

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 429

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

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; CREATING A FUND; PROVIDING FOR A PEACE OFFICER APPEARANCE FEE; MAKING AN APPROPRIATION.

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

Section 1. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended by Laws 2001, Chapter 277, Section 2 and also by Laws 2001, Chapter 279, Section 2) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or

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1 suspend the following costs:

2 docket fee, criminal actions under Section 29-5-1 NMSA  
3 1978 . . . . . \$ 1.00;

4 docket fee, to be collected prior to docketing any other  
5 criminal action, except as provided in Subsection B  
6 of Section 35-6-3 NMSA 1978 . . . . . 20.00.

7 Proceeds from this docket fee shall be transferred  
8 to the administrative office of the courts for  
9 deposit in the court facilities fund;

10 docket fee, ten dollars (\$10.00) of which shall be  
11 deposited in the court automation fund and fifteen  
12 dollars (\$15.00) of which shall be deposited in the  
13 civil legal services fund, to be collected prior to  
14 docketing any civil action, except as provided in  
15 Subsection A of Section 35-6-3 NMSA 1978 . 62.00;

16 jury fee, to be collected from the party demanding trial  
17 by jury in any civil action at the time the demand  
18 is filed or made . . . . . 25.00;

19 copying fee, for making and certifying copies of any  
20 records in the court, for each page copied by  
21 photographic process . . . . . .50.

22 Proceeds from this copying fee shall be transferred  
23 to the administrative office of the courts for  
24 deposit in the court facilities fund; and

25 copying fee, for computer-generated or electronically

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1 transferred copies, per page . . . . . 1.00.

2 Proceeds from this copying fee shall be transferred  
3 to the administrative office of the courts for  
4 deposit in the court automation fund.

5 Except as otherwise specifically provided by law, docket  
6 fees shall be paid into the court facilities fund.

7 B. Except as otherwise provided by law, no other  
8 costs or fees shall be charged or collected in the magistrate  
9 or metropolitan court.

10 C. The magistrate or metropolitan court may grant  
11 free process to any party in any civil proceeding or special  
12 statutory proceeding upon a proper showing of indigency. The  
13 magistrate or metropolitan court may deny free process if it  
14 finds that the complaint on its face does not state a cause of  
15 action.

16 D. As used in this subsection, "convicted" means  
17 the defendant has been found guilty of a criminal charge by  
18 the magistrate or metropolitan judge, either after trial, a  
19 plea of guilty or a plea of nolo contendere. Magistrate  
20 judges, including metropolitan court judges, shall assess and  
21 collect and shall not waive, defer or suspend the following  
22 costs:

23 (1) corrections fee in any county without a  
24 metropolitan court, to be collected upon conviction from  
25 persons convicted of violating any provision of the Motor

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1 Vehicle Code involving the operation of a motor vehicle,  
2 convicted of a crime constituting a misdemeanor or a petty  
3 misdemeanor or convicted of violating any ordinance that may  
4 be enforced by the imposition of a term of imprisonment  
5 . . . . . \$10.00;

6 (2) court automation fee, to be collected  
7 upon conviction from persons convicted of violating any  
8 provision of the Motor Vehicle Code involving the operation of  
9 a motor vehicle, convicted of a crime constituting a  
10 misdemeanor or a petty misdemeanor or convicted of violating  
11 any ordinance that may be enforced by the imposition of a term  
12 of imprisonment . . . . . 10.00;

13 (3) traffic safety fee, to be collected upon  
14 conviction from persons convicted of violating any provision  
15 of the Motor Vehicle Code involving the operation of a motor  
16 vehicle . . . . . 3.00;

17 (4) judicial education fee, to be collected  
18 upon conviction from persons convicted of operating a motor  
19 vehicle in violation of the Motor Vehicle Code, convicted of a  
20 crime constituting a misdemeanor or a petty misdemeanor or  
21 convicted of violating any ordinance punishable by a term of  
22 imprisonment . . . . . 1.00;

23 (5) brain injury services fee, to be  
24 collected upon conviction from persons convicted of violating  
25 any provision of the Motor Vehicle Code involving the

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1 operation of a motor vehicle . . . . . 5.00;

2 [~~and~~]

3 (6) court facilities fee, to be collected  
4 upon conviction from persons convicted of violating any  
5 provision of the Motor Vehicle Code involving the operation of  
6 a motor vehicle, convicted of a crime constituting a  
7 misdemeanor or a petty misdemeanor or convicted of violating  
8 any ordinance that may be enforced by the imposition of a term  
9 of imprisonment as follows:

10 in a county with a metropolitan court . . . . . 24.00;

11 in any other county . . . . . 10.00; and

12 (7) peace officer appearance fee, to be  
13 collected upon conviction from persons convicted of violating  
14 any provision of the Motor Vehicle Code involving the  
15 operation of a motor vehicle and deposited in the peace  
16 officer appearance fund . . . . . 10.00.

