

ASSESSMENT OF COURT FEES - BACKGROUND MEMORANDUM

Section 1 of 2013 Senate Bill No. 2078 directs the Legislative Management to study the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute. As introduced, Senate Bill No. 2078, a bill introduced at the request of the Supreme Court, would have replaced the current court administration fee and the community service supervision fee with a single court fee that would be distributed among various funds. Testimony in support of the introduced bill indicated that the bill proposed to consolidate the many different criminal fees into a single fee that is set by the Legislative Assembly. The bill was amended in the House to provide for this study.

STATUTORY FEES

North Dakota Century Code Section 29-26-22 requires a court, upon a plea or finding of guilt, to impose a court administration fee in lieu of the assessment of court costs in all criminal cases except infractions. Under that section, the court administration fee must include a fee of \$125 for a Class B misdemeanor, \$200 for a Class A misdemeanor, \$400 for a Class C felony, \$650 for a Class B felony, and \$900 for a Class A or Class AA felony.

Section 29-26-22 also provides in all criminal cases except infractions, the court administration fee must include an additional \$100. From the additional \$100 court administration fee, the first \$750,000 collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next \$460,000 collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.

Section 29-26-22 allows a court to waive the administration fee or community service supervision fee upon a showing of indigency. That section further provides that district court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A court may allow a defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

Under Section 12.1-32-07, when a court orders probation for an offender, the court is required to order supervision costs and fees of not less than \$55 per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. The court is also authorized to impose as a condition of probation that the defendant make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, pay any fine imposed, and support the defendant's dependents and meet other family responsibilities. In addition, as a condition of probation, the court may order the offender to reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant.

Section 12.1-32-08 authorizes the court to order the defendant to reimburse indigent defense costs and expenses as a condition of probation. That section also provides the reimbursement amount must include an application fee imposed under Section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. Section 29-07-01.1 imposes a nonrefundable application fee of \$35 to be paid at the time an application for indigent defense services in the district court is submitted.

Section 12.1-32-08 requires a court, when restitution ordered by the court is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, to impose as costs the greater of the sum of \$10 or an amount equal to 25 percent of the amount of restitution ordered, except the amount may not exceed \$1,000. The state-employed clerks of district court are required to remit the funds collected to the State Treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court are required to remit the funds collected to the county treasurer to be deposited in the county general fund.

Section 12.1-32-16 provides when an individual whose occupational, professional, recreational, motor vehicle operator, or vehicle license or registration has been suspended for nonpayment of child support is convicted of engaging in activity for which the license or registration was required, the court shall require as a condition of the sentence that the individual pay restitution in the amount of \$250, or a higher amount set by the court.

Section 27-01-10 allows the governing body of a county to, by resolution, authorize the district judges serving that county to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment. That section also allows the governing body of a city to, by ordinance, authorize a municipal judge to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment. All fees paid to a district or municipal court must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to a private, nonprofit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

As reported by the judicial branch, during the 2011-13 biennium, the judiciary collected \$9,997,087 in fees as follows:

- Criminal court administration fees - \$5,474,416.
- Indigent defense recoupment - \$347,152.
- Indigent defense application fee - \$186,436.
- Indigent defense administration fee - \$1,786,383.
- Restitution collection assistance fund - \$47,409.
- Community service supervision fee - \$53,837.
- Court facilities improvement and maintenance fund - \$1,496,381.
- Victim witness fee (county) - \$605,074.

The total number of criminal cases during the 2011-13 biennium was 62,073.

PRIOR STUDIES

The Commission on Alternatives to Incarceration has studied the imposition of fees upon offenders during the 2005-06, 2007-08, 2009-10, and 2011-12 interims. The focus of each of these studies, however, was on the funding of community service programs and the imposition of the community service supervision fee.

2005-06 Interim and 2007 Legislation

During the 2005-06 interim, the Commission on Alternatives to Incarceration was informed that of the 14 community service organizations operating in the state, approximately one-third of the programs' budgets were supported through grants from the state. However, the testimony also indicated that the level of state support varied greatly among the programs. The 2007 Legislative Assembly enacted Senate Bill No. 2243, which imposed a \$50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The bill appropriated \$125,000 from the fund for the 2007-09 biennium to the Department of Corrections and Rehabilitation for providing matching grants for community service supervision of offenders and directed the department to use \$100,000 of the funds appropriated in the field services line item in Section 3 of 2007 House Bill No. 1015 for the purpose of providing matching grants for community service supervision of offenders for the biennium.

