

1 HOUSE BILL 178

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Emily Kane

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9  
10 AN ACT

11 RELATING TO CRIMINAL CITATIONS; PROVIDING FOR THE USE OF  
12 ELECTRONIC CITATIONS; ASSESSING AN ELECTRONIC CITATION FEE TO  
13 PERSONS CONVICTED OF CERTAIN CRIMES; PROVIDING FOR DEPOSIT OF  
14 ELECTRONIC CITATION FEES IN THE COURT AUTOMATION FUND.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 31-1-6 NMSA 1978 (being Laws 1973,  
18 Chapter 73, Section 4, as amended) is amended to read:

19 "31-1-6. CITATION IN LIEU OF ARREST WITHOUT A WARRANT.--

20 A. A law enforcement officer who arrests a person  
21 without a warrant for a petty misdemeanor or any offense under  
22 Chapter 17 NMSA 1978 may offer the person arrested the option  
23 of accepting a citation to appear in lieu of taking ~~him~~ the  
24 person to jail.

25 B. A citation issued pursuant to this section shall

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1 contain the name and address of the cited person, the offense  
2 charged and the time and place to appear. The citation may be  
3 a paper citation or the equivalent electronic version of a  
4 paper citation. Unless the person requests an earlier date,  
5 the time specified in the citation shall be at least three days  
6 after issuance of the citation. The law enforcement officer  
7 shall explain the person's rights not to sign a citation, the  
8 effect of not signing the citation, the effect of signing the  
9 citation and the effect of failing to appear at the time and  
10 place stated on the citation.

11 C. The person's signature on the citation  
12 constitutes a promise to appear at the time and place stated in  
13 the citation. One copy of the citation to appear shall be  
14 delivered to the person cited, and the law enforcement officer  
15 shall keep a duplicate copy [~~which he shall file~~] for filing  
16 with the court as soon as practicable.

17 D. A law enforcement officer who prepares a  
18 citation pursuant to this section may use a paper citation form  
19 or an electronic citation form to record the information  
20 required by this section. Regardless of the form of citation  
21 used, a physical copy of the citation shall be delivered to the  
22 person cited as required by this section. An electronic  
23 citation may be signed electronically and the law enforcement  
24 officer's copy of a citation may be filed with the court  
25 electronically.

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1           ~~[D-]~~ E. A citation issued pursuant to this section  
2 is a valid complaint if the person receiving it appears in  
3 court.

4           ~~[E-]~~ F. It is a petty misdemeanor for a person  
5 signing a citation not to appear at the time and place stated  
6 in the citation regardless of the disposition of the offense  
7 for which the citation was issued. A written promise to appear  
8 may be complied with by appearance of counsel."

9           **SECTION 2.** A new section of Chapter 31, Article 12 NMSA  
10 1978 is enacted to read:

11           "[NEW MATERIAL] ELECTRONIC CITATION FEES--DEPOSIT IN THE  
12 COURT AUTOMATION FUND.--In addition to any other fees collected  
13 in the district court, metropolitan court and magistrate court,  
14 those courts shall assess and collect from a person convicted  
15 of a penalty assessment misdemeanor, traffic violation, petty  
16 misdemeanor or misdemeanor offense an "electronic citation fee"  
17 of five dollars (\$5.00). Electronic citation fees shall be  
18 deposited in the court automation fund."

