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FISCAL IMPACT REPORT

SPONSOR: Beam DATE TYPED: 3/15/01 HB 143/aHJC/aSPAC
 SHORT TITLE: Rate of Fines Reduced for Jails SB _____
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
See Narrative				GF/OSF

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Public Defender (PD)
 Association of Counties

Response Not Received

Administrative Office of the District Attorney (AODA)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Attorney General's Office (AG)

SUMMARY

Synopsis of SPAC Amendments

The Senate Public Affairs Committee deleted the House Judiciary Amendments. Instead of \$100 per day, the rate of credit would be eight times the federal hourly wage.

Upon submitting an affidavit that the defendant has no property out of which to pay the fine or costs, the jail term is limited to sixty days.

Significant Issues

By limiting the credit rate and the amount of time that a defendant may spend in jail, the amendment would decrease the fiscal impact of the original bill and encourage more defendants to pay the fine rather than go to jail.

Synopsis of HJC Amendments

The House Judiciary Committee amends the credit per day or portion of a day of incarceration from \$100 to twelve hours of the federal minimum wage or the amount equal to the actual daily cost of incarceration, whichever is greater.

Synopsis of Original Bill

The Rate of Fines Reduced for Jails Act amends Section 33-3-11 NMSA 1978 to change the amount of money credited for time served in jail for nonpayment of any fines or costs, or both, from \$5 a day to \$100 a day. The bill also amends the total amount of time that the prisoner can serve to pay off fines and costs from three months to ninety days.

Significant Issues

If the rate of credit exceeds the average daily wage of a defendant, a greater number of defendants may choose to serve time in jail instead of paying fines. A 5 percent reduction in these fines and fees could have a significant impact on those revenues and could impair the ability of the state, of Bernalillo Metropolitan Court, and of the State Court Automation Fund to pay NMFA bond obligations.

One magistrate judge noted, "The notion of rewarding defendant at \$100/day will overwhelm the local jails with people who would rather do a weekend in jail for a \$200.00 credit, rather than 39 hours of community service. This would produce a lose/lose scenario for all involved, except the defendant."

FISCAL IMPLICATIONS

The \$5 a day credit has been in place since 1961. According to the Association of Counties, it costs an average \$50.80 a day to keep a person in jail. The average daily population for the state in 1998 was 4,944 prisoners. The average detainee per facility was 164.

\$100 per day is the hourly equivalent of \$12.00 per hour after taxes for an eight hour day (or approximately \$14.00 per hour gross). Since this is more than many defendants may earn, this bill could give defendants an incentive to choose jail time instead of paying fines and fees due the courts.

Estimates by the Magistrate Court Warrant Enforcement program are that at least 5 percent of defendants currently get credit for jail or community service (for which defendants receive credit towards fines at the minimum wage [currently \$5.15 per hour]).

Statewide, magistrate courts collect fines and fees of over \$14.3 million per year, and Bernalillo Metropolitan Court deposits over \$8 million. All this money goes to the general fund or to other funds. A 5 percent reduction in these fines and fees could have a significant impact on those revenues and could impair the ability of the state, of Bernalillo Metropolitan Court, and of the State Court Automation Fund to pay NMFA bond obligations. That figure could rise above 5 percent given the rate of credit defendants would receive.

Magistrate judges throughout the state have advised that all defendants are afforded several different opportunities to make payment before a bench warrant issues for a failure to pay. Upon conviction, a defendant may pay in full immediately, pay in full in 30 days, make partial payments of \$100 every 30 days until paid in full, earn community service at \$5.15 an hour. Defendants are regularly given extensions to pay or altered methods of payment in order to assist them in fulfilling their fine and fee obligations. If there is a continued failure to pay after these

options, an Order to Show Cause Hearing affords the defendant an additional 5 working days to pay after the hearing. Then, and only then, is a bench warrant for Failure to Pay issued by the court.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts reports it is important to note that under the case of *Bearden v. Georgia*, 461 U.S. 660 (1983), the state may imprison a defendant only if the defendant willfully refused to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay. If the defendant cannot pay, the court must consider alternative measures of punishment other than imprisonment. In New Mexico, the alternative measures include allowing the defendant more time to make payments and allowing the defendant to perform community service instead of payment (he or she receives credit towards the fines, fees, and costs at the rate of the prevailing federal minimum hourly wage). It is only when the defendant's default is contumacious that the court may order him or her "committed until the fine or a specified part of it or the fees or costs are paid." Section 31-12-3 NMSA 1978.

DW/njw