

# NEW MEXICO TRAFFIC CITATIONS MANUAL

## A LEGAL AND PROCEDURAL GUIDE

This publication has been developed for use by the New Mexico judiciary with public funds administered by the Judicial Education Center.

It is the property of this court. No person may remove this publication from the premises of the court except for judges *during their term of service* and authorized judicial personnel on official court business.



<http://jec.unm.edu>

New Mexico Judicial Education Center  
Institute of Public Law, UNM School of Law  
MSC11 6060, 1 University of New Mexico, Albuquerque, NM 87131-0001

New Mexico Traffic Citations Manual  
© 2001, 2004 by the New Mexico Judicial Education Center

New Mexico Judicial Education Center  
Institute of Public Law  
MSC11 6060  
1 University of New Mexico  
Albuquerque, NM 87131-0001

Physical Address: 1117 Stanford NE, Albuquerque, NM 87131

Phone: 505-277-5006  
Fax: 505-277-7064

This benchbook is intended for educational and informational purposes only. It is not intended to provide legal advice. Readers are responsible for consulting the statutes, ordinances, rules and cases pertinent to their issue or proceeding. Readers should keep in mind that laws and procedures are subject to change.

# NEW MEXICO TRAFFIC CITATIONS MANUAL

## *A Legal and Procedural Guide*

### TABLE OF CONTENTS

#### **Preface**

#### **1. Jurisdiction to Hear Traffic Cases**

- 1.1 Appropriate Court
- 1.2 State Motor Vehicle Code
- 1.3 Uniform Traffic Code

#### **2. Adjudication of Traffic Cases: Penalty Assessment Programs**

- 2.1 What is a Penalty Assessment Program?
- 2.2 Authority to Adopt a Penalty Assessment Program
- 2.3 Change of Plea
- 2.4 Payment Remitted Late
- 2.5 Payment Remitted to Wrong Entity

#### **3. Adjudication of Traffic Cases: “Paperwork Offenses”**

- 3.1 What is a Paperwork Offense?
- 3.2 No Driver’s License
  - 3.2.1 Drivers Must Be Licensed
  - 3.2.2 License Must Be in Possession
- 3.3 No Current Registration
- 3.4 Proof of Financial Responsibility
- 3.5 Equipment Violation
- 3.6 Suspended Driver’s License

#### **4. Adjudication of Traffic Cases: Court Appearances**

- 4.1 Offenses that Require Mandatory Court Appearance
- 4.2 Other Court Appearances
- 4.3 Notice of Trial
  - 4.3.1 Citation
  - 4.3.2 Summons
  - 4.3.3 Arrest
- 4.4 Arraignment

- 4.4.1 Advisement of Rights
- 4.4.2 Acceptance of Guilty Plea
- 4.5 Trial
  - 4.5.1 Burden of Proof and LOVID
  - 4.5.2 Elements of the Offense
  - 4.5.3 Defenses
  - 4.5.4 Right to Jury Trial
  - 4.5.5 Plea Agreements
- 4.6 Evidentiary Issues
  - 4.6.1 Radar
  - 4.6.2 Lidar

## **5. Penalties**

- 5.1 General Information
- 5.2 Penalty Assessment
- 5.3 Mandatory Court Appearance
- 5.4 Fines: Agreement to Pay
- 5.5 Fees
  - 5.5.1 Magistrate and Metropolitan Court Fees for Penalty Assessment Misdemeanors
  - 5.5.2 Magistrate and Metropolitan Court Fees for Motor Vehicle Code Violations Other than Penalty Assessment Misdemeanors
  - 5.5.3 Municipal Courts
- 5.6 Mandatory Suspend/Revoke Driver's License
- 5.7 Jail
- 5.8 Suspension of Sentence
- 5.9 Deferral of Sentence
- 5.10 Driver Improvement School
- 5.11 Community Service

## **6. Post-Adjudication**

- 6.1 Failure to Appear
- 6.2 Failure to Pay
- 6.3 Probation Violation
- 6.4 Appeal and Remand

## **7. Abstracts of Record**

- 7.1 What is an Abstract?
  - 7.1.1 Judgment and Sentence Form
  - 7.1.2 Written Plea Agreement
  - 7.1.3 Abstract of Record on Citation
- 7.2 When to Send
- 7.3 How to Fill Out

- 7.4 Failure to Pay/Failure to Appear
- 7.5 Insufficient Funds Checks
- 7.6 Deferral of Sentence
- 7.7 Amendment of Abstract
- 7.8 Removal of Suspend Status

## **8. Juveniles**

- 8.1 Jurisdictional Issues
- 8.2 Failure to Pay/Failure to Appear
- 8.3 Graduated Driver's License

## **9. Non-Residents**

# **APPENDICES**

## **A. MVD Forms**

- A.1 Uniform Traffic Citation, Form 11015
- A.2 Notice of Failure to Appear in Court (Residents), Form 10079
- A.3 Rescission of Notice of Failure to Appear (Non-Residents), Form 10947
- A.4 Request for Refund, Form 10208

## **B. Administrative Office of the Courts Policy Directive No. 7 (July 1999)**

## **C. New Mexico Taxation & Revenue Department Telephone Directory (including MVD numbers), May 2004**

## **D. New Mexico Supreme Court Order No. 03-8200 (In the Matter of the Adoption of a Collection Scheme for Fines, Fees, and Costs Assessed in Criminal Proceedings)**

# PREFACE

## Acknowledgements

The New Mexico Traffic Citations Manual was primarily authored by Judith Olean, formerly a Rio Rancho Municipal Court judge and currently Chair of the Judicial Studies Program at the Albuquerque Technical-Vocational Institute (TVI).

The New Mexico Judicial Education Center gratefully acknowledges the generous assistance provided by the expert volunteers who helped in developing the Traffic Citations Manual. These volunteers contributed their expertise and time in providing background material and reviewing and editing drafts. They include:

- Hon. James Blancq, Catron County Magistrate Court
- Hon. Caleb Chandler, Curry County Magistrate Court
- Hon. Vickey Crawford, Lea County Magistrate Court
- Curt Sanchez, Motor Vehicle Division, State Taxation and Revenue Department
- Gary Wells, Motor Vehicle Division, State Taxation and Revenue Department
- Rio Rancho Municipal Court staff:
  - Vince Facio
  - Patty Hayden
  - Cindy Johnson
  - Toni Kleitch

This manual was developed under a generous grant from the Traffic Safety Bureau of the New Mexico State Highway and Transportation Department.

## Purpose

The purpose of the Traffic Citations Manual is to provide courts of limited jurisdiction with a comprehensive resource guide for handling all types of traffic citations cases, except for DWI cases. A separate DWI Benchbook is available from the Judicial Education Center.

This manual is intended to serve as a current, convenient secondary source of law, policy and practice for traffic citations cases. Do not rely on the manual as legal authority; instead, consult the New Mexico statutes, rules, forms and uniform jury instructions, as well as case law and court policies and procedures, for specific requirements.

## Style and Format

The Traffic Citations Manual is written in a descriptive style. Abbreviations are kept to a minimum and should be readily recognizable when encountered. Likewise, citations to

statutes, rules and cases use the most concise style possible while still providing adequate reference information. In general, citations in the text use the following style:

- Statutes: New Mexico statutes are cited as §\_\_-\_\_-\_\_, such as §66-8-113, without “NMSA 1978.” Federal laws are cited as \_\_ U.S.C. §\_\_, such as 25 U.S.C. §1901.
- Rules: New Mexico judicial rules are cited as Rule \_\_-\_\_, such as Rule 9-501, without the addition of “NMRA.”
- Cases: New Mexico cases are cited using the New Mexico Reports citation, such as 116 N.M. 456 (1993), and, if available, the vendor-neutral citation adopted in 1998, such as 1998-NMCA-039.

## **Effective Date**

The information in this manual is current through May 2004. The manual will be updated periodically as funds and staffing allow. Please contact the Judicial Education Center at the address below for information about the status and availability of updates.

## **Additional Copies**

For information on obtaining additional copies of this manual, please contact the Judicial Education Center. The manual is available free of charge on the Judicial Education Center web site, <http://jec.unm.edu/>.

## **Permission to Reproduce**

For information on the permission and acknowledgements necessary for reproducing portions of this manual, please contact the Judicial Education Center.

## **Contacts**

For further information on the manual, or to report errors or suggestions for future updates, please contact:

Paul Biderman, Director, 505-277-8789, [biderman@unm.edu](mailto:biderman@unm.edu)  
Pam Lambert, Senior Attorney, 505-277-1052, [plams@unm.edu](mailto:plams@unm.edu)  
Beth Gillia, Attorney, 505-277-0710, [bgillia@unm.edu](mailto:bgillia@unm.edu)

Judicial Education Center  
Institute of Public Law  
1117 Stanford NE  
Albuquerque, New Mexico 87131  
Fax: 505-277-7064

# **Table of Contents**

<b>Jurisdiction to Hear Traffic Cases</b>	<b>1</b>
<b>Adjudication of Traffic Cases: Penalty Assessment Programs</b>	<b>2</b>
<b>Adjudication of Traffic Cases: “Paperwork Offenses”</b>	<b>3</b>
<b>Adjudication of Traffic Cases: Court Appearances</b>	<b>4</b>
<b>Penalties</b>	<b>5</b>
<b>Post-Adjudication</b>	<b>6</b>
<b>Abstracts of Record</b>	<b>7</b>
<b>Juveniles</b>	<b>8</b>
<b>Non-Residents</b>	<b>9</b>
<b>Appendices</b>	<b>10</b>



# CHAPTER 1

## JURISDICTION TO HEAR TRAFFIC CASES

### 1.1 Appropriate Court

Traffic offenses are typically heard in the Courts of Limited Jurisdiction – specifically, the Municipal, Magistrate and Metropolitan Courts. In some instances, traffic offenses may be heard in the District Court, usually when they are additional charges included in a felony trial for vehicular homicide or felony DWI. Additionally, appeals of traffic convictions from limited jurisdiction courts will be heard in District Court. See Chapter 6, Section 6.4.

The authority for limited jurisdiction courts to hear traffic offenses comes from §66-8-7, which provides that, unless specified as a felony, all violations of the Motor Vehicle Code are misdemeanors. Magistrate and Metropolitan Courts have jurisdiction to hear misdemeanor cases. §§35-3-4, 34-8A-3. Municipal Courts are given authority to hear “all offenses and complaints under ordinances of the municipality.” §35-14-2(A). A municipality may adopt ordinances “not inconsistent with the laws of New Mexico.” §3-17-1. The Motor Vehicle Code also anticipates the adoption of local ordinances as long as there is no conflict. §66-7-8. Section 66-8-130 allows for the adoption of a municipal penalty assessment program as long as it is “similar” to the provisions of the state program. See Chapter 2 for a discussion of penalty assessment programs.

Which court hears the case is dependent upon how the law enforcement officer cites the violator. If the violation is cited under the State Motor Vehicle Code, the case will be heard in Magistrate Court – unless the citation is issued in Bernalillo County where it will be heard in Metropolitan Court. If the violation is cited under a municipal ordinance, the case will be heard in Municipal Court. For a case to be cited under a municipal ordinance, the offense must have occurred within the boundaries of the municipality.

Note: A municipality may adopt the State Motor Vehicle Code by reference. §3-17-6. If a municipality does this, it must be clear on the citation that the offense is a municipal offense and not a state offense, so that jurisdiction is clearly established.

### 1.2 State Motor Vehicle Code

The New Mexico Motor Vehicle Code is contained in Articles 1 through 8 of Chapter 66 of the New Mexico Statutes Annotated. Chapter 66 contains all laws relating to the licensing

and operation of motor vehicles. A motor vehicle is defined as “every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails.” §66-1-4.11(I). This includes, but is not limited to, automobiles; buses (§66-1-4.2(C)); farm tractors (§66-1-4.6(A)); mopeds (§66-1-4.11(F), *see State v. Saiz*, 2001-NMCA-035, 130 N.M. 333); motorcycles (§66-1-4.11(G)); motor homes (§66-1-4.11(H)), certain off-road vehicles (§66-1-4.13(B)), and trucks (§66-1-4.17(N)). A bicycle is not a motor vehicle because it is human powered, nor is a train that runs on stationary rails or tracks. §66-1-4.19(B).

Note: A snowmobile is not considered a motor vehicle. *State v. Eden*, 108 N.M. 737 (Ct. App. 1989). Likewise, a boat is not considered a motor vehicle.

Article 3 of the Motor Vehicle Code covers the registration and titling of vehicles (§§66-3-1 – 424.14), theft of vehicles (§§66-3-501 to -508), laws governing the operation of bicycles (§§66-3-701 to -707), vehicle equipment requirements and prohibitions (§§66-3-801 to -901), off-highway motor vehicles (66-3-1001 to -1016), mopeds (§66-3-1101), and electric personal assistance mobility devices (§66-3-1102). Violations of many of the provisions of Article 3 carry penalties, so it is a good idea to have copies of these laws handy when presiding over court.

Article 4 deals with the licensing of dealers and wreckers, and while it carries a misdemeanor penalty for a first offense (§66-4-9(A)), it will probably seldom come before a court of limited jurisdiction.

Violations of the statutes contained in Article 5 will be a staple in the courts of limited jurisdiction, so a thorough knowledge of these provisions is imperative. Sections 66-5-1 to -51 set forth the laws regarding driver’s licenses. Also included in these sections are the laws that specify when and under what circumstances a license will be cancelled, suspended or revoked by the Motor Vehicle Division. §§66-5-24 to -30. Section 66-5-39 (which will be discussed in more detail in Chapters 4 and 5) is the section that provides for penalties, some mandatory, when a person is convicted of driving on a suspended or revoked driver’s license. Sections 66-5-52 to -72, the “New Mexico Commercial Driver’s License Act,” carry misdemeanor penalties for violations. Another part of Article 5 that will appear frequently in the courts of limited jurisdiction is the “Mandatory Financial Responsibility Act.” §§66-5-201 to -239. These sections set forth, among other provisions, the requirement that a vehicle be insured, the mandatory insurance coverage required, and the penalties for violating the provisions of the Act.

Article 6 of Chapter 66 sets forth the fees to be paid to the Motor Vehicle Department, and carries no penalties. Therefore, it is not relevant for purposes of this manual.

Article 7 is another set of important laws. This Article covers all of the traffic violations that will be seen in the courts of limited jurisdiction with the exception of those discussed previously, and those contained in Article 8, to be discussed below. Article 7 covers traffic

signs and signals (§§66-7-101 to -109), reporting of accidents (§§66-7-201 to -215), general traffic laws such as speeding, passing, turning, laws relating to pedestrians, parking, motorcycles, child restraints, and seatbelts (§§66-7-301 to -373), and weight and size limitations for vehicles and trailered loads (§§66-7-401 to -416). Specific matters regarding violations of these sections such as penalties and required proof will be discussed in subsequent chapters.

Article 8 is made up of two parts. Part 1 covers offenses relating to vehicle registration. §§66-8-1 to -10. Part 2 is really the most significant part of the Motor Vehicle Code as it is used in the courts of limited jurisdiction. Section 66-8-101 and 101.1 describe the offenses of homicide by vehicle, great bodily injury by vehicle and injury to pregnant woman by vehicle. Since these offenses carry felony penalties, they will not be heard in the courts of limited jurisdiction, except when a magistrate or metropolitan court is doing an arraignment or a preliminary examination. See §35-3-4(A) and 34-8A-3. Sections 66-8-102 to -112 contain the laws prohibiting DWI, set the penalties for DWI and contain the provisions of the “Implied Consent Act” which governs the taking of chemical tests to determine drug or alcohol content.

Reckless driving is defined in §66-8-113, careless driving in §66-8-114, and racing on highways in §66-8-115. The “open container law”--having an open container of alcohol in a motor vehicle--and the penalties for violating this provision are contained in §§66-8-138 and 66-8-139. Most of the remainder of Article 8 sets forth the state’s penalty assessment program (see Chapter 2), requirements for a valid traffic citation, arrest procedures and citation abstracts (see Chapter 7). Section 66-8-137.1 is the “Nonresident Violator Compact.”

So, that is a quick tour of the New Mexico Motor Vehicle Code. Many of the provisions cited above will be discussed in greater detail in the chapters to follow. They will be discussed in terms of their penalties (Chapters 2 and 5), proof needed to convict or dismiss (Chapters 3 and 4) and other miscellaneous matters such as violations committed by juveniles (Chapter 8) or non-residents (Chapter 9).

### **1.3 Uniform Traffic Code**

Section 3-17-6 allows a municipality to adopt, by ordinance, a traffic code. §3-17-6(A)(10). The requirements of such adoption are that the code “shall provide for minimum requirements at least equal to the state requirements on the same subject.” To this end, many municipalities in New Mexico have adopted the New Mexico Uniform Traffic Code (UTC). The UTC is prepared and kept updated by the New Mexico Municipal League. The UTC was first compiled in 1983, and has been updated as needed since then. Basically, the Uniform Traffic Code is the State Motor Vehicle Code made applicable to municipalities. The offenses in the Motor Vehicle Code that carry penalties beyond the jurisdiction of municipal courts (see Chapter 5) are not included in the UTC. Additionally some definitions have been reworded to reflect the Code’s application within the municipal boundaries rather than the entire state. New definitions have been added where necessary, again to make the UTC usable within the laws governing municipal governments.

The drafters of the Uniform Traffic Code have aided in the application of the UTC by inserting the comparable provisions in the State Motor Vehicle Code at the end of each section or paragraph of the UTC. This is helpful in several ways. First, a municipal attorney or judge will be able to look to the state law for cases interpreting the law, and apply those to cases involving the corresponding UTC provision. Additionally, cross-references, statutory history, attorney general opinions and law review articles cited with the state law will provide assistance in the trial and interpretation of the similar provision of the UTC.

A municipality may adopt the Uniform Traffic Code in total or it may adopt only those sections it chooses. For example, some municipalities have determined that it is beyond their financial abilities to hear driving while under the influence cases. This is due to the potential need for public defenders for indigent defendants, and the cost of mandatory jail sentences. These municipalities, therefore, have adopted the Uniform Traffic Code with the exception of the sections pertaining to driving while under the influence.

It is not necessary for the municipality to publish the entire Uniform Traffic Code in each of its Code books. The municipality need only adopt an ordinance which “refer[s] to the proper title and date of the code only, without setting forth the code’s conditions, provisions, limitations and terms, and may include any exception or deletion to the code by setting forth the exception or deletion to the code.” §3-17-6(B). If a municipality adopts the UTC in this way it must be stated in the ordinance where the code is located within the municipality (usually the City Clerk’s office) so that it may be viewed and copied by the public.

## CHAPTER 2

# ADJUDICATION OF TRAFFIC OFFENSES: PENALTY ASSESSMENT PROGRAMS

### 2.1 What is a Penalty Assessment Program?

A penalty assessment program is a means of designating certain traffic offenses as those that do not require a court appearance. The state and some municipalities have adopted pre-set fines, i.e. penalty assessments, which an offender can elect to pay without appearing before a judge. Penalty assessment misdemeanors are listed in the State Motor Vehicle Code at §66-8-116 (those dealing with all drivers), §66-8-116.1 (those dealing with oversize loads), §66-8-116.2 (those dealing with the Motor Carrier Act), and §66-8-116.3 (additional fees).

If an offense has been designated as a penalty assessment misdemeanor by one of the above statutes or a municipal ordinance, the citing officer is required to “offer the alleged violator the option of accepting a penalty assessment.” §66-8-117(A). By signing the citation and accepting the penalty assessment the offender is pleading guilty to the offense. See Section 2.3 below concerning change of plea. The offender then has thirty days to mail the payment to the Motor Vehicle Division if the offense is cited under state statute or whatever time is specified if the offense is cited under a municipal penalty assessment program. See Section 2.2 below. A payment postmarked within that thirty-day period will be accepted as timely by the Division. §66-8-117(B).