19           **SECTION 3.** Section 35-6-1 NMSA 1978 (being Laws 1968,  
20 Chapter 62, Section 92, as amended) is amended to read:

21           "35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF  
22 "CONVICTED".--

23           A. Magistrate judges, including metropolitan court  
24 judges, shall assess and collect and shall not waive, defer or  
25 suspend the following costs:

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1 docket fee, criminal actions under Section 29-5-1 NMSA  
2 1978 . . . . . \$ 1.00;  
3 docket fee, to be collected prior to docketing any other  
4 criminal action, except as provided in Subsection B  
5 of Section 35-6-3 NMSA 1978 . . . . . 20.00.  
6 Proceeds from this docket fee shall be transferred  
7 to the administrative office of the courts for  
8 deposit in the court facilities fund;  
9 docket fee, twenty dollars (\$20.00) of which shall be  
10 deposited in the court automation fund and fifteen  
11 dollars (\$15.00) of which shall be deposited in the  
12 civil legal services fund, to be collected prior to  
13 docketing any civil action, except as provided in  
14 Subsection A of Section 35-6-3 NMSA 1978 . . 72.00;  
15 jury fee, to be collected from the party demanding trial  
16 by jury in any civil action at the time the demand  
17 is filed or made . . . . . 25.00;  
18 copying fee, for making and certifying copies of any  
19 records in the court, for each page copied by  
20 photographic process . . . . . 0.50.  
21 Proceeds from this copying fee shall be transferred  
22 to the administrative office of the courts for  
23 deposit in the court facilities fund; and  
24 copying fee, for computer-generated or electronically  
25 transferred copies, per page . . . . . 1.00.

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

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

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

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

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

21 (1) corrections fee, to be collected upon  
22 conviction from persons convicted of violating any provision of  
23 the Motor Vehicle Code involving the operation of a motor  
24 vehicle, convicted of a crime constituting a misdemeanor or a  
25 petty misdemeanor or convicted of violating any ordinance that

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1 may be enforced by the imposition of a term of imprisonment as  
2 follows:

3 in a county with a metropolitan court . . . . . \$10.00;  
4 in a county without a metropolitan court . . . . . 20.00;

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

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

16 (4) judicial education fee, to be collected upon  
17 conviction from persons convicted of operating a motor vehicle  
18 in violation of the Motor Vehicle Code, convicted of a crime  
19 constituting a misdemeanor or a petty misdemeanor or convicted  
20 of violating any ordinance punishable by a term of  
21 imprisonment . . . . . 3.00;

22 (5) jury and witness fee, to be collected upon  
23 conviction from persons convicted of operating a motor vehicle  
24 in violation of the Motor Vehicle Code, convicted of a crime  
25 constituting a misdemeanor or a petty misdemeanor or convicted

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1 of violating any ordinance punishable by a term of imprisonment  
2 . . . . . 5.00;

3 (6) brain injury services 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 . . . . . 5.00;

7 [~~and~~]

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

15 in a county with a metropolitan court . . . . . 24.00;  
16 in any other county . . . . . 10.00;

17 and

18 (8) electronic citation fee, to be collected  
19 upon conviction from persons convicted of a penalty assessment  
20 misdemeanor, traffic violation, misdemeanor or petty  
21 misdemeanor . . . . . 5.00.

22 E. Metropolitan court judges shall assess and collect  
23 and shall not waive, defer or suspend as costs a mediation fee  
24 not to exceed five dollars (\$5.00) for the docketing of small  
25 claims and criminal actions specified by metropolitan court

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1 rule. Proceeds of the mediation fee shall be deposited into  
2 the metropolitan court mediation fund."

3 SECTION 4. Section 35-7-4 NMSA 1978 (being Laws 1968,  
4 Chapter 62, Section 99, as amended) is amended to read:

5 "35-7-4. MAGISTRATE ADMINISTRATION--MONTHLY  
6 REMITTANCES.--Each magistrate court shall pay to the  
7 administrative office of the courts, not later than the date  
8 each month established by regulation of the director of the  
9 administrative office, the amount of all fines, forfeitures and  
10 costs collected by the court during the previous month, except  
11 for amounts disbursed in accordance with law. The  
12 administrative office shall return to each magistrate court a  
13 written receipt itemizing all money received. The  
14 administrative office shall deposit the amount of all fines and  
15 forfeitures with the state treasurer for credit to the current  
16 school fund. The administrative office shall deposit the  
17 amount of all costs, except all costs collected pursuant to  
18 Subsections D and E of Section 35-6-1 NMSA 1978, for credit to  
19 the general fund. The amount of all costs collected pursuant  
20 to Subsections D and E of Section 35-6-1 NMSA 1978 shall be  
21 credited as follows:

22 A. the amount of all costs collected pursuant to  
23 Paragraph (1) of Subsection D of Section 35-6-1 NMSA 1978 for  
24 credit to the local government corrections fund;

25 B. the amount of all costs collected pursuant to

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1 ~~[Paragraph]~~ Paragraphs (2) and (8) of Subsection D of Section  
2 35-6-1 NMSA 1978 for credit to the court automation fund;

3 C. the amount of all costs collected pursuant to  
4 Paragraph (3) of Subsection D of Section 35-6-1 NMSA 1978 for  
5 credit to the traffic safety education and enforcement fund;

6 D. the amount of all costs collected pursuant to  
7 Paragraph (4) of Subsection D of Section 35-6-1 NMSA 1978 for  
8 credit to the judicial education fund;

9 E. the amount of all costs collected pursuant to  
10 Paragraph (5) of Subsection D of Section 35-6-1 NMSA 1978 for  
11 credit to the jury and witness fee fund;

12 F. the amount of all costs collected pursuant to  
13 Paragraph (6) of Subsection D of Section 35-6-1 NMSA 1978 for  
14 credit to the brain injury services fund;

15 G. the amount of all costs collected pursuant to  
16 Paragraph (7) of Subsection D of Section 35-6-1 NMSA 1978 for  
17 credit to the court facilities fund; and

18 H. the amount of all costs collected pursuant to  
19 Subsection E of Section 35-6-1 NMSA 1978 for credit to the  
20 metropolitan court mediation fund."

21 **SECTION 5.** Section 66-8-116.3 NMSA 1978 (being Laws 1989,  
22 Chapter 318, Section 35 and Laws 1989, Chapter 319, Section 14  
23 and also Laws 1989, Chapter 320, Section 5, as amended) is  
24 amended to read:

25 "66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL

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1 FEES.--In addition to the penalty assessment established for  
2 each penalty assessment misdemeanor, there shall be assessed:

3 A. in a county without a metropolitan court, twenty  
4 dollars (\$20.00) to help defray the costs of local government  
5 corrections;

6 B. a court automation fee of ten dollars (\$10.00);

7 C. a traffic safety fee of three dollars (\$3.00),  
8 which shall be credited to the traffic safety education and  
9 enforcement fund;

10 D. a judicial education fee of three dollars (\$3.00),  
11 which shall be credited to the judicial education fund;

12 E. a jury and witness fee of five dollars (\$5.00),  
13 which shall be credited to the jury and witness fee fund;

14 F. a juvenile adjudication fee of one dollar (\$1.00),  
15 which shall be credited to the juvenile adjudication fund;

16 G. a brain injury services fee of five dollars  
17 (\$5.00), which shall be credited to the brain injury services  
18 fund;

19 H. a court facilities fee as follows:  
20 in a county with a metropolitan court . . . . . \$24.00;  
21 in any other county . . . . . 10.00;

22 [~~and~~]

23 I. an electronic citation fee of five dollars  
24 (\$5.00), which shall be credited to the court automation fund;

25 and

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1           [~~F.~~] J. until May 31, 2014, a magistrate courts  
2 operations fee of four dollars (\$4.00), which shall be credited  
3 to the magistrate courts operations fund."

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

6           "66-8-123. CONDUCT OF ARRESTING OFFICER--NOTICES BY  
7 CITATION.--

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

19           B. Whenever a person is arrested for violation of a  
20 penalty assessment misdemeanor and elects to pay the penalty  
21 assessment, the arresting officer, using the uniform traffic  
22 citation or the electronic traffic citation, shall complete the  
23 information section and prepare the penalty assessment notice  
24 indicating the amount of the penalty assessment, have the  
25 arrested person sign the agreement to pay the amount

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

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

16 D. In order to secure [~~his~~] release, the arrested  
17 person must give [~~his~~] the person's written promise to appear  
18 in court or to pay the penalty assessment prescribed or  
19 acknowledge receipt of a warning notice.

