

1 HOUSE BILL 138

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO COURTS; PROVIDING FLEXIBILITY AND CHANGING
12 REQUIREMENTS FOR PAYMENT OF FINES, FEES AND COSTS ASSOCIATED
13 WITH CONVICTION; EXPANDING COMMUNITY SERVICE OPTIONS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 31-12-3 NMSA 1978 (being Laws 1971,
17 Chapter 236, Section 1, as amended) is amended to read:

18 "31-12-3. PAYING FINES, FEES OR COSTS IN INSTALLMENTS--
19 COMMUNITY SERVICE OPTION.--

20 A. ~~[Any]~~ In a criminal proceeding, the court shall
21 assess a person's ability to pay any fine, fee or cost at the
22 time of sentencing. A person sentenced to pay a fine or to pay
23 fees and costs in any criminal proceeding against [him] the
24 person, either in addition to or without a term of
25 imprisonment, [may in the discretion of the court] shall be

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1 allowed to pay such fine, fees or costs in installments [~~of~~
2 ~~such amounts, at such times and upon such conditions as the~~
3 ~~court may fix~~]. If the person is able to pay the full amount
4 at the time of sentencing, the court shall require the person
5 to do so. Installments shall be in thirty-day increments, and
6 each installment shall not exceed two percent of a person's
7 self-reported monthly net income or ten dollars (\$10.00),
8 whichever is greater. Nothing in this section shall limit a
9 person's ability to reduce the total amount owed by making
10 optional payments in addition to those required by the court in
11 an installment agreement.

12 B. The defendant may also be required to serve a
13 period of time in labor to be known as "community service" in
14 lieu of all or part of the fine. If unable to pay the fees or
15 costs, [~~he~~] the defendant may be granted permission to perform
16 community service in lieu of them as well. The labor shall be
17 meaningful, shall not be suspended or deferred and shall be of
18 a type that benefits the public at large or any public,
19 charitable or educational entity or institution, including job
20 training, school attendance or participation in social service
21 or rehabilitation programs, and is consistent with Article 9,
22 Section 14 of the constitution of New Mexico. Any person
23 performing community service pursuant to court order shall be
24 immune from civil liability arising out of the community
25 service other than for gross negligence, shall not be entitled

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1 to wages or considered an employee for any purpose and shall
2 not be entitled to workers' compensation, unemployment or any
3 other benefits otherwise provided by law. Instead, a person
4 who performs community service shall receive credit toward the
5 fine, fees or costs at twice the rate of the prevailing
6 federal, state, county or municipal hourly minimum wage [~~Unless~~
7 ~~otherwise provided, however, the total fine, fees and costs~~
8 ~~shall be payable forthwith~~] where the court is located at the
9 time of adjudication, whichever is highest.

10 [B.] C. The court may [~~at any time~~] revise, modify,
11 reduce or enlarge the amount of the installment or the time and
12 conditions fixed for payment of it after the court conducts an
13 additional ability to pay assessment.

14 [C.] D. When a defendant sentenced to pay a fine in
15 installments or ordered to pay fees or costs defaults in
16 payment, the court, upon motion of the prosecutor or upon its
17 own motion, may require the defendant to show cause why [~~his~~]
18 the defendant's default should not be treated as contumacious
19 and may issue a summons or a warrant of arrest for [~~his~~] the
20 defendant's appearance. It shall be a defense that the
21 defendant did not willfully refuse to obey the order of the
22 court or that [~~he~~] the defendant made a good faith effort to
23 obtain the funds required for the payment. If the defendant's
24 default was contumacious, the court may order [~~him~~] the
25 defendant committed until the fine or a specified part of it or

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1 the fees or costs are paid. A defendant who is ordered to a
2 period of confinement under this subsection shall receive
3 credit toward the fine, fees or costs at twenty-four times the
4 rate of the prevailing federal, state, county or municipal
5 hourly minimum wage, whichever is highest, for each day or
6 portion of a day of incarceration. A defendant shall receive
7 credit at the same rate for all pre-sentence confinement
8 served. The maximum term of imprisonment for such contumacious
9 nonpayment shall be specified in the order of commitment.

10 ~~[D-]~~ E. If it appears that a defendant's default in
11 the payment of a fine, fees or costs is not contumacious, the
12 court may allow the defendant additional time for payment,
13 reduce the amount of the fine or of each installment, revoke
14 the fine or the unpaid portion in whole or in part or require
15 the defendant to perform community service in lieu of the fine,
16 fees or costs."

