

SENATE BILL 181

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Joseph Cervantes

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

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

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

"31-12-3. PAYING FINES, FEES OR COSTS IN INSTALLMENTS--

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COMMUNITY SERVICE OPTION.--

A. Sfl1→SJC→[Any] ~~In a criminal proceeding, the court shall assess a person's ability to pay any fine, fee or cost at the time of sentencing.~~←SJC←Sfl1 Sfl1→[Any] In a criminal proceeding, the court shall assess a person's ability to pay any fine, fee or cost at the time of sentencing.←Sfl1 A person sentenced to pay a fine or to pay fees and costs in any criminal proceeding against [him] the person, either in addition to or without a term of imprisonment, [may in the discretion of the court] shall be allowed to pay such fine, fees or costs in installments [~~of such amounts, at such times and upon such conditions as the court may fix~~]. SJC→~~If the person is able to pay the full amount at the time of sentencing, the court shall require the person to do so.~~←SJC Installments shall be in thirty-day increments, and each installment shall not exceed two percent of a person's self-reported monthly net income or ten dollars (\$10.00), whichever is greater. SJC→~~Nothing in this section shall limit a person's ability to reduce the total amount owed by making optional payments in addition to those required by the court in an installment agreement.~~←SJC

B. The defendant may also be required to serve a period of time in labor to be known as "community service" in lieu of all or part of the fine. If unable to pay the fees or costs, [he] the defendant may be granted permission to perform

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community service in lieu of them as well. The labor shall be meaningful, shall not be suspended or deferred and shall be of a type that benefits the public at large or any public, charitable or educational entity or institution, including job training, school attendance or participation in social service or rehabilitation programs, and is consistent with Article 9, Section 14 of the constitution of New Mexico. Any person performing community service pursuant to court order shall be immune from civil liability arising out of the community service other than for gross negligence, shall not be entitled to wages or considered an employee for any purpose and shall not be entitled to workers' compensation, unemployment or any other benefits otherwise provided by law. Instead, a person who performs community service shall receive credit toward the fine, fees or costs at twice the rate of the prevailing [federal] SJC→federal←SJC SJC→,←SJC state, county or municipal hourly minimum wage, [~~Unless otherwise provided, however, the total fine, fees and costs shall be payable forthwith~~] whichever is highest.

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

[G.] D. When a defendant sentenced to pay a fine in installments or ordered to pay fees or costs defaults in

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payment, the court, upon motion of the prosecutor or upon its own motion, may require the defendant to show cause why [~~his~~] the defendant's default should not be treated as contumacious and may issue a summons or a warrant of arrest for [~~his~~] the defendant's appearance. It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that [~~he~~] the defendant made a good faith effort to obtain the funds required for the payment. If the defendant's default was contumacious, the court may order [~~him~~] the defendant committed until the fine or a specified part of it or the fees or costs are paid. A defendant who is ordered to a period of confinement under this subsection shall receive credit toward the fine, fees or costs at SJC→twice←SJC SJC→twenty-four times←SJC the rate of the prevailing SJC→federal,←SJC state, county or municipal hourly minimum wage, whichever is highest SJC→for each day or portion of a day of incarceration←SJC . A defendant shall receive credit at the same rate for all pre-sentence confinement served. The maximum term of imprisonment for such contumacious nonpayment shall be specified in the order of commitment.

[D-] E. If it appears that a defendant's default in the payment of a fine, fees or costs is not contumacious, the court may allow the defendant additional time for payment, reduce the amount of the fine or of each installment, revoke the fine or the unpaid portion in whole or in part or require

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the defendant to perform community service in lieu of the fine, fees or costs."

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

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

A. "costs" means:

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

(2) the costs or fees imposed by the court pursuant to statute resulting from a conviction or the issuance of a bench warrant;

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

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

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

~~[D.]~~ E. "serious crime" includes a felony and any misdemeanor or offense ~~[which]~~ that carries a possible penalty

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of confinement for more than six months."

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

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

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

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

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

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

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

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall assess and collect [~~and shall not waive, defer or suspend~~] the following costs:

docket fee, criminal actions under Section 29-5-1 NMSA
1978 \$ 1.00;

docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section 35-6-3 NMSA 1978. 20.00.

Proceeds from this docket fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund;

docket fee, twenty dollars (\$20.00) of which shall be

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deposited in the court automation fund and fifteen dollars (\$15.00) of which shall be deposited in the civil legal services fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 . . . 72.00; jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made 25.00; copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process 0.50. Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund; and copying fee, for computer-generated or electronically transferred copies, per page 1.00. Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund.

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

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

C. The magistrate or metropolitan court may grant

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

D. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by the magistrate or metropolitan judge, either after trial, a plea of guilty or a plea of nolo contendere. Magistrate judges, including metropolitan court judges, shall assess and collect ~~[and shall not waive, defer or suspend]~~ the following costs once, for each case resulting in conviction:

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

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

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a

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petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment. 10.00;

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

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment. 3.00;

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

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

and

(7) court facilities fee, to be collected upon

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conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:

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

E. Metropolitan court judges shall assess and collect [~~and shall not waive, defer or suspend as costs~~] a mediation fee not to exceed five dollars (\$5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund."

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

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

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

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

- (1) a corrections fee of twenty dollars

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(\$20.00);

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

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

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

D. All money collected pursuant to Paragraph (1) of Subsection B of this section shall be deposited in a special fund in the municipal treasury and shall be used for:

(1) municipal jailer or juvenile detention officer training;

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

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

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

(5) providing inpatient treatment or other substance abuse programs in conjunction with or as an

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alternative to jail sentencing;

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

(7) providing electronic monitoring systems.

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

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

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

H. All money collected pursuant to Paragraph (3) of Subsection B of this section shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase, maintenance and operation of court automation systems in the municipal courts.

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Operation includes staff expenses, temporary or otherwise, and costs as needed to comply with Section 35-14-12 NMSA 1978. The court automation systems shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information systems council.

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

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

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

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

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

- (1) temporary assistance for needy families;
- (2) general assistance;
- (3) the supplemental nutritional assistance program, also known as "food stamps";
- (4) supplemental security income;
- (5) the federal food distribution program on

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Indian reservations; or

(6) other criteria approved by the bureau."

SJC→~~SECTION 8. A new section of the Indigent Defense Act is enacted to read:~~

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

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