

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 429

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Al Park

AN ACT

RELATING TO LAW ENFORCEMENT; CLARIFYING THE STATUTE REGARDING CERTAIN CITATIONS ISSUED BY OFFICERS; PROVIDING AUTHORITY FOR PUBLIC SECURITY GUARDS TO ISSUE PARKING CITATIONS; ALLOWING THE METROPOLITAN COURT TO EXPEDITE THE DISPOSITION OF TRAFFIC CITATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-117 NMSA 1978 (being Laws 1978, Chapter 35, Section 525, as amended) is amended to read:

"66-8-117. PENALTY ASSESSMENT MISDEMEANORS-- OPTION-- EFFECT. --

A. Unless a verbal warning or warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor the arresting officer shall offer the alleged violator the option of accepting a penalty assessment.

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 The violator's signature on the penalty assessment notice  
2 constitutes an acknowledgment of guilt of the offense stated  
3 in the notice.

4 B. Except for penalty assessments made under a  
5 civil violation or criminal misdemeanor county or municipal  
6 program authorized by Section 66-8-130 NMSA 1978, payment of  
7 any penalty assessment must be made by mail or credit card to  
8 the division within thirty days from the date of arrest.  
9 Payments of penalty assessments are timely if postmarked  
10 within thirty days from the date of arrest. The division may  
11 issue a receipt when a penalty assessment is paid by currency,  
12 or credit card, but checks tendered by the violator upon which  
13 payment is received are sufficient receipt.

14 C. No record of any penalty assessment payment is  
15 admissible as evidence in any court in any civil action. "

16 Section 2. Section 66-8-119 NMSA 1978 (being Laws 1968,  
17 Chapter 62, Section 159, as amended) is amended to read:

18 "66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

19 A. The division, county or municipality shall  
20 remit all penalty assessment receipts, except receipts  
21 collected pursuant to Subsections A through F of Section  
22 66-8-116.3 NMSA 1978, to the state treasurer for credit to the  
23 general fund.

24 B. The division, county or municipality shall  
25 remit all penalty assessment fee receipts collected pursuant

. 140009. 2

underscored material = new  
[bracketed material] = delete

1 to:

2 (1) Subsection A of Section 66-8-116.3 NMSA  
3 1978 to the state treasurer for credit to the local government  
4 corrections fund;

5 (2) Subsection B of Section 66-8-116.3 NMSA  
6 1978 to the state treasurer for credit to the court automation  
7 fund;

8 (3) Subsection C of Section 66-8-116.3 NMSA  
9 1978 to the state treasurer for credit to the traffic safety  
10 education and enforcement fund;

11 (4) Subsection D of Section 66-8-116.3 NMSA  
12 1978 to the state treasurer for credit to the judicial  
13 education fund;

14 (5) Subsection E of Section 66-8-116.3 NMSA  
15 1978 to the state treasurer for credit to the brain injury  
16 services fund; and

17 (6) Subsection F of Section 66-8-116.3 NMSA  
18 1978 to the state treasurer for credit to the court facilities  
19 fund. "

20 Section 3. Section 66-8-123 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 531, as amended) is amended to read:

22 "66-8-123. CONDUCT OF ARRESTING OFFICER--NOTICES BY  
23 CITATION. --

24 A. Except as provided in Section 66-8-122 NMSA  
25 1978, unless a verbal warning, penalty assessment or written

. 140009. 2

underscored material = new  
[bracketed material] = delete

1 warning notice is given, whenever a person is arrested for any  
2 violation of the Motor Vehicle Code or other law relating to  
3 motor vehicles punishable as a misdemeanor, the arresting  
4 officer, using the uniform traffic citation, shall manually or  
5 electronically complete the information section and prepare a  
6 notice to appear in court, specifying the time and place to  
7 appear, have the arrested person sign the agreement to appear  
8 as specified, give a copy of the citation to the arrested  
9 person and release him from custody.

10 B. Whenever a person is arrested for violation of  
11 a penalty assessment misdemeanor and elects to pay the penalty  
12 assessment, the arresting officer, using the uniform traffic  
13 citation, shall manually or electronically complete the  
14 information section and prepare the penalty assessment notice  
15 indicating the amount of the penalty assessment, have the  
16 arrested person sign the agreement to pay the amount  
17 prescribed, give a copy of the citation along with a business  
18 reply envelope addressed to the county, municipality or motor  
19 vehicle division, Santa Fe to the arrested person and release  
20 him from custody. No officer shall accept custody or payment  
21 of any penalty assessment. If the arrested person declines to  
22 accept a penalty assessment notice, the officer shall issue a  
23 notice to appear.