17 **SECTION 2.** Section 31-16-2 NMSA 1978 (being Laws 1968,
18 Chapter 69, Section 59, as amended) is amended to read:

19 "31-16-2. DEFINITIONS.--As used in the Indigent Defense
20 Act:

21 A. "costs" means:

22 (1) the costs associated with representation
23 in a trial, including the cost of an attorney and the costs of
24 depositions, experts, exhibits or other trial costs; and

25 (2) the costs or fees imposed by the court

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1 pursuant to statute resulting from a conviction or the issuance
2 of a bench warrant;

3 ~~[A.]~~ B. "detain" means to have in custody or
4 otherwise deprive of freedom of action;

5 ~~[B.]~~ C. "expenses", when used with reference to
6 representation, includes the expenses of investigation, other
7 preparation and trial;

8 ~~[C.]~~ D. "needy person" means a person who, at the
9 time ~~[his]~~ the person's need is determined by the court, is
10 unable, without undue hardship, to provide for all or a part of
11 the expenses of legal representation from available present
12 income and assets; and

13 ~~[D.]~~ E. "serious crime" includes a felony and any
14 misdemeanor or offense ~~[which]~~ that carries a possible penalty
15 of confinement for more than six months."

16 SECTION 3. Section 33-2-40 NMSA 1978 (being Laws 1913,
17 Chapter 50, Section 2, as amended) is amended to read:

18 "33-2-40. FINES AND COSTS--SERVICE FOR.--~~[Sec. 68.]~~ All
19 convicts sentenced to the ~~[state]~~ penitentiary of New Mexico
20 who have a fine or costs or both attached to ~~[such]~~ the
21 sentence shall not be required to serve more than ~~[thirty]~~
22 fifteen days for ~~[such]~~ the fine or costs."

23 SECTION 4. Section 33-3-11 NMSA 1978 (being Laws 1889,
24 Chapter 9, Section 1, as amended) is amended to read:

25 "33-3-11. JAIL FOR NONPAYMENT OF FINE.--

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1 A. Whenever any person is committed to jail for
2 nonpayment of any fine or costs or both, [~~he~~] the person shall
3 be credited with [~~eight~~] twenty-four times the federal, state,
4 county or municipal hourly minimum wage where the court is
5 located at the time of adjudication a day, whichever is
6 highest, in reduction thereof for each day or portion of a day
7 of incarceration. When the person has remained incarcerated a
8 sufficient length of time to extinguish the fine or cost or
9 both, computed at this rate, or has paid to the sentencing
10 court the amount of the fine or costs or both, remaining after
11 deducting credit allowed by this section and obtaining from the
12 court an order of release from commitment, the officer having
13 the prisoner in custody shall discharge [~~him~~] the prisoner from
14 custody under commitment.

15 B. If the person in custody makes an affidavit that
16 [~~he~~] the person has no property out of which [~~he~~] the person
17 can pay the fine and costs, either or any part, the prisoner
18 shall not be retained in custody longer than [~~sixty~~] fifteen
19 days even though the fine and costs or either exceeds the
20 amount credited toward repayment during those [~~sixty~~] fifteen
21 days. The affidavit shall be delivered to the sheriff or jail
22 administrator as defined in Section 4-44-19 NMSA 1978 having
23 custody of the prisoner."

24 **SECTION 5.** Section 35-6-1 NMSA 1978 (being Laws 1968,
25 Chapter 62, Section 92, as amended) is amended to read:

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1 "35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF
2 "CONVICTED".--
3 A. Magistrate judges, including metropolitan court
4 judges, shall assess and collect [~~and shall not waive, defer or~~
5 ~~suspend~~] the following costs:
6 docket fee, criminal actions under Section 29-5-1 NMSA
7 1978 \$ 1.00;
8 docket fee, to be collected prior to docketing any other
9 criminal action, except as provided in Subsection B
10 of Section 35-6-3 NMSA 1978. 20.00.
11 Proceeds from this docket fee shall be transferred
12 to the administrative office of the courts for
13 deposit in the court facilities fund;
14 docket fee, twenty dollars (\$20.00) of which shall be
15 deposited in the court automation fund and fifteen
16 dollars (\$15.00) of which shall be deposited in the
17 civil legal services fund, to be collected prior to
18 docketing any civil action, except as provided in
19 Subsection A of Section 35-6-3 NMSA 1978 . . 72.00;
20 jury fee, to be collected from the party demanding trial
21 by jury in any civil action at the time the demand
22 is filed or made 25.00;
23 copying fee, for making and certifying copies of any
24 records in the court, for each page copied by
25 photographic process 0.50.