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

22 F. A law enforcement officer who arrests a person  
23 without a warrant for a misdemeanor violation of the Motor  
24 Carrier Act, the Criminal Code, the Liquor Control Act or other  
25 New Mexico law may use the uniform traffic citation or

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1 electronic traffic citation, issued pursuant to procedures  
2 outlined in Subsections B through F of Section 31-1-6 NMSA 1978  
3 [~~Subsections B through E~~], in lieu of taking [him] the person  
4 to jail.

5 G. An electronic traffic citation, prescribed by  
6 Section 66-8-128 NMSA 1978, is an electronic version of the  
7 uniform traffic citation. For the purposes of this section, an  
8 electronic citation may be completed instead of a uniform  
9 traffic citation; provided, however, that where this section  
10 requires a copy of a citation to be given to an arrested  
11 person, a physical copy of the citation shall be provided  
12 whether a uniform traffic citation or an electronic traffic  
13 citation was used. An electronic traffic citation may be  
14 signed electronically."

15 SECTION 7. Section 66-8-128 NMSA 1978 (being Laws 1978,  
16 Chapter 35, Section 536, as amended) is amended to read:

17 "66-8-128. UNIFORM TRAFFIC CITATION.--

18 A. The department shall prepare a uniform traffic  
19 citation containing at least the following information:

- 20 (1) an information section, serially numbered  
21 and containing spaces for the name, physical address and  
22 mailing address, city and state of the individual charged; the  
23 individual's physical description, age and sex; the  
24 registration number, year and state of the vehicle involved and  
25 its make and type; the state and number of the individual's

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1 driver's license; the specific section number and common name  
2 of the offense charged under the NMSA 1978 or local law; the  
3 date and time of arrest; the arresting officer's signature and  
4 identification number; and the conditions existing at the time  
5 of the violation;

6 (2) a notice to appear; and

7 (3) a penalty assessment notice with a place for  
8 the signature of the violator agreeing to pay the penalty  
9 assessment prescribed.

10 B. The department shall prescribe how the uniform  
11 traffic citation form may be used as a warning notice.

12 C. The department shall prescribe the size and number  
13 of copies of the paper version of the uniform traffic citation  
14 and the disposition of each copy. The department may also  
15 prescribe one or more electronic versions of the uniform  
16 traffic citation, [~~and these electronic versions~~] which shall  
17 be referred to as "electronic traffic citations" and which may  
18 be used in the issuance of citations instead of or with paper  
19 uniform traffic citations.

20 D. Any entity that wishes to submit [~~uniform~~]  
21 electronic traffic citations instead of or with paper uniform  
22 traffic citations required to be submitted to the department  
23 [~~by electronic means~~] shall secure the prior permission of the  
24 department.

25 E. Electronic traffic citations shall include the

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1 same information required to be included in a uniform traffic  
2 citation. Electronic traffic citations may be signed  
3 electronically and a law enforcement officer may submit or file  
4 with a court an electronic traffic citation if prior permission  
5 of the department has been secured. Where the law requires a  
6 law enforcement officer to provide a copy of a citation to a  
7 person cited or arrested, a physical copy of the citation shall  
8 be provided regardless of whether a uniform traffic citation or  
9 an electronic traffic citation form was used."

10 SECTION 8. TEMPORARY PROVISION--PROCEDURES TO IMPLEMENT  
11 THE USE OF ELECTRONIC CITATIONS.--The department of public  
12 safety, the motor vehicle division of the taxation and revenue  
13 department and the administrative office of the courts shall  
14 develop procedures to carry out the provisions of this act.

15 SECTION 9. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2014.