

7-207.1. Payment of fines, fees, and costs.

A. **Payment arrangements.** The court shall assess the defendant's ability to pay any fines, fees, or costs at the time of sentencing. If the defendant cannot pay the full amount at the time of sentencing, the court shall permit the defendant to enter into an agreement to pay in installments. ~~[At sentencing, the]~~ The court shall provide the defendant with a deadline by which the defendant shall be required to pay ~~[all fines, fees, or costs owed to the court]~~. The defendant may make any size or number of payments or perform community service in lieu of payment as set forth in Paragraph B of this rule, so long as the total amount is paid or community service performed by the deadline set by the court. If the court orders a defendant to make a contribution to crime stoppers or to participate in a program or activity that is owned or operated by a third party and not by the court, such as treatment, counseling, victims impact panel, certain drug testing, or certain schools, the defendant may not perform community service in lieu of payment of any fees owed to that third party.

B. **Community service in lieu of payment.** The court shall permit a defendant to perform community service in lieu of payment of all or any portion of the assessed fines, fees, or costs, except for contributions and fees owed to third parties. The court shall maintain a list of eligible community services agencies. The defendant shall receive credit toward the fines, fees, or costs owed to the court at twice the prevailing ~~[federal]~~ state hourly minimum wage rate or as otherwise required by law. If the defendant performs community service in lieu of payment, all hours must be completed by the deadline for payment set by the court. If the defendant fails to perform community service, the failure to perform community service shall be treated the same as a failure to pay, and the court shall follow the procedures set forth in Paragraphs C and D of this rule.

C. **Failure to comply; issuance of summons or bench warrant.**

(1) ***Issuance and content of summons.*** If a defendant fails to pay or perform community service by the deadline set by the court, the court shall issue a summons within five (5) days of the deadline. The summons shall

(a) instruct the defendant to pay, complete hours of community service in lieu of payment, or appear at the court's customer service division within thirteen (13) days after the date that the summons is issued;

(b) state that the defendant may request a hearing before the judge and that the defendant's ability to pay or perform community service in lieu of payment will be addressed at any hearing; and

(c) notify the defendant that a bench warrant shall be issued if the defendant fails to timely respond to the summons.

(2) ***Service of summons.*** The court may serve a summons under this paragraph using any method of service permitted by the Rules of Criminal Procedure for the Metropolitan Courts.

(3) ***Issuance of bench warrant.*** If a defendant fails to comply with a summons issued under Subparagraph (C)(1) of this rule, the court shall issue a bench warrant for failure to pay or perform community service. Once the defendant has been arrested or has surrendered on the warrant, the court shall hold a hearing under Paragraph D of this rule, unless the defendant has satisfied all outstanding obligations to the court by making payment in full, ~~or by~~ performing community service, or serving a period of confinement, including presentence confinement, in lieu of payment.

1 (4) ***Subsequent failure to comply.*** If the defendant misses a deadline to pay or
2 perform community service, the court shall follow the procedure set forth in Subparagraphs (C)(1)
3 through (C)(3) of this rule. If the court extends the deadline as set forth in Subparagraph D of this
4 Rule, and the defendant fails to meet that deadline, the court may issue a bench warrant and is not
5 required to issue a summons prior to issuing a bench warrant.

6 D. **Failure to comply hearing.** If the defendant is not able to either pay or perform
7 community service, then on or before the deadline set by the court, the defendant may request a
8 hearing for an extension of the deadline or for other relief. The court shall hold a failure to comply
9 hearing at the defendant's request or following the defendant's arrest or surrender on a bench
10 warrant, unless the defendant has satisfied all outstanding obligations to the court by making
11 payment in full, ~~[or by]~~ performing community service, or serving a period of confinement,
12 including presentence confinement, in lieu of payment. If the defendant has been arrested and
13 remains in custody, the court shall hold the hearing within three (3) days of the defendant's arrest.
14 At the hearing, the court shall determine the basis for the defendant's failure to pay or to perform
15 community service as ordered by the court. If the court finds that the defendant is financially
16 unable to pay and is unable to perform community service, the court may waive the bench warrant
17 fee, revoke any unpaid portion of a fine, or grant other appropriate relief. If the court finds that the
18 defendant has willfully refused to pay or to perform community service, the court may order the
19 defendant committed to jail under NMSA 1978, Section 33-3-11 ~~[NMSA 1978]~~. A defendant shall
20 receive credit toward the fine, fees, or costs at twenty-four times the rate of the state minimum
21 wage for each day or portion of a day of incarceration. A defendant shall receive credit for all
22 presentence confinement served.

[Adopted by Supreme Court Order No. 17-8300-001, effective for all cases pending or filed on or after April 17, 2017; as amended by Supreme Court Order No. S-1-RCR-2024-00079, effective for all cases pending or filed on or after October 9, 2025.]

Committee commentary. — If the defendant has failed to pay fines, fees, or costs owed to the court or to perform community service as ordered by the court, the court should issue a summons instructing the defendant to pay, request a time extension, or request a hearing prior to the issuance of a bench warrant. If the defendant requests a hearing prior to the issuance of bench warrant under Subparagraph (C)(3) of this rule, the court shall not issue a bench warrant prior to the hearing date. In addition to issuing summonses for failure to pay, the court should develop and implement alternative methods for providing supplementary notice to the defendant through automated means, such as automated telephone calls, email messages, or text messages.

A defendant may perform community service in lieu of payment of fines, fees, or costs owed to the court. If the court orders a defendant to make a contribution to a local crime stoppers program, domestic violence prevention or treatment program, or drug abuse resistance education program, *see* NMSA 1978, Section 31-20-6(E); or to participate in a program or service that is owned or operated by a third party, the court cannot convert the contribution or fee for such program or service to community service because the contribution or fee is owed to the third party, not the court. Examples of the types of programs or services that may be ordered by the court but are operated by third parties include, but are not limited to, treatment, counseling, victims impact panel, drug testing by third-party providers and not by the court's probation officers, and schools other than the court's own DWI School, Driver Improvement School, and Aggressive Driving School.

Prior to assessing jail in lieu of payment, the court must afford the defendant adequate procedural due process protections and determine the defendant's ability to pay. The court must notify the defendant that ability to pay will be addressed at any hearing, provide the defendant with an opportunity to present and dispute information relevant to the defendant's ability to pay, and document any willful failure to pay with written findings in the court file. *See Turner v. Rogers*, 564 U.S. 431[~~131 S. Ct. 2507, 2520~~] (2011). "It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that [~~the defendant~~] the defendant made a good faith effort to obtain the funds required for the payment." NMSA 1978, § [~~31-12-3(C) (1993)~~] 31-12-3(D) (2023); *see Bearden v. Georgia*, 461 U.S. 660 (1983) (holding that imprisoning a person for failure to pay fines, without considering the reasons for the inability to pay, violates the constitutional guarantee of equal protection).

[Adopted by Supreme Court Order No. 17-8300-001[~~, effective for all cases pending or filed on or after April 17, 2017~~]; as amended by Supreme Court Order No. S-1-RCR-2024-00079.]