### 2.2 Authority to Adopt a Penalty Assessment Program

All state courts, i.e. Magistrate, Metropolitan and District, are obligated to follow the State Motor Vehicle Code penalty assessment statutes. The offenses and fines are set by law, and must be adhered to by law enforcement officers and these courts. Municipal courts, though, unless they have adopted the Motor Vehicle Code by reference, §3-17-6, must specifically adopt a penalty assessment program by municipal ordinance if one is to be used. Section 66-8-130 gives a municipality the authority to adopt a penalty assessment program by ordinance with the mandate that the municipal program be “similar to that established in Sections 66-8-116 through 66-8-117.” In other words, the municipal ordinance must not conflict with the state law. *City of Hobbs v. Biswell*, 81 N.M. 778, 782 (Ct. App. 1970), citing 6 McQuillin, Municipal Corporations §24.54 (3<sup>rd</sup> ed. rev. 1969).

In *Biswell*, the Court held that an ordinance with stricter requirements (that is, higher standards, not higher penalties) than the state statute did not necessarily conflict with the statute. Rather, the “question is whether the stricter requirements of the ordinance conflict with the statute,” *id.*, or whether the ordinance permits an act the statute prohibits

or prohibits an act the statute allows. *Incorporated County of Los Alamos v. Montoya*, 108 N.M. 361, 365 (Ct. App. 1989) (holding that a municipal DWI ordinance did not conflict with the general statute by imposing mandatory jail time when the state statute gave the judge discretion to suspend or defer the sentence); *see also Rancho Lobo Ltd. v. DeVargas*, 303 F.3d 1195 (10<sup>th</sup> Cir. 2002) (holding that a municipal ordinance did not conflict with a state statute because it imposed stricter requirements for obtaining a clear-cutting permit).

Note: Make sure that there is a corresponding municipal ordinance for each offense listed in the penalty assessment ordinance. Unless there is an ordinance prohibiting the specific activity, a municipality has no authority to punish for that activity.

### 2.3 Change of Plea

Note: The following will only be applicable to municipal courts, since a citation written under state statute will be sent directly to the Motor Vehicle Division in Santa Fe, and the court will not have a copy.

It is quite common for an individual who has signed a citation agreeing to pay the penalty assessment to show up at the court asking to be able to talk to the judge. What this person usually wants to do is change his or her plea. As stated earlier, when an individual signs the citation and agrees to pay the penalty assessment, he or she is pleading guilty to the offense charged. The statement on the Uniform Traffic Citation reads as follows:

**Penalty Assessment:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment shown above.

It is pretty clear that, by signing the above statement, the individual is admitting guilt and agreeing to pay the fine. However, it is all too common to hear a person say that he or she was upset, confused, told to sign there, signed in the wrong place, didn't know what they were signing, and give other reasons asking to change the plea. A 1969 Opinion of the Attorney General (No. 69-88) advocates the position that, once signed, an individual's agreement to plead guilty and pay cannot be changed. The opinion treats the signing of the citation as the signing of a contract. There are many that disagree with this position from a constitutional standpoint.

As will be discussed in greater detail in Section 4.4.2, Acceptance of Guilty Plea, a judge may not accept a guilty plea unless it is demonstrated in open court that the plea is being made knowingly and voluntarily. To ascertain this, the judge must ensure that the

defendant understands the rights being given up by pleading guilty. Additionally, a judge must elicit a factual basis for the plea; in other words, the judge must be persuaded that the defendant is able to explain what the basis of the charge is. In a nutshell, a plea is knowing and voluntary if the judge is satisfied that the defendant knowingly waives the right against self-incrimination, the right to a trial, the right to confront accusers and question witnesses and the right to counsel (although this will not be applicable in a penalty assessment case since there is no jail time involved), and that there has been no coercion to plead guilty. Because it is certain that the law enforcement officer would not have explained all of this to the traffic offender at the time of the stop, it is certainly arguable that the plea on the penalty assessment was not determined to be knowing and voluntary, and if the offender alleges confusion of some kind, the offender should be allowed to change his/her plea and proceed to trial.

There is one way to “bulletproof” a guilty plea on a traffic citation, but few officers use it. On the reverse of the court copy of the citation is a statement that the officer can have the offender read and sign, if he/she chooses to, which would probably be upheld as fulfilling the “knowing and voluntary” requirement. That statement reads:

I the undersigned do hereby enter my appearance on the complaint of the offense charged on reverse side of the summons [citation]. I have been informed of my right to trial, that my signature to this plea of guilty will have the same force and effect as a judgment of the court, and this record will be sent to the Licensing Authority of this state (or the state where I received my license to drive). I do hereby PLEAD GUILTY to said offense as charged and WAIVE my rights to a hearing by court.

Of course, it can still be argued that a law enforcement officer is not a judge, and should not be informing people of their legal rights and accepting waivers of those rights. These are, however, traffic offenses, not criminal offenses, there is no jail time involved, no jury trial, and no right to an attorney, so the offender’s signature on the written statement should be adequate.

Given these differing views, what should a judge do when the defendant has not signed the waiver on the back of the citation and comes to court seeking to change his or her plea? A common and reasonable response is to allow the plea change up to the date the fine is due, but not beyond that date.

## **2.4 Payment Remitted Late**

Section 66-8-117(B) requires penalty assessments to be paid “within thirty days from the date of arrest [citation].” If an individual is cited under state statute, payments are to be mailed to the Motor Vehicle Division of the Taxation and Revenue Department in Santa Fe. Most law enforcement officers will supply envelopes to offenders to mail payments to Santa Fe. If the citation is written pursuant to a municipal penalty assessment ordinance, the time for payment will be set in the ordinance. Many municipalities have adopted a time shorter than thirty days. Payment under municipal penalty assessment

programs is made directly to the municipal court or to whatever entity collects the fines for the city. See Section 2.5 below, Payment Remitted to Wrong Entity. Payment to the municipality may be mailed, made in person, or put in a drop box supplied by the court, if available. The state statute and most, if not all, municipal penalty assessment ordinances provide that a payment is timely if it is postmarked by the due date.

Failure to pay a penalty assessment within the specified time will result in the suspension of the person's driver's license. Section 66-5-30(A)(10) authorizes the Motor Vehicle Division to suspend the driver's license "without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee...has failed to pay a penalty assessment within thirty days of the date of issuance." The suspension remains in effect until the penalty assessment and any late fees or reinstatement fees are paid. §§66-5-32(C) and 66-5-33.1(A). See Section 6.2.

If the payment was to be made to a municipality pursuant to a municipal penalty assessment program, and that payment is not received by the municipality within the specified time, the municipal court must notify the Motor Vehicle Division of the failure to pay. Because of the provision allowing for the postmark to be the deciding factor, the municipal court should not send the notice of failure to pay on the due date or even the day after. It is best to wait a few days to make sure the payment is not in the mail. A quick suspension will only result in more paperwork to "undo" the suspension. Many municipalities do weekly "suspend lists." These lists include persons who have failed to pay penalty assessments or failed to appear in court when required. Some of the new computer programs used in the courts will do these lists automatically based on information and codes entered into the computer. Upon receipt of these lists, MVD will process the paperwork to suspend the offender's driver's license. Upon payment of all fines and fees, the municipality provides the offender a Notice of Clearance so that the license may be reinstated. See Section 7.8, Removal of Suspend Status.

Note: In many municipalities, the citation abstract stays at the Municipal Court. It is not forwarded to MVD until it is paid in full or all conditions are met. See Chapter 7.

## **2.5 Payment Remitted to Wrong Entity**

Occasionally, an individual will mail the fine to the wrong place. Most often, this occurs when the payment should be mailed to a municipality, but is mailed to the Motor Vehicle Division in Santa Fe instead. Several actions result from this mistake. First, since the municipality has not received the payment in time, a notice of nonpayment will be sent to the Division and the individual's driver's license will be suspended. Second, the Division will receive a payment, but yet not have the officer's copy of the citation to go with it. Occasionally, the Division will realize the mistake and send the payment on to the municipality. The municipality then can request that the suspension be rescinded due to a mistake.



If, however, the Division does not automatically send the payment to the municipality, it is sometimes quite a while before the mistake is realized. In fact, it may not be until the offender goes to renew the driver's license, receives another traffic citation, or is arrested on a failure to pay warrant that the suspension comes to light. In these cases, MVD Form 10208, Request for Refund, is to be used. The offender must fill out and mail this form to the Motor Vehicle Division to get the payment returned. It is best to have the offender make the payment to the appropriate court as soon as the mistake is realized while concurrently requesting the refund from the Division. As soon as the municipality receives the payment, a Notice of Clearance can be issued so the individual can reinstate his or her driver's license.

## CHAPTER 3

### ADJUDICATION OF TRAFFIC CASES: "PAPERWORK OFFENSES"

#### 3.1 What is a Paperwork Offense?

Note: There is no specific statutory authority for the following procedures. However, there also does not seem to be a specific prohibition against them. It is clearly up to each judge to decide if and how to implement these procedures. They are merely suggested here as a way to save time for the court and the public.

There are some offenses within the Motor Vehicle Code and Uniform Traffic Code that are fairly routine and easy to dispose of. For the purposes of this manual, these offenses will be referred to as "paperwork offenses." They are so labeled because, upon presentation to the court of appropriate paperwork, the citation can be disposed of either with a set fine or a dismissal. This chapter will discuss these offenses, and suggest various methods for dealing with them. It is, of course, the prerogative of each individual court to decide how it wants to handle these cases.

None of the offenses discussed in this chapter are part of the state's Penalty Assessment Program, §§6-8-116 to 66-8-119. In other words, a court appearance is required. However, being mindful of already overcrowded dockets, it is possible for the offender to avoid a long wait in the courtroom and take care of the citation at the clerk's office. It is unnecessary for a member of the public to sit through three or four hours of court, only to have the case dismissed by showing the judge proof, for example, that a broken taillight has been fixed. Why not generate a bit of good PR while reducing the size of your docket by allowing these people to take care of their business at the clerk's office? Of course, this type of procedure necessitates hard and fast rules that must be established, and followed, by the court staff. Any deviations or questions, and the offender must go before the judge.

If a program such as this is going to be successful, you must have the cooperation and assistance of your law enforcement agencies. If law enforcement does the case settings (see Chapter 4, Section 4.3.1), then it will be up to the citing officer to inform the individual that, even though a court date has been set, the matter may be resolved at the clerk's office upon presentation of appropriate paperwork. If court staff does settings, they will need to be aware of the court's policies. It would be helpful to have a preprinted instruction sheet for these offenses to hand out to individuals when they are cited or come to schedule their court date.

What follows is a list of common "paperwork offenses," and suggestions for disposing of them without an appearance before the judge.

## **3.2 No Driver's License**

There are actually two statutory provisions relating to no driver's license. Section 66-5-2 requires a person to "hold a valid license issued under the provisions of the Motor Vehicle Code" in order to drive a motor vehicle. Section 66-5-16 requires that a person "have his driver's license in his immediate possession at all times when operating a motor vehicle." These two statutes are very different in their underlying concepts, and, as such, the court may want to treat them differently.

### **3.2.1 Drivers Must be Licensed**

A person charged with violating §66-5-2 allegedly has no valid driver's license. This could mean that the person never had a license, had a license that is expired, had a license that was revoked but the period of revocation is completed and the person has not yet obtained a new license, or had a license that was cancelled by MVD. In these cases, the individual should be required to go before the judge because the penalty imposed will depend on the circumstances.

### **3.2.2 License Must be in Possession**

Section 66-5-16 is violated when an individual has a valid license, but does not have it in his or her possession when stopped. Presumably, the person has been stopped for another, unrelated traffic violation. In this case, even the statute seems to indicate the nature of this offense: "No person charged with violating this section shall be convicted if he produces in court a driver's license theretofore issued to him and valid at the time of his arrest." Clearly, the legislature wanted a duly licensed person not to be penalized if all they did was leave the house without their driver's license. The interest of the state is that people be validly licensed. See section 3.2.1 above. A court clerk can just as easily look at the driver's license and determine if it was effective on the date the person was cited as can a judge.

Assume that the defendant has been stopped for speeding, and when stopped was not in possession of her driver's license, but does have a valid license. The person is cited for speeding and violating §66-5-16. She chooses to sign the penalty assessment for the speeding violation. Should this person have to come to court, and possibly wait for several hours only to show the judge her driver's license? Why not have a procedure whereby the person can present her driver's license to the court clerk? If the clerk can see from the face of the license that the person had a valid driver's license on the date the citation was issued, then the citation should be dismissed and marked "Proof Shown." You might also require that a copy of the license be made or the driver's license number written on the abstract. See Section 7.3, How to Fill Out Abstracts. If the clerk has any questions at all about the validity of the license, then the person will be required to appear before the judge. Time and judicial resources are used efficiently.

### **3.3 No Current Registration**

The same general procedure can be used when a person is cited for a violation of §66-3-13, Evidence of Registration to be Signed and Exhibited on Demand. This statute is similar to the above statute requiring the showing of a driver's license to an officer. It makes sense that if the person can show to the court clerk a registration certificate that was valid on the date the citation was issued, the citation should be dismissed with the notation "Proof Shown." The same would apply if a person had their validating sticker on the date the citation was issued, but had neglected to affix it to the license plate. Again, if there are any questions, the matter should be set for a court hearing.

### **3.4 Proof of Financial Responsibility**

Another such situation occurs when a person is cited under §66-5-205. The Mandatory Financial Responsibility Act, §§66-5-201 – 66-5-239 requires that a specified minimum amount of insurance be purchased for any vehicle registered in the State of New Mexico. Additionally, §66-5-205 requires that an owner or driver of a motor vehicle must have evidence of that insurance. If an individual is unable to provide a law enforcement officer with that evidence, then a citation will be issued. As with the driver's license and registration offenses discussed above, that individual may, indeed, have the required insurance, and may even have the proof of that insurance, but not in the vehicle at the time of the officer's request. If this is the case, and the person shows the clerk a valid proof of insurance card or policy that indicates that on the date the citation was issued, there was proper insurance in effect, the charge should be dismissed. As with any other paperwork offense, the clerk should have no discretion; the judge should rule on any questions or on any questionable certificates of insurance.

### **3.5 Equipment Violation**

Officers often cite individuals for equipment violations. Common violations are broken headlights or taillights, §§66-3-804 and 805, and obstructed or broken windshield, §66-3-846. It would be counterproductive to have the individual pay a fine and not get the defect fixed. It was clearly the intent of the legislature that a person maintain a motor vehicle in safe operating condition. See §66-3-901, Vehicles without required equipment or in unsafe condition. A policy that the citation will be dismissed upon proof that the equipment violation has been taken care of serves this purpose. A receipt from an auto mechanic, body shop, windshield repair shop, or even parts store that adequately identifies the vehicle and the work done will suffice. Sometimes, it is difficult if the individual merely purchased the parts and did the labor herself. In this case there will be no automobile identifying information on the receipt. The court may require the individual to provide photographic evidence that the repair was made. Or, if practical, the court may require that an officer inspect the vehicle to ensure that the violation no longer exists. As long as there is a consistent policy, these equipment violations should be able to be handled by the court staff without spending the judge's or the public's valuable time.

### 3.6 Suspended Driver's License

Only if the person can show that the Motor Vehicle Division, prior to the date of the citation, had reinstated his or her license should this offense be handled as a paperwork offense. Sometimes it takes a day or two for the computer to show the reinstatement. In all other cases of driving on a suspended license the person must go before the judge. This is because this offense carries mandatory jail time and fines upon conviction. §66-5-39.

One judge suggested the following: In the interest of justice, if it appears that after conviction and prior to sentencing, there is a reasonable expectation that the defendant can and will reinstate her license in a short period of time, e.g. within 10 days, the court may wish to consider giving the defendant an opportunity to fulfill any obligations and then reduce the charge to "no driver's license" and sentence on that charge. By doing this, the court gets the defendant back out on the road as a legal driver, gets the defendant to pay all fines, costs and reinstatement fees, and has the defendant appear at all pending court hearings without the one year suspension that would result if the defendant were convicted of the suspended license charge. Naturally, the abstract of record, see Chapter 7, needs to clearly reflect such court action to ensure proper handling by the Motor Vehicle Division. Of course, a defendant with numerous failures to appear would not be a candidate for this type of leniency.

## CHAPTER 4

# ADJUDICATION OF TRAFFIC OFFENSES: COURT APPEARANCES

### 4.1 Offenses that Require Mandatory Court Appearance

Chapter 2 discussed those offenses for which penalties could be paid either by mail or in person without an appearance before a judge. Those offenses are commonly referred to as Penalty Assessment offenses. This chapter deals with those offenses that cannot be taken care of by paying a set fine without a court appearance. The Motor Vehicle Code provides that some offenses must be adjudicated in a court before a judge. §66-8-122. These offenses carry no set penalty; rather, they usually have a penalty range, i.e., up to a \$1000 fine and/or one year in jail. It is up to a judge, after hearing all of the evidence, to determine the appropriate sentence. Motor Vehicle Code offenses that require court appearances include:

- Reckless Driving, §66-8-113
- Driving While Intoxicated, §66-8-102
- Failure to stop for accident involving death, injury or damage to property, §§66-7-201, 66-7-202
- Driving while Suspended or Revoked, §66-5-39
- Refusal to sign the Uniform Traffic Citation for any offense.

Note: This list is not all-inclusive. For example if a municipal court has not adopted a penalty assessment program, all offenses would require court appearances.

### 4.2 Other Court Appearances

For an offense designated as a penalty assessment misdemeanor, see Chapter 2, an offender may choose not to accept the penalty assessment but instead choose to plead not guilty and request a court date. In this instance, the matter is set for trial and proceeds as described in Section 4.5 below. One important statutory restriction, though, is that if this person is convicted by the judge, the fine cannot “exceed the penalty assessment established for the particular penalty assessment misdemeanor and no probation imposed upon a suspended or deferred sentence shall exceed ninety days.” §66-8-116(C). This is to ensure that an offender is not penalized for exercising the right to plead not guilty. However, if the defendant pleads not guilty and is subsequently convicted at trial, the magistrate and metropolitan courts must impose a \$20.00 docket fee in addition to the other costs and fees imposed on penalty assessments. See Section 5.5.1 and §35-6-1(A).

## 4.3 Notice of Trial

The court may notify an offender of a trial date in one of the three ways described in the following sections. Whichever method is used, the defendant must be notified in writing. Individual courts may use different means of notification depending upon the offense and depending upon court policies. If an offense requires an arraignment, the first notice to the defendant is for an arraignment date. Following the arraignment, if the defendant does not waive the right to trial, a trial date is set. If no arraignment is held, e.g. in a case involving a penalty assessment misdemeanor, then the offender receives notice only of the trial. Further, every time a case is continued, a new notice of trial must be mailed to both the defendant and the arresting officer if no attorneys are involved, or the defense attorney and the prosecuting attorney in attorney trials. A Notice of Trial form is located at Rule 9-501.

### 4.3.1 Citation

#### Notice by Officer

For non-arrestable offenses, see §66-8-122 and §66-8-123, the court date may be set either by the law enforcement officer or by the court. Some jurisdictions give the officers the authority to set the court date, and to notify the offender of that date in writing on the citation. Several cautions are in order when using this procedure. First, there must be continuous coordination between the officers and the court. The officers must be aware of the days court will be in session, and more specifically, which days the court will hear which types of cases. For example, most courts will hold separate sessions for cases that involve attorneys. Courts may also set specific days and times for arraignments or probation violation hearings.

Another reason for close coordination is to maintain docket control. If all the officers set all the cases for the same day and time, the court will be overloaded. A method for preventing this must be developed.

