

8-206.1. 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. ~~[and shall consider the following types of payment arrangements in the order of priority set forth below.]~~

~~(1) **Full payment at time of sentencing.** If the defendant is able to pay the full amount at the time of sentencing, the court shall require the defendant to do so.~~

~~(2) **Full payment within thirty (30) days of sentencing.** If the defendant cannot pay the full amount at the time of sentencing but will be able to pay within thirty (30) days, the court shall require the defendant to do so.~~

~~(3) **Agreement to pay.**~~ If the defendant cannot pay the full amount ~~[within thirty (30) days after the date]~~ at the time of sentencing, the court ~~[may]~~ shall permit the defendant to enter into an agreement to pay in installments. The court shall retain the authority to enforce an agreement to pay regardless of whether the defendant remains on probation or whether the defendant was placed on probation at all. An agreement to pay shall

(1)~~[(a)]~~ be based on the defendant's individual circumstances;

(2)~~[(b)]~~ require the largest possible payment amounts that the judge determines the defendant can make successfully;

(3)~~[(c)]~~ require the first installment to be due no later than thirty (30) days after the date of sentencing;

(4)~~[(d)]~~ schedule subsequent installments in intervals of thirty (30) days or ~~[less]~~ more; and

(5)~~[(e)]~~ schedule all payments to be made within the shortest practicable period of time.

1 **B. Modification of the agreement to pay.** [~~—(4)—~~ ~~*Modification of the*~~
2 ~~*agreement to pay.*~~] The court may, for good cause shown, modify the agreement to pay up to three
3 (3) times, either by allowing the defendant additional time for payment or by reducing the amount
4 of one or more installments. The court shall document the good cause shown with written findings
5 [~~in the case file~~].

6 [~~B.~~] **C. Community service in lieu of payment.** If the court finds at any time that the
7 defendant is unable to pay all or part of the assessed fines, fees, or costs, the court shall permit the
8 defendant to perform community service in lieu of payment of all or part of the assessed fines,
9 fees, or costs owed to the court. The defendant shall receive credit toward the fines, fees, or costs
10 at twice the rate of the prevailing [~~federal~~] state hourly minimum wage or as otherwise required
11 by law. If the defendant performs community service in lieu of payment, all hours must be
12 completed by the deadline set by the court. If the defendant fails to perform community service as
13 ordered by the court, the failure to perform community service shall be treated the same as a failure
14 to pay, and the court shall follow the procedures set forth in Paragraphs [~~C and D~~] D and E of this
15 rule.

16 [~~C.~~] **D. Failure to comply; issuance of summons or bench warrant.**

17 (1) ***Issuance and content of summons.*** If the defendant fails to make a payment
18 as ordered by the court, request a modification of an agreement to pay before the payment due
19 date, or perform community service by the deadline set by the court, the court shall issue a
20 summons within five (5) days of the deadline. The summons shall

21 (a) instruct the defendant to either pay or appear at the court within
22 fifteen (15) days after the date that the summons is issued;

(b) if the summons does not set a specific hearing date and time, state that the defendant may request a hearing before the judge and that ability to pay 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 Procedure for the Municipal Courts.

(3) ***Issuance of bench warrant.*** If a defendant fails to comply with a summons issued under Subparagraph ~~[(C)(1)]~~ (D)(1) of this rule, the court shall issue a bench warrant for failure to pay or perform community service no later than five (5) days after the appearance date on the summons. Once the defendant has been arrested or has surrendered on the warrant, the court shall hold a hearing under Paragraph ~~[D]~~ E of this rule, unless the defendant has satisfied all outstanding obligations to the court by making payment in full or by performing community service in lieu of payment.

(4) ***Subsequent failure to comply.*** The first time the defendant misses a payment under an agreement to pay or fails to perform community service by the deadline set by the court, the court shall follow the procedure set forth in Subparagraphs ~~[(C)(1) through (C)(3)]~~ (D)(1) through (D)(3) of this rule. If the defendant subsequently fails to comply with an order to pay or to perform community service, the court may issue a bench warrant and is not required to issue a summons prior to issuing a bench warrant. Prior to issuing a bench warrant, the court may attempt to contact the defendant and make satisfactory arrangements to address the defendant's noncompliance. Once the court has issued a second bench warrant for failure to comply, the court

shall not grant the defendant an extension or a renewed agreement to pay, except upon a written finding of exceptional circumstances.

~~[D.]~~ **E. Failure to comply hearing.** The court shall hold a failure to comply hearing as set forth in a summons, at the defendant's request, or following the defendant's arrest or surrender on a bench warrant, unless the defendant has satisfied all outstanding obligations to the court by making payment in full, ~~[or]~~ performing community service, or serving a period of confinement, including presentence confinement, in lieu of payment. If the defendant has been arrested and remains in custody, the court shall hold the hearing within three (3) days of the defendant's arrest. The defendant may appear at the hearing through an audio or audio-visual communication under Rule 8-109A NMRA. At the hearing the court shall determine the basis for the defendant's failure to pay or to perform community service as ordered by the court. If the court finds that the defendant is financially unable to pay, the court may modify the agreement to pay under Subparagraph ~~[(A)(4)]~~ [(B)(4)] of this rule; convert the unpaid fines, fees, or costs to community service; revoke any unpaid portion of a fine; or grant other appropriate relief. If the court finds that the defendant has willfully refused to pay or to perform community service, the court may order the defendant committed to jail under NMSA 1978, Section 33-3-11 ~~[NMSA 1978]~~. A defendant shall receive credit toward the fine, fees, or costs at twenty-four times the rate of the state minimum wage for each day or portion of a day of incarceration. A defendant shall receive credit for all 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. The summons may set a specific hearing date and time. Alternatively, the summons may set a deadline by which the defendant must pay, request a modification to the agreement to pay, or request a hearing. 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.

If the defendant requests a hearing prior to the issuance of a bench warrant under Subparagraph ~~[(C)(3)]~~ (D)(3) of this rule, the court shall not issue a bench warrant prior to the hearing date.

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] 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.]