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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/2022

SPONSOR Cadena LAST UPDATED _____ HB 81

SHORT TITLE Fine, Fee & Cost Payment Flexibility SB _____

ANALYST Carswell/Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC Operating Budget	NFI	Indeterminate, Minimal	Indeterminate, Minimal	Indeterminate, Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Attorney General’s Office (NMAG)
 Sentencing Commission (NMSC)
 Crime Victims Reparation Commission (CVRC)

SUMMARY

Synopsis of Bill

House Bill 81, endorsed by the New Mexico Sentencing Commission and the interim Courts, Corrections and Justice Committee, amends Section 31-12-3 NMSA 1978 to require a criminal sentencing court to assess a convicted person’s ability to pay before imposing standard fines and costs related to the criminal proceeding. Where a person cannot pay, the court would be required to permit installment payments every 30 days, not to exceed 2 percent of the person’s income, or \$10 per month, whichever is greater. The person may make additional payments to reduce their debt.

The bill also expands community service ordered in lieu of fines and fees to include job training, education and rehabilitation programs and increases credit for community service hours to twice the federal, state, county, or municipal minimum hourly wage, whichever is highest.

HB81 would require the court to conduct an additional ability-to-pay assessment before modifying an installment order, and would require credit for confinement at 24 times the prevailing minimum wage.

A person who is determined to be needy under the Indigent Defense Act who is convicted of a criminal offense could no longer be assessed court costs, fees, or fines under HB81.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Select major funds within the judiciary affected by HB81 and their respective fund balance as of December, 2020:

Court Facilities Fund	\$2,118.8
Court Automation Fund	\$1,388.9
Jury and Witness Fund	\$3,202.7

Court fees support multiple programs outside the courts, including DWI prevention programming, domestic violence offender treatment programs, and the crime victim reparation fund. Select fees affected by HB81 transferred to state agencies for other purposes and actual revenue collected in FY20:

Brain Injury Fee (Transferred to Human Services Department)	\$113.4
Magistrate Retirement Fee (Transferred to PERA)	\$147.9
Domestic Violence Fee (Transferred to CYFD)	\$150.8

In its analysis of a similar bill during the 2021 legislative session (Senate Bill 181), the Administrative Office of the Courts (AOC) provided detailed data on how many cases would be affected by the bill's enactment, and, applying the percentage of cases which were represented by PDD (about 30 percent) to fees assessed, estimated the bill could result in a loss of \$3 million to \$15 million in revenue to various funds. However, this projection used *assessed* fees rather than actual revenue collected. LFC analysis showed revenue collected was only a fraction of total fees assessed, and LFC files showed fund balances to the relevant funds rarely, if ever, accumulate the revenue AOC projected at risk. For example, AOC reported that for penalty assessment traffic cases, over \$4.8 million in court costs, fees, and fines were assessed, yet LFC analysis projected that actual revenue collected from such cases in FY20 was only about \$1.2 million. It is also reasonable to assume that there is at least some overlap in populations currently defaulting (or receiving jail/community service credits in lieu of payment) on fees, fines, and costs and populations that would be exempted from court surcharges under HB81.

The Sentencing Commission cites a recent Brennan Center for Justice study that found Socorro, Santa Fe, and Bernalillo counties either expend more resources collecting fines than the fine itself or collect only a fraction of assessments.

Bernalillo County, for example, lost \$278 thousand in revenue on \$4.1 million in assessed fines from 2012 to 2016:

Fines and Fees assessed:	\$	4,100.0
Fines and Fees Converted into jail and community service credits	\$	2,200.0
Collection/Court and jail costs	\$	(2,178.0)
Fines and Fees Collected	\$	1,900.0
TOTAL REVENUE	\$	(278.0)

Assuming both marginal savings from enforcement efforts as well as some overlap between populations that currently default on fees and that would be exempt from newly assessed fees, the additional operating budget table reflects an indeterminate, but minimal, impact.

SIGNIFICANT ISSUES

The National Center for State Courts (NCSC) has done extensive research on the effects of fees and fines on the criminal justice system, and found that fees and fines frequently cost more to collect than the revenue generated, create perverse incentives when used to fund court staff salaries, and disproportionately affect the indigent. Such fees should only be established when essential to the “administration of justice,” which, according to the center, should be narrowly defined. NCSC also notes that it is essential for courts to allow for judicial discretion when implementing fines in addition to promulgating rules for assessing a person’s ability to pay, granting waivers, authorizing payment plans, and other alternatives to incarceration. HB81 addresses the majority of these national best practices, however, the legislation does not establish a uniform mechanism for assessing a person’s ability to pay, which could result in inconsistent enforcement throughout the state, which AOC also raises as a potential issue.

According to the Public Defender Department (PDD), “the current fines and fees statute permits imprisonment for nonpayment of fines, without an assessment of ability to pay. Ensuring ability to pay will benefit...clients who are indigent...by helping to stop a cycle of poverty and incarceration.”

ADMINISTRATIVE IMPLICATIONS

PDD suggests the bill would free up limited resources in the courts and law enforcement currently dedicated to fee collection for other purposes.

AOC reports an “administrative impact on the court resulting from the need to reprogram the courts’ case management systems regarding the assessment of fines, fees, and costs; and to develop new business practices for the assessment and collection of fines, fees, and costs.” The agency further notes an “administrative impact regarding the courts’ management of confidential public assistance information, contained in publicly accessible casefiles. Any such records will have to be redacted from case files that are subject to public records requests. This will require additional administrative time and resources.”

TECHNICAL ISSUES

AOC states the prohibition on assessment of costs, fees, or fines against a needy person contained in Section 8 should specify a length of time such a prohibition is in effect when a person is found to be needy and whether a finding in one jurisdiction extends to others. Without such guidance, courts would have to determine whether every person who appears in court is needy and to do so on every court appearance, according to the agency.

AOC further notes the bill expands the definition of community service to include social service programs without defining those programs.

OTHER SUBSTANTIVE ISSUES

AOC raises the following issue: “Presentence confinement credit is required for defendants convicted of felony offenses. Section 31-20-12 NSMA 1978. However, trial courts possess inherent discretionary authority to grant presentence confinement credit for misdemeanor offenses. *See State v. Martinez*, 1998-NMSC-23, 126 N.M. 39, 966 P.2d 747. House Bill 81 would add language to Section 31- 12-3(D) NMSA 1978 giving presentence confinement credit toward fines, fees, or costs, where the court may not be required to give presentence confinement credit against the overall sentence.”

AOC suggests Section 1 of the bill should not fix the terms of payment plans in order to allow judges flexibility in accommodating defendants’ financial circumstances and length of engagement with the court.

AOC takes issue with Sections 5 and 6, which would authorize judges to determine how much of and which fees should be paid. The decision to appropriate revenue to particular funds should not be left to judges, according to the agency.

AOC states the bill would provide inconsistent protection to indigent persons facing fines and fees for traffic violations because it would only apply to such violations that are brought to court.

AOC further raises concerns that using enrollment in public assistance programs, the records of which are confidential, to determine indigency could pose privacy concerns.

AOC also notes that court rules already require judges to conduct ability to pay assessments for individuals who are assessed fines, fees, and costs.