

September 2011

## COMMUNITY SERVICE PROGRAMS - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4001 directs a study of the imposition of fees by courts at sentencing and other fees that are imposed upon offenders.

### BACKGROUND

Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

#### 2005-06 Interim and 2007 Legislation

During the 2005-06 interim, the Commission on Alternatives to Incarceration received testimony regarding the funding of community service programs. The commission was informed that 14 community service organizations were operating in the state and 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 commission also received testimony from officials from the Department of Corrections and Rehabilitation indicating the community service programs were expected to become self-supporting within a few years after implementation. At the end of the interim, the commission recommended the Governor include in the executive budget \$200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

Although funding was not included in the executive budget for community service programs, the Legislative Assembly enacted Senate Bill No. 2243 (2007), which imposed a \$50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided that 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 House Bill No. 1015

(2007) 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 commission was informed that less than \$15,000 had been collected and deposited in the community service supervision fund during the first nine months of the 2007-09 biennium and community service supervision grants were not likely to amount to the \$125,000 appropriated from the fund for the biennium.

At the conclusion of the interim, the commission recommended Senate Bill No. 2028 (2009) to repeal the \$50 community service supervision fee, and recommended the Governor include \$500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department.

The Legislative Assembly amended Senate Bill No. 2028 to retain the community service supervision fee, but reduced the fee to \$25. The Legislative Assembly also provided an appropriation of \$62,500 from the community service supervision fund to the department in Senate Bill No. 2015 (2009) and provided an appropriation of \$375,000 from the general fund to the Office of Management and Budget in Senate Bill No. 2178 (2009) for community service supervision grants.

#### 2009-10 Interim and 2011 Legislation

During the 2009-10 interim, the commission continued to examine issues relating to community service programs and the imposition of the community service supervision fee. The commission was again 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 received testimony regarding the varied level of funding of community service organizations by local

governments and a lack of consistency in establishing adequate local participation fees to cover the costs of the programs.

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 Senate Concurrent Resolution No. 4001 (2011) 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 Legislative Assembly in 2011 enacted Senate Bill No. 2275, which appropriated \$375,000 from the general fund for the biennium to support the community service programs. Senate Bill No. 2275 included a statement of legislative intent which provided that it is "the intent of the sixty-second legislative assembly that the funds appropriated in section 1 of this Act are considered ongoing funding and that the funds be a part of the office of management and budget's base budget as a separate line item for the 2013-15 biennium." The annual funding for the community service programs during the 2011-13 biennium is to be allocated as follows:

- Barnes County - \$9,091.
- Bismarck (urban) - \$20,293.
- Bismarck (rural) - \$10,667.
- Devils Lake - \$10,747.
- Dickinson - \$12,683.
- Fargo - \$24,127.
- Grand Forks - \$19,803.
- Jamestown - \$13,883.
- Minot - \$16,194.
- Richland County - \$9,931.
- Rugby - \$11,657.
- Sargent County - \$8,086.
- Wells County - \$8,189.
- Williston - \$12,149.

North Dakota Century Code Section 29-26-22(3) provides that community service supervision fees collected must be deposited in the community service supervision fund to be used to provide community service supervision grants subject to legislative appropriations. In 2011 the Legislative Assembly did not appropriate any funds from the community service supervision fund.

### Other Statutory Fees

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 AA felony.

Section 29-26-22 also provides that 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 \$45 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 \$25 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 that 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.

### **POSSIBLE STUDY APPROACH**

In conducting this study, the commission may consider gathering additional information from representatives of the judicial system regarding fees that may be imposed by judges beyond the statutorily required fees. The commission also may seek additional information regarding the amount of fees collected and the use of the fees, as well as the amount of fees that are waived.