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FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 02/04/21
LAST UPDATED 03/12/21 **HB** _____
SHORT TITLE Payment Flexibility For Court Convictions **SB** 181/aSJC/aSFL#1
ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC operating Budget		Indeterminate, Minimal	Indeterminate, Minimal	Indeterminate, Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to:
House Bill 117
House Bill 91

SOURCES OF INFORMATION

LFC Files
National Center for State Courts

Responses Received From
Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
Public Defender Department (PDD)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Senate Floor Amendment

The Senate Floor Amendment strikes Senate Judiciary amendment 1, which struck the requirement for courts to conduct an indigency determination.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 181 strikes language in subsection A mandating courts assess a defendants ability to pay, as court rules already establish this, as well as language clarifying that defendants may make payments towards fines outside of a prescribed payment plan, which court rules similarly already allow for.

In subsection B and all subsequent references, the committee added the federal minimum wage to be considered along with state and local minimum wages for credits earned against fees and fines in the event that the federal rate is the highest prevailing wage.

In subsection D (and all subsequent references) the committee adjusted the credits towards fine and fee payment a defendant earns at the highest prevailing minimum wage while in jail from 16 to 24, so that a defendant is credited for all 24 hours spent incarcerated.

Finally, the Senate Judiciary Committee amendment strikes Section 8 of the original bill entirely, which created a new section of the Indigent Defense Act establishing that a “needy” person under the Indigent Defense Act shall not be assessed court costs, fees, or fines.

Synopsis of Original Bill

Senate Bill 181, unanimously endorsed by the New Mexico Sentencing Commission and the interim Courts, Corrections and Justice Committee, amends NMSA 1978, Section 31-12-3 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 thirty days, not to exceed 2 percent of the person’s income, or \$10/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 city, county or state minimum hourly wage, whichever is highest.

SB181 would require the court to conduct an additional ability-to-pay assessment before modifying an installment order, and would require credit for confinement at twice prevailing minimum wage.

FISCAL IMPLICATIONS

The major funds within the judiciary affected by SB181 as amended 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

Fees affected by SB181 as amended 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

The Administrative Office of the Courts uses the court facilities, court automation, and jury and witness funds for various court services and operating expenses. The Legislative Finance Committee budget recommendation, currently reflected in House Bill 117, reduces general fund revenue to the Administrative Office of the Courts by about \$1.6 million, and replaces it with the same amount of fund balance from the jury and witness and warrant enforcement funds. If the provisions of SB181 as amended significantly reduce revenue to the funds, the agency would not be able to sustain this revenue “swap.”

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 uses *assessed* fees rather than actual revenue collected. LFC analysis shows revenue collected was only a fraction of total fees assessed, and LFC files show fund balances to the relevant funds rarely, if ever, accumulate the revenue AOC projects at risk. For example, AOC reports that for penalty assessment traffic cases, over \$4.8 million in court costs, fees, and fines were assessed, yet LFC analysis projects 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 SB181 as amended.

The New Mexico Sentencing Commission cites a recent Brennan Center for Justice study that found Socorro, Santa Fe, and Bernalillo counties often expend more resources collecting fines than the fine itself.

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 because 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. SB18 as amended 1 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 NMAG notes could result in inconsistent enforcement throughout the state.

The Senate Judiciary Committee amendment striking Section 8 of the bill which amended the Indigent Defense Act to prohibit fine and fee assessments for needy persons may result in increased work to courts and judicial staff to conduct additional indigent assessments.

RELATIONSHIP

Relates to House Bill 91, which increases the Metropolitan Court medication fee from \$5.00 to \$15.00.

TECHNICAL ISSUES

NMAG notes a language inconsistency throughout the bill:

The proposed amendments to NMSA 1978, Section 31-12-3(A) refer to “a person” when referring to who would be subject to court fines, fees, and costs. Then, throughout the rest of the bill (NMSA 1978, Section 31-12-3(B)-(E)) refers to “a defendant” or “the defendant.”

ADP/sb/al/rl