



NM Fines and Fees Reform: Ability to Pay, Payment Plans and Community Service

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The Steep Costs of Criminal Justice Fees and Fines

A Fiscal Analysis of Three States
and Ten Counties

BRENNAN
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Santa Fe County

- Assessed about \$1.1 million in fines and fees, of which \$352,000 was written off-through jail and community service credits.
- Of the remaining, \$786,000, \$724,000 was ultimately collected.
- At least \$294,000 was spent on collections activity and jailing alone, resulting in, at most, a \$430,000 net gain, or 38% of what was originally assessed.

Socorro County

- Socorro County: (Poverty rate of 25%-one of the highest in the state)
- Assessed \$207,000 in fines and fees, of which \$88,000 was written off through jail and community service credits.
- Virtually all of the remainder, \$119,000 was collected.
- At least \$96,000 was spent on jail costs and collections activity, resulting in, at most, a \$24,000 net gain, or 11% of what was originally assessed.



Bernalillo County

- Court and jail costs for imposing and collecting fees and fines in Metro Ct. were \$2.178 million in 2016, or 117 percent of what ultimately was collected.
 - Ct. assessed more than \$4.1 million fines and fees
 - \$2.2 million was written off-through jail credits or community service
 - Of the remainder, close to \$1.9 million was ultimately collected.
 - **HOWEVER**, more than \$2.1 million was spent on collections activity (net loss of \$316,000)



Cost of Collections

- Bernalillo County: \$1.17 for every \$1
- Santa Fe County: \$.41 for every \$1
- Socorro County: \$.80 for every \$1



Brennan Center for Justice Recommendations

- Eliminate court-imposed fees-courts should be funded primarily by taxpayers, all of whom are served by the system.
- Institute a sliding scale for fines based on ability to pay. \$200 fine may be a minor inconvenience to one person but is an insurmountable debt to another.
- Courts must stop jailing for failure to pay-harms rehabilitation efforts and makes little fiscal sense due to cost shifting.
- Eliminate debt-based drivers license suspensions.
- Improve data automation practices to assist the public in understanding their debts and allows for ease of evaluation and efficacy of fees/fines as a source of revenue.
- Purge old balances that are unlikely to be paid but continue to complicate the lives of millions.

ABA's 10 Guidelines on Fines and Fees*

*Approved by American Bar Association House of Delegates on August 6, 2018.

1. Fees imposed by a court must be related to the justice system, services rendered to the defendant, and never be in excess of a person's ability to pay.
2. A punitive fine should not result in substantial and undue hardship to a person or their family.
3. Incarceration or other disproportionate sanctions should not be the result of an individual's inability to pay a fine, fee, or restitution.
4. A court must hold an ability-to-pay hearing before it imposes a sanction on a person for nonpayment of fines, fees, or restitution.
5. A person's failure to pay court fines and fees should not result in deprivation of their right to vote or other fundamental rights.
6. Courts must consider alternatives to incarceration and disproportionate sanctions for people who are not able to pay fines and fees.
7. The standards for evaluating a person's ability to pay should be clear and consistent and should consider certain factors.
8. If a person is unable to afford a lawyer, counsel must be provided to them for free.
9. Finances, demographic data, and other information relevant to the imposition and collection of fines and fees should be made publicly available.
10. Public and private entities authorized to collect fines, fees, and restitution should adhere to these Guidelines.



Recommendations: Payment Plans

**KEEP
CALM
WE HAVE
PAYMENT
PLANS!**

- **Make payment plans mandatory.**
- **Cap the monthly payment at no more than 2% of an individual's monthly net income, or \$10--whichever is greater.**
- **Consider an early release provision that forgives the remaining balance, IF a person makes 12 payments within 15 months.**
- **If a person is sentenced to a period of incarceration, AND the court costs and fine are not converted to run concurrent with jail time, defer payment.**

Recommendations: Community Service



- Limit the amount of hours that can be assigned per month.
- Increase the conversion rate from the federal minimum wage per hour to no less than twice the state or local (whichever is higher) minimum wage.
- Implement a cap on community service hours required to fulfil the entire sentence.
- Expand the type of activities that qualify as community service:
 - School attendance, job training, work readiness, life skills training, rehab including AA/NA, other social service programs, etc.

Presumptions-Streamlining Ability to Pay

- Ability to pay polices should include a rebuttable presumption that some individuals **will not have the ability to pay any fine or fee**. For example:
 - Eligibility for a public defender;
 - Current receipt of any needs-based public assistance/benefits;
 - Residence in a mental health facility within the last 6 months;
 - Developmental or permanent physical disability;
 - Minor;
 - Experiencing homelessness in the previous 12 months;



Ability to Pay: If a presumption does NOT apply/traffic offenses

- If a presumption doesn't apply, calculate total monthly income, including wages and excluding any child support or SSI and consider dependents.
- The amount owed should be assessed according to the following guidelines:
 1. 101-200% of the HUD very low income limit: waive all fees and pay 25% of the standard fine.
 2. 201-300% of the HUD standard: waive all fees and pay 50% of the standard fine.
 3. 301-400% of the HUD standard: waive all fees and 75% of the standard fine.
 4. Over 400% of the HUD standard: no waiver, full fine.

