

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 10

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO TRANSPORTATION; PROHIBITING THE USE OF A MOBILE  
COMMUNICATION DEVICE WHILE OPERATING A MOTOR VEHICLE;  
PROHIBITING THE USE OF A MOBILE COMMUNICATION DEVICE WHILE  
OPERATING A MOTOR VEHICLE ENGAGED IN PUBLIC TRANSPORTATION OR  
SCHOOL TRANSPORTATION; PROVIDING EXCEPTIONS; IMPOSING PENALTIES  
AND FEES; DIRECTING THE DISPOSITION OF CERTAIN PENALTY  
ASSESSMENT MISDEMEANOR RECEIPTS; RECONCILING MULTIPLE  
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

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) is amended to read:

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

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1           A. Magistrate judges, including metropolitan court  
2 judges, shall assess and collect and shall not waive, defer or  
3 suspend the following costs:

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

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

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

12          docket fee, twenty dollars (\$20.00) of which shall be  
13          deposited in the court automation fund and fifteen  
14          dollars (\$15.00) of which shall be deposited in the  
15          civil legal services fund, to be collected prior to  
16          docketing any civil action,

17          except as provided in Subsection A of Section 35-6-3  
18          NMSA 1978 . . . . . 72.00;

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

22          copying fee, for making and certifying copies of any  
23          records in the court, for each page copied by  
24          photographic process . . . . . [50] 0.50.

25          Proceeds from this copying fee shall be transferred

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1 to the administrative office of the courts for  
 2 deposit in the court facilities fund; and  
 3 copying fee, for computer-generated or electronically  
 4 transferred copies, per page . . . . . 1.00.  
 5 Proceeds from this copying fee shall be transferred  
 6 to the administrative office of the courts for  
 7 deposit in the court automation fund.

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

10 B. Except as otherwise provided by law, no other  
 11 costs or fees shall be charged or collected in the magistrate  
 12 or metropolitan court.

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

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

- 25 (1) corrections fee, to be collected upon

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1 conviction from persons convicted of violating any provision of  
2 the Motor Vehicle Code involving the operation of a motor  
3 vehicle, convicted of a crime constituting a misdemeanor or a  
4 petty misdemeanor or convicted of violating any ordinance that  
5 may be enforced by the imposition of a term of imprisonment as  
6 follows:

7 in a county with a metropolitan court . . . . . \$10.00;

8 in a county without a metropolitan court . . . . . 20.00;

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

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

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

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1 (5) jury and witness fee, to be collected upon  
2 conviction from persons convicted of operating a motor vehicle  
3 in violation of the Motor Vehicle Code, convicted of a crime  
4 constituting a misdemeanor or a petty misdemeanor or convicted  
5 of violating any ordinance punishable by a term of imprisonment  
6 . . . . . 5.00;

7 (6) brain injury services fee, to be collected  
8 upon conviction from persons convicted of violating any  
9 provision of the Motor Vehicle Code involving the operation of  
10 a motor vehicle . . . . . 5.00;

11 [~~and~~]

12 (7) court facilities 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, convicted of a crime constituting a misdemeanor or a  
16 petty misdemeanor or convicted of violating any ordinance that  
17 may be enforced by the imposition of a term of imprisonment as  
18 follows:

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

20 in any other county . . . . . 10.00;

21 and

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

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1 convicted of violating any ordinance punishable by a term of  
2 imprisonment . . . . . 2.00.

3 E. Metropolitan court judges shall assess and collect  
4 and shall not waive, defer or suspend as costs a mediation fee  
5 not to exceed five dollars (\$5.00) for the docketing of small  
6 claims and criminal actions specified by metropolitan court  
7 rule. Proceeds of the mediation fee shall be deposited into  
8 the metropolitan court mediation fund."

9 Section 2. Section 35-7-4 NMSA 1978 (being Laws 1968,  
10 Chapter 62, Section 99, as amended) is amended to read:

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

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1 to Subsections D and E of Section 35-6-1 NMSA 1978 shall be  
2 credited as follows:

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

6 B. the amount of all costs collected pursuant to  
7 Paragraph (2) of Subsection D of Section 35-6-1 NMSA 1978 for  
8 credit to the court automation fund;

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

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

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

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

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

24 H. the amount of all costs collected pursuant to  
25 Paragraph (8) of Subsection D of Section 35-6-1 NMSA 1978 for

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1 credit to the interlock device fund; and

2 [H.] I. the amount of all costs collected pursuant to  
3 Subsection E of Section 35-6-1 NMSA 1978 for credit to the  
4 metropolitan court mediation fund."