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1 Proceeds from this copying fee shall be transferred
2 to the administrative office of the courts for
3 deposit in the court facilities fund; and
4 copying fee, for computer-generated or electronically
5 transferred copies, per page 1.00.

6 Proceeds from this copying fee shall be transferred
7 to the administrative office of the courts for
8 deposit in the court automation fund.

9 Except as otherwise specifically provided by law, docket
10 fees shall be paid into the court facilities fund.

11 B. Except as otherwise provided by law, no other
12 costs or fees shall be charged or collected in the magistrate
13 or metropolitan court.

14 C. The magistrate or metropolitan court may grant
15 free process to any party in any civil proceeding or special
16 statutory proceeding upon a proper showing of indigency. The
17 magistrate or metropolitan court may deny free process if it
18 finds that the complaint on its face does not state a cause of
19 action.

20 D. As used in this subsection, "convicted" means the
21 defendant has been found guilty of a criminal charge by the
22 magistrate or metropolitan judge, either after trial, a plea of
23 guilty or a plea of nolo contendere. Magistrate judges,
24 including metropolitan court judges, shall assess and collect
25 ~~[and shall not waive, defer or suspend]~~ the following costs

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1 once, for each case resulting in conviction:

2 (1) corrections fee, to be collected upon
3 conviction from persons convicted of violating any provision of
4 the Motor Vehicle Code involving the operation of a motor
5 vehicle, convicted of a crime constituting a misdemeanor or a
6 petty misdemeanor or convicted of violating any ordinance that
7 may be enforced by the imposition of a term of imprisonment as
8 follows:

- 9 in a county with a metropolitan court \$10.00;
- 10 in a county without a metropolitan court 20.00;

11 (2) court automation fee, to be collected upon
12 conviction from persons convicted of violating any provision of
13 the Motor Vehicle Code involving the operation of a motor
14 vehicle, convicted of a crime constituting a misdemeanor or a
15 petty misdemeanor or convicted of violating any ordinance that
16 may be enforced by the imposition of a term of
17 imprisonment. 10.00;

18 (3) traffic safety fee, to be collected upon
19 conviction from persons convicted of violating any provision of
20 the Motor Vehicle Code involving the operation of a motor
21 vehicle 3.00;

22 (4) judicial education fee, to be collected upon
23 conviction from persons convicted of operating a motor vehicle
24 in violation of the Motor Vehicle Code, convicted of a crime
25 constituting a misdemeanor or a petty misdemeanor or convicted

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1 of violating any ordinance punishable by a term of
2 imprisonment. 3.00;

3 (5) jury and witness fee, to be collected upon
4 conviction from persons convicted of operating a motor vehicle
5 in violation of the Motor Vehicle Code, convicted of a crime
6 constituting a misdemeanor or a petty misdemeanor or convicted
7 of violating any ordinance punishable by a term of
8 imprisonment. 5.00;

9 (6) brain injury services fee, to be collected
10 upon conviction from persons convicted of violating any
11 provision of the Motor Vehicle Code involving the operation of
12 a motor vehicle 5.00;
13 and

14 (7) court facilities fee, to be collected upon
15 conviction from persons convicted of violating any provision of
16 the Motor Vehicle Code involving the operation of a motor
17 vehicle, convicted of a crime constituting a misdemeanor or a
18 petty misdemeanor or convicted of violating any ordinance that
19 may be enforced by the imposition of a term of imprisonment as
20 follows:

21 in a county with a metropolitan court 24.00;
22 in any other county 10.00.

23 E. Metropolitan court judges shall assess and collect
24 ~~[and shall not waive, defer or suspend as costs]~~ a mediation
25 fee not to exceed five dollars (\$5.00) for the docketing of

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1 small claims and criminal actions specified by metropolitan
2 court rule. Proceeds of the mediation fee shall be deposited
3 into the metropolitan court mediation fund."