Ability to Pay in NMRA

- Municipal Court: NMRA 8-206
- Metro Court: NMRA 7-207.1
- Magistrate Court: NMRA 6-207.1



NM Ability to Pay Inquiry in Rule

- The court shall assess the D's ability to pay fines, fees, and the costs at the time of sentencing.
 - Defendants who can pay, shall be required to pay in accordance with the financial sentence imposed by the court.
 - Defendants who cannot pay, the court shall permit community service.
- Before the issuance of a warrant for failure to pay, the court shall issue a summons to appear or pay.
 - At hearing, the court may modify the payment agreement or convert the payment to community service.
 - The court must afford adequate procedural due process before jail is imposed.



NM Ability to Pay Inquiry in Rule

NMRA 6-207.1. Payment of fines, fees, and costs.

A. **Payment arrangements.** The court shall assess the defendant's ability to pay any fines, fees, or costs at the time of sentencing and shall consider the following types of payment arrangements in the order of priority set forth below.

- (1) **Full payment at time of sentencing.** If the defendant is able to pay the full amount at the time of sentencing, the court shall require the defendant to do so.
- (2) **Full payment within thirty (30) days of sentencing.** If the defendant cannot pay the full amount at the time of sentencing but will be able to pay within thirty (30) days, the court shall require the defendant to do so.
- (3) **Agreement to pay.** If the defendant cannot pay the full amount within thirty (30) days after the date of sentencing, the court may permit the defendant to enter into an agreement to pay in installments. The court shall retain the authority to enforce an agreement to pay regardless of whether the defendant remains on probation or whether the defendant was placed on probation at all. An agreement to pay shall
 - (a) be based on the defendant's individual circumstances;
 - (b) require the largest possible payment amounts that the judge determines the defendant can make successfully;
 - (c) require the first installment to be due no later than thirty (30) days after the date of sentencing;
 - (d) schedule subsequent installments in intervals of thirty (30) days or less; and
 - (e) schedule all payments to be made within the shortest practicable period of time.

The Indigent Defense Act NMSA 31-16-1

NMSA 31-16-2. Definitions.

As used in the Indigent Defense Act [[31-16-1](#) NMSA 1978]:

- A. "detain" means to have in custody or otherwise deprive of freedom of action;
- B. "expenses", when used with reference to representation, includes the expenses of investigation, other preparation and trial;
- C. "needy person" means a person who, at the time his 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. "serious crime" includes a felony and any misdemeanor or offense which carries a possible penalty of confinement for more than six months.

History: 1953 Comp., § 41-22-2, enacted by Laws 1968, ch. 69, § 59; 1973, ch. 210, § 1.

The Indigent Defense Act NMSA 31-16-1

NMSA 31-16-5. Determination of indigency.

A. The determination of whether a person covered by Section 60 [[31-16-3](#) NMSA 1978] of the Indigent Defense Act is a needy person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under Section 66 [[31-16-9](#) NMSA 1978] of the Indigent Defense Act, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is a needy person.

B. In determining whether a person is a needy person and **the extent of his inability to pay**, the court concerned may consider such factors as income, property owned, outstanding obligations and the number and ages of his dependents. Release on bail does not necessarily prevent him from being a needy person. In each case, the person shall, subject to the penalties for perjury, certify in writing or by other record material factors relating to his ability to pay as the court prescribes.

C. To the extent that a person covered by Section 60 of the Indigent Defense Act is able to provide for an attorney, the other necessary services and facilities of representation and court costs, the court may order him to provide for their payment.

Right to Representation: The Indigent Defense Act NMSA 31-16-1

NMSA 31-16-3. Right to representation.

A. A needy person who is being detained by a law enforcement officer, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled to be represented by an attorney to the same extent as a person having his own counsel and to be provided with the necessary services and facilities of representation, including investigation and other preparation. **The attorney, services and facilities and expenses and court costs shall be provided at public expense for needy persons.**

B. A needy person entitled to representation by an attorney under Subsection A is entitled to be:

- (1) counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney;
- (2) represented in any appeal or review proceedings; and
- (3) represented in any other postconviction proceeding that the attorney or the needy person considers appropriate unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.

C. A needy person's right to a benefit under this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

Power to Determine Indigency and Court Adoption

- NMSA 31-15-7(B)12 Chief Public Defender; general duties and powers grants the chief the authority to **“adopt a standard to determine indigency.”**
- This standard is used/adopted by all courts when determining indigency:
 - NMSA 34-6-46 District court; indigency standard; fee schedule; reimbursement.
 - NMSA 34-8A-11 Metropolitan court; indigency standard; fee schedule; reimbursement.
 - NMSA 35-5-8 Magistrate court; indigency standard; fee schedule; reimbursement.



NMSC Reform Committee Proposed Legislation

- Incorporates principals from NM's court rules on ability to pay:
 - Requires payment plans in 30-day increments;
 - Set's concrete limits on payment amounts-2% of monthly net income or \$10, whichever is greater;
 - Follows established court procedure-income will be self reported and Court/DA welcome to ask questions if necessary.
- Expands the scope of community service activities;
- Clarifies existing law by limiting the assessment of conviction fees to once per case;
- Increases conversion rates for community service and jail credits by using the prevailing local minimum wage rate;
- Clarifies the definition of "costs" in the NM Indigency Act and solidifies a presumptive inability to pay for "needy persons" as already defined in the Act.