5 Section 3. Section 35-14-11 NMSA 1978 (being Laws 1983,  
6 Chapter 134, Section 6, as amended) is amended to read:

7 "35-14-11. MUNICIPAL ORDINANCE--COURT COSTS--  
8 COLLECTION--PURPOSE.--

9 A. Every municipality shall enact an ordinance  
10 requiring assessment of corrections fees, judicial education  
11 fees [~~and~~], court automation fees and interlock device fees to  
12 be collected as court costs and used as provided in this  
13 section.

14 B. A municipal judge shall collect the following  
15 costs:

16 (1) a corrections fee of twenty dollars  
17 (\$20.00);

18 (2) a judicial education fee of three dollars  
19 (\$3.00); [~~and~~]

20 (3) a court automation fee of six dollars  
21 (\$6.00); and

22 (4) an interlock device fee of two dollars  
23 (\$2.00).

24 C. The fees are to be collected upon conviction from  
25 persons convicted of violating any ordinance relating to the



1 operation of a motor vehicle or any ordinance that may be  
2 enforced by the imposition of a term of imprisonment.

3 D. All money collected pursuant to Paragraph (1) of  
4 Subsection B of this section shall be deposited in a special  
5 fund in the municipal treasury and shall be used for:

6 (1) municipal jailer or juvenile detention  
7 officer training;

8 (2) the construction planning, construction,  
9 operation and maintenance of a municipal jail or juvenile  
10 detention facility;

11 (3) paying the cost of housing municipal  
12 prisoners in a county jail or detention facility or housing  
13 juveniles in a detention facility;

14 (4) complying with match or contribution  
15 requirements for the receipt of federal funds relating to jails  
16 or juvenile detention facilities;

17 (5) providing inpatient treatment or other  
18 substance abuse programs in conjunction with or as an  
19 alternative to jail sentencing;

20 (6) defraying the cost of transporting prisoners  
21 to jails or juveniles to juvenile detention facilities; or

22 (7) providing electronic monitoring systems.

23 E. A municipality may credit the interest collected  
24 from fees deposited in the special fund pursuant to Subsection  
25 D of this section to the municipality's general fund.

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1 F. All money collected pursuant to Paragraph (2) of  
2 Subsection B of this section shall be remitted monthly to the  
3 state treasurer for credit to the judicial education fund and  
4 shall be used for the education and training, including  
5 production of bench books and other written materials, of  
6 municipal judges and other municipal court employees.

7 G. All money collected pursuant to Paragraph (3) of  
8 Subsection B of this section shall be remitted monthly to the  
9 state treasurer for credit to the municipal court automation  
10 fund and shall be used for the purchase, maintenance and  
11 operation of court automation systems in the municipal courts.  
12 Operation includes staff expenses, temporary or otherwise, and  
13 costs as needed to comply with Section 35-14-12 NMSA 1978. The  
14 court automation systems shall have the capability of  
15 providing, on a timely basis, electronic records in a format  
16 specified by the judicial information systems council.

17 H. All money collected pursuant to Paragraph (4) of  
18 Subsection B of this section shall be remitted monthly to the  
19 state treasurer for credit to the interlock device fund.

20 [~~H.~~] I. As used in this section, "convicted" means  
21 the defendant has been found guilty of a criminal charge by a  
22 municipal judge, either after trial, a plea of guilty or a plea  
23 of nolo contendere."

24 Section 4. A new section of the Motor Vehicle Code is  
25 enacted to read:

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1            "[NEW MATERIAL] USE OF MOBILE COMMUNICATION DEVICE

2            PROHIBITED--EXCEPTIONS--PENALTY.--

3            A. A driver shall not use a mobile communication  
4            device except:

5                            (1) if the driver reasonably believes that there  
6            is no other person in the motor vehicle capable of doing so:

7    (a) to report illegal activity;

8    (b) to summon medical or law enforcement  
9            help; or

10    (c) to prevent injury to a person or to  
11            property;

12                            (2) in an authorized emergency or law  
13            enforcement motor vehicle if required by the driver's official  
14            duties;

15                            (3) when the device is permanently affixed to a  
16            motor vehicle used by a motor carrier pursuant to the Motor  
17            Carrier Act, to a motor vehicle used by a public utility  
18            pursuant to the Public Utility Act or to a motor vehicle used  
19            by a cooperative pursuant to the Rural Electric Cooperative Act  
20            and the device is used in the ordinary course of business of  
21            the motor carrier, public utility or cooperative;

22                            (4) if the driver holds a valid amateur radio  
23            operator license or other license issued by the federal  
24            communications commission and is operating an amateur radio;

25                            (5) if the driver is operating a two-way radio

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1 device that transmits radio communication transmitted by a  
2 station operating on an authorized frequency within the  
3 citizens' or family radio service bands in accordance with  
4 rules of the federal communications commission;

5 (6) while the motor vehicle is lawfully parked;

6 (7) when using hands-free equipment; provided  
7 that the exception allowed in this paragraph does not apply to  
8 the driver of a motor vehicle used in a public or school  
9 transportation system unless the provisions of Paragraph (8) of  
10 this subsection apply to the driver; or

11 (8) in addition to the applicable exceptions in  
12 the provisions of this subsection, the driver of a motor  
13 vehicle used in a public or school transportation system may  
14 use a mobile communication device in the ordinary course of  
15 business as required by the public or school transportation  
16 system.