24 C. The arresting officer may issue a verbal  
25 warning or may manually or electronically issue a civil

underscored material = new  
[bracketed material] = delete

1 violation, criminal misdemeanor violation or written warning  
2 notice. [~~but~~] Unless a verbal warning is issued, the officer  
3 shall fill in the information section of the uniform traffic  
4 citation and give a copy to the arrested person after  
5 requiring his signature on the civil violation, criminal  
6 misdemeanor violation or written warning notice as an  
7 acknowledgment of receipt. No civil violation or written  
8 warning notice issued under this section shall be used as  
9 evidence of conviction for purposes of suspension or  
10 revocation of license under Section 66-5-30 NMSA 1978.

11 D. In order to secure his release, the arrested  
12 person must give his written promise to appear in court or to  
13 pay the penalty assessment prescribed or acknowledge receipt  
14 of a civil violation, criminal misdemeanor violation or  
15 written warning notice. An arresting officer may release any  
16 person arrested after the officer has given the person a  
17 verbal warning.

18 E. Any officer violating this section is guilty of  
19 a misconduct in office and is subject to removal.

20 F. A law enforcement officer who arrests a person  
21 without a warrant for a misdemeanor violation of the Motor  
22 Carrier Act, the Criminal Code, the Liquor Control Act or  
23 other New Mexico law may manually or electronically use the  
24 uniform traffic citation, issued pursuant to procedures  
25 outlined in Section 31-1-6 NMSA 1978, Subsections B through E,

underscored material = new  
[bracketed material] = delete

1 in lieu of taking him to jail."

2 Section 4. Section 66-8-124 NMSA 1978 (being Laws 1961,  
3 Chapter 213, Section 3, as amended) is amended to read:

4 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM --

5 A. No person shall be arrested for violating the  
6 Motor Vehicle Code or other law relating to motor vehicles  
7 punishable as a misdemeanor except by a commissioned, salaried  
8 peace officer who, at the time of arrest, is wearing a uniform  
9 clearly indicating his official status.

10 B. Notwithstanding the provisions of Subsection A  
11 of this section, a county or municipality may provide by  
12 ordinance that uniformed public and private security guards  
13 may be commissioned by the local police agency to manually or  
14 electronically issue parking citations for violations of  
15 clearly and properly marked no parking zones, loading zones,  
16 metered parking zones, special permit zones, fire zones and  
17 handicapped zones. Prior to the commissioning of any security  
18 guard, the employer of the security guard shall agree in  
19 writing with the local police agency to ~~said~~ the  
20 commissioning of the employer's security guard. The employer  
21 of any security guard commissioned under the provisions of  
22 this section shall be liable for the actions of that security  
23 guard in carrying out his duties pursuant to that commission.  
24 Notwithstanding the provisions of the Tort Claims Act, private  
25 security guards commissioned under this section shall not be

. 140009. 2

underscored material = new  
[bracketed material] = delete

1 deemed public employees under that act. "

2 Section 5. Section 66-8-126 NMSA 1978 (being Laws 1978,  
3 Chapter 35, Section 534) is amended to read:

4 "66-8-126. FAILURE TO OBEY NOTICE TO APPEAR. --

5 A. It is a misdemeanor for any person to violate  
6 his written promise to appear in court given to an officer  
7 upon manual or electronic issuance of a uniform traffic  
8 citation regardless of the disposition of the charge for which  
9 the citation was issued.

10 B. A written promise to appear in court may be  
11 complied with by appearance of counsel. "

12 Section 6. Section 66-8-130 NMSA 1978 (being Laws 1978,  
13 Chapter 35, Section 538, as amended) is amended to read:

14 "66-8-130. ALL TRAFFIC CITATIONS TO CONFORM - COUNTIES OR  
15 MUNICIPALITIES MAY PASS ORDINANCE TO ESTABLISH SIMILAR  
16 PROGRAM --

17 A. The uniform traffic citation shall manually or  
18 electronically be used by all state and local agencies  
19 enforcing laws and ordinances relating to motor vehicles. Any  
20 county or municipality may, by passage of an ordinance,  
21 establish a [~~municipal~~] civil violation or criminal  
22 misdemeanor penalty assessment program similar to that  
23 established in Sections 66-8-116 through 66-8-117 NMSA 1978  
24 for violations of provisions of the Motor Vehicle Code. Every  
25 county or municipality that has adopted an ordinance to