A second caution concerns when the officers set their cases. Some law enforcement agency policies require officers to try to arrange their court schedule for when they are on duty, while some have the opposite policy. The concern here is cost and coverage. If the officers have court only on their off-duty days, the department will incur enormous overtime costs. The flip side of this is that if officers schedule court for their on-duty time, there will be fewer officers on the street to respond to problems. Each department should coordinate with the court to decide which works best for them. Of course, this only applies to those cases set by the officer. If the court sets the cases, it can do so according to its policies; even then, some method for incorporating officers' vacation and training schedules is helpful to avoid unnecessary continuances.

Third, if the officer sets the court date on the citation, there is always the possibility that the offender will need to reschedule. If this is done, the court must ensure that the officer is notified of the new court date, and the officer must ensure that the rescheduled date is noted.

### **Notice by Court**

Most courts do not allow the officers to set the court date. The court sets the date either upon appearance by the defendant or by mail. For example, some jurisdictions require the offender to appear personally at the court within a specific number of days following the issuance of the citation. The offender appears, usually at the clerk's window, and is given a written notice of trial. The court is then able to assign a judge (in jurisdictions with more than one), and set the time and date so as not to overcrowd any one docket.

Note: Courts schedule cases in two ways. Some courts set cases for a specific time, e.g. every fifteen minutes. Other courts have what is called a rolling docket, meaning all cases are set for the same time, and called in whatever order the court sets, e.g. alphabetical, all officers' cases together, types of cases, etc. If officers assign court dates, they should do so only for rolling dockets, because of the potential confusion in setting specific times.

In some smaller courts, the offenders appear before the judge, and, if they inform the judge that they want to go to trial, a court date is set either by the judge or by the court clerk.

Each court must decide how best to handle scheduling matters. This will involve coordination among judges, clerks, law enforcement, prosecutors, probation employees, and any others who regularly appear. The bottom line, though, is that the court is in charge of its docket, not any outside agency. The court, in the person of the judge, has the authority to order an appearance, and while taking into account the schedules of others is commendable, that should not be done to the detriment of the court's ability to manage and schedule so as to serve the public effectively.

### **4.3.2 Summons**

Courts may issue summonses in traffic cases, especially in cases involving automobile crashes. It may be that the officer did not conclude the investigation prior to releasing the individuals from the scene. Or, persons may have been transported to the hospital making the issuance of a citation at the time of the crash impossible. In these situations, the officer would issue the citation after the fact, deliver the citations to the court, and the court would issue a summons. The summons directs the offender to appear in court for an arraignment on a specific date at least ten days hence (thirteen days if mailed). Rules 6-204 and 205, 7-204 and 205, and 8-203 and 204. The summons is served either by a law enforcement officer or by mail along with a copy of the citation(s). The court rules specify that "[s]ervice of a summons shall be by mail unless the court directs that personal service be made."

If an offender fails to appear after being properly served with summons, the court may issue an arrest or bench warrant.



A Criminal Summons Form can be found at Rule 9-208. The form includes a Certificate of Mailing that verifies the date the summons and citation(s) were mailed. It also includes a Return of Service to be used if service was made in person.

### 4.3.3 Arrest

Some traffic offenses require that the defendant be arrested and taken into custody. Arrest occurs when a defendant is charged with:

- Reckless Driving §66-8-113
- Driving While Intoxicated §66-8-102 (not a subject for this manual)
- Failure to stop for accident involving death, injury or damage to property §§66-7-201, 66-7-202
- Driving while Suspended or Revoked §66-5-39;

or when a person:

- Refuses to sign the Uniform Traffic Citation for any offense, or
- Requests an immediate appearance

§66-8-122.

A recent U.S. Supreme Court case, *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), holds that the Fourth Amendment to the U.S. Constitution does not prevent an officer from arresting an individual for even minor traffic offenses. The case involved a motorist stopped for a seat belt violation. It is unclear how the courts in New Mexico will react to this ruling.

After the person is arrested and taken into custody, the issue of bail is the first consideration. Anyone arrested for a traffic offense is entitled to bail. The bail may be in the form of a cash bond, a bail bond issued by a licensed bondsman or a property bond. Most limited jurisdiction courts do not deal with property bonds so this discussion will be limited to cash and bail bonds.

Many courts have developed a “Bond Schedule” which sets a specific bond for various common offenses. Judges can designate in writing someone (usually a detention facility employee) to release persons on a specific bond. Rules 6-401(J), 7-401(J) and 8-401(H). This eliminates the need for the judge to be awakened throughout the night to set bail and authorize release. The defendant may either post the entire bail amount in cash or may contact a licensed bail bondsman who will post the bond and charge the defendant a fee. If bond is posted, the defendant will be given an arraignment date at the jail or will be notified of arraignment at a later date by the court. The defendant also should be given a copy of any citations and complaints and other pertinent paperwork.

If the defendant is unable to make bail, the court must set an immediate arraignment. Defendants who are incarcerated must be arraigned within forty-eight hours after they are put

into custody or a probable cause determination must be held. Rules 6-203, 7-203 and 8-202. This is only true for those defendants arrested without a warrant, as is the case for most of the traffic violations cited above. The determination of probable cause is made by the judge based upon the criminal complaint and a probable cause statement, if applicable. If the officer includes the information necessary to establish probable cause in the complaint a separate probable cause statement is not necessary. Neither the defendant nor anyone else need be present while the judge makes the determination. If the documents presented to the judge contain sufficient information to determine that there was probable cause to believe that an offense was committed by the defendant, the judge makes a written determination, reviews the conditions of release, and either releases the defendant on conditions or orders the defendant kept in custody and arraigned at the earliest possible time. If the judge does not find probable cause, the judge dismisses the charges without prejudice (meaning they can later be refiled) and orders the defendant released.

The probable cause determination is an informal procedure. In most cases, it involves either hand-delivering or faxing the documents to the judge for review. The judge then reviews the documents and places a stamp or notation with the judge's signature on the document regarding the findings. The documents are then either returned in person or by fax. Usually, these determinations are only needed on weekends when the court is closed. If the court is open, the defendant should be brought in for an arraignment immediately if unable to bond out and not kept in custody over forty eight-hours before seeing a judge.

## **4.4 Arraignment**

The arraignment is the defendant's first appearance before the judge. At this proceeding, the judge will inform the defendant of the charge(s) against him, advise the defendant of his rights, and ask the defendant to plead to the charge(s). If the defendant refuses to enter a plea, the court must enter a not guilty plea. If the defendant is still incarcerated, the judge will go over the conditions of release, and, if warranted, change them to allow the defendant to be released.

Many times, usually when an attorney represents a defendant, the court will receive a Waiver of Arraignment and Entry of Plea of Not Guilty. See Forms 9-405 and 405A (these forms may need some modification to take into account nonjury trial offenses). This is a document in which the defendant states that she is aware of her right to appear, aware of the charges against her, and aware of her constitutional rights, but waives her right to appear in court and enters a not guilty plea. This waiver must be filed "no later than forty-eight (48) hours prior to the scheduled arraignment." Rules 6-501(C), 7-501(C) and 8-501(D).

### **4.4.1 Advisement of Rights**

At a minimum, the judge should advise the defendant of the following at arraignment:

- Offense(s) charged
- Maximum penalty and any mandatory penalties for the offense(s)
- Right to bail

- Right to counsel if the offense carries with it the possibility of jail time

Note: The judge can, at this time, make a written determination that no jail time will be imposed, and then inform the defendant that he has no right to an attorney, but certainly may hire one on his own if he wishes.

- Right to a public defender if the defendant is indigent
- Right to remain silent, and that if anything is said it may be used against the defendant
- Right to a jury trial, if applicable

Rules 6-501(A), 7-501(A) and 8-501(A).

Additional items that the judge may address include the presumption of innocence, instructions to the defendant on how to subpoena witnesses, and any collateral consequences of a conviction such as license suspension, deportation, prohibition against owning firearms, etc.

The judge must be very clear at arraignment that she is not the defendant's attorney and cannot give the defendant legal advice. If the defendant has questions as to whether or not to hire a lawyer or what to plead, he should be advised to consult an attorney. The judge can, however, and should, answer any of the defendant's questions regarding what the offense is or what the penalty means. The judge should instruct staff to observe the same limitations in talking with the defendant, i.e. offering explanations, but not legal advice.

If a judge has a number of arraignments at one time, she might consider a "mass arraignment." This is a procedure whereby a general explanation of constitutional rights is given by the judge either in person or by videotape. Then each defendant is called up individually before the judge and informed of the charges against him, the potential penalty, and asked to plead. This method can save quite a bit of time. It is important to ensure that everyone is in the room when the general advisements are given. Each person should be asked if they understood those advisements when they are called up. If a non-English speaking person is present, arrangements will need to be made to advise that person separately.

#### **4.4.2 Acceptance of Guilty Plea**

Some defendants may choose to plead guilty or no contest at their arraignment. Some may choose to plead guilty or no contest at the start of their trial. Regardless of when such a plea is received, certain safeguards must be observed to ensure that the plea is valid. The general rule is that a judge must determine that a plea is given "knowingly and voluntarily" before the judge may accept that plea and proceed to sentencing. Various inquiries go into this

determination. The judge should engage in a discussion with the defendant to determine whether there is a factual basis for the plea – that is, does the defendant know what she did and can she explain to the judge the circumstances of the offense. (If attorneys are involved, this factual basis may be established through the attorneys with the defendant standing silent.) The New Mexico Supreme Court has provided two forms, Rule 9-406 and 9-406A, that the judge should use to determine whether the plea of guilty meets the legal requirements. The judge and the defendant must sign this form. The judge must inform and the defendant must agree to the following:

- The defendant understands the charge(s)
- The defendant understands the potential sentence(s)
- The defendant waives the following rights:
  - right to have a trial
  - right to a jury trial, if applicable
  - right to an attorney, if applicable
  - right to confront and cross-examine adverse witnesses
  - right to present evidence in her own behalf
  - right to remain silent
- There is a factual basis for the plea
- The plea is voluntary
- It is reasonable for the defendant to plead guilty or no contest
- The defendant understands the consequences of the plea

See also Rules 6-502, 7-502 and 8-502.

## **4.5 Trial**

If there has been no guilty plea or plea agreement, see Section 4.5.5 below, the matter will proceed to trial. Because this manual covers only traffic offenses, it will not address discovery and other pre-trial matters. This discussion will focus on the procedures to be followed and the legal requirements of a trial.

The general order of trial is as follows:

- Jury selection, if applicable
- Judge's charge to jury, if applicable
- Prosecutor's opening statement
- Defendant's opening statement (may be waived at this point and presented at the beginning of the defense case)
- Prosecution's case-in chief (calling of the prosecution's witnesses and admission of exhibits)
  - direct examination by prosecutor
  - cross examination by defense attorney
  - re-direct and re-cross, if necessary and allowed by court
- Prosecution rests (ends its case)

## Adjudication: Court Appearances-----

- Defense motion (optional) to dismiss full case or any charge, alleging that the prosecution has not proved its case (called a motion for a directed verdict)
  - if granted, case is over (as to charges for which the motion is granted)
  - if denied, defense case proceeds
- Defense case (proceeds with witnesses and exhibits the same as the case-in-chief)
- Prosecution rebuttal case, if necessary
- Closing arguments
  - prosecution
  - defense
  - rebuttal by prosecution, if desired
- Jury instructions, if applicable
- Verdict
  - not guilty – ends case; defendant discharged
  - guilty – proceed to sentencing or request presentence report and set for sentencing at a later date.

Note: The judge may ask questions to clarify testimony, but not to establish the required elements of the offense.

The list above represents a trial with attorneys involved. If the trial is a pro se trial, i.e., the defendant is representing herself, and the arresting officer is the “prosecutor,” there probably will be no opening statements or closing arguments, and the testimony usually will be done without questioning. A pro se trial will typically go something like this:

- Judge calls the case
- Judge states charge(s) and asks defendant how he pleads
  - if guilty or no contest– judge inquires into whether plea is knowing and voluntary, see Section 4.4.2 above, and proceeds to sentencing or pre-sentence report
  - if not guilty – proceed to trial
- Officer presents testimony – if more than one officer or if “civilian” witnesses, all testify by “telling their story.” See Sections 4.5.1 and 4.5.2 for proof required.
- Defendant may cross-examine the officer
- Defendant testifies, if desired – does not have to
- Officer may cross-examine the defendant
- Officer presents rebuttal, if necessary
- Judge may ask questions to clarify testimony, but not to establish required elements of the offense

Note: Do not let the officer and the defendant talk to each other during this phase. It could end up in a shouting match or worse. Inform all parties that comments are to be directed to the judge.

- Judge announces decision
  - if not guilty – ends case; defendant is discharged
  - if guilty – to sentencing or pre-sentence report

Note: In traffic cases, as in all cases, the judge should make the decision immediately. There should be no “taking a case under advisement” with a decision to come at a later date. Unless there is a legal issue that needs to be resolved by the writing of a brief in attorney cases, or the judge is awaiting a pre-sentence report, all decisions should be rendered immediately upon the close of the case.

## **4.5.1 Burden of Proof and LOVID**

### **Burden of Proof**

The burden of proof in traffic cases, as in all criminal cases, is proof of guilt beyond a reasonable doubt. “Beyond a reasonable doubt” does not mean beyond all doubt. It means beyond all reasonable doubt.

As stated in Uniform Jury Instruction-Criminal 14-5060:

The law presumes the defendant to be innocent unless and until you are satisfied beyond a reasonable doubt of his guilt.

The burden is always on the state to prove guilt beyond a reasonable doubt. It is not required that the state prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act in the graver and more important affairs of life.

If there is any reasonable doubt whatsoever, the defendant must be found not guilty. It is up to the prosecution (either the prosecuting attorney or the police officer) to prove the case beyond a reasonable doubt. In deciding whether the case has been proven beyond a reasonable doubt, the judge may only consider evidence and testimony that has been presented in court. The decision must not be based on any information the judge may have obtained from past experience, knowledge of the parties, media reports or other outside influences.

### **LOVID**

Note: Thanks to Judge Frederic B. Rodgers of the Gilpin County Court, Colorado, for his permission to use the LOVID formula.

In addition to proving the case beyond a reasonable doubt, there are other items that the prosecution must prove in court in order for a case to be complete. An easy way to remember this is to use the acronym LOVID, described as follows:

- **L** Location of the offense
- **O** elements of the **O**ffense
- **V** Venue, town or city, county and state
- **I** in-court **I**dentification of the defendant
- **D** **D**ate of the offense

All of the above must be affirmatively proved by the prosecution or the case must be dismissed. The location of the offense and venue must be stated to prove that the court in which the case is being tried has jurisdiction over both the geographical location of the offense and the type of offense. For example, if a case is tried in a municipal court, it must be shown that the offense occurred within the municipal boundaries, and the offense is one that is contained in the municipal ordinances.

The date of the offense must be stated so the court can determine whether there are any statute of limitations violated. Additionally, the defendant needs to know the date of the alleged offense, so that he can prepare his defense to the charge. This is especially important if there is more than one offense, occurring on different dates.

Proof of the elements of the offense will be discussed in the next section.

Other helpful and sometimes necessary points for the prosecution to bring out are:

- The officer is a commissioned law enforcement officer, §66-8-124(A)
- The officer was in uniform indicating official status, i.e. badge of office, §66-6-124(A)
- The officer has completed any relevant training
- A witness has completed any relevant training, especially if the witness is introduced as an expert
- A witness is related to the officer or to the defendant, if applicable
- Any other relevant evidence

#### **4.5.2 Elements of the Offense**

Every offense can be broken down into elements. In order to prove a case beyond a reasonable doubt each and every element of an offense must be proven beyond a reasonable doubt. Determining the elements of an offense is similar to the diagramming of sentences that most of us did back in grade school. Break the offense up into its component parts, and each part will probably be an element of the offense. As an example, take the offense of reckless driving, §66-8-113(A):

Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

The elements of this offense that must be proven are:

- The defendant was driving a vehicle (here it should be stated within the municipality, county or state, depending on the court's jurisdiction)
- The driving was
  - careless and heedless
  - in willful or wanton disregard of the rights or safety of others
  - without due caution or circumspection
  - at a speed or in a manner so as to endanger or be likely to endanger any person or property

In this case, the prosecution would have to show, by testimony of the officer, the type of driving observed, and what about that driving put persons or property in danger.

A second example: driving on a revoked driver's license, §66-5-39(A):

Any person who drives a motor vehicle on any public highway of this state at a time when his privilege to do so is ... revoked and who knows or should have known that his license was ...revoked is guilty of a misdemeanor....

The elements of this offense are:

- The defendant was driving a motor vehicle
- On a public highway of the state (or municipality if charged under an ordinance)
- While the defendant's license was, in fact, revoked
- The defendant knew his license was revoked OR should have known his license was revoked

This offense can be somewhat difficult to prove because it involves evidence outside of the testimony of the officer or witnesses. There must be proof that the defendant's driver's license was revoked. This usually involves the prosecution obtaining a certified copy of the defendant's driving record from the Motor Vehicle Division showing that on the date of the offense the defendant's license was within a period of revocation. This is not enough, though. Now the prosecution must prove that the defendant either knew or should have known that his license was revoked. This can be proven in several ways. Any statements made by the defendant at the time of the traffic stop can be used to prove knowledge. Certified mail receipts signed by the defendant showing that the Notice of Revocation was received by the defendant can be used as proof of knowledge. The "should have known" standard is a bit harder to quantify. This usually is based on circumstantial evidence that,



based on his past actions, the defendant must have been aware that his license would be revoked. Of course, the defendant can rebut all of this knowledge evidence. See next section.

### 4.5.3 Defenses

After the prosecution has presented its case, the defendant may testify or present witnesses who tell a different version of events. Then it is up to the judge to determine which witnesses are more credible. A defendant may also testify that he did commit the act he was accused of, but he has a defense and therefore should be found not guilty. A legal defense absolves the defendant of guilt. An example of a legal defense is self-defense. In a battery trial, if the defendant testifies that he punched the other person after being punched himself, and he was only defending himself, and if that testimony is credible or raises a reasonable doubt, the defendant should be acquitted.

Some common defenses that may arise in traffic cases are:

- The directional traffic sign was down or was obscured
- The defendant didn't realize her speedometer was broken, and did not realize she was exceeding the speed limit (this defense should only work once!)
- The defendant was facing an emergency (this one is tough – if the defendant testifies he was rushing his pregnant wife to the hospital, is he justified in speeding or should he have called an ambulance which can legally speed?)
- The defendant's conduct was not voluntary (a "friend" reached over and grabbed the steering wheel or stepped on the gas pedal)
- The defendant is not competent (if there is a question as to the competency of a defendant or a plea of insanity or guilty but mentally ill, the case should be transferred immediately to the District Court for a competency hearing. Rule 6-507, 7-507, and 8-507.

Note: In Metropolitan Court, the matter will be transferred if the defendant pleads "not guilty by reason of insanity" or "guilty but mentally ill," but if there is a question as to competency to stand trial that matter shall be decided by the Metropolitan Court judge after a hearing. Rule 7-507(B).

### 4.5.4 Right to Jury Trial

There is no statutory authority for jury trials in Municipal Court. Municipalities have understood this to mean that there is no right to a jury trial in Municipal Court. Consequently, municipalities have limited the potential punishment under their ordinances to less than six months so that juries would not be constitutionally required (even though they are statutorily authorized to impose lengthier sentences for DWI). In addition, because the right to a jury attaches if the potential aggregate sentence for multiple convictions is six

months or more, Municipal Courts have avoided imposing consecutive sentences that would amount to or exceed six months.