17 E. Metropolitan court judges shall assess and  
18 collect and shall not waive, defer or suspend as costs a  
19 mediation fee not to exceed five dollars (\$5.00) for the  
20 docketing of small claims and criminal actions specified by  
21 metropolitan court rule. Proceeds of the mediation fee shall  
22 be deposited into the metropolitan court mediation fund."

23 Section 2. Section 35-14-11 NMSA 1978 (being Laws 1983,  
24 Chapter 134, Section 6, as amended) is amended to read:

25 "35-14-11. MUNICIPAL ORDINANCE-- COURT COSTS--

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1 COLLECTION-- PURPOSE. --

2 A. Every municipality shall enact an ordinance  
3 requiring assessment of corrections fees, judicial education  
4 fees, [~~and~~] court automation fees and peace officer appearance  
5 fees to be collected as court costs and used as provided in  
6 this section.

7 B. As used in this [~~subsection~~] section,  
8 "convicted" means the defendant has been found guilty of a  
9 criminal charge by a municipal judge, either after trial, a  
10 plea of guilty or a plea of nolo contendere. A municipal  
11 judge shall collect the following costs:

12 (1) a corrections fee of ten dollars  
13 (\$10.00);

14 (2) a judicial education fee of one dollar  
15 (\$1.00); [~~and~~]

16 (3) a court automation fee of six dollars  
17 (\$6.00); and

18 (4) a peace officer appearance fee of ten  
19 dollars (\$10.00).

20 C. The fees are to be collected upon conviction  
21 from persons convicted of violating any ordinance relating to  
22 the operation of a motor vehicle or any ordinance that may be  
23 enforced by the imposition of a term of imprisonment.

24 D. All money collected pursuant to Paragraph (1)  
25 of Subsection B of this section and any remaining balance from

1 Subsection G of this section shall be deposited in a special  
2 fund in the municipal treasury and shall be used for municipal  
3 jailer or juvenile detention officer training, for the  
4 construction planning, construction, operation and maintenance  
5 of a municipal jail or juvenile detention facility, for paying  
6 the cost of housing municipal prisoners in a county jail or  
7 housing juveniles in a detention facility or for complying  
8 with match or contribution requirements for the receipt of  
9 federal funds relating to jails or juvenile detention  
10 facilities.

11 E. All money collected pursuant to Paragraph (2)  
12 of Subsection B of this section shall be remitted monthly to  
13 the state treasurer for credit to the judicial education fund  
14 and shall be used for the education and training, including  
15 production of bench books and other written materials, of  
16 municipal judges and other municipal court employees.

17 F. All money collected pursuant to Paragraph (3)  
18 of Subsection B of this section shall be remitted monthly to  
19 the state treasurer for credit to the municipal court  
20 automation fund and shall be used for the purchase and  
21 maintenance of court automation systems in the municipal  
22 courts. The court automation systems shall have the  
23 capability of providing, on a timely basis, electronic records  
24 in a format specified by the judicial information system  
25 council.

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1                   G. All money collected pursuant to Paragraph (4)  
2 of Subsection B of this section shall be deposited in a  
3 special fund in the municipal treasury and shall be used first  
4 for the purpose of compensating the municipality for overtime  
5 paid to police officers for attending court hearings. Any  
6 remaining balance in the fund may be used for the purposes  
7 described in Subsection D of this section. "

8                   Section 3. Section 66-8-117 NMSA 1978 (being Laws 1978,  
9 Chapter 35, Section 525, as amended) is amended to read:

10                   "66-8-117. PENALTY ASSESSMENT MISDEMEANORS--OPTION--  
11 EFFECT.--

12                   A. Unless a verbal warning or warning notice is  
13 given, at the time of making an arrest for any penalty  
14 assessment misdemeanor the arresting officer shall offer the  
15 alleged violator the option of accepting a penalty assessment.  
16 The violator's signature on the penalty assessment notice  
17 constitutes an acknowledgment of guilt of the offense stated  
18 in the notice.

19                   B. Except for penalty assessments made under a  
20 municipal program authorized by Section 66-8-130 NMSA 1978,  
21 payment of any penalty assessment must be made by mail or  
22 credit card to the division within thirty days from the date  
23 of arrest. Payments of penalty assessments are timely if  
24 postmarked within thirty days from the date of arrest. The  
25 division may issue a receipt when a penalty assessment is paid



1 by currency, or credit card, but checks tendered by the  
2 violator upon which payment is received are sufficient  
3 receipt.