17 B. As used in this section:

18 (1) "hands-free equipment" means a built-in  
19 feature of, or a piece of equipment used in addition to, a  
20 mobile communication device that allows a person using the  
21 mobile communication device to keep both of the person's hands  
22 on the steering wheel and the person's eyes on the highway  
23 except when using a hand and the eyes to activate or deactivate  
24 a function of the hands-free equipment or the mobile  
25 communication device; and

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1 (2) "mobile communication device" means a  
 2 wireless, two-way communications device that is designed to  
 3 receive and transmit voice, text or image communication.

4 C. A violation of the provisions of this section is a  
 5 penalty assessment misdemeanor, the penalty for which is  
 6 prescribed in Section 66-8-116 NMSA 1978."

7 Section 5. Section 66-8-116 NMSA 1978 (being Laws 1978,  
 8 Chapter 35, Section 524, as amended) is amended to read:

9 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS--  
 10 DEFINITION--SCHEDULE OF ASSESSMENTS.--

11 A. As used in the Motor Vehicle Code, "penalty  
 12 assessment misdemeanor" means violation of any of the following  
 13 listed sections of the NMSA 1978 for which, except as provided  
 14 in Subsections D and E of this section, the listed penalty  
 15 assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
Permitting unlicensed	ASSESSMENT	
minor to drive	66-5-40	\$ 10.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
Speeding	66-7-301	
(1) up to and including		
ten miles an hour		
over the speed limit		15.00

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1	(2) from eleven up to	
2	and including fifteen	
3	miles an hour	
4	over the speed limit	30.00
5	(3) from sixteen up to	
6	and including twenty	
7	miles an hour over the	
8	speed limit	65.00
9	(4) from twenty-one up to	
10	and including twenty-five	
11	miles an hour	
12	over the speed limit	100.00
13	(5) from twenty-six up to	
14	and including thirty	
15	miles an hour over the	
16	speed limit	125.00
17	(6) from thirty-one up to	
18	and including thirty-five	
19	miles an hour over the	
20	speed limit	150.00
21	(7) more than thirty-five	
22	miles an hour over the	
23	speed limit	200.00
24	Unfastened safety belt	66-7-372 25.00
25	Child not in restraint device	

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1	or seat belt	66-7-369	25.00
2	Minimum speed	66-7-305	10.00
3	Speeding	66-7-306	15.00
4	Improper starting	66-7-324	10.00
5	Improper backing	66-7-354	10.00
6	Improper lane	66-7-308	10.00
7	Improper lane	66-7-313	10.00
8	Improper lane	66-7-316	10.00
9	Improper lane	66-7-317	10.00
10	Improper lane	66-7-319	10.00
11	Improper passing	66-7-309 through 66-7-312	10.00
12	Improper passing	66-7-315	10.00
13	Controlled access		
14	violation	66-7-320	10.00
15	Controlled access		
16	violation	66-7-321	10.00
17	Improper turning	66-7-322	10.00
18	Improper turning	66-7-323	10.00
19	Improper turning	66-7-325	10.00
20	Following too closely	66-7-318	10.00
21	Failure to yield	66-7-328 through 66-7-331	10.00
22	Failure to yield	66-7-332	50.00
23	Failure to yield	66-7-332.1	25.00
24	Pedestrian violation	66-7-333	10.00
25	Pedestrian violation	66-7-340	10.00

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1	Failure to stop	66-7-342 and 66-7-344	
2		through 66-7-346	10.00
3	Railroad-highway grade		
4	crossing violation	66-7-341 and 66-7-343	150.00
5	Passing school bus	66-7-347	100.00
6	Failure to signal	66-7-325 through 66-7-327	10.00
7	Failure to secure load	66-7-407	100.00
8	Operation without oversize-		
9	overweight permit	66-7-413	50.00
10	Improper equipment	66-3-801	10.00
11	Improper equipment	66-3-901	20.00
12	Improper emergency		
13	signal	66-3-853 through 66-3-857	10.00
14	Operation interference	66-7-357	5.00
15	Littering	66-7-364	300.00
16	Improper parking	66-7-349 through 66-7-352	
17		and 66-7-353	5.00
18	Improper parking	66-3-852	5.00
19	Failure to dim lights	66-3-831	10.00
20	Riding in or towing		
21	occupied house trailer	66-7-366	5.00
22	Improper opening of doors	66-7-367	5.00
23	No slow-moving vehicle		
24	emblem or flashing		
25	amber light	66-3-887	5.00

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1 Open container - first

2 violation 66-8-138 25.00

3 Prohibited mobile

4 communication device Section 4 of

5 use this 2010 act 25.00.