In Magistrate and Metropolitan Courts, either party may demand trial by jury for any offense except contempt, including penalty assessment offenses. §35-8-1. See also Rules 6-602(A) and 7-602(A). If the offense carries a penalty or the aggregate penalty for all offenses charged is more than six months in jail the trial will be by jury unless waived by the defendant. Rules 6-602(B) and 7-602(B). Juries are comprised of six persons. The rules for jury selection are similar to those in District Court, including the parties' rights to challenges and voir dire. There is no requirement that an individual be represented by an attorney in order to have a jury trial so it may be helpful for the court to come up with some basic instructions for a pro se defendant and police officer prosecutor on how to try a case before a jury.

#### **4.5.5 Plea Agreements**

Plea agreements are very common. In fact, some statistics show that 90-95% of all criminal cases end in plea agreements and never go to trial. Most plea agreements that are reached in traffic cases come where attorneys are involved. However, there is no prohibition against the officer communicating with the offender and working out an agreement to be presented to the judge. The important thing to remember about plea agreements is that the court takes no part in the initial agreement. It is the judge's job either to approve or disapprove the agreement after it has been entered into between the parties. The judge should neither suggest a possibility of a plea agreement, nor should she suggest or be part of the discussion regarding the terms of the agreement.

Some courts have a policy allowing the parties to enter into a plea agreement regarding the charges only. That is, the agreement may dismiss or reduce some charges in exchange for a plea of guilty to others, but may not contain any matters regarding sentencing. That is left to the sole discretion of the court. Another common policy is to allow the agreement to contain general sentencing matters, such as "no more than ten days jail" or "a fine not to exceed \$100," or a requirement that the defendant attend a certain program. This leaves the final sentencing up to the judge within the parameters agreed to by the parties. One other method is to allow the parties to "recommend" a particular sentence, but the judge is not bound by that and can impose any lawful sentence.

Whatever the particular policy, it is important that it be in writing so both sides know their limitations. If there are different policies for attorney and pro se cases, that should be clearly spelled out. Whatever the rules, plea-bargaining can save valuable judicial time and can be of benefit to both parties.

#### **4.6 Evidentiary Issues**

Certain issues come up time and again in traffic cases. Some, like "I wasn't given my Miranda warnings" can be disposed of quickly. (These warnings are not required in minor traffic stops – only when a defendant is taken into custody and questioned.) Others regarding

the operation of certain equipment can be more problematic. This gets into the realm of scientific evidence, and an explanation of how and when to allow such testimony is warranted.

First, there is a difference between “expert testimony” and “scientific evidence.” Expert testimony goes to the expertise of the person testifying and the standards used in deciding whether to admit the testimony. The underlying tests used to determine whether to admit such testimony are:

- What is the reliability of the scientific principles upon which the expert testimony rests? A good example of this is the horizontal gaze nystagmus (HGN) test, struck down by the New Mexico Supreme Court as not yet shown to be sufficiently reliable to be admitted without expert testimony as to its validity. *State v. Torres*, 1999-NMSC-010, 127 N.M. 20 (1999).
- Will the testimony help the fact finder OR will it mislead or overwhelm the judge or jury?
- Does the scientific research fit the features of the issue?
- Will it waste time or confuse the issues?

Expert testimony is framed as the “opinion” of the expert based on the tests given. If the opinion is not based on “sound” science, then it is not worth much. That is where scientific evidence comes in. When is the underlying science admissible on its face? This focuses on the science rather than the person giving an opinion based on that science.

In traffic cases when an officer testifies about the results of the radar equipment used for detecting speed, she is not giving an opinion, she is stating a fact. The issue the court must decide is whether the equipment meets the standard for admissibility, and, if it does, whether the officer is qualified to operate it and testify about it.

The standard for the admissibility of the results of a scientific instrument such as radar and lidar, see below, is as follows:

- Is it scientific?
  - Can the theory advanced be tested?
  - Has it been subjected to peer review?
  - What is the known or potential rate of error?
  - Are there standards maintained?
  - Is it generally accepted in the relevant scientific community?
- Does it relate to something known rather than to a mere belief or speculation?
- Will it help the fact-finder?
  - Is it relevant?
  - Does its probative value outweigh its prejudicial value?

If the answers to all of the above are “yes” then the instrument’s results may be admissible providing the officer passes the following test:

- Has the officer received the appropriate training, including refresher courses if necessary?
- Has the officer enough experience in operating the instrument?
- Was the instrument operating properly – were calibration or other required tests performed, and were they timely?
- Did the officer follow prescribed procedures in operating the instrument?

If the answers to all of the above are yes, then the results are admissible.

#### **4.6.1 Radar**

Use of radar devices is the traditional way in which officers have measured speed. Most officers receive training in the use of these devices at the police academy. The main objection to radar is always that there is no precise way for the officer to know which vehicle is being tracked and therefore, “it was the car next to me that was speeding.” The other objection is that something interfered with the radar. P. David Fisher, Ph.D., P.E., in a paper presented at the 2000 American Bar Association Traffic Court Seminar (“Instruments for Checking Vehicle Speeds—Scientific Aspects”) agrees that the use of radar has “numerous shortcomings.” It is his contention that since radar has a wide beam, and may even look past the first vehicle, “target tracking” must be clearly articulated by the officer. Secondly the officer must be able to clearly explain away any allegation of interference. If the officer cannot, the results will be in question.

Newer radars are being developed that allow officers to pinpoint specific vehicles, and that are not as sensitive to interference. This points to the great need for training and experience before an officer is allowed to testify as to these devices.

#### **4.6.2 Lidar**

Lidar is a laser-based instrument used to measure speed. It is based on a time principal. A beam of light is sent out from the instrument to the targeted vehicle; it bounces off the targeted vehicle and returns to the instrument. The time it takes for this travel, factored with the distance (which is measured by the instrument), is how the speed is calculated. One of the major differences between lidar and radar is that there is a visual of the beam of light striking the automobile so there is no doubt as to which vehicle is being targeted. Lidar also does not have the interference problems that radar has. Training on lidar is much less complicated than on radar. Fisher, pp. 12 –15.

<p>Note: In many cases involving radar or lidar, one officer operates the equipment while another stops the vehicle and writes the citation. If this is the case, BOTH officers must testify as to their part.</p>
--



## CHAPTER 5

### PENALTIES

#### 5.1 General Information

Penalties for traffic offenses (other than driving while intoxicated) may be a set fine (as in a penalty assessment offense); may provide a range of fines (such as from \$0 to \$500; or may contain the possibility of a fine and jail time (such as a fine of \$0 to \$500 and/or a term of jail up to 90 days). Some traffic offenses have mandatory penalties, such as the mandatory fine and jail required when a person is convicted of driving when their license has been revoked for an alcohol related offense. §66-5-39. In offenses with mandatory penalties, the judge has no discretion to impose a lesser penalty than that required by the statute or ordinance. The judge may, of course, impose a harsher penalty than the mandatory.

In addition to imposition of fines and jail time, judges have the discretionary authority to suspend or defer sentence and impose conditions on the offender. See Sections 5.8 – 5.11 below. In the case of an offense with a mandatory penalty, the judge must impose that penalty, but may suspend, but not defer, additional fines and/or jail time on certain conditions.

In deciding what is an appropriate sentence, judges should consider the purpose of sentencing, and how those purposes might best be accomplished with reference to the particular offender before the court. The purposes of sentencing may include: (1) to punish the offender; (2) to deter the offender from future bad acts, and hopefully to deter others from committing the same offenses; (3) to protect society, and more specifically, the local community from the offender; (4) to rehabilitate the offender; and (5) to provide reparation or restitution to any victim(s) of the offender's actions. Not all of these considerations may be needed in determining an appropriate sentence for a traffic offender. For example, there may be no victim of the offense, or the offender may not be a danger to society. However, these factors should always be kept in mind when a judge has discretion in sentencing, and sentences should be fashioned to meet these goals whenever possible. This will serve two purposes: (1) the defendant's sentence will "fit the crime" and "fit the offender," and (2) the judge will avoid accusations of being arbitrary and capricious if it can be shown why the particular sentence was imposed using these considerations.

#### 5.2 Penalty Assessment

As discussed in Chapter 2, certain offenses have legislatively set penalties. The set fine is known as a penalty assessment. These offenses, as previously discussed, do not require court appearances, although the offender may request a court date. The offender is required to mail or hand-deliver the penalty assessment to the court if the offense is cited under a municipal ordinance, or to the Motor Vehicle Division in Santa Fe if cited under state statute.

The amount due appearing on the citation will usually include not only the set fine, but any mandatory court fees that are due in addition to the fine. See Section 5.5 below. If the offender chooses to appear in court, the amount due will be no more than that which would be due if the offender had just remitted the money to the court or to the Motor Vehicle Division. Additionally, if the court suspends or defers sentencing and imposes a period of probation on the offender, that probationary period cannot exceed ninety days. §66-8-116(C).

### **5.3 Mandatory Court Appearance**

Offenses that require a court appearance usually do not have set penalties. Rather they have a range of penalties from which the judge can select. Section 66-8-7 makes it a misdemeanor to commit an offense specified in the Motor Vehicle Code (except, of course for those offenses such as Homicide by Vehicle, §66-8-101, which are specifically designated felonies).

The first task for the judge after conviction of a defendant on such an offense is to determine the maximum allowable penalty. The maximum penalty for a misdemeanor under the Motor Vehicle Code is “a fine of not more than three hundred dollars (\$300) or imprisonment for not more than ninety days or both.” §66-8-7(B). This maximum does not apply to those offenses for which a specific penalty has been set either within the section itself or in the sections setting forth those offenses that are penalty assessment misdemeanors. Under §3-17-1 a municipality has the authority to enact ordinances with a maximum penalty of five hundred dollars (\$500) and up to ninety days in jail or both. (There are some exceptions to this maximum, such as driving while intoxicated, but that is beyond the scope of this manual.)

Note: If an offense is cited under a municipal ordinance it is necessary to check the sentencing provisions, since not all municipalities have adopted the maximum allowed by state law.

Once the maximum allowable sentence has been determined for a particular traffic offense, the judge must then determine the appropriate sentence for the particular offender before the court, taking into account any mandatory sentences that might be required. As stated above, the judge should consider the purposes of punishment. The judge should then consider such factors as the reasons, if any, the offender gave for violating the law, the offender’s age, past driving record, demeanor towards the officers at the time of the stop as testified to by the officers, demeanor in court, and any other factors both mitigating (favorable) and aggravating (unfavorable), that will help the judge in formulating an appropriate sentence.

It is uncommon, though not unheard of, to impose jail time for traffic offenses. There are some judges who impose jail time if the conduct is of a willful and malicious nature, such as that required for reckless driving, §66-8-113.

Note: Conviction for reckless driving appears to carry a mandatory sentence under §66-8-113. Since that provision contains no language prohibiting the suspension or deferral of this sentence such as that found in §66-5-39 (“the fine and imprisonment shall not be suspended, deferred or taken under advisement” for driving when a license was revoked for DWI), it can be argued that the mandatory jail and fine for reckless driving must be imposed, but can then be suspended.

## 5.4 Fines: Agreement to Pay

It is all too common that, upon hearing how much is owed, the offender states that he or she does not have the money to pay it all at once and would like to work out a “payment plan.” Most courts have a policy that all fines and fees are due at time of sentencing (similar to your doctor’s requirement that all payments are due at time of service!), but enforcement of this policy is difficult at best. You certainly cannot make the offender sit there until the money somehow appears. Section 5.11 will discuss the imposition of community service in lieu of fines, but that should only be used in those situations where the defendant will not be able to make payment even in installments. If the defendant has the ability to pay something, and over time can pay the full amount, an Agreement to Pay should be set up. The Supreme Court has approved forms for this use. Rule 9-605 for use in Magistrate and Metropolitan Courts, and Rule 9-606 for use in Municipal Court.

Administrative Office of the Courts Policy Directive No. 7, issued July 1999 (Appendix B), prohibits the use of payment agreements in magistrate court if the defendant owes less than \$100. Payment in full must be made within thirty days of the sentence or release from jail. If the amount owed is more than \$100, the Directive allows an agreement to pay as long as the payments are at least \$50 per month. The Directive also includes procedures to follow if a defendant demonstrates inability to pay, including ordering community service in lieu of fines, fees or costs.

When a defendant signs an Agreement to Pay a contract is created between the defendant and the court. The Agreement may either specify that the defendant will pay the entire amount due in one lump sum on a particular date, or the defendant will make payments, e.g. weekly, bi-weekly or monthly, in a set amount until paid in full. The defendant acknowledges on the form that failure to comply may result in a charge of contempt of court, a bench warrant for arrest and further fines and fees, or jail.

It is important to keep track of the defendant’s payments. Most of the court computer programs will do this tracking automatically, and contain some notification method to inform the court clerk if payment has not been made on time. Do not let the defendant get behind in payments, or continually ask for extensions. This only makes the problem worse, since if it was difficult to come up with one payment, it will be doubly difficult to catch up and make multiple payments at one time.



In rare circumstances, it may be reasonable to rework the payment schedule, but only if the defendant can prove to the court's satisfaction that some significant unplanned event has seriously hampered the ability to pay according to the original agreement. If this cannot be shown, the defendant should be held to the initial agreement. Most defendants, when given the choice between making the payments and going to jail on a bench warrant, will find the funds somehow.

## 5.5 Fees

Whether an offense is acknowledged by mail, adjudicated by a court, results from a guilty, not guilty or no contest plea, and regardless of whether a sentence is suspended or deferred, court fees (sometimes called "costs") will be owed. The amount of those fees depends upon the court that has jurisdiction over the offense and sometimes the offense itself. Fees must be authorized by either the state legislature, or by the local governing body in limited circumstances. Court fees must be collected. Because they are all turned over to the state or some other agency, they cannot be waived or suspended. The designated organizations expect to receive the fee from any conviction regardless of the outcome of the rest of the sentence. Most court computer programs will assess fees before fines; that is, if the offender is making payments, payments will first be applied to fees and then to any fines due. What follows is a discussion of court fees as the various courts impose them. Appendix D of this Manual includes a New Mexico Supreme Court Order explaining the order in which money paid by an offender toward fines and fees should be applied.

### 5.5.1 Magistrate and Metropolitan Court Fees for Penalty Assessment Misdemeanors

Sections 66-8-116.3, 35-6-4(B), and 31-12-11 set forth the fees that must be imposed on all penalty assessment misdemeanors cited under state statute. They are as follows:

(Docket fee imposed if defendant pleads not guilty and is convicted)	(\$20.00)
Court Automation Fee	10.00
Court Facilities Fee	
Metropolitan Court	24.00
Magistrate Court	10.00
Corrections Fee	20.00 (not collected by Metropolitan Court in penalty assessment cases)
Traffic Safety Fee	3.00
Judicial Education Fee	2.00
Brain Injury Fee	5.00
Domestic Violence Offender Treatment Fee	5.00

**In Magistrate Court, the total fees to be imposed on convictions for penalty assessment misdemeanors amount to fifty-five dollars (\$55.00) if paid with a plea of guilty or seventy-five dollars (\$75.00) if the defendant pleads not guilty and is subsequently convicted.**

**In Metropolitan Court, the total fees to be imposed on convictions for penalty assessment misdemeanors amount to forty-nine dollars (\$9.00) if paid with a guilty plea or sixty-nine dollars (\$69.00) if the defendant pleads not guilty and is subsequently convicted.**

All fees (together with all fines) collected must be sent monthly to the Administrative Office of the Courts. The money will then be deposited into the appropriate funds at the Department of Finance and Administration and a receipt will be issued to the courts. §35-7-4.

**5.5.2 Magistrate and Metropolitan Court Fees for Motor Vehicle Code Violations Other than Penalty Assessment Misdemeanors**

For non-penalty assessment violations of the Motor Vehicle Code, §35-6-1(D) requires the collection of the same fees as above in the Magistrate and Metropolitan Courts, except that Metropolitan Courts shall also collect a corrections fee of \$20.00 in these cases:

(Docket fee imposed if defendant pleads not guilty and is convicted)	\$(20.00)
Court Automation Fee	10.00
Court Facilities Fee	
Metropolitan Court	24.00
Magistrate Court	10.00
Corrections Fee	20.00
Traffic Safety Fee	3.00
Judicial Education Fee	2.00
Brain Injury Fee	5.00
Domestic Violence Offender Treatment Fee	5.00

In Magistrate Court, the total fees to be imposed on convictions of motor vehicle code violations (other than penalty assessment misdemeanors) amount to fifty-five dollars (\$55.00) if the defendant pleads guilty or seventy-five dollars (\$75.00) if the defendant pleads not guilty and is convicted after trial.

In Metropolitan Court, the total fees to be imposed on convictions of motor vehicle code violations (other than penalty assessment misdemeanors) amount to sixty-nine dollars

(\$69.00) if the defendant pleads guilty or eighty-nine dollars (\$89.00) if the defendant pleads not guilty and is convicted after trial.

### 5.5.3 Municipal Courts

Municipal courts are given the authority by the state legislature to impose various court fees. Except under very limited circumstances, a municipality has no authority to impose a fee that has not been explicitly authorized by the legislature. Those limited circumstances exist only for home rule municipalities. Home rule municipalities have broader powers than non-home rule municipalities, and some have enacted fees not listed below. If you have a question as to whether your municipality is governed by home rule or not, check with your city clerk.

The state legislature has authorized, and in fact required in §35-14-11, that all municipalities impose the following court fees upon conviction of both penalty assessment and non-penalty assessment traffic violations:

Corrections Fee	\$20.00
Judicial Education Fee	2.00
Court Automation Fee	6.00

**The total fees to be imposed on convictions for traffic violations in Municipal Courts is twenty-eight dollars (\$28.00).**

All corrections fees collected by the municipal courts stay with the municipality to be used for jailer training, construction or maintenance of jails or housing of municipal prisoners. This money must be put in a separate fund and may only be used for the purposes allowed by law. Judicial Education Fees are sent monthly to the Judicial Education Center, Institute of Public Law, 1117 Stanford NE, Albuquerque, NM 87131. JEC deposits the funds monthly in the Municipal Judicial Education fund account in the State Treasury. Court Automation Fees are remitted monthly to the Administrative Office of the Courts for deposit into the appropriate state funds. §35-14-11.

### 5.6 Mandatory Suspend/Revoke Driver’s License

Conviction of certain offenses requires the suspension or revocation of the offender’s driver’s license. The most common of these offenses is driving while intoxicated, but that is not covered in this manual. Another offense that requires suspension or revocation of a driver’s license is driving while license was suspended or revoked, §66-5-39. If a person’s license has been suspended for accumulation of points, or some other reason set forth in §66-5-30, and that person is convicted of driving during the period of suspension, the offender’s license will be suspended for “an additional like period.” §66-5-39(C). If the person is convicted of driving on a revoked license, the person will have a one-year suspension tacked onto the end of the revocation period. §66-5-39(C).

It is not within the authority of the court to suspend or revoke the license. It is the court’s responsibility to send the abstract of record to the Motor Vehicle Division so that the

Division may take the appropriate action. See Chapter 7 for a full discussion of abstracts of record. A judge may, however, recommend to the Motor Vehicle Division that a person's driver's license be suspended. Section 66-5-30(A)(11) allows for a municipal or magistrate (and presumably metropolitan) court judge to recommend up to a three month suspension for an individual who "has accumulated seven points, but less than eleven points." This can be useful in the case of a young driver who has repeated traffic violations showing a lack of judgment or immaturity.

## **5.7 Jail**

Some traffic offenses carry the potential for up to 90 days in jail in municipal court and 364 days in magistrate and metropolitan court. Some offenses, such as driving during the time when a person's license has been revoked for driving under the influence of alcohol or drugs, or an Implied Consent Act Violation, carry mandatory jail time. §66-5-39. If a person is convicted of that offense, the statute, and municipal ordinances prohibiting the same offense, require the imposition of "not less than seven consecutive days [in jail] ... and the ... imprisonment shall not be suspended, deferred or taken under advisement." §66-5-39. Because this statute is very clear on its face, a judge has no choice but to sentence an individual to jail upon a conviction for driving on a revoked driver's license if the statutory requirements are met. The seven-day jail term must be consecutive. This term explicitly requires that the jail time be spent all at once. It cannot be split over several weekends. However, credit for time served in jail prior to the conviction must be given. Our courts have yet to determine whether an individual may be allowed to participate in a work-release program during the period of mandatory jail time.

