
Bill Analysis 2023 Regular Session

SPONSOR: Representative Micaela Lara Cadena

SHORT TITLE: Flexibility in Fine and Fee Payments

SYNOPSIS OF BILL: HB 138 establishes new standards for fines, conviction fee, and bench warrant fees assessment. Defendants who qualify for a public defender will not be assessed post adjudication or bench warrant fees as well as traffic case defendants who can prove indigency. Further, in cases where defendants do not qualify for a public defender, fine and fee payment plans based on the individual's monthly income are mandated. Additionally, HB 138 expands community service alternatives, mandates credit for presentence confinement, and disallows the assessment of conviction fees more than once per case. Finally, conversion rates for community service and jail will be doubled based on the local or federal minimum wage (whichever is higher).

STRENGTHS: By establishing presumptions of inability to pay and adjusting jail conversion rates, HB 138 will reduce the instances of individuals being jailed for failure to pay court-debt—which does not increase public safety and only endangers jail inmates and workers and wastes government resources.

Moreover, HB 138 will shrink government spending on collections and streamline court processes. A Brennan Center for Justice Study demonstrates that several of New Mexico's most populated counties spend more money attempting to collect fees than the actual fee amount. From 2012-2016, Bernalillo County incurred a loss of \$278 thousand in attempts to collect \$4.1M in assessed fees.¹ Moreover, it costs the state even more money to incarcerate people for uncollectible fees, where they will be subject to a litany of other fees they can't afford (e.g., booking fees). HB 138 will reduce court dockets, maximize efficiency within NM's criminal legal system and ensure that the state is not spending more money on collection than it collects.

Finally, income assessments are conducted by the public defender to determine eligibility for counsel. Therefore, HB 138 does not compel judges to conduct redundant ability-to-pay assessments in those cases where eligibility was previously determined.

WEAKNESSES: HB138 does not address the reality that individuals not deemed indigent may nevertheless struggle to pay fees, even on payment plans.

HB 138 overlaps with policy proposed in HB 139—which would eliminate conviction and adjudication fees for all criminal and traffic cases. With respect to conviction and bench warrant fees, HB 139 is preferred as it goes further to eliminate wasteful spending as well as mitigate unintended consequences associated with fee collection.

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¹ Brennan Center for Justice (2019) "The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties," available at <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

<u>Safer</u>	<u>Apolitical</u>	<u>Fiscally-Responsible</u>	<u>Evidence Based</u>	<u>Grade</u>
HB 138 will prevent individuals from being jailed (or reduce jail stays) for their inability to pay fines and fees—keeping inmates, jail staff, and New Mexicans at large safer. Further, HB 138 refocuses the responsibilities of law enforcement and judges from collecting unpaid fees to efforts that actually improve public safety.	Many states have passed reforms that employ components of this bill including Texas, Maine, Ohio, and Colorado. Arthur Pepin, Director of the Administrative Office of the Courts, authored a report detailing similar, successful policy efforts across the country. ²	Fees and fines can quickly add up to hundreds and sometimes thousands of dollars. HB 138 will reduce the financial burden that so many New Mexican families are currently experiencing during the largest global pandemic of our time. HB 138 will also reduce the spending of state and local resources on attempts to collect uncollectible fines/fees and jailing those unable to pay—an incredibly costly practice that generates revenue losses for the state and does not improve public safety.	HB 138 addresses the majority of best practices on court fines and fees established by the American Bar Association: Judicial discretion, waivers, payment plans, alternatives to incarceration, etc. ³	B

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² https://cosca.ncsc.org/_data/assets/pdf_file/0014/26330/end-of-debtors-prisons-2016.pdf

³ https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-ten-guidelines_.pdf