

**TITLE VII: TRAFFIC CODE**

Chapter

**70. GENERAL PROVISIONS**



## CHAPTER 70: GENERAL PROVISIONS

### Section

- 70.01 Amendments; 2004 New Mexico Uniform Traffic Ordinance
- 70.02 Penalty assessment misdemeanors; definitions; schedule of assessments
- 70.03 Penalty assessment misdemeanors; option; penalty; effect
- 70.04 Speed limits
- 70.05 Stopping, standing or parking prohibited in specific places
- 70.06 Street or highway
- 70.07 Maximum penalty
- 70.08 Parking in designated disabled parking spaces
- 70.09 Preference to vehicles upon streets
- 70.10 Permitted traffic control devices
- 70.11 Prohibited signage
- 70.12 Administrative designation
- 70.13 School bus
- 70.14 Subsequent offender
- 70.15 Vehicle
- 70.16 Operation of vehicle on approach of authorized emergency vehicle; of oncoming vehicle - yield right-of-way
- 70.17 Child passenger restraint; penalty; enforcement
- 70.18 Operating a motor vehicle under the influence of intoxicating liquor or drugs; penalties; sentencing; fees
- 70.19 Ordinance available for inspection
- 70.20 Copies of ordinance for purchase

### **§ 70.01 AMENDMENTS; 2004 NEW MEXICO UNIFORM TRAFFIC ORDINANCE.**

(A) Except as otherwise provided herein, the 2004 New Mexico Uniform Traffic Ordinance, being a traffic code, is adopted by reference pursuant to NMSA § 3-17-6.

(B) The following sections of the 2004 New Mexico Uniform Traffic Ordinance are amended or adopted to read as set out below.

(Ord. 183, passed 5-19-1998; Am. Ord. 187, passed 9-15-1998; Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)

**§ 70.02 PENALTY ASSESSMENT MISDEMEANORS; DEFINITIONS; SCHEDULE OF ASSESSMENTS (§ 12-12-2-1).**

(A) Section 12-12-2.1 is amended to read as follows:

As used in the Uniform Traffic Code, the term ***PENALTY ASSESSMENT MISDEMEANOR*** means violation of any of the following listed sections of the New Mexico Uniform Traffic Ordinance, for which the listed penalty assessment is established:

<i><b>Common Name of Offense</b></i>	<i><b>Section Violated</b></i>	<i><b>Penalty Assessment</b></i>
Flashing signals	12-5-8	\$50
Speeding regulations	12-6-1	
Up to and including 10 mph over speed limit		\$25
From 11 up to and including 15 mph over speed limit		\$30
From 16 up to and including 20 mph over speed limit		\$65
From 21 up to and including 25 mph over speed limit		\$100
From 26 up to and including 30 mph over speed limit		\$125
From 31 up to and including 35 mph over speed limit		\$150
More than 35 mph over the speed limit		\$200
Minimum speed regulations	12-6-1.5	\$25
Overtaking vehicle on left	12-6-2.3	\$25
Limitations on overtaking vehicle on the left	12-6-2.4	\$25

## General Provisions

<i>Common Name of Offense</i>	<i>Section Violated</i>	<i>Penalty Assessment</i>
No passing zones and restrictions on passing	12-6-2.7	\$25
Following too closely	12-6-2.13	\$25
Driving on divided street	12-6-2.14	\$25
Vehicle approaching or entering intersection	12-6-4.1	\$25
Vehicle turning left into intersection	12-6-4.2	\$25
Vehicle entering stop or yield intersection	12-6-4.3	\$25
Limitation on turning around	12-6-5.5	\$25
Starting parked vehicle	12-6-5.7	\$25
Turning and stopping movements and required signals	12-6-5.8	\$25
Stopping, standing and parking	12-6-6	\$25
Special stops required	12-6-7	\$25
Stopping for school bus	12-6-7.3	\$100
Railroad-highway grade crossing violation	12-6-7.6	\$10
Failure to stop at railroad-highway grade crossing	12-6-7.7	\$10
Operators and chauffeurs must be licensed	12-6-12.5	\$25
Limitations on backing	12-6-12.9	\$25
Child not in restraint device or safety belt	12-6-13.12	\$50
Mandatory use of seat belts	12-6-13.13	\$50
Possession or consumption of alcoholic beverages in open containers - first offense	12-6-13.14	\$50
Destructive or injurious material on roadway	12-6-13.5	\$100



## Tularosa - Traffic Code

<i>Common Name of Offense</i>	<i>Section Violated</i>	<i>Penalty Assessment</i>
Littering	12-6-13.15	\$300
Pedestrian violation	12-6-14	\$25
Drivers to exercise due care	12-6-14.8	\$25
When lighted ramps are required	12-10-1.3	\$25
Headlamps on vehicles	12-10-1.5	\$25
Dimming of lights	12-10-1.6	\$25
Tail lamps	12-10-1.7	\$25
Mufflers, prevention of noise	12-10-1.10	\$25
Lamp or flag on projecting load	12-10-1.11	\$25
Display of current valid registration plate	12-10-4	\$25
Evidence of registration to be signed and exhibited on demand	12-10-5	\$25

(B) The term **PENALTY ASSESSMENT MISDEMEANOR** does not include any violation which has caused or contributed to the cause of an accident resulting in injury or death to any person.

(C) When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor and no probation imposed upon a suspended or deferred sentence shall exceed 90 days.