In addition to mandatory jail time, a judge has discretion to impose up to ninety days in jail for other traffic offenses. Unless there are specific statutory restrictions, the jail time may be imposed fully, partially suspended, or entirely suspended. Any time actually served may include provisions for work release. It may also be served non-consecutively, that is several days at a time over a specified period of time. These details should be worked out at sentencing and made a part of the Judgment and Sentence form. Any change after the completion of the Judgment and Sentence form would require a hearing before the judge to reconsider or modify the sentence.

## **5.8 Suspension of Sentence**

Unless prohibited by statute or ordinance, a judge has the power to suspend all or any part of a sentence. Section 35-15-14 gives a municipal judge the authority to suspend sentences if an ordinance has been adopted allowing it. Section 31-20-3 gives the power of suspension to magistrate and metropolitan court judges. Procedurally, the judge imposes a sentence, then suspends all or part of it. The suspension is for a specified period of time, and usually involves conditions that the offender must meet. The offender is on probation for the period of the suspension. See §31-19-1(C) for magistrate and metropolitan court judges and §35-15-14(A)(2) for municipal court judges. The total period of probation is limited to the "maximum allowable incarceration time for the offense, or as otherwise provided by law." §31-20-5(A). As noted in Section 5.2 above, if a person is put on probation for committing a

penalty assessment misdemeanor, even though there is no allowable jail, a probationary period of ninety days is allowed. §66-8-116(C).

A judge may order the defendant to comply with certain conditions during the period of probation. The general rule is that any conditions are acceptable if the judge determines that they are “necessary to ensure that the defendant will observe the laws...” §31-20-6. The conditions of probation should be “reasonably related” to the offense committed. Common conditions of probation in traffic cases are attendance at driver improvement school, see Section 5.10 below, that the offender get no citations during the probationary period, that the defendant not have more than a specific number of people in the vehicle at any one time (usually used for juveniles), that the defendant not drive at night, or any other condition deemed appropriate by the judge.

If the defendant complies with the probationary conditions, at the end of the probationary period, the sentence will be deemed to have been complied with, and the file may be closed. If there is a violation of the conditions, the defendant will need to be summoned back to court on either a probation violation or contempt of court charge. See Section 6.3 for a full discussion of probation violations.

Note: Even if the entire sentence, i.e. fines and jail, is suspended, court fees must still be imposed and paid by the defendant. Court fees cannot be suspended.

## 5.9 Deferral of Sentence

Deferring a sentence is quite different from suspending a sentence. When a sentence is suspended, as discussed above, the sentence is actually imposed by the judge, but the performance of the sentence or a part thereof is suspended. When a sentence is deferred, no sentence is imposed; the imposition of the sentence is deferred upon the satisfactory completion of conditions of probation. Another large difference is that with a suspended sentence, at the end of the period of the suspension, the conviction remains on the offender’s record; with a deferred sentence, if the offender satisfactorily completes the period of probation/deferral, the charge is dismissed. Therefore, when deciding whether to defer a sentence, the judge must think it in the best interests of all that the offender end up with a clean record, assuming satisfactory completion of probation.

As with a suspended sentence, the offender is put on probation during the period of deferral. The same rules as to the length of probation apply here. The rules regarding conditions of probation are no different if the sentence is suspended or deferred. If the offender violates the terms, a charge of contempt of court or probation violation could be brought. Additionally, since sentencing is deferred on conditions, if the offender does not meet those conditions, the judge then has the authority to impose any sentence that could have been imposed at the time of the initial deferral. In that case, however, the defendant must be given

credit for all time served on probation, §31-21-15(B), excluding any time that the defendant was a fugitive. See §31-21-15(C); see also *State v. Kenneman*, 98 N.M. 794, 797-98 (Ct. App. 1982). If this is done, then the conviction is entered on the offender's record.

Note: In order to defer sentencing there must first be a conviction. The law requires collection of court fees on any conviction – it does not differentiate between those in which sentence is imposed and those that are later dismissed. Therefore, court fees must be collected when a sentence is deferred.

## 5.10 Driver Improvement School

It is common for judges to either defer sentencing or impose and suspend the sentence on the condition that the offender attends a driver improvement class or driver safety school. Most courts have such a school within their jurisdiction. Section 66-10-11 states that judges “ shall consider ordering that the offender ... take any driver safety course” as part of a sentence for a traffic violation. These classes are most often, but not always, used for people with clean driving records; that is, people who have had no prior convictions for traffic violations. Deferring sentencing on the condition that the offender attend a driver safety course is a way to get the offender to take some responsibility for her actions, and to hopefully instruct the driver on good driving habits.

Courts should keep records of who they send to local driver improvement classes so that an individual does not go repeatedly. The opportunity to have a sentence deferred and a conviction dismissed on the condition of attending class is a privilege for the offender, and should not be repeatedly offered to the same offender. The purpose of the class is to teach better driving habits. If the person continues to commit traffic offenses, obviously the class is not having the desired effect, and some other penalty needs to be considered.

## 5.11 Community Service

An offender can be ordered to perform community service under two scenarios. If an offender truly is unable to pay a fine, then community service may be imposed in lieu of the fine. The hours spent performing community service shall be credited “at the rate of the prevailing federal minimum wage” until the defendant's obligation is paid in full. §31-12-3(A). Community service may also be imposed as a condition of probation, and not tied to the payment of fines. §31-20-6(D) for magistrate and metropolitan courts and §35-15-14(A)(2) for municipal courts.

If an offender is ordered to perform community service for either of the above reasons, there must be someone in the court who is available to track the community service hours to make sure the defendant is complying with the sentence, and to ensure that the defendant is given proper credit towards money owed to the court. As with any court order, if the offender fails

to perform the required community service, either a contempt of court charge or probation violation will result.

It should be noted that the laws regarding community service for all courts make it clear that persons benefiting from community service may not assert civil claims for liability for damages arising from the community services unless gross negligence by the offender can be shown. Also the offenders performing community service are not employees of the city, county or state and therefore are not entitled to wages, worker's compensation or any other benefits. §§31-20-6(D) and 35-15-14(A)(2).

## CHAPTER 6

### POST-ADJUDICATION

#### 6.1 Failure to Appear

When an offender either chooses to come to court on a penalty assessment or is required to appear in court due to the nature of the offense, a court date and time is set. See Section 4.3 for a discussion of Notice of Trial. Unless the offender requests and is granted a continuance by the court, that court date must be honored. If the offender fails to appear as required, a chain of events is set in motion. First, the court issues a bench warrant for the offender's arrest or an order to show cause. See Rules 6-207A (Magistrate Court), 7-207(A) (Metropolitan Court), and 8-206(A) (Municipal Courts). It should be noted that these rules require that the judge have personal knowledge of the failure to appear. This means that the judge must call the offender's name in open court, and personally note the offender's absence in the case file. Second, a notice is sent to Motor Vehicle Division notifying the Division of the offender's failure to appear so that the offender's driver's license is suspended. Section 66-5-30(A)(9) allows the Motor Vehicle Division to suspend a driver's license for failure to appear in court on a traffic offense.

Additionally, the state statutes provide for a separate offense of failure to appear. Section 31-3-9 makes it a petty misdemeanor to fail to appear "in connection with a misdemeanor or a petty misdemeanor proceeding." The offender is, therefore, subject to further penalty. The penalty for a petty misdemeanor is a fine up to five hundred dollars (\$500), jail up to six months, or both. §31-19-1(B). A municipality also may have enacted an ordinance making failure to appear an offense and assigned a penalty to the offense. Municipal judges must check their ordinances, because if there is no separate offense for failure to appear, the only option is to charge the offender with contempt of court for failure to obey a court order directing the appearance in court.

If the offender is arrested on the bench warrant, or turns himself in on the warrant, the bond specified in the warrant must be posted or the offender must be placed in jail until arraignment. The arraignment is the same as any other, see section 4.4: the offender is either released or returned to jail, and a court date is set for both the original charge and the failure to appear or contempt charge. See Chapter 4 for a full discussion of trial procedures.

Once the offender takes care of the charges, a Notice of Clearance is provided to the offender. This notice may either be on a Motor Vehicle Division-approved form or computer-generated. It is then up to the offender to take the Notice of Clearance to the Motor Vehicle Division, pay the appropriate fee and have his license reinstated.



## 6.2 Failure to Pay

The procedure for a failure to pay a penalty assessment is similar to that for a failure to appear in court. If an offender has accepted the penalty assessment, i.e. agreed to plead guilty and pay the set amount either by mail or in person, a date is given within which the payment is due. For state violations the offender has thirty (30) days to pay. §66-8-117(B). For municipal violations, the time is whatever is specified in the ordinance.

If payment in full has not been received by the due date, a warrant may be issued, but due to volume this is not always feasible. A notice is sent to the Motor Vehicle Division informing them of the failure and the Division then has the authority to suspend the offender's driver's license. §66-5-30(A)(10).

The process for clearing the license is the same as that for a failure to appear.

## 6.3 Probation Violation

For the minor traffic violations that are the subject of this manual, a probation violation hearing will rarely be needed. This is mainly because, due to the nature of the offenses, the conditions of probation will be relatively minor. Additionally, since jail time is not often imposed, it is not economically feasible to continue to bring someone back to court for a fifty dollar (\$50) fine. Probation, if imposed, is usually of a very short duration, and the conditions will not be oppressive. Therefore, most offenders will do what is required – especially if their sentence was deferred and it means a dismissal of the charge – and there will be few, if any, probation violations. But there are always a few.

When an offender's sentence has been imposed but suspended, see Section 5.8, or sentencing has been deferred, see Section 5.9, the offender is put on probation for a definite period of time and required to comply with certain conditions. If the offender fails to comply with those conditions, a probation violation hearing may be set. For example, say an offender is sentenced to ninety (90) days in jail and fined \$500. The entire jail sentence is suspended as well as \$400 of the fine. The offender is placed on six months probation with the conditions that she attend driver improvement school, perform twenty (20) hours of community service, and receive no traffic citations during the period of probation. On the thirtieth (30<sup>th</sup>) day of her probation, the offender is cited for reckless driving. Because this is a violation of the terms of her probation, she should be brought back to court to answer for the probation violation.

The rules of probation violations are very clear. An offender is given credit for one day in jail for every day spent on probation. This means that our hypothetical offender, if found to have violated her probation, can be sentenced to no more than sixty (60) days in jail, since she has already "served" thirty (30) days. There is no corresponding rule regarding fines, so the entire suspended fine may be imposed.

The standard of proof at a probation violation hearing is “to the satisfaction of the court,” not “beyond a reasonable doubt” or as it was in the initial trial. The hearing may be informal, (the Rules of Evidence do not apply) and if the court finds that the conditions of probation were violated,

...the court may continue the original probation, revoke the probation and either order a new probation with any condition provided for in ... [statute], or require the probationer to serve the balance of the sentence imposed or any lesser sentence. If imposition of the sentence was deferred, the court may impose any sentence which might originally have been imposed, but credit shall be given for time served on probation.

§31-21-15(B).

## **6.4 Appeal and Remand**

Trials for traffic offenses are not recorded for purposes of an appellate record. Therefore, all appeals from these cases are to the District Court de novo; that is, an entire new trial is held in the District Court, as opposed to just a review of the record of the proceedings below. Rules 6-703(J) (Magistrate Court), 7-703(J) (Metropolitan Court), and 8-703(J) (Municipal Courts).

If an offender chooses to appeal a conviction of a traffic violation, a notice of appeal must be filed in District Court no more than fifteen (15) days from the filing of the Judgment and Sentence. The trial court is then required to forward to the District Court the record which consists of a title page, a copy of all papers and pleadings, a copy of the Judgment and Sentence, and any exhibits. An appeal must be heard in the District Court within six months or it shall be dismissed and remanded (sent back) to the original court for imposition of the original sentence. It is up to the defendant to make sure this scheduling takes place. After hearing all of the evidence, if the district court finds the defendant guilty it may impose “the same, a greater or a lesser penalty as imposed in the municipal court.” §35-15-8. Presumably the same applies to appeals from the magistrate and metropolitan courts. In the case of appeals from municipal courts, any fines assessed by the District Court must be remitted to the municipality. §35-15-13.

Usually, the District Court will only impose the sentence, but not actually collect fines or make arrangements for the offender to report to jail. The case is remanded to the lower court with instructions to carry out the sentence imposed by the District Court. If there is any probation, it is up to the lower court to monitor that probation.

## CHAPTER 7

### ABSTRACTS OF RECORD

#### 7.1 What is an Abstract?

The abstract of record is the document that is sent to the Driver Services Bureau of the Motor Vehicle Division, which provides information regarding the offense charged, the offense pled or found guilty to, the plea or finding by the court to the charge, and the sentence imposed. The information from the abstract is entered onto the offender's permanent driver's record, so that it may be accessed by law enforcement or the courts to determine a person's past driving history for sentencing or other purposes. Accuracy in filling out abstracts is critical. Incorrect information could lead to a person being penalized more or less severely and could lead to the incarceration of a person in error. The Motor Vehicle Division also will use this information to determine whether suspension or revocation of a person's driving privileges is warranted so the consequences to an individual can be quite serious. Ensure that all information is correct and timely before sending it to MVD because while removing inaccuracies from a person's driving record is possible, once the damage is done to a person's reputation, it is sometimes hard to undo just with paperwork correction.

Courts use several types of documents to record a traffic case's disposition. While all of these contain vital information, it is the information recorded on the citation abstract that goes to MVD. Information contained in the other documents is important, though, and may be requested by another jurisdiction or used in the same jurisdiction to show, for example, that a defendant's guilty plea was knowing and voluntary. See Section 4.4.2. The information also may be important to show whether the defendant was represented by an attorney, if applicable. These documents should be kept in the court file for the time required under the applicable Records Disposition Schedule so that they may be retrieved if necessary.

##### 7.1.1 Judgment and Sentence Form

A Judgment and Sentence Form (see Rules 9-601 and 9-602) is not often used in simple traffic cases. However, it may be used in cases where the defendant has been charged with a jailable offense such as reckless driving. If a Judgment and Sentence Form is used, the reverse of the citation must still be filled out and mailed to the Motor Vehicle Division. The Judgment and Sentence form is not sent, but stays in the court file. Information such as conditions of probation may be included on the Judgment and Sentence Form, but not on the citation abstract. Other information, such as the attorneys' names, if applicable, also will be on the Judgment and Sentence, but not on the citation abstract.

### **7.1.2 Written Plea Agreement**

In a few traffic cases, usually when the offender is represented by an attorney, a written plea agreement may be presented to the court. See Rules 9-408 and 9-408A. The plea agreement will contain information similar to that contained on the Judgment and Sentence, i.e. the original charges, the charges pled to, any charges that were reduced or dismissed, the names of the attorneys, the sentence if approved by the court (see Section 4.5.5), conditions of probation, if applicable and allowed by the court, and any other information necessary to the disposition of the case. As with the Judgment and Sentence, this document is not sent to the Motor Vehicle Division, but is kept in the court file.

### **7.1.3 Abstract of Record on Citation**

The “official” abstract of record is the form on the reverse of the citation. The citation is comprised of four copies. One goes to the offender. On the reverse of the offender’s copy are instructions regarding payment of the citation, appearing in court, directions if the offender is given a warning rather than a citation requiring action, and the address for sending payment. The second copy goes to the issuing agency (the department of the law enforcement officer who issued the citation). On the reverse of this copy is a section for the officer to write notes regarding the offense observed and to list any witnesses. The officer usually uses a copy of this when testifying in court and the original is turned in to the person in the department responsible for reporting citations. The remaining two copies are turned in to the court with jurisdiction over the offense. One copy will remain with the court and the other will be sent to the Driver Services Bureau of the Motor Vehicle Division as the official abstract of record.

The reverse of the court copy and the motor vehicle copy are similar. The court copy has some additional information not contained on the abstract of record. The court copy contains a statement that may be signed by the offender indicating his desire to waive his rights and plead guilty. Additionally, if a warrant is issued due to failure to pay or appear there is a place on the court’s copy for that information. Other than these two major differences, the two copies are very similar. The individual items of the abstract of record will be discussed below in Section 7.3.

An abstract of record must be filled out and sent to the Motor Vehicle Division for every citation turned in to the court regardless of disposition. No abstract is to be filled out for a warning. In fact, warning citations should not even be forwarded to the court; they should remain with the appropriate law enforcement department for statistical and citation tracking records only. An abstract will be filled out by the Municipal Courts for any penalty assessment citations paid to the court. The court and motor vehicle copies of citations for penalty assessment offenses issued under state statute will be sent to the Driver Services Bureau, which will complete the information when the penalty assessment is paid. For offenses where there is a court appearance, the municipal, magistrate or metropolitan court will fill out and mail the abstract to the Bureau.

## 7.2 When to Send

State law requires that the abstract of record be forwarded to the Driver Services Bureau of the Motor Vehicle Division within 10 days of final action. §66-8-135(B).

## 7.3 How to Fill Out

Completing the abstract of record is mostly just a matter of checking boxes and filling in blanks. It sounds simple, but it bears repeating that accuracy is paramount. Mistakes can be costly to the court, the system, and the offender. Looking at the abstract of record copy let's go through the form:

- Fill in the Court Docket Number (Case Number), Court Date and Sentencing Date at the top of the form. The court date and sentencing date probably will be the same date.
  - Defendant's Plea – Check the box that corresponds with the defendant's plea.
  - Finding of the Court – Check the appropriate box. If the prosecutor or the officer fails to appear in court the case should be "Dismissed no Prosecution." If the defense or prosecution makes a motion to dismiss that is granted by the court the case should be "Dismissed on Motion."

Note: If the defendant has pled guilty, the court finding must be guilty unless the court refuses to accept the guilty plea, in which case the defendant's plea should be changed to "Not guilty."

- Sentence of the Court – check all that apply and insert the appropriate amount in the far column. If a fine is imposed and none of it is suspended, do not check that box.
  - In the court cost box insert any court costs not specifically listed on the form.
  - The Corrections Fee, Court Automation Fee, Judicial Education Fee, and Traffic Safety Fee are all statutorily imposed and must be collected for each offense.
  - The warrant fee will only be imposed by those courts that are authorized to collect it and only in cases where a defendant has failed to appear and a warrant has been issued.
- The Remarks section may be used for many things.
  - If a defendant has been charged with one offense and found or pled guilty to another, lesser offense, that will be noted here.
  - If a defendant has been charged with a "paperwork" offense, indicate in the Remarks section that proof has been shown and therefore the charge dismissed.

- If the Motor Vehicle Division needs to be informed of anything, such as the judge's desire that the individual's license be suspended (see §66-5-30(A)(11)), put that information here.
- If the defendant's fine is suspended on the condition that she attend Driver Improvement School, when the school is completed and the charge dismissed note that here. This also is used whenever a sentence is deferred on a certain condition, and the charge dismissed when that condition is complied with.
- The form must then be signed by the judge (a facsimile signature is allowed) or the authorized representative (usually the court clerk), and the court's name and address inserted. The form then is complete.

## 7.4 Failure to Pay/Failure to Appear

If an individual fails to pay a penalty assessment when due or fails to appear in court when scheduled the law mandates that their driving privileges be suspended until they pay in full and/or appear in court and take the case to its final disposition. §§66-5-30A(9) and 66-5-30A(10). When either of these occurrences happens, the abstract of record is not sent in. Instead a notice of Failure to Appear in Court or Failure to Pay is sent to the Motor Vehicle Division so appropriate action may be taken. This form may be generated by any of the approved computer software programs in the courts or it may be on an approved form. Certain information must be contained on the form.

