

## michaels, kathryn

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**From:** michaels, kathryn  
**Sent:** Thursday, January 3, 2019 10:22 AM  
**To:** michaels, kathryn  
**Subject:** Rule 32 suggestion

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**From:** grohs, deborah  
**Sent:** Thursday, November 15, 2018 12:38 PM  
**To:** dailey, john <[john.dailey@judicial.state.co.us](mailto:john.dailey@judicial.state.co.us)>; michaels, kathryn <[kathryn.michaels@judicial.state.co.us](mailto:kathryn.michaels@judicial.state.co.us)>  
**Subject:** Rule 32 suggestion

Good Afternoon,

House Bill 16-1311 was passed on 6-10-16. The bill amended the language in C.R.S. 18-1.3-702 regarding monetary payments assessed against defendants by adding (2)(b).

C.R.S. 18-1.3-702(2) states:

(2) When the court imposes a sentence, enters a judgment, or issues an order that obligates a defendant to pay any monetary amount, the court shall instruct the defendant as follows:

(a) If at any time the defendant is unable to pay the monetary amount due, the defendant 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;

**(b) If the defendant lacks the present ability to pay the monetary amount due without undue hardship to the defendant or the defendant's dependents, the court shall not jail the defendant for failure to pay; and**

(c) 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.

The language of the statute now imposes on a judge the responsibility to instruct the defendant of (b). The bill also made some minor changes to the language of the statute.

C.R. Crim P. 32 currently reads:

(3) When the court imposes a sentence that includes payment of any monetary amount, the court shall instruct the defendant that:

(I) If at any time the defendant is unable to pay the monetary amount due, the defendant 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

(II) 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 section 18-1.3-702, C.R.S.

The sub-committee's suggestion is to amend C.R. Crim. P. 32(c)(3) to mirror the language of C.R.S. 18-1.3-702(2) as follows:

(3) When the court imposes a sentence, enters a judgment, or issues an order that obligates a defendant to pay any monetary amount, the court shall instruct the defendant as follows:

(I) If at any time the defendant is unable to pay the monetary amount due, the defendant 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;

(II) If the defendant lacks the present ability to pay the monetary amount due without undue hardship to the defendant or the defendant's dependents, the court shall not jail the defendant for failure to pay; and

(III) 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.

We look forward to discussing the issue with the committee.

Judge Grohs