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

6 Section 4. Section 66-8-123 NMSA 1978 (being Laws 1978,  
7 Chapter 35, Section 531, as amended) is amended to read:

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

10 A. Except as provided in Section 66-8-122 NMSA  
11 1978, unless a verbal warning, penalty assessment or written  
12 warning notice is given, whenever a person is arrested for any  
13 violation of the Motor Vehicle Code or other law relating to  
14 motor vehicles punishable as a misdemeanor, the arresting  
15 officer, using the uniform traffic citation, shall manually or  
16 electronically complete the information section and prepare a  
17 notice to appear in court, specifying the time and place to  
18 appear, have the arrested person sign the agreement to appear  
19 as specified, give a copy of the citation to the arrested  
20 person and release him from custody.

21 B. Whenever a person is arrested for violation of  
22 a penalty assessment misdemeanor and elects to pay the penalty  
23 assessment, the arresting officer, using the uniform traffic  
24 citation, shall manually or electronically complete the  
25 information section and prepare the penalty assessment notice

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1 indicating the amount of the penalty assessment, have the  
2 arrested person sign the agreement to pay the amount  
3 prescribed, give a copy of the citation along with a business  
4 reply envelope addressed to the motor vehicle division, Santa  
5 Fe to the arrested person and release him from custody. No  
6 officer shall accept custody or payment of any penalty  
7 assessment. If the arrested person declines to accept a  
8 penalty assessment notice, the officer shall issue a notice to  
9 appear.

10 C. The arresting officer may issue a verbal  
11 warning or may manually or electronically issue a written  
12 warning notice. [~~but~~] Unless a verbal warning is issued, the  
13 officer shall fill in the information section of the uniform  
14 traffic citation and give a copy to the arrested person after  
15 requiring his signature on the written warning notice as an  
16 acknowledgment of receipt. No written warning notice issued  
17 under this section shall be used as evidence of conviction for  
18 purposes of suspension or revocation of license under Section  
19 66-5-30 NMSA 1978.

20 D. In order to secure his release, the arrested  
21 person ~~must~~ give his written promise to appear in court or to  
22 pay the penalty assessment prescribed or acknowledge receipt  
23 of a written warning notice. An arresting officer may release  
24 any person arrested after the officer has given the person a  
25 verbal warning.

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

3 F. A law enforcement officer who arrests a person  
4 without a warrant for a misdemeanor violation of the Motor  
5 Carrier Act, the Criminal Code, the Liquor Control Act or  
6 other New Mexico law may manually or electronically use the  
7 uniform traffic citation, issued pursuant to procedures  
8 outlined in Section 31-1-6 NMSA 1978, Subsections B through E,  
9 in lieu of taking him to jail."

10 Section 5. Section 66-8-124 NMSA 1978 (being Laws 1961,  
11 Chapter 213, Section 3, as amended) is amended to read:

12 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM --

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

18 B. Notwithstanding the provisions of Subsection A  
19 of this section, a municipality may provide by ordinance that  
20 uniformed public and private security guards may be  
21 commissioned by the local police agency to manually or  
22 electronically issue parking citations for violations of  
23 clearly and properly marked no parking zones, loading zones,  
24 metered parking zones, special permit zones, fire zones and  
25 handicapped zones. Prior to the commissioning of any security

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1 guard, the employer of the security guard shall agree in  
2 writing with the local police agency to ~~[said]~~ the  
3 commissioning of the employer's security guard. The employer  
4 of any security guard commissioned under the provisions of  
5 this section shall be liable for the actions of that security  
6 guard in carrying out his duties pursuant to that commission.  
7 Notwithstanding the provisions of the Tort Claims Act, private  
8 security guards commissioned under this section shall not be  
9 deemed public employees under that act. "

10 Section 6. Section 66-8-126 NMSA 1978 (being Laws 1978,  
11 Chapter 35, Section 534) is amended to read:

12 "66-8-126. FAILURE TO OBEY NOTICE TO APPEAR. --

13 A. It is a misdemeanor for any person to violate  
14 his written promise to appear in court given to an officer  
15 upon manual or electronic issuance of a uniform traffic  
16 citation regardless of the disposition of the charge for which  
17 the citation was issued.