(D) The penalty assessment for speeding in violation of Section 12-6-1.2(4) of the Uniform Traffic Ordinance is twice the penalty assessment established in division (A) of this section for the equivalent miles per hour over the speed limit.

(E) In addition to the penalty assessment established for each penalty assessment misdemeanor pursuant to this section, there shall be assessed the following fees for each penalty assessment misdemeanor: a \$20 corrections fee; a \$6 court automation fee; and a \$2 judicial education fee.

(Am. Ord. 202, passed 10-15-2002; Am. Ord. 204, passed 5-20-2003; Am. Ord. 211, passed 7-20-2004; Am. Ord. 219, passed 8-15-2006)



**§ 70.03 PENALTY ASSESSMENT MISDEMEANORS; OPTION; PENALTY; EFFECT (§ 12-12-1.4).**

Section 12-12-1.4 is amended to read as follows:

(A) Unless a warning notice is given at the time of making an arrest for any penalty assessment misdemeanor, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice, and payment of the prescribed penalty assessment is a complete satisfaction of the violation.

(B) Payment of any penalty assessment must be made by mail to the Municipal Court, Village of Tularosa, New Mexico, within 30 days from the date of arrest. Payments of penalty assessments are timely if postmarked within the time limits set from the date of the arrest. The Court Clerk shall issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

(C) No record of any penalty assessment payment is admissible as evidence in any court in any civil action.

(D) If a penalty assessment is not paid within 30 days from date of arrest, the violator may be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued. Upon conviction in such prosecution, the court may impose penalties as provided by the New Mexico Uniform Traffic Ordinance (Section 12-12-1.1) or other law relating to motor vehicles for the particular offense charges, and the schedule of penalty assessments may not apply.

(E) In addition to the prosecution provided for in division (D), it is a misdemeanor for any person who has elected to pay a penalty assessment to fail to do so within 30 days from the date of arrest.

(F) The office of the Municipal Court shall notify the Division of Motor Vehicles of the State of New Mexico when a person fails to pay a penalty assessment within the required period of time. The Department of Motor Vehicles shall report the notice upon the driver's record and shall not renew the person's license to drive until the office of the Municipal Court notifies the Department of Motor Vehicles that the penalty assessment, or its equivalent, as well as any additional penalties imposed are properly disposed of.

(Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)

**§ 70.04 SPEED LIMITS (§ 12-6-1.2).**

Section 12-6-1.2 is amended as follows:

(A) No person shall drive a vehicle on a street or detour at a speed greater than:

(1) Fifteen miles per hour on all streets when passing a school while children are going to, or leaving school, and when the school zone is properly posted;



(2) Twenty miles per hour in any business or residence district;

(3) The lawfully posted speed limit when signs are erected giving notice of the speed limit; or

(4) The posted speed limit in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the municipality or Highway and Transportation Department, provided that the posted speed limit be determined by an engineering study performed by the State Highway and Transportation Department.

(B) In every event, speed shall be so controlled as may be necessary:

(1) To avoid colliding with any person, vehicle or other conveyance on, or entering, the street;

(2) To comply with legal requirements as may be established by the municipality, the State Highway Department or the New Mexico State Police, and the duty of all persons to use due care; and

(3) To protect workers in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the municipality or Highway and Transportation Department.

(NMSA § 66-7-301) (Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)

#### **§ 70.05 STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIC PLACES (§ 12-6-6.1).**

Section 12-6-6.1A is amended by adding a new subpart (17) as follows: (17) at any time which obstructs entrance into the garage doors of the Fire Station.

(Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)

#### **§ 70.06 STREET OR HIGHWAY (§ 12-1-76).**

Section 12-1-76 is amended to read as follows: **STREET** or **HIGHWAY** means any way or place generally open to the use of the public as a matter of right and every way, place or parking lot, regardless of ownership, used for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

(Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)



**§ 70.07 MAXIMUM PENALTY (§ 12-12-1.1).**

Section 12-12-1.1 is amended to read as follows: Unless another penalty is expressly provided in this Ordinance or as otherwise provided by state law, every person convicted of a violation of any provision of this Ordinance shall be punished by a fine of not more than \$500 or by imprisonment for not more than 90 days or by both such fine and imprisonment.

(Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)

**§ 70.08 PARKING IN DESIGNATED DISABLED PARKING SPACES.**

(A) It is unlawful for any person to park a motor vehicle not carrying registration plates or a placard indicating disability in accordance with NMSA § 66-3-16 in a designated disabled parking space or in such a manner as to block access to any part of a curb cut. Any person who violates this section shall be subject to a fine of not less than \$250 or more than \$500. Failure to properly display a parking placard or special registration plate issued pursuant to NMSA § 66-3-16 is not a defense against a charge of violation of subsection (A).

(NMSA § 66-7-352.5)

(B) As used in this section, *DESIGNATED DISABLED PARKING SPACE* means any space, including an access aisle, marked and reserved for the parking of a passenger vehicle that carries registration plates or a parking placard indicating disability in accordance with NMSA § 66-3-16 and designated by a conspicuously posted sign bearing the international disabled symbol of a wheelchair and, if paved, by a clearly visible depiction of this symbol painted in blue on the pavement of the space. *CURB-CUT* means a short ramp through a curb or built up to the curb designed for access by the handicapped.

(C) A vehicle parked in violation of subsection (