4 SECTION 6. Section 35-14-11 NMSA 1978 (being Laws 1983,
5 Chapter 134, Section 6, as amended) is amended to read:

6 "35-14-11. MUNICIPAL ORDINANCE--COURT COSTS--
7 COLLECTION--PURPOSE.--

8 A. Every municipality shall enact an ordinance
9 requiring assessment of corrections fees, judicial education
10 fees and court automation fees to be collected as court costs
11 and used as provided in this section.

12 B. A municipal judge shall assess and collect the
13 following costs once, for each case resulting in conviction:

14 (1) a corrections fee of twenty dollars
15 (\$20.00);

16 (2) a judicial education fee of three dollars
17 (\$3.00); and

18 (3) a court automation fee of six dollars
19 (\$6.00).

20 C. The fees are to be collected upon conviction from
21 persons convicted of violating any ordinance relating to the
22 operation of a motor vehicle or any ordinance that may be
23 enforced by the imposition of a term of imprisonment.

24 D. All money collected pursuant to Paragraph (1) of
25 Subsection B of this section shall be deposited in a special

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1 fund in the municipal treasury and shall be used for:

2 (1) municipal jailer or juvenile detention
3 officer training;

4 (2) the construction planning, construction,
5 operation and maintenance of a municipal jail or juvenile
6 detention facility;

7 (3) paying the cost of housing municipal
8 prisoners in a county jail or detention facility or housing
9 juveniles in a detention facility;

10 (4) complying with match or contribution
11 requirements for the receipt of federal funds relating to jails
12 or juvenile detention facilities;

13 (5) providing inpatient treatment or other
14 substance abuse programs in conjunction with or as an
15 alternative to jail sentencing;

16 (6) defraying the cost of transporting prisoners
17 to jails or juveniles to juvenile detention facilities; or

18 (7) providing electronic monitoring systems.

19 E. If a municipality with a population less than ten
20 thousand according to the most recent federal decennial census
21 has a balance in its special fund pursuant to Subsection D of
22 this section that is over the amount projected to be needed for
23 the next fiscal year for the purposes set forth in that
24 subsection, the municipality may transfer the unneeded balance
25 to the municipality's general fund.

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1 F. A municipality may credit the interest collected
2 from fees deposited in the special fund pursuant to Subsection
3 D of this section to the municipality's general fund.

4 G. All money collected pursuant to Paragraph (2) of
5 Subsection B of this section shall be remitted monthly to the
6 state treasurer for credit to the judicial education fund and
7 shall be used for the education and training, including
8 production of bench books and other written materials, of
9 municipal judges and other municipal court employees.

10 H. All money collected pursuant to Paragraph (3) of
11 Subsection B of this section shall be remitted monthly to the
12 state treasurer for credit to the municipal court automation
13 fund and shall be used for the purchase, maintenance and
14 operation of court automation systems in the municipal courts.
15 Operation includes staff expenses, temporary or otherwise, and
16 costs as needed to comply with Section 35-14-12 NMSA 1978. The
17 court automation systems shall have the capability of
18 providing, on a timely basis, electronic records in a format
19 specified by the judicial information systems council.

20 I. As used in this section, "convicted" means the
21 defendant has been found guilty of a criminal charge by a
22 municipal judge, either after trial, a plea of guilty or a plea
23 of nolo contendere."

24 **SECTION 7.** A new section of Chapter 66, Article 8 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] ASSESSMENT OF COURT COSTS FOR INDIGENT
2 PERSONS.--

3 A. Court costs or fees shall not be imposed on an
4 indigent person convicted of a violation of the Motor Vehicle
5 Code.

6 B. Indigency shall be determined by the court based
7 on proof of enrollment in one or more of the following types of
8 public assistance:

- 9 (1) temporary assistance for needy families;
- 10 (2) general assistance;
- 11 (3) the supplemental nutrition assistance
12 program, also known as "food stamps";
- 13 (4) supplemental security income;
- 14 (5) the federal food distribution program on
15 Indian reservations; or
- 16 (6) other criteria approved by the bureau."

17 SECTION 8. A new section of the Indigent Defense Act is
18 enacted to read:

19 "[NEW MATERIAL] ASSESSMENT OF COURT COSTS FOR NEEDY
20 PERSONS.--A person determined to be a needy person under the
21 Indigent Defense Act who is convicted of a criminal offense
22 shall not be assessed court costs or fees."