- Court name, address and court code
- Offender's citation number
- Offender's name and address
- Offender's date of birth
- Offender's social security number
- Court or payment date not complied with
- Violation date

Note: It is extremely important that the citing officer get all of the above information so that the Motor Vehicle Division can be sure it is suspending the right person's driving privileges. Many people have the same name and possibly even the same address and birth date; the social security number is the most individual identifying factor. All of this information also is necessary for issuance of a warrant for the same reasons.

Depending on the caseload of the court, these "suspend lists" can be sent in as they occur or on a weekly basis. With the computer software programs now in use by the courts, the computer may be programmed to automatically generate the list on a certain day or a weekly basis. The clerk must manually check the list to ensure that no one is on the list who has come in to pay recently and the computer has not yet processed their payment.

A separate list must be prepared for non-New Mexico residents who fail to appear or pay. See Chapter 10. The same information must be provided on this list. MVD will forward the appropriate paperwork to the home state of the violator in accordance with the Nonresident Violator Compact.

## **7.5 Insufficient Funds Checks**

If a person pays with a check that is returned by the bank due to insufficient funds (or not sufficient funds - NSF) or a closed account, it is as if that person failed to pay. If the abstract of record has already been sent to the Motor Vehicle Division the person will be included on the suspend list and no amended abstract of record need be prepared. The citation will go on their record, and the offender will have to come to court to “make good” the NSF check and pay any late fees, NSF processing fees, or warrant fees that may have accrued. If the abstract has not yet been sent, it should be held as if there was a failure to pay, and the person’s information included on the suspend list sent to the Motor Vehicle Division. In most cases, the abstract will already have been sent on since it may take upwards of two weeks to be notified by the bank that a check has not cleared. It would be impractical to amend the abstract to reflect a failure to pay at this time, and it has more effect to suspend the driving privileges and have the violation on the person’s record.

Some courts will not immediately put the person on the suspend list after receiving notification of an NSF check. The court will attempt to contact the person, and give them time to pay the fine (in cash or certified check or money order this time!). If the person complies, the abstract is sent (if it hasn’t been already) as if the citation were paid on time.

## **7.6 Deferral of Sentence**

If the sentence is deferred on the condition that the offender perform some act such as attending Driver Improvement School, the abstract of record should not be sent in until the offender either complies or fails to comply within the required time period. Usually the time of deferral is quite short, e.g. 90 days, so why send in an abstract showing a conviction only to have to amend that abstract soon thereafter to indicate that the citation has been dismissed? Additionally, having the conviction on his driving record, even for a short time, could have a detrimental effect on a defendant’s insurance costs or even ability to hold a job. Therefore, holding the abstract until compliance or noncompliance is only practical for both the court and the offender.

If the offender complies with the conditions of the deferral the citation can be sent in as dismissed with a note in the Remarks section indicating that even though the defendant pled guilty or was found guilty, the citation is being dismissed due to the defendant’s compliance with the conditions of a deferred sentence. The Motor Vehicle Division will then treat the charge as a dismissal.

If, on the other hand, the offender does not comply with the conditions of the deferral he may be brought back into court for sentencing or the citation may just be sent directly to the

Motor Vehicle Division for processing as a conviction. For more discussion on the effect of a deferred sentence see Section 5.9.

## **7.7 Amendment of Abstract**

Occasionally, information already transmitted to the Driver Services Bureau on an Abstract of Record must be amended. If amendment becomes necessary, a form should be used to indicate what part of the abstract must be changed, and a reason for the amendment given. Some courts have developed their own form for this purpose. Others communicate the information in letter form. Whichever way the court chooses, make sure that it is acceptable to the Driver Services Bureau, and especially ensure that all the necessary information is included.

## **7.8 Removal of Suspend Status**

When a person whose license has been suspended due to a failure to pay or failure to appear takes care of that violation, two actions are required by the court. First a Notice of Clearance must be prepared and given to the offender. This may be a computer-generated form or the Motor Vehicle Department approved form. It is the offender's responsibility to take this form to the local Motor Vehicle Division office, pay any reinstatement fees and get her license back. The court does not send an "Unsuspend list" to the Division.

The court then sends the abstract of record to the Driver Services Bureau showing that the case has been adjudicated, and the abstract is filled out as provided for above.



## CHAPTER 8

### JUVENILES

#### 8.1 Jurisdictional Issues

As a general rule, Magistrate, Metropolitan and Municipal Courts have no jurisdiction over offenses committed by juveniles (persons who have not yet reached their 18<sup>th</sup> birthday). An exception, however, is provided for most traffic offenses. Section 32A-2-29 gives municipal, magistrate and metropolitan courts original jurisdiction to hear traffic offenses committed by minors under either the Motor Vehicle Code or municipal ordinances. Offenses excepted from this authority of the limited jurisdiction courts are: driving while intoxicated, reckless driving, driving on a suspended or revoked driver's license, and other serious traffic offenses. §32A-2-3. If one of these serious offenses is committed along with other traffic violations, all charges will go to the Children's Court. For example, if a 17-year old is arrested for driving while intoxicated, speeding and failing to wear a seatbelt, all offenses would be heard in the Children's Court, even though the lower courts have jurisdiction over the speeding and seat belt charges. This is so one court, here the Children's Court, can "see the whole picture" and deal with the incident as a whole, instead of having two courts deal with pieces of the same incident.

If any of the offenses that are heard in the lower courts have the potential for imposing jail time, the court may not sentence the juvenile to jail "without first securing the approval of the children's court." §32A-2-29(D). Because the more serious offenses are within the jurisdiction of the children's court, the potential for a limited jurisdiction judge sentencing a juvenile to jail is all but nonexistent.

Some judges make it a rule that at least one of the juvenile's parents must appear in court with the juvenile. This is to ensure that the parents are aware of the offense – especially if they are paying the insurance premiums! – and to give the parents an opportunity to provide any relevant information to the court about the juvenile.

#### 8.2 Failure to Pay/Failure to Appear

If a juvenile fails to appear in court for a traffic violation or fails to pay a penalty assessment when due, the procedure is similar to that for adults. The court sends a notice to the Motor Vehicle Division and the juvenile's driver's license will be suspended until the citation is taken care of. See Section 8.3 below for a discussion of the consequences when the juvenile is driving with a graduated driver's license.

The main difference between adults and juveniles in this area is that a magistrate, municipal or metropolitan judge does not have the authority to incarcerate a juvenile without permission of the Children's Court. §32A-2-29(D). A warrant form for juveniles is found at Rule 9-212B. This form may be used by municipal, magistrate and metropolitan court judges

when a juvenile fails to appear for a traffic offense, fails to pay fines on a traffic offense or fails to comply with conditions of probation for traffic offenses. This warrant differs from an “adult warrant” in that it may be served only under two conditions:

- The defendant may be arrested “only during court hours after confirming a judge is available for immediate appearance”; or
- “A children’s court judge has approved the arrest and incarceration of this juvenile.”

Rule 9-212B.

Before issuing warrants to arrest juveniles in traffic cases, a judge should make sure that the law enforcement officers are aware of these restrictions, and that they have a policy for either getting the Children’s Court’s approval or for contacting the limited jurisdiction judge for immediate arraignment. Under no circumstances should the court allow the juvenile to be held, even in a holding cell, unless prior approval has been obtained from the Children’s Court judge.

After arraignment, if the juvenile is unable to post bail or to take care of the failure upon which the warrant was issued, the court must contact the Children’s Court judge for permission to incarcerate the juvenile if that permission has not been previously obtained.

### **8.3 Graduated Driver’s License**

A new law went into effect on January 1, 2000 requiring anyone under eighteen to go through a three-stage program in order to obtain a driver’s license This law is known as the Graduated Driver License law. §§66-5-5, 66-5-8, 66-5-9, 66-5-11, 66-5-12, 66-5-13. The three stages are summarized as follows:

#### **Stage 1 – Instructional Permit**

1. A person at least fifteen years of age may obtain an instructional permit:
  - a. with permission of a parent or guardian;
  - b. upon enrollment and attendance in or completion of a state-approved or public school driver education program;
  - c. after passing a written and vision test; and
  - d. upon paying the appropriate fee.
2. The person must have the instructional permit for at least six months and during that time must:
  - a. complete the driver education program;
  - b. drive with an adult (at least 21 years old) who has had a driver’s license for at least three years;
  - c. complete fifty (50) hours of driving, not less than ten of which must be at night (this must be certified to in writing by the parent or guardian); and
  - d. have no traffic violations within the ninety days preceding application for Stage 2.

**Stage 2 – Provisional License**

1. In order to obtain a provisional license, the teen must:
  - a. successfully complete all requirements of Stage 1;
  - b. be at least fifteen and one-half years old; and
  - c. pass a driving test.
2. The person must have the provisional license for at least twelve months and during that time:
  - a. may not have more than one passenger (other than an immediate family member) under the age of twenty-one in the vehicle unless there is also a licensed driver over the age of twenty-one in the vehicle;
  - b. may not drive between the hours of midnight and five a.m. unless a licensed driver over the age of twenty-one is in the vehicle (the law provides exceptions for school, work, family and medical need or religious functions, as long as the teen has a signed permission statement); and
  - e. must have no traffic violations within the ninety days preceding application for Stage 3.

**Stage 3 – Full License**

An individual at least sixteen and one-half years old who has held a provisional license for at least twelve months and successfully completed all the requirements of Stage 2 is eligible for a full license.

Because of the requirements and restrictions imposed on drivers in the Graduated Driver's License program, judges and court clerks must be aware of their duties under that program. If a juvenile appears in court for a traffic violation during the ninety days prior to going on to the next step, and if that person is found guilty of the violation, the Motor Vehicle Division must be notified immediately. This is so the Division can take the appropriate action and, if necessary, refuse to allow the juvenile to proceed to the next stage.

If a sentence is deferred and then the conviction dismissed, the conditions of deferral will have to be completed prior to the expiration of the ninety days. If the process of complying with the conditions runs past the ninety-day limit, then technically there has been a conviction, but no sentencing. Also, if the juvenile fails to comply with the conditions of the deferral, the court will need enough time to determine whether to impose sentencing and send the abstract to Santa Fe in time for processing.

Since this program is so new, and the time limits can be so critical, if a situation comes up that could potentially result in the juvenile not being allowed to progress to the next stage, a phone call to the Motor Vehicle Division might be advisable.

## CHAPTER 9

### NON-RESIDENTS

What happens when a person from Alabama gets a citation in New Mexico and fails to either appear in court as ordered or pay a penalty assessment?

Sections 66-8-137.1 to 66-8-137.4 comprise the Nonresident Violator Compact (NRVC). This is an agreement signed by about forty states that addresses the action to be taken in such a situation. Under the compact, the person from Alabama who gets a speeding ticket in New Mexico and either fails to appear or to pay will have his Alabama driver's license suspended if provided for in Alabama law until the New Mexico citation is resolved.

Prior to the adoption of the NRVC, a nonresident violator either had to post bail or be taken into custody if the citation was written in a state other than the state of residence. This was to ensure that the person did not leave the state, return home and fail to take care of the citation. Since there was no way to serve a misdemeanor warrant across state lines, that person would, in effect, get off with no penalty--neither in the person's home state nor in the state in which the citation was received. The drafters of the Interstate Compact responded to the widespread perception that the posting of bond or incarceration of an offender based on nonresident status was unfair and "a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine and thus is compelled to remain in custody until some arrangement can be made." §66-8-137.1, Article I(A)(5).

In order to fulfill the dual goals of ensuring that the citation is taken care of while not unduly burdening the nonresident, the Nonresident Violator Compact was adopted. This compact provides for the nonresident to sign a citation promising to pay or appear (unless the offense provides for immediate arrest). If the person fails to pay or appear, the municipal court, if the citation was issued for violation of a municipal ordinance, notifies the Motor Vehicle Division by sending the abstract of record showing a violation of the Nonresident Violator Compact in the Remarks section. NRVC abstracts should be sent separately from all other abstracts and documents. The Motor Vehicle Division then forwards the necessary information on to the offender's home state. The home state, "in accordance with the home jurisdiction's procedures," will begin the action to suspend the offender's driver's license. §66-8-137.1, Article IV(A). Once the citation has been taken care of, and the New Mexico MVD has provided proof to the home jurisdiction, action to reinstate the license in the home state may be taken.

Payment for citations must be made to the Motor Vehicle Division. If payment is sent to the Municipal Court, a "Rescission of Notice of Failure to Appear (Under Nonresident Violator Compact)" should be sent to MVD so that the home state can be notified. If the failure to appear occurs in Magistrate or Metropolitan Court, essentially the same procedure applies. If the citation was written under state law and the offender signed the penalty assessment, all action will be taken by the Motor Vehicle Division once the due date to receive payment has passed with no payment received.

Note: The Nonresident Violator Compact only applies to moving violations. It does not apply to parking or standing violations, weight and size limitations, inspection violations or any other violations exempt from the compact.

If the offender is from a state that is not a member of the NRVC, the court still can send the abstract to MVD. If MVD chooses to send it to the home jurisdiction, action may be taken regardless of the state's participation in the compact.

# APPENDICES

## **A. MVD Forms**

- A.1 Uniform Traffic Citation, Form 11015
- A.2 Notice of Failure to Appear in Court (Residents), Form 10079
- A.3 Rescission of Notice of Failure to Appear (Non-Residents), Form 10947
- A.4 Request for Refund, Form 10208

## **B. Administrative Office of the Courts Policy Directive No. 7 (July 1999)**

## **C. New Mexico Taxation & Revenue Department Telephone Directory (including MVD numbers), May 2004**

## **D. New Mexico Supreme Court Order No. 03-8200 (In the Matter of the Adoption of a Collection Scheme for Fines, Fees, and Costs Assessed in Criminal Proceedings)**

# **APPENDIX A**

## **MVD Forms**

- A.1 Uniform Traffic Citation, Form 11015
- A.2 Notice of Failure to Appear in Court (Residents), Form 10079
- A.3 Rescission of Notice of Failure to Appear (Non-Residents), Form 10947
- A.4 Request for Refund, Form 10208

# **APPENDIX A.1**

## **Uniform Traffic Citation, Form 11015**





# STATE OF NEW MEXICO UNIFORM TRAFFIC CITATION

UNIVERSITY OF NM  
POLICE  
DEPARTMENT

COUNTY CODE    AGENCY CODE  
**0 2 0 1 1**

NAME (LAST)																
NAME (FIRST)											MI					
ADDRESS						CITY			STATE		ZIP CODE					
STATE		DRIVER LICENSE NUMBER														
DATE OF BIRTH			SOCIAL SECURITY NUMBER				SEX	HEIGHT		WEIGHT	EYE COLOR					
M	M	D	D	Y	Y		FT	IN								
LICENSE PLATE NUMBER				STATE	VEH YR	COLOR		TYPE / MAKE / MODEL								
C M V	LICENSE TYPE			HAZMAT PL	PASS 16+	DOT NUMBER										
Y	N	LP	D	E	A	B	C	Y	N	Y	N					
TRAFFIC		WEATHER			ROAD		LIGHT		ACCIDENT							
LT	MD	HV	CL	FG	RN	SN	DS	D	W	I	S	LT	DS	DK	Y	N

<input type="checkbox"/> STATUTE 66-7-301 <b>SPEEDING</b>	<input type="checkbox"/> CZ	<input type="checkbox"/> STATUTE 66-5-205 NO INSURANCE	<input type="checkbox"/> STATUTE	<input type="checkbox"/> ORDINANCE
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> MPH IN A <input type="checkbox"/> <input type="checkbox"/> ZONE	<input type="checkbox"/> RH	<input type="checkbox"/> STATUTE 66-7-372 NO SEAT BELTS		

DATE	TIME	IDENTIFICATION		DISTRICT		MILE POST							
M	M	D	D	Y	Y	H	H	M	M				
LOCATION													
OFFICER'S PRINTED NAME						OFFICER'S SIGNATURE							

ESSENTIAL FACTS

**PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of \$    .00  
OFFICER MAY NOT ACCEPT PAYMENT

**TRAFFIC ARRAIGNMENT:** You are hereby ordered to appear in METROPOLITAN COURT  
on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM  
PM  
My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

**COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in  
● MAGISTRATE ● METRO ● MUNICIPAL or ● TRIBAL court.  
Address \_\_\_\_\_ AM  
on (or by) \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ PM

**WARNING NOTICE:** I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.  
X \_\_\_\_\_ Agree to the above marked determination.  
Signature

02 01 1  
BAR CODE AREA

COURT DOCKET NUMBER	COURT DATE	SENTENCING DATE

I, the undersigned do hereby enter my appearance on the complaint of the offense charged on the reverse side of the order or summons. I have been informed of my right to trial, that my signature to this plea of guilty will have the same force and effect as a judgment of the court, and this record will be sent to the Licensing Authority of this state (or the state where I received my license to drive). I do hereby PLEAD GUILTY to said offense as charged and WAIVE my rights to a hearing by court.

Amount of Fine

Signature

### COURT DISPOSITION

- |  |   |
|--|---|
| <input type="checkbox"/> Guilty          | <input type="checkbox"/> Not Guilty               |
| <input type="checkbox"/> Fines           | <input type="checkbox"/> Dismissed no Prosecution |
| <input type="checkbox"/> Fines Suspended | <input type="checkbox"/> Dismissed on Motion      |

### SENTENCE OF THE COURT

- |   |            |   |          |
|---|------------|---|----------|
| <input type="checkbox"/> Fine             | \$ _____   | <input type="checkbox"/> Correction Fee         | \$ _____ |
| <input type="checkbox"/> Amount Suspended | \$ _____   | <input type="checkbox"/> Court Automation Fee   | \$ _____ |
| <input type="checkbox"/> Jail             | Days _____ | <input type="checkbox"/> Judicial Education Fee | \$ _____ |
| <input type="checkbox"/> Time Suspended   | Days _____ | <input type="checkbox"/> Traffic Safety Fee     | \$ _____ |
| <input type="checkbox"/> Bond Forfeit     | \$ _____   | <input type="checkbox"/> Warrant Fee            | \$ _____ |
| <input type="checkbox"/> Court Costs      | \$ _____   | <input type="checkbox"/> Facility Fee           | \$ _____ |
|   |            | <input type="checkbox"/> Other                  | \$ _____ |

Total Jail Days \_\_\_\_\_

Total Costs \$ \_\_\_\_\_

Remarks \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Final Posting	Date
	Date
Warrant Issued	Date
	Date
Judge's Signature	Defendant Absent Issued Bench Warrant
Jailed - See Arrest Number	
_____ AM PM	



# STATE OF NEW MEXICO UNIFORM TRAFFIC CITATION

UNIVERSITY OF NM  
POLICE  
DEPARTMENT

COUNTY CODE	AGENCY CODE
0 2 0	1 1

NAME (LAST)																					
NAME (FIRST)											MI										
ADDRESS								CITY		STATE		ZIP CODE									
STATE		DRIVER LICENSE NUMBER																			
DATE OF BIRTH				SOCIAL SECURITY NUMBER				SEX	HEIGHT		WEIGHT		EYE COLOR								
M	M	D	D	Y	Y				FT	IN											
LICENSE PLATE NUMBER				STATE		VEH YR	COLOR		TYPE / MAKE / MODEL												
CMV	LICENSE TYPE			HAZMAT PL		PASS 16+		DOT NUMBER													
Y	N	LP	D	E	A	B	C	Y	N	Y	N										
TRAFFIC		WEATHER			ROAD			LIGHT			ACCIDENT										
LT	MD	HV	CL	FG	RN	SN	DS	D	W	I	S	LT	DS	DK	Y	N					

<input type="checkbox"/>	STATUTE 66-7-301 <b>SPEEDING</b>	<input type="checkbox"/>	CZ	<input type="checkbox"/>	STATUTE 66-5-205 NO INSURANCE	<input type="checkbox"/>	STATUTE	<input type="checkbox"/>	ORDINANCE
<input type="checkbox"/>	MPH IN A <input type="checkbox"/>	<input type="checkbox"/>	ZONE	<input type="checkbox"/>	RH	<input type="checkbox"/>	STATUTE 66-7-372 NO SEAT BELTS		

DATE				TIME				IDENTIFICATION				DISTRICT		MILE POST			
M	M	D	D	Y	Y	H	H	M	M								
LOCATION																	
OFFICER'S PRINTED NAME								OFFICER'S SIGNATURE									

ESSENTIAL FACTS

---



---



---

**PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of OFFICER MAY NOT ACCEPT PAYMENT \$ .00

**TRAFFIC ARRAIGNMENT:** You are hereby ordered to appear in METROPOLITAN COURT

on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM/PM  
My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

**COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in  
 MAGISTRATE  METRO  MUNICIPAL or  TRIBAL court.  
 Address \_\_\_\_\_ AM/PM  
 on (or by) \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ PM

**WARNING NOTICE:** I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.  
 Signature \_\_\_\_\_ Agree to the above marked determination.