. 140009. 2

underscored material = new  
[bracketed material] = delete

1 establish a penalty assessment program shall assess on all  
2 civil violations, criminal misdemeanors or penalty assessment  
3 misdemeanors after January 1, 1984, in addition to the penalty  
4 assessment, a penalty assessment fee of ten dollars (\$10.00)  
5 to be deposited in a special fund in the county or municipal  
6 treasury for use by the county or municipality only for  
7 [~~municipal~~] jailer training; for the construction planning,  
8 construction, operation and maintenance of the county or  
9 municipal jail; for paying the costs of housing [~~that~~  
10 ~~municipality's~~] prisoners in other detention facilities in the  
11 state; or for complying with match or contribution  
12 requirements for the receipt of federal funds relating to  
13 jails. Such [~~a municipal program~~] programs shall be limited  
14 to violations of county or municipal traffic ordinances.

15 B. All penalty assessments under a county or  
16 municipal program authorized by this section shall be  
17 processed by the district, metropolitan or municipal court,  
18 and all fines and fees collected shall be deposited in the  
19 treasury of the county or municipality. A copy of each  
20 criminal misdemeanor penalty assessment processed shall be  
21 forwarded to the division within ten days of completion of  
22 local processing for posting to the driver's record. With the  
23 prior approval of the director, the required information may  
24 be submitted to the division by electronic means in lieu of  
25 forwarding copies of the penalty assessments.



underscored material = new  
[bracketed material] = delete

1 C. Each agency shall provide itself with copies  
2 conforming exactly in size and format with the uniform traffic  
3 citation prescribed by the director, and any alterations to  
4 conform with local conditions must be approved by the  
5 director. "

6 Section 7. Section 66-8-131 NMSA 1978 (being Laws 1961,  
7 Chapter 213, Section 10, as amended) is amended to read:

8 "66-8-131. UNIFORM TRAFFIC CITATION IS COMPLAINT. --The  
9 uniform traffic citation used as a notice to appear is a valid  
10 verified complaint [though not verified] made under oath and  
11 submitted by the officer who issued the notice. "

12 Section 8. Section 66-8-133 NMSA 1978 (being Laws 1961,  
13 Chapter 213, Section 12, as amended) is amended to read:

14 "66-8-133. DISPOSITION OF CITATIONS. --

15 A. Every state and local traffic enforcement  
16 officer manually issuing a uniform traffic citation to an  
17 alleged violator of the Motor Vehicle Code or other law or  
18 ordinance relating to motor vehicles shall dispose of the  
19 citation as indicated on the back of each copy.

20 B. Citations spoiled or issued in error shall be  
21 marked "void" in large letters on the face, signed by the  
22 officer and the copies disposed of as a valid warning notice.

23 C. In a county with a metropolitan court, the  
24 court may establish an expedited disposition of a uniform  
25 traffic citation issued to an alleged violator of the Motor

underscored material = new  
[bracketed material] = delete

1 Vehicle Code or other law or ordinance relating to motor  
2 vehicles.

3 ~~[C-]~~ D. It is a misdemeanor and official  
4 misconduct for any officer or other public official or  
5 employee to dispose of a uniform traffic citation except as  
6 provided in this section. "

7 Section 9. Section 66-8-141 NMSA 1978 (being Laws 1978,  
8 Chapter 35, Section 369, as amended) is amended to read:

9 "66-8-141. DISHONORED CHECKS OR CREDIT CARDS-- CIVIL  
10 PENALTY. --

11 A. Any person who pays any fee pursuant to the  
12 Motor Vehicle Code by check or credit card to the department  
13 or a county or municipality and which check or credit card is  
14 dishonored upon presentation is liable to the department or  
15 county or municipality for the fees, together with a penalty  
16 of not less than ten dollars (\$10.00) for each [~~such check~~]  
17 transaction.

18 B. Any identification card, license, permit,  
19 registration, plate, title or other document issued by the  
20 department or a county or municipality pursuant to the Motor  
21 Vehicle Code that requires payment and the payment is not made  
22 because the check or credit card offered in payment is  
23 dishonored upon presentation shall be canceled, suspended or  
24 revoked for failure to make payment. Any reinstatement fee  
25 due pursuant to Section 66-5-33.1 NMSA 1978 shall be in

. 140009. 2

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

addition to the penalty provided for in Subsection A of this section. "