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

20 Section 7. Section 66-8-130 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 538, as amended) is amended to read:

22 "66-8-130. ALL TRAFFIC CITATIONS TO CONFORM -  
23 MUNICIPALITIES MAY PASS ORDINANCE TO ESTABLISH SIMILAR  
24 PROGRAM --

25 A. The uniform traffic citation shall manually or

1 electronically be used by all state and local agencies  
 2 enforcing laws and ordinances relating to motor vehicles.  
 3 [~~Any~~] A municipality may, by passage of an ordinance,  
 4 establish a municipal penalty assessment program similar to  
 5 that established in Sections 66-8-116 through 66-8-117 NMSA  
 6 1978 for violations of provisions of the Motor Vehicle Code.  
 7 Every municipality that has adopted an ordinance to establish  
 8 a penalty assessment program shall assess on all penalty  
 9 assessment misdemeanors after January 1, 1984, in addition to  
 10 the penalty assessment, a penalty assessment fee of ten  
 11 dollars (\$10.00) to be deposited in a special fund in the  
 12 municipal treasury for use by the municipality only for  
 13 municipal jailer training; for the construction planning,  
 14 construction, operation and maintenance of the municipal jail;  
 15 for paying the costs of housing [~~that municipality's~~]  
 16 prisoners in other detention facilities in the state; or for  
 17 complying with match or contribution requirements for the  
 18 receipt of federal funds relating to jails. Such a municipal  
 19 program shall be limited to violations of municipal traffic  
 20 ordinances.

21 B. All penalty assessments under a municipal  
 22 program authorized by this section shall be processed by the  
 23 municipal court, and all fines and fees collected shall be  
 24 deposited in the treasury of the municipality. A copy of each  
 25 penalty assessment processed shall be forwarded to the

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1 division within ten days of completion of local processing for  
2 posting to the driver's record. With the prior approval of  
3 the director, the required information may be submitted to the  
4 division by electronic means in lieu of forwarding copies of  
5 the penalty assessments.

6 C. Each agency shall provide itself with copies  
7 conforming exactly in size and format with the uniform traffic  
8 citation prescribed by the director, and any alterations to  
9 conform with local conditions must be approved by the  
10 director. "

11 Section 8. [NEW MATERIAL] PEACE OFFICER APPEARANCE FUND  
12 CREATED-- ADMINISTRATION-- DISTRIBUTION. --

13 A. There is created in the state treasury the  
14 "peace officer appearance fund" to be administered by the  
15 administrative office of the courts.

16 B. Peace officer appearance fees assessed by a  
17 magistrate or metropolitan court judge pursuant to Section  
18 35-6-1 NMSA 1978 shall be deposited in the peace officer  
19 appearance fund.

20 C. All balances in the peace officer appearance  
21 fund are appropriated to the administrative office of the  
22 courts for distribution to and expenditure by the local  
23 government or state agency that employed the officer who  
24 issued the citation and appeared at a hearing that resulted in  
25 conviction of a person for a violation involving the operation

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1 of a motor vehicle pursuant to the provisions of the Motor  
2 Vehicle Code.

3 D. A distribution to a local government or a state  
4 agency shall be made:

5 (1) based on the number of citations issued  
6 by the peace officers of that local government or state agency  
7 that resulted in convictions;

8 (2) on a quarterly basis; and

9 (3) upon certification by the magistrate or  
10 metropolitan court that:

11 (a) the fee was paid by a person  
12 convicted of a violation of the provisions of the Motor  
13 Vehicle Code; and

14 (b) the peace officer issuing the  
15 citation for the violation was present at a hearing that led  
16 to the conviction.

17 E. Payments from the peace officer appearance fund  
18 shall be made upon vouchers issued and signed by the director  
19 of the administrative office of the courts upon warrants drawn  
20 by the secretary of finance and administration.

21 F. Money distributed to a state agency or local  
22 government that is not a tribal government shall be deposited  
23 in the general fund of that entity and shall be used first for  
24 the purpose of compensating peace officers for attending court  
25 hearings. Any remaining balance in the fund on June 30 of any

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1 year shall revert to the administrative office of the courts  
2 and is appropriated as of July 1 of that year for distribution  
3 for any purpose for which a fee is assessed and collected  
4 pursuant to the provisions of Subsection D of Section 35-6-1  
5 NMSA 1978.

6 G. As used in this section:

7 (1) "local government" means a municipality,  
8 a county or a tribal government;

9 (2) "peace officer" means a law enforcement  
10 agent who is authorized by Section 29-1-11 NMSA 1978 or by a  
11 law enforcement agency of a local government to issue uniform  
12 traffic citations for violations of the Motor Vehicle Code;  
13 and

14 (3) "tribal government" means the governing  
15 body of an Indian nation, tribe or pueblo located wholly or  
16 partially in the state.