02 01 1

BAR CODE AREA

## ABSTRACT OF RECORD

COURT DOCKET NUMBER

COURT DATE

SENTENCING DATE

### DEFENDANT'S PLEA

Nolo Contendere

Guilty

Not Guilty

### COURT DISPOSITION

Guilty

Dismissed no Prosecution

Not Guilty

Dismissed on Motion

### SENTENCE OF THE COURT

Fine \$ \_\_\_\_\_

Amount Suspended \$ \_\_\_\_\_

Jail Days \_\_\_\_\_

Time Suspended Days \_\_\_\_\_

Bond Forfeit \$ \_\_\_\_\_

Court Costs \$ \_\_\_\_\_

Correction Fee \$ \_\_\_\_\_

Court Automation Fee \$ \_\_\_\_\_

Judicial Education Fee \$ \_\_\_\_\_

Traffic Safety Fee \$ \_\_\_\_\_

Warrant Fee \$ \_\_\_\_\_

Facility Fee \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Total Jail Days \_\_\_\_\_

Total Costs \$ \_\_\_\_\_

Remarks \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This is a correct abstract of the court's disposition of the citation issued to the defendant as a result of the offense shown on the reverse.**

Signature (Magistrate, Judge, or Authorized Representative of the Court)

Printed Name

Name of Court

Date

Address

Post Office

### DISPOSITION BY OFFICER AND COURT

**COURT APPEARANCE OR TRAFFIC ARRAIGNMENT:** Officer must forward this abstract to the court. The court must complete the above and mail to the Motor Vehicle Division.

**PENALTY ASSESSMENT:** Officer must forward this abstract to the Motor Vehicle Division.

MOTOR VEHICLE DIVISION  
Driver Services Bureau  
P.O. Box 1028  
Santa Fe, New Mexico 87504-1028



# STATE OF NEW MEXICO UNIFORM TRAFFIC CITATION

UNIVERSITY OF NM  
POLICE  
DEPARTMENT

COUNTY CODE	AGENCY CODE
0 2	0 1 1

NAME (LAST)																	
NAME (FIRST)											MI						
ADDRESS						CITY			STATE		ZIP CODE						
STATE		DRIVER LICENSE NUMBER															
DATE OF BIRTH				SOCIAL SECURITY NUMBER				SEX	HEIGHT		WEIGHT	EYE COLOR					
M	M	D	D	Y	Y				FT	IN							
LICENSE PLATE NUMBER				STATE	VEH YR	COLOR		TYPE / MAKE / MODEL									
CMV	LICENSE TYPE			HAZMAT PL		PASS 16+		DOT NUMBER									
Y	N	LP	D	E	A	B	C	Y	N	Y	N						
TRAFFIC		WEATHER			ROAD		LIGHT		ACCIDENT								
LT	MD	HV	CL	FG	RN	SN	DS	D	W	I	S	LT	DS	DK	Y	N	

<input type="checkbox"/>	STATUTE 66-7-301 <b>SPEEDING</b>	<input type="checkbox"/>	CZ	<input type="checkbox"/>	STATUTE 66-5-205 NO INSURANCE	<input type="checkbox"/>	STATUTE	<input type="checkbox"/>	ORDINANCE
<input type="checkbox"/>	MPH IN A <input type="checkbox"/>	<input type="checkbox"/>	ZONE	<input type="checkbox"/>	RH	<input type="checkbox"/>	STATUTE 66-7-372 NO SEAT BELTS		

DATE			TIME			IDENTIFICATION			DISTRICT			MILE POST			
M	M	D	D	Y	Y	H	H	M	M						
LOCATION															
OFFICER'S PRINTED NAME							OFFICER'S SIGNATURE								

ESSENTIAL FACTS

---



---



---

**PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of OFFICER MAY NOT ACCEPT PAYMENT \$ .00

**TRAFFIC ARRAIGNMENT:** You are hereby ordered to appear in METROPOLITAN COURT

on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM  
PM  
My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

**COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in  
 MAGISTRATE  METRO  MUNICIPAL or  TRIBAL court.  
 Address \_\_\_\_\_ AM  
 on (or by) \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ PM

**WARNING NOTICE:** I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.

\_\_\_\_\_ Agree to the above marked determination.  
 Signature

02 01 1  
BAR CODE AREA

# INSTRUCTIONS TO MOTORIST

**REFUSAL TO ACCEPT AND SIGN THIS CITATION WILL REQUIRE THAT YOU BE DETAINED IMMEDIATELY AND HELD IN CUSTODY UNTIL TAKEN TO APPEAR BEFORE A JUDGE, WHEN ONE BECOMES AVAILABLE.**

**PENALTY ASSESSMENT:** If this is a penalty assessment notice, your signature constitutes an acknowledgment of guilt and no court appearance is required. You must remit the prescribed penalty amount indicated on the face of this citation within thirty days of the date of issuance. Failure to remit the penalty amount within the required time frame will result in the suspension of your driver's license and driving privileges and subject you to payment of an additional reinstatement fee. Insure proper credit for payment by enclosing this copy of the citation with your check or money order made payable to the Motor Vehicle Division (or applicable jurisdiction indicated below) and mail to the address given below. DO NOT SEND CASH!

**TRAFFIC ARRAIGNMENT:** If this notice is a notice to appear in arraignment court, signing this citation is acknowledging receipt of the court's order to appear and not an admission of guilt. My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

**COURT APPEARANCE:** If this is a notice to appear in court, signing this citation is only an agreement to appear and not an admission of guilt. Failure to appear is a misdemeanor subjecting you to another prosecution in addition to the offense alleged on this citation. Also, failure to comply with your signed promise to appear will result in the suspension of your driver's license and driving privileges by the licensing jurisdiction. You are required to appear in court within the time frame specified by the officer.

**WARNING NOTICE:** If this is a warning notice, it does not require an appearance in court or payment of a penalty. However, the officer is warning you that a violation has been committed and that convictions for offenses of this nature would result in the posting of the violation against your driving record, notification to the licensing jurisdiction and possible subsequent adverse action against your driving privileges.

STATE PENALTY ASSESSMENT ADDRESS	LOCAL PENALTY ASSESSMENT ADDRESS
<p style="text-align: center;"><b>Motor Vehicle Division Driver Services Bureau P.O. Box 1028 Santa Fe, NM 87504-1028</b></p>	<p><b>Please remit payment amount indicated on face of this citation to:</b></p>



# STATE OF NEW MEXICO UNIFORM TRAFFIC CITATION

UNIVERSITY OF NM  
POLICE  
DEPARTMENT

COUNTY CODE    AGENCY CODE  
**0 2 0 1 1**

NAME (LAST)																
NAME (FIRST)											MI					
ADDRESS						CITY			STATE		ZIP CODE					
STATE		DRIVER LICENSE NUMBER														
DATE OF BIRTH			SOCIAL SECURITY NUMBER				SEX	HEIGHT		WEIGHT	EYE COLOR					
M	M	D	D	Y	Y		FT	IN								
LICENSE PLATE NUMBER				STATE	VEH YR	COLOR		TYPE / MAKE / MODEL								
CMV	LICENSE TYPE			HAZMAT PL	PASS 16+	DOT NUMBER										
Y	N	LP	D	E	A	B	C	Y	N	Y	N					
TRAFFIC		WEATHER			ROAD		LIGHT		ACCIDENT							
LT	MD	HV	CL	FG	RN	SN	DS	D	W	I	S	LT	DS	DK	Y	N

<input type="checkbox"/> STATUTE 66-7-301 <b>SPEEDING</b>	<input type="checkbox"/> CZ	<input type="checkbox"/> STATUTE 66-5-205 NO INSURANCE	<input type="checkbox"/> STATUTE	<input type="checkbox"/> ORDINANCE
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> MPH IN A <input type="checkbox"/> <input type="checkbox"/> ZONE	<input type="checkbox"/> RH	<input type="checkbox"/> STATUTE 66-7-372 NO SEAT BELTS		

DATE		TIME		IDENTIFICATION		DISTRICT		MILE POST	
M	M	D	D	Y	Y	H	H	M	M
LOCATION									
OFFICER'S PRINTED NAME					OFFICER'S SIGNATURE				

ESSENTIAL FACTS

**PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of OFFICER MAY NOT ACCEPT PAYMENT \$    .00

**TRAFFIC ARRAIGNMENT:** You are hereby ordered to appear in METROPOLITAN COURT

on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM/PM  
My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

**COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in  
 MAGISTRATE    METRO    MUNICIPAL or    TRIBAL court.  
 Address \_\_\_\_\_ AM/PM  
 on (or by) \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ PM

**WARNING NOTICE:** I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.

\_\_\_\_\_ Agree to the above marked determination.  
Signature

02 01 1  
BAR CODE AREA





## **APPENDIX A.2**

### **Notice of Failure to Appear in Court (Residents) Form 10079**

Click the titles of the individual blocks for more information.

MVD -10079  
REV. 09/92

STATE OF NEW MEXICO  
**NOTICE OF FAILURE TO APPEAR IN COURT**  
New Mexico Licensee / Resident ONLY



**REPORTING AGENCY INFORMATION**

Name		Court Code	
Address			
City		N.M.	Zip Code

**CITATION INFORMATION**

County Code	Agency Code	Number	Vio. Date
-------------	-------------	--------	-----------

**VIOLATOR'S INFORMATION**

NAME: Last, First, MI		NM Driver's License No	
Street Address			
City		State	Zip Code
D. Month Day Year	SSN #	Vio. Code XC4	NM Stat. NO 66-5-30
O. B.		Court Date	Report/Action Begin Date
		Month Day Year	

**OFFICIAL  
USE  
ONLY**

\_\_\_\_\_  
Signature of Authorized Court Representative

\_\_\_\_\_  
Date

MICROFILM  
NUMBER

## **APPENDIX A.3**

### **Rescission of Notice of Failure to Appear (Non-Residents), Form 10947**

MVD-10947  
Rev. 04/95

STATE OF NEW MEXICO - MOTOR VEHICLE DIVISION

**RESCISSION OF NOTICE OF FAILURE TO APPEAR**

(UNDER NON-RESIDENT VIOLATOR COMPACT)



**N**

**R**

**V**

**C**

REPORTING COURT'S COMPLETE NAME AND ADDRESS			REPORTING DATE
NAME			
ADDRESS			COURT CODE
CITY, STATE, ZIP CODE			
VIOLATOR'S NAME (Last, First & Middle Initial)	DATE OF BIRTH (Mo./Day/Yr.)	LICENSE STATE	DRIVER'S LICENSE NUMBER
TOTAL FEES PAID	PAYMENT DATE	CITATION NUMBER	
VIOLATION DESCRIPTION: _____			
_____			
COURT CLERK'S SIGNATURE			DATE

ADDITIONAL COMMENTS:

## **APPENDIX A.4**

### **Request for Refund, Form 10208**



STATE OF NEW MEXICO - MOTOR VEHICLE DIVISION  
**REQUEST FOR REFUND**

**CHECK ONE:**

- Vehicle Related
- Driver Related

**OWNER / DRIVER INFORMATION**

Printed Name		Date of Birth
Address		Social Security Number
City, State, Zip Code		Driver License Number
Telephone No. (     )	Citation Number (If Applicable)	

**VEHICLE / VESSEL INFORMATION (IF APPLICABLE)**

Year	Make	Model	Body Type (Series)	State Registered
Engine No. (If Applicable)		Vehicle or Hull ID Number	License Plate or Boat No.	

**REASON(S) FOR REFUND**

VEHICLE RELATED	DRIVER RELATED
<input type="checkbox"/> <b>INCORRECT COMPUTATION OF REGISTRATION FEE (INCLUDING OVERPAYMENT, DOUBLE PAYMENT OR MISAPPLIED FEES):</b> Submit copy of registration certificate and letter of explanation.	<input type="checkbox"/> <b>COURT TICKET - PAYMENT MADE TO MVD INSTEAD OF DESIGNATED COURT.</b>
<input type="checkbox"/> <b>TWO REGISTRATIONS AND VALIDATION STICKERS/DECALS PURCHASED FOR ONE VEHICLE/VESSEL:</b> Submit copy of vehicle/vessel registration certificate being used and the unused registration certificate and sticker/decals.	<input type="checkbox"/> <b>DOUBLE PAYMENT</b>
<input type="checkbox"/> <b>INCORRECT COMPUTATION OF EXCISE TAX:</b> Submit copy of registration certificate showing fees paid and letter of explanation.	<input type="checkbox"/> <b>OVERPAYMENT</b>
<input type="checkbox"/> <b>VEHICLE/VESSEL TRANSFERRED FROM ONE PARTY TO ANOTHER OR DISPOSED OF:</b> Indicate exact date vehicle/vessel was transferred or disposed of and method of transfer or disposition. Submit unused registration certificate and sticker/decals.	<input type="checkbox"/> <b>WARNING TICKET</b>
<input type="checkbox"/> <b>VETERANS ALLOWANCE:</b> Submit New Mexico Veterans Certificate of Eligibility.	<input type="checkbox"/> <b>REINSTATEMENT FEE:</b> Amount Paid \$ _____
<input type="checkbox"/> <b>EXEMPTION FROM PAYMENT OF NEW MEXICO EXCISE TAX FOR A VESSEL (BOAT):</b> Submit Form 10014, Affidavit of Non-Resident Military Personnel.	

**OTHER REASON(S) FOR REFUND:** Submit supporting documents and letters of explanation (if needed).

**IMPORTANT!**

ALL REQUESTS FOR REFUND MUST BE ACCOMPANIED BY A COPY OF A CANCELED CHECK, MONEY ORDER OR CREDIT CARD STATEMENT

I hereby request refund of fees paid to the New Mexico Motor Vehicle Division for the reason(s) indicated above and certify that all information given is true and correct to the best of my knowledge.

REQUESTER'S SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

Please include all copies of payments and mail to:

Motor Vehicle Division  
Driver & Vehicle Services Bureau  
P.O. Box 1028  
Santa Fe, New Mexico 87504-1028

## **APPENDIX B**

Administrative Office of the Courts Policy Directive No. 7  
(July 1999)

**Magistrate Court Administrative Procedures Manual**

---

POLICY DIRECTIVE NO. 7 (Issued July 1999)

POLICY RELATING TO ACCEPTANCE OF PARTIAL PAYMENTS  
OF FINES AND COSTS

This policy is issued in accordance with NMSA 1978, Section 35-7-1. It provides guidelines and directions for courts to allow criminal defendants to pay outstanding fines, fees, or costs through Agreements to Pay. This policy **does not** apply to civil actions or posting bond.

Imposing and collecting fines, fees, and costs has both a rehabilitative value and a deterrent effect on a defendant. A court that requires a defendant to pay at the time of sentencing emphasizes the importance of complying with the court's orders and promotes the integrity and credibility of all courts.

State law prohibits a magistrate's suspension or waiver of any fee or cost, other than the warrant enforcement fee. State law also imposes a number of mandatory fines, which may not be suspended or waived. All fees, costs, and mandatory fines must be collected or converted to community service or jail time.

Although there is statutory authority that allows a convicted criminal defendant to pay in partial payments all fines, fees, or costs assessed, an Agreement to Pay imposes significant additional administrative and accounting burdens on the court system. Consequently, the circumstances under which Agreements to Pay may be allowed are limited as follows:

A defendant owing \$100 or less is not eligible for an Agreement to Pay; the magistrate may not extend the time for full payment beyond thirty (30) days from the date of sentence or from the date defendant is released from jail, if jail time is part of the sentence.

A defendant owing more than \$100 may be allowed to pay through an Agreement to Pay; however, the magistrate may not allow for payment at a rate less than \$50 per month.

If a defendant fails to make a payment pursuant to the Agreement to Pay, an Order to Show Cause shall be issued requiring the defendant to appear before the court to determine the reason the defendant failed to pay as agreed. If a defendant fails to appear at the scheduled Order to Show Cause hearing, or otherwise cure the delinquent payments, a bench warrant shall be issued. If a defendant appears at the scheduled Order to Show Cause hearing and the court finds that the defendant is financially unable to pay the assessed fines, fees, or costs, the defendant shall be ordered to perform community service in lieu of the amounts owed that he or she is unable to pay. Community service will be credited at the rate of the prevailing minimum wage. A magistrate must require community service to be performed at a rate of at least 40 hours per month. If the magistrate finds that the failure to pay (or to perform required community service) is willful, the magistrate may sentence the defendant to jail, with each day served credited toward the fines, fee,

---



***Magistrate Court Administrative Procedures Manual***

---

and costs owed at the rate set by state law.

If a defendant was sentenced for a violation of the Motor Vehicle Code, and failed to appear upon the Order to Show Cause, the clerk shall prepare the MVD notice form TMV-10079, indicating "Failure to Appear in Court" in the violation code portion. Pursuant to NMSA 1978, Section 66-5-30(A)(9), the Motor Vehicle Division is authorized to suspend the license of a driver, without a preliminary hearing, when the Division receives notice from the court that a defendant "has failed to fulfill a signed promise to appear in court or when appearance is required by law or by the court as a consequence of any charge or conviction under the motor vehicle code." At such time as the defendant appears, the case will proceed as if the defendant had appeared on the Order to Show Cause. The clerk shall prepare the Rescind Notice on the MVD Notice of Failure to Appear form TMV-10079 and forward it to the Division. If the court sends MVD notice of the defendant's failure to appear, the judge cannot adjust the fines to zero as "not collectible" and close the file; rather, the court must keep the file open until the defendant appears to respond to the outstanding Agreement to Pay and the outstanding Order to Show Cause. If the defendant satisfies his outstanding liability after arrest on a bench warrant, the clerk shall issue the Rescind Notice and the court may close the case file.

