

POLICY DIRECTIVE NO. 7 (Issued July 1999)

**POLICY RELATING TO ACCEPTANCE OF PARTIAL PAYMENTS
OF FINES AND COSTS**

This policy is issued in accordance with NMSA 1978, Section 35-7-1. It provides guidelines and directions for courts to allow criminal defendants to pay outstanding fines, fees, or costs through Agreements to Pay. This policy **does not** apply to civil actions or posting bond.

Imposing and collecting fines, fees, and costs has both a rehabilitative value and a deterrent effect on a defendant. A court that requires a defendant to pay at the time of sentencing emphasizes the importance of complying with the court's orders and promotes the integrity and credibility of all courts.

State law prohibits a magistrate's suspension or waiver of any fee or cost, other than the warrant enforcement fee. State law also imposes a number of mandatory fines, which may not be suspended or waived. All fees, costs, and mandatory fines must be collected or converted to community service or jail time.

Although there is statutory authority that allows a convicted criminal defendant to pay in partial payments all fines, fees, or costs assessed, an Agreement to Pay imposes significant additional administrative and accounting burdens on the court system. Consequently, the circumstances under which Agreements to Pay may be allowed are limited as follows:

A defendant owing \$100 or less is not eligible for an Agreement to Pay; the magistrate may not extend the time for full payment beyond thirty (30) days from the date of sentence or from the date defendant is released from jail, if jail time is part of the sentence.

A defendant owing more than \$100 may be allowed to pay through an Agreement to Pay; however, the magistrate may not allow for payment at a rate less than \$50 per month.

If a defendant fails to make a payment pursuant to the Agreement to Pay, an Order to Show Cause shall be issued requiring the defendant to appear before the court to determine the reason the defendant failed to pay as agreed. If a defendant fails to appear at the scheduled Order to Show Cause hearing, or otherwise cure the delinquent payments, a bench warrant shall be issued. If a defendant appears at the scheduled Order to Show Cause hearing and the court finds that the defendant is financially unable to pay the assessed fines, fees, or costs, the

defendant shall be ordered to perform community service in lieu of the amounts owed that he or she is unable to pay. Community service will be credited at the rate of the prevailing minimum wage. A magistrate must require community service to be performed at a rate of at least 40 hours per month. If the magistrate finds that the failure to pay (or to perform required community service) is willful, the magistrate may sentence the defendant to jail, with each day served credited toward the fines, fee, and costs owed at the rate set by state law.

If a defendant was sentenced for a violation of the Motor Vehicle Code, and failed to appear upon the Order to Show Cause, the clerk shall prepare the MVD notice form TMV-10079, indicating "Failure to Appear in Court" in the violation code portion. Pursuant to NMSA 1978, Section 66-5-30(A)(9), the Motor Vehicle Division is authorized to suspend the license of a driver, without a preliminary hearing, when the Division receives notice from the court that a defendant "has failed to fulfill a signed promise to appear in court or when appearance is required by law or by the court as a consequence of any charge or conviction under the motor vehicle code." At such time as the defendant appears, the case will proceed as if the defendant had appeared on the Order to Show Cause. The clerk shall prepare the Rescind Notice on the MVD Notice of Failure to Appear form TMV-10079 and forward it to the Division. If the court sends MVD notice of the defendant's failure to appear, the judge cannot adjust the fines to zero as "not collectible" and close the file; rather, the court must keep the file open until the defendant appears to respond to the outstanding Agreement to Pay and the outstanding Order to Show Cause. If the defendant satisfies his outstanding liability after arrest on a bench warrant, the clerk shall issue the Rescind Notice and the court may close the case file.