related technology.

7 (B)(i) Expenditures from the circuit court automation fund  
8 shall be approved by the administrative circuit judge of each judicial  
9 circuit and shall be authorized and paid under the state laws governing the  
10 appropriation and payment of county expenditures.

11 (ii) Expenditures may be made for indirect expenses  
12 related to implementation of new court-related technology, including overtime  
13 pay, personnel or travel expenses, and technology-related supplies.

14 (iii) Funds in each county in a judicial district  
15 may be pooled for expenditure pursuant to a circuit-wide technology plan  
16 approved by the administrative circuit judge.

17 (3)(A) One-half ( $\frac{1}{2}$ ) of the installment fee collected in district  
18 court shall be remitted by the tenth day of each month to the Administration  
19 of Justice Funds Section, on a form provided by ~~that~~ the section, for deposit  
20 into the Judicial Fine Collection Enhancement Fund established by § 16-13-  
21 712.

22 (B) The other half of the installment fee collected in  
23 district court shall be remitted by the tenth day of each month to the city  
24 treasurer of the city in which the district court is located to be deposited  
25 into a fund entitled the "district court automation fund" to be used solely  
26 for district court-related technology.

27 (C) In any district court which is funded solely by the  
28 county, the other half of ~~this~~ the installment fee shall be remitted by the  
29 tenth day of each month to the county treasurer of the county in which the  
30 district court is located to be deposited into the district court automation  
31 fund to be used solely for district court-related technology.

32 (D)(i) Expenditures from the district court automation  
33 fund shall be approved by a district judge and shall be authorized and paid  
34 under state laws governing the appropriation and payment of county or  
35 municipal expenditures by the governing body or, if applicable, governing  
36 bodies, that contribute to the expenses of a district court.

1 (ii) Expenditures may be made for indirect expenses  
2 related to implementation of new court-related technology, including overtime  
3 pay, personnel or travel expenses, and technology-related supplies.

4 (E)(i) In circuit court only, an installment fee of an  
5 additional five dollars (\$5.00) per month shall also be assessed on the first  
6 day of each month on each person who is ordered to pay a fine on an  
7 installment basis with the additional five dollars (\$5.00) to be remitted to  
8 the collecting official to be used to defray the cost of fine collection.

9 (ii) In district court only, an installment fee of  
10 an additional five dollars (\$5.00) per month shall also be assessed on the  
11 first day of each month on each person who is ordered to pay a fine on an  
12 installment basis with the additional five dollars (\$5.00) to be remitted by  
13 the tenth day of each month to the Administration of Justice Funds Section on  
14 a form provided by ~~that~~ the section for deposit into the State Administration  
15 of Justice Fund.

16 (c) Any defendant who has been authorized by the court to pay a fine  
17 by installments shall be considered to have irrevocably appointed the clerk  
18 of the court as his or her agent upon whom all papers affecting his or her  
19 liability may be served, and the clerk shall ~~forthwith~~ immediately notify the  
20 defendant ~~thereof~~ of papers affecting the defendant's liability by ordinary  
21 mail at his or her last known address.

22 ~~(d) "Ability to pay" means that the resources of the defendant,~~  
23 ~~including all available income and resources, are sufficient to pay the fine~~  
24 ~~and provide the defendant and his or her dependents with a reasonable~~  
25 ~~subsistence compatible with health and decency.~~