

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_ BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO COURTS; PROVIDING FLEXIBILITY AND CHANGING  
REQUIREMENTS 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--  
COMMUNITY SERVICE OPTION.--

A. ~~[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. 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

.223125.1SA

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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

.223125.1SA

underscored material = new  
[bracketed material] = delete

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 [G-] 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

underscored material = new  
[bracketed material] = delete

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

.223125.1SA

underscored material = new  
[bracketed material] = delete

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 [G-] 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.--

underscored material = new  
[bracketed material] = delete

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:

.223125.1SA

underscored material = new  
[bracketed material] = delete

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.

underscored material = new  
[bracketed material] = delete

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

.223125.1SA



underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

underscoring material = new  
~~[bracketed material] = delete~~

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

.223125.1SA

underscoring material = new  
~~[bracketed material] = delete~~

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.

.223125.1SA

underscoring material = new  
~~[bracketed material] = delete~~

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:

.223125.1SA

underscored material = new  
[bracketed material] = delete

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, fees or fines."