2007-08 Interim and 2009 Legislation

During the 2007-08 interim, the Commission on Alternatives to Incarceration again examined issues related to the community service programs. The commission received testimony indicating the community service fee was low on the hierarchy of fees that a court was required to impose, and defendants often did not have the financial resources to pay the fees imposed by courts. Therefore, many judges were not imposing the community service fee when ordering a defendant to perform community service.

The 2009 Legislative Assembly enacted Senate Bill No. 2028 to reduce the community service fee to \$25. The Legislative Assembly also provided an appropriation of \$62,500 from the community service supervision fund to the Department of Corrections and Rehabilitation in 2009 Senate Bill No. 2015 and provided an appropriation of \$375,000 from the general fund to the Office of Management and Budget (OMB) in 2009 Senate Bill No. 2178 for community service supervision grants.

2009-10 Interim and 2011 Legislation

During the 2009-10 interim, the Commission on Alternatives to Incarceration again was informed the community service supervision fee is low on the hierarchy of fees that a court is required to impose, and defendants often do not have the financial resources to pay the fees imposed by courts. Therefore, many judges do not impose the fee or waive the fee when ordering a defendant to perform community service. The commission considered a bill draft that would have eliminated the community service supervision fee. Although commission members generally agreed that community service programs should continue to receive state support separate from the community service supervision fee, members of the commission were reluctant to eliminate the fee without further study of all the fees that may be imposed upon a defendant upon sentencing as well as other fees that may be imposed upon offenders. Thus, the commission recommended 2011 Senate Concurrent Resolution No. 4001 to request the Legislative Management to study the imposition of fees at sentencing and other fees that are imposed upon offenders. The commission also recommended the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs. In addition to adopting the study resolution, the 2011 Legislative Assembly enacted Senate Bill No. 2275, which appropriated \$375,000 from the general fund for the biennium to support the community service programs.

2011-12 Interim

During the 2011-12 interim, the Commission on Alternatives to Incarceration, as directed by 2011 Senate Concurrent Resolution No. 4011, studied the imposition of fees upon offenders. The commission received a report from the judicial branch regarding fees collected or imposed by the judicial branch. The commission also received testimony that indicated the collection of restitution is likely to become more efficient with the implementation of a new computer system that also is used to assist in the collection of fines, fees, and administrative costs. The commission made no recommendations as a result of this study.

2013 SENATE BILL NO. 2078

Senate Bill No. 2078, introduced at the request of the Supreme Court, would have consolidated the seven different fees imposed by the court in criminal cases into a single fee, the amount of which would vary based upon the grade of the offense. The bill would have replaced the individual fees with a fee of \$250 for a Class B misdemeanor, \$400 for a Class A misdemeanor, \$600 for a Class C felony, \$800 for a Class B felony, and \$1,000 for a Class A or Class AA felony. The bill authorized the court to waive the fee upon a showing of indigency.

The bill also included a formula for the distribution of the fees collected. As amended by the Senate, the bill would have distributed the fees as follows:

- 68.2 percent deposited in the state general fund.
- 14.5 percent deposited in the indigent defense administration fund.
- 12.2 percent deposited in the court facilities improvement and maintenance fund.
- 4.7 percent deposited monthly in the county treasury if the county in which the fee is assessed has authorized acceptance of the fee by resolution under Section 27-01-10. If the county has not adopted such a resolution, this amount would be deposited in the state general fund.
- 0.4 percent deposited in the community service supervision fund.

Testimony in support of the bill indicated the bill had broad support in the judiciary. The testimony also indicated a consolidated fee would result in significant time-savings for the court. Other testimony expressed concerns about including the victim witness fee in the consolidated fee since that fee remains with the county. It was explained counties vary greatly in their efforts to collect this fee.

SUGGESTED STUDY APPROACH

The committee, in its study of the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute, may want to approach the study as follows:

- Receive information from the judicial branch regarding caseload and revenues collected from the various court fees;
- Receive information from counties on the impact a consolidated fee would have on the victim witness fee that is retained by the county;

- Receive information regarding the impact a consolidated court fee would have on the workload of district court personnel; and
- Develop recommendations and prepare legislation necessary to implement the recommendations.