## **APPENDIX C**

New Mexico Taxation & Revenue Department Telephone  
Directory (including MVD numbers), May 2004

# New Mexico Taxation & Revenue Department

## Telephone Directory

[Office of the Secretary](#)  
[Administrative Services Division](#)  
[Audit and Compliance Division](#)  
[Motor Vehicle Division](#)  
[Property Tax Division](#)  
[Revenue Processing Division](#)

Taxation and Revenue Department  
1100 South St. Francis Dr.  
P.O. Box 630  
Santa Fe, NM 87504-0630

Switchboard (505) 827-0700

### Office of the Secretary

Joseph Montoya Building  
1100 South St. Francis Drive  
Santa Fe NM 87504-0630  
Office of the Secretary (505)827-0341  
FAX (505)827-0331  
DWI Legal (505)827-9807  
Inspector General (505)827-0570  
Legal Services (505)827-0730  
Tax Information and Policy (505)827-0908  
Tax Research and Statistics (505)827-0690

### Administrative Services Division:

Joseph Montoya Building  
1100 South St. Francis Drive  
Santa Fe NM 87504-0630  
Director (505)827-0369  
FAX (505)827-0469  
Personnel Services Bureau FAX (505)827-5476  
Financial Services Bureau FAX (505)827-0785

### Audit and Compliance Division:

Joseph Montoya Building  
1100 South St. Francis Drive  
Santa Fe NM 87504-0630  
Director (505)827-0900  
FAX (505)827-9801

Manuel Lujan Building  
1200 South St. Francis Drive  
Santa Fe NM 87505-4034  
Support Office (505)827-0922  
Audit Services Unit (505)827-0929  
FAX (505)827-0940

District Offices:

**Alamogordo** (505)437-2322  
No Tax Office is available in Alamogordo

**Albuquerque**  
5301 Central NE  
P.O. Box 8485  
Albuquerque, NM 87198-8485  
District Office (505)841-6200  
FAX (District Office) (505)841-6326  
Computer Assisted Collections (CACs) (505)841-6352  
FAX (CACs) (505)841-6327  
FAX (Tax Compliance Bureau) (505)841-6361

**Carlsbad** (505)885-5616  
No Tax Office is available in Carlsbad.

**Clovis** (505)763-5515  
No Tax Office is available in Clovis.

**Farmington** (505)325-5049  
3501 E. Main St.  
P.O. Box 479

Farmington, NM 87499-0479

**Hobbs** (505)393-0163  
No Tax Office is available in Hobbs.

**Las Cruces** (505)524-6225  
2540 El Paseo, Bldg. #2  
P.O. Box 607

Las Cruces, NM 88004-0607  
FAX (505)524-6224

**Roswell** (505)624-6065  
400 Pennsylvania Ave, Suite 200  
P.O. Box 1557

Roswell, NM 88202-1557  
FAX (505)624-6070

**Santa Fe** (505)827-0951  
1200 South St. Francis Dr.  
P.O. Box 5374

Santa Fe, NM 87504-5374  
FAX (505)827-0056

**Silver City**  
(505)388-4403  
No Tax Office is available in Silver City.

## Motor Vehicle Division:

Motor Vehicle Division  
Joseph Montoya Building  
P.O. Box 1028  
1100 South St. Francis Drive  
Santa Fe 87504-1028

MVD Toll Free Hotline  
1-888-683-4636  
1-888-MVD-INFO  
Re-registration  
Office Information  
Documents Needed for:  
Registrations  
Titles  
Drivers License  
Commercial Vehicle Information  
Director (505) 827-2296  
Dealers (505) 841-6482  
Driver Citation Information (888) 683-4636  
Driver Services (888) 683-4636  
Field Operations (888) 683-4636  
Commercial Vehicle Registration (505) 827-0392  
Commercial Vehicle Audit (505) 827-0978  
Commercial Vehicle Reporting/Assessments (505) 827-0392  
Commercial Vehicle Collections (505) 827-0392  
Vehicle Registration (888) 683-4636  
Title Information (888) 683-4636  
Vehicle Services (888) 683-4636  
Plans and Programs (505) 841-6479

**Field Offices:**

**Alamogordo** (505) 437-9226 Monday - Friday 8- 4  
263 C Robert H Bradley Dr., Alamogordo NM 88310

**Albuquerque Cottonwood Mall** (505) 890-5799 Monday - Friday 8 - 6  
10000 Coors NW #G-21, Albuquerque 87114

**Albuquerque MVD Express Office (Fee Agent – Transaction Charge)** (505) 293-0223 Monday -  
Friday 8 - 6 Saturday 8 - 3  
4531 Eubank NE, Albuquerque, NM 87111

**Albuquerque MVD Express Office (Fee Agent – Transaction Charge)** (505) 217-0024 Monday -  
Friday 8 - 6 Saturday 8 - 3  
4100 Menaul NE, Suite 1C, Albuquerque, NM 87110

**Albuquerque MVD Express Office (Fee Agent – Transaction Charge)** (505) 294-1732 Monday -  
Friday 8 - 6 Saturday 8 - 3  
10200 Menaul NE, Suite 100, Albuquerque, NM 87112

**Albuquerque MVD Express Office (Fee Agent – Transaction Charge)** (505) 792-5020 Monday -  
Friday 8 - 6 Saturday 8 - 3  
6271 Riverside Plaza Lane NW, Suite A, Albuquerque, NM 87120

**Albuquerque Kirtland AFB** (505) 846-8390 Monday - Friday 8 - 4  
1451 4th Ave Bldg. #20245 Albuquerque, NM 87116

**Albuquerque MVD Specialists (Fee Agent – Transaction Charge)** (505) 341-2MVD [2683], (505)  
243-4800  
Monday – Friday 8 – 8 Saturday 9 – 9  
5728 Edith NE, Albuquerque 87102

**Albuquerque Montgomery Plaza** (505) 875-0715 Monday - Friday 8 - 6  
4575 San Mateo NE, Suite G 190 Albuquerque, NM 87109

**Albuquerque Rio Bravo** (505) 452-9239 Monday - Friday 8 - 4  
3211 Coors SW Ste. D10 and D11 Albuquerque, NM 87121-5255

**Albuquerque Sandia Vista** (505) 292-4570 Monday - Friday 8 - 6  
11500 Menaul NE Suite F1, Albuquerque, NM 87112

**Artesia** (505) 746-1323 Monday - Friday 8 - 5  
116 N. First St., Artesia, NM 88210

**Aztec** (505) 334-7690 Monday - Friday 8:30 - 4:30  
201 W. Chaco Ste. 5, Aztec, NM 87410

**Bayard** (505) 537-5313 Monday - Friday 8:30 - 12 & 1 - 4:45  
#1 Central Ave., P.O. Box 728 Drawer T, Bayard, NM 88023

**Belen** (505) 864-5260 Monday - Friday 8 - 4  
100 S. 5th St., Belen, NM 87002

**Bernalillo** (505) 867-5171 Monday - Friday 8:30 - 4:30  
829 Camino del Pueblo, P.O. Box 638, Bernalillo, NM 87004

**Bloomfield** (505) 632- 6320 Monday - Friday 8 - 1 & 1:30 - 4:30  
915 N. 1st, P.O. Box 1839, Bloomfield, NM 87413

**Capitan** (505) 354-2247 Monday & Tuesday 7 - 12 & 1 - 4:30  
114 S. Lincoln Ave., P.O. Box 246, Capitan, NM 88316

**Carlsbad** (505) 885-2251 Monday - Friday 8 - 4  
401 S. Main, Carlsbad, NM 88220

**Carrizozo** (505) 648-2371 Monday - Thursday 8 - 12 & 12:30 - 3  
100 4th St., P.O. Box 247, Carrizozo, NM 88301

**Cimarron** (505) 376-2232 Monday - Friday 1 - 4  
356 B E. 9th St., P.O. Box 654, Cimarron, NM 87714

**Clayton** (505) 374-9502 Monday - Thursday 9 - 1  
834 Main St., Clayton, NM 88415

**Cloudcroft** (505) 682-2411 Monday - Friday 9 - 12  
201 Barro Ave., P.O. Box 317, Cloudcroft, NM 88317

**Clovis** (505) 762-3732 Monday - Friday 8 - 4  
814 W. 6th St., Clovis, NM 88101

**Corona** (505) 849-5511 Tuesday – Friday 8 - 3  
Main St., P.O. Box 264, Corona, NM 88318

**Cuba** (505) 289-3864 Monday - Friday 1 - 4  
16 B. East Cordova St., P.O. Box 426, Cuba, NM 87103

**Deming** (505) 546-2088 Monday - Friday 8 - 4  
322 S. Silver Ave., Deming, NM 88030

**Espanola** (505) 753-4681 Monday - Friday 8 - 4  
1121 Santa Clara Peak RD, Espanola, NM 87532

**Estancia** (505) 384-2708 Monday - Friday 9 - 11:30 & 12:30 - 3  
1001 Highland Ave., P.O. Box 166, Estancia, NM 87016

**Eunice** (505) 394-3232 Monday - Friday 8 - 12 & 1 - 4:30  
1101 Ave. J, P.O. Box 147, Eunice, NM 88231

**Farmington** (505) 599-9712 Monday - Friday 8 - 4  
3501 E. Main St #N, Farmington, NM 87402

**Fort Sumner** (505) 355-2401 Monday - Friday 8:30 - 12:30 & 1:30 - 4  
501 Ave. C, P.O. Box 180, Fort Sumner, NM 88119

**Gallup** (505) 863-3847 Monday - Friday 8 - 4  
2902 E. Highway 66, Gallup, NM 87301

**Grants** (505) 287-8892 Monday - Friday 8 - 4  
105 E. Roosevelt Ave. Ste. B, Grants, NM 87020

**Hatch** (505) 267-5216 Monday - Friday 1 - 4  
104 B Franklin, P.O. Box 220, Hatch, NM 87937

**Hobbs** (505) 397-9213 Monday, Tuesday, Thursday & Friday 8 - 4:30 Wednesday 8 - 3  
300 N. Turner, Hobbs, NM 88240

**Jal** (505) 395-2222 Monday, Tuesday, Thursday, Friday 8 - 12 & 1 - 4:30  
Wednesday 8 - 12 & 1 - 3 523 Main, P.O. Drawer 340, Jal, NM 88252

**Las Cruces** (505) 524-6215 Monday - Friday 8 - 4  
505 S. Main, St. #357, Las Cruces, NM 88001

**Las Cruces MVD Express Office (Fee Agent – Transaction Charge)** (505) 373-1367 Monday -  
Friday 8 - 6 Saturday 8 - 3  
3961 East Lohman, Suite 20, Las Cruces, NM 88011

**Las Vegas** (505) 425-8122 - Fax (505) 425-7854 Monday - Friday 8 - 4  
2522 Ridge Runner Road, Las Vegas, NM 87701

**Logan** (505) 487-2815 Monday - Friday 8 - 11:30 & 1 - 3:30  
Village Office 108A, US 54, P.O. Box 7, Logan, NM 88426

**Lordsburg** (505) 542-3706 Monday - Friday 8:30 - 12 & 1:30 - 4  
809 Main St., Lordsburg, NM 88045

**Los Alamos** (505) 662-4243 Monday - Friday 8 - 4  
997 Central, Los Alamos, NM 87544

**Los Lunas** (505) 841-5353 Monday - Friday 8 - 4  
501-B Luna Ave., Los Lunas, NM 87031

**Loving** (505) 745-3511 Monday - Friday 8 - 12 & 1 - 5  
402 W. Cedar, P.O. Box 56, Loving, NM 88256

**Lovington** (505) 396-5358 Monday - Thursday 7:30 - 5:30 Friday 7:30 - 11:30  
117 E. Ave. B, Box 1268, Lovington, NM 88260

**Melrose** (505) 253-4500 Monday - Thursday 9 - 4 Friday 9 - 5:00  
105 7th St., P.O. Box 318, Melrose, NM 88124

**Metro Court MVD** (505) 764-6650 Monday - Friday 8 - 5  
801 4th Street NW, Suite M Albuquerque, NM 87102-2189

**Metro Court Hearing Bureau**  
801 4th Street NW, Suite K Albuquerque, NM 87102-2189

**Moriarty** (505) 832-6218 Monday - Friday 8:30 - 4  
201 Broadway, P.O. Box 639, Moriarty, NM 87035

**Mountainair** (505) 847-2806 Monday 12 - 4 Tuesday - Friday 10 - 1 & 1:30 - 4  
109 N. Roosevelt, P.O. Box 115, Mountainair, NM 87036

**Pecos** (505) 757-6591 Monday - Friday 8 - 12 & 1 - 4  
Municipal Bldg., Highway 63, P.O. Drawer 337, Pecos, NM 87552

**Portales** (505) 356-8711 Monday - Friday 8 - 4  
1410 S. Avenue O, Portales, NM 88130

**Questa** (505) 586-2428 Monday - Friday 7:30 - 12 & 1 - 4:30  
2500 Old St. Rd. #3, P.O. Box 260 Questa, NM 87556

**Raton** (505) 445-3919 Monday - Friday 8 - 12 & 1 - 4  
1245 South 2nd St., P.O. Box 1235 Raton, NM 87740

**Reserve** (505) 533-6235 Monday - Thursday 8 - 12 & 1 - 4  
Main St., P.O. Box 163, Reserve, NM 87830

**Rio Rancho** (505) 891-5014 Monday - Friday 8:00 - 4:30  
4114 Sabana Grande, Rio Rancho, NM 87124

**Rio Rancho Express Office located inside Furr's(Fee Agent – Transaction Charge)** (505) 896-  
4750 Monday - Saturday 9 - 6  
2316 Southern Blvd., SE, Suite B1, Rio Rancho, NM 87124

**Roswell** (505) 624-6062 Monday - Friday 8 - 4  
200 E. Wilshire Blvd, Roswell, NM 88201

**Roy** (505) 485-2607 Tuesday & Thursday 7:30 - 12 & 12:30 - 3:30  
5th & Chicosa, P.O. Box 10, Roy, NM 87743

**Ruidoso** (505) 378-8359 Monday - Friday 8 - 12 & 1 - 4  
301 W. Hwy 70 #3, Ruidoso, NM 88345

**Santa Fe** (505) 476-1500 Monday - Friday 8 - 4  
2544 Camino Edward Ortiz Suite B, Santa Fe, NM 87501

**Santa Fe MVD Express Office (Fee Agent – Transaction Charge)** (505) 474-0337 Monday - Friday 8  
- 6 Saturday 8 - 3  
850 St. Michaels Drive, Santa Fe, NM 87505

**Santa Rosa** (505) 472-5297 Monday - Friday 8 - 12 & 1 - 5  
141 South 5<sup>th</sup> Street, Santa Rosa, NM 88435

**Silver City** (505) 538-3281 Monday - Friday 8 - 4  
1876 Hwy 180 East, Silver City, NM 88061

**Socorro** (505) 835-0768 Monday - Friday 8 - 12 & 1 - 4  
102 S. 6th St., Socorro, NM 87801

**Springer** (505) 483-2802 Monday, Wednesday & Friday 8 - 12 & 1 - 3:30  
419 1/2 Maxwell, Springer, NM 87747

**Sunland Park** (505) 589-5015 Monday - Friday 8 - 4:30  
880 McNutt, P.O. Box 3290, Sunland Park, NM 88063

**Taos** (505) 758-4226 Monday - Friday 8 - 4  
1038-B S. Salazar St., Taos, NM 87571

**Tatum** (505) 398-4633 Monday - Friday 8 - 12 & 1 - 4:30  
20 W. Broadway, P.O. Box 156, Tatum, NM 88267

**Tijeras** (505) 281-2250 Monday - Friday 8 - 4  
12 Camino Municipal, City Hall, P.O. Box 9, Tijeras, NM 87059

**Truth or Consequences** (505) 894-6529 Monday - Friday 8:30 - 12 & 1 - 4  
1912 N. Date, P.O. Box 1707, T or C 87901

**Tucumcari** (505) 461-4105 Monday - Friday 8 - 12 & 1 - 4  
1110 E. High, Tucumcari, NM 88401

**Tularosa** (505) 585-8252 Monday - Thursday 8 - 12 & 1 - 4, Friday 8 - 11:30  
705 St. Francis Dr., Tularosa, NM 88352

**Wagon Mound** (505) 666-2408 Monday - Friday 9 - 12 & 1 - 4  
600 Carton Ave., P. O. Box 87 City Hall Wagon Mound, NM 87752

**White Sands** (505) 678-8824 Monday - Friday 7 - 3:30  
Office Bldg. HT 304, P.O. Box 400 White Sands, NM 88002

**MVD Interactive Voice Response System 1-888-MVD-INFO**

**MVD Toll Free Hotline 1-888-683-4636**

**In Santa Fe Call 827-4636**

### **Property Tax Division:**

Director (505)476-3092  
FAX (505)827-0782  
Appraisal Bureau (505)827-0885  
Appraisal Fax(505)827-1645  
State Assessed Properties Bureau (505)827-0894  
State Assessed Properties Fax (505)827-0438



Delinquent Property Tax Bureau (505)827-0883  
Delinquent Fax (505)827-0879

### **Revenue Processing Division:**

Director (505)827-0800  
FAX (505)827-9873  
Administrative Resolutions Services Bureau (505)827-0830  
CRS-Gross Receipts Sales Tax (505)827-0832  
PIT-Personal Income Tax (505)827-0822  
O and G Oil and Gas Section (505)827-0806  
Automated Records Management Bureau (505)827-9864  
FAX (505)827-0843  
Document Processing Bureau (505)827-0814

Current as of August 28, 2006

## **APPENDIX D**

New Mexico Supreme Court Order No. 03-8200 (In the Matter of the Adoption of a Collection Scheme for Fines, Fees, and Costs Assessed in Criminal Proceedings)

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 03-8200

IN THE MATTER OF THE ADOPTION OF A  
COLLECTION SCHEME FOR FINES, FEES,  
AND COSTS ASSESSED IN CRIMINAL PROCEEDINGS

ORDER

WHEREAS, Section 31-12-3(A) NMSA allows any person sentenced to pay a fine or to pay fees and costs in any criminal proceedings against him in installments or allows community service to be performed in lieu of costs and fees; and

WHEREAS, effective July 1, 2003, new and increased fees will be added to criminal convictions, specifically, \$10 was added to the correction fee, \$1 was added to the judicial education fee, and a new \$5 fee to fund domestic violence treatment programs was enacted, and the Court having considered said Legislative changes and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that effective July 1, 2003, the money received shall be applied in the following order when the fee is applicable:

1. Court Costs/Docket Fee ----- Section 35-6-1 NMSA 1978
2. Court Automation Fee----- Section 35-6-1 NMSA 1978
3. Court Facilities Fee----- Section 35-6-1 NMSA 1978
4. Driving While Under the Influence Lab Fee ----- Section 31-12-7 NMSA 1978
5. Substance Abuse Lab Fee----- Section 31-12-8 NMSA 1978
6. Corrections Fee----- Section 35-6-1 NMSA 1978
7. Traffic Safety Fee ----- Section 35-6-1 NMSA 1978
8. Driving While Under the Influence Prevention Fee-- Section 31-12-7 NMSA 1978
9. Judicial Education Fee ----- Section 35-6-1 NMSA 1978
10. Brain Injury Services Fee ----- Section 35-6-1 NMSA 1978
11. Domestic Violence Treatment Fee ----- Section 34-15-1 & -2 NMSA 1978
12. Bench Warrant Fee----- Sections 34-8A-12 and 35-6-5 NMSA 1978
13. Fines----- Section 31-19-1 NMSA 1978

IT IS FURTHER ORDERED that community service performed in lieu of payment or a jail payout shall be applied starting with number thirteen (13) fines and proceed in reverse order;

IT IS FURTHER ORDERED that the collection scheme is based upon the principles that fees numbered one (1) through eleven (11) shall not be waived, deferred or suspended; that fees numbered one (1) through three (3) are pledged to pay off bonds (court costs are paid into the Court Facilities Fund) or to directly fund the courts; fees numbered four (4) through eleven (11) are paid off in the order in which they were enacted; fee numbered twelve (12) must be assessed but may be waived; and fines numbered thirteen (13) may be waived, unless mandatory.

IT IS SO ORDERED.

Done in Santa Fe, New Mexico, this 18th day of June, 2003.

---

Chief Justice Petra Jimenez Maes

---

Justice Pamela B. Minzner

---

Justice Patricio M. Serna

---

Justice Richard C. Bosson

---

Justice Edward L. Chavez