6 B. The term "penalty assessment misdemeanor" does  
7 not include a violation that has caused or contributed to the  
8 cause of an accident resulting in injury or death to a person.

9 C. When an alleged violator of a penalty assessment  
10 misdemeanor elects to accept a notice to appear in lieu of a  
11 notice of penalty assessment, a fine imposed upon later  
12 conviction shall not exceed the penalty assessment established  
13 for the particular penalty assessment misdemeanor and probation  
14 imposed upon a suspended or deferred sentence shall not exceed  
15 ninety days.

16 D. The penalty assessment for speeding in violation  
17 of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978  
18 is twice the penalty assessment established in Subsection A of  
19 this section for the equivalent miles per hour over the speed  
20 limit.

21 E. Upon a second conviction for operation without a  
22 permit for excessive size or weight pursuant to Section  
23 66-7-413 NMSA 1978, the penalty assessment shall be two hundred  
24 fifty dollars (\$250). Upon a third or subsequent conviction,  
25 the penalty assessment shall be five hundred dollars (\$500)."

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1           Section 6. Section 66-8-116.3 NMSA 1978 (being Laws 1989,  
2 Chapter 318, Section 35, Laws 1989, Chapter 319, Section 14 and  
3 also Laws 1989, Chapter 320, Section 5, as amended by Laws  
4 2009, Chapter 244, Section 1 and by Laws 2009, Chapter 245,  
5 Section 5) is amended to read:

6           "66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL  
7 FEES.--In addition to the penalty assessment established for  
8 each penalty assessment misdemeanor, there shall be assessed:

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

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

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

16           D. a judicial education fee of three dollars  
17 (\$3.00), which shall be credited to the judicial education  
18 fund;

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

21           ~~[E.]~~ F. a juvenile adjudication fee of one dollar  
22 (\$1.00), which shall be credited to the juvenile adjudication  
23 fund;

24           ~~[F.]~~ G. a brain injury services fee of five dollars  
25 (\$5.00), which shall be credited to the brain injury services

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1 fund; [~~and~~

2 ~~G.] H. a court facilities fee as follows:~~

3 in a county with a metropolitan court . . . . . \$24.00;

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

5 I. an interlock device fee of two dollars (\$2.00),  
6 which shall be credited to the interlock device fund."

7 Section 7. Section 66-8-119 NMSA 1978 (being Laws 1968,  
8 Chapter 62, Section 159, as amended) is amended to read:

9 "66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

10 A. The division shall remit all penalty assessment  
11 receipts, except receipts collected pursuant to Subsections A  
12 through [~~G]~~ I of Section 66-8-116.3 NMSA 1978, to the state  
13 treasurer for credit to the general fund.

14 B. The division shall remit all penalty assessment  
15 fee receipts collected pursuant to:

16 (1) Subsection A of Section 66-8-116.3 NMSA  
17 1978 to the state treasurer for credit to the local government  
18 corrections fund;

19 (2) Subsection B of Section 66-8-116.3 NMSA  
20 1978 to the state treasurer for credit to the court automation  
21 fund;

22 (3) Subsection C of Section 66-8-116.3 NMSA  
23 1978 to the state treasurer for credit to the traffic safety  
24 education and enforcement fund;

25 (4) Subsection D of Section 66-8-116.3 NMSA

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1 1978 to the state treasurer for credit to the judicial  
2 education fund;

3 (5) Subsection E of Section 66-8-116.3 NMSA  
4 1978 to the state treasurer for credit to the jury and witness  
5 fee fund;

6 (6) Subsection F of Section 66-8-116.3 NMSA  
7 1978 to the state treasurer for credit to the juvenile  
8 adjudication fund;

9 [~~6~~] (7) Subsection [~~F~~] G of Section  
10 66-8-116.3 NMSA 1978 to the state treasurer for credit to the  
11 brain injury services fund; [~~and~~

12 ~~(7)~~] (8) Subsection [~~G~~] H of Section  
13 66-8-116.3 NMSA 1978 to the state treasurer for credit to the  
14 court facilities fund; and

15 (9) Subsection I of Section 66-8-116.3 NMSA  
16 1978 to the state treasurer for credit to the interlock device  
17 fund."

18 Section 8. EMERGENCY.--It is necessary for the public  
19 peace, health and safety that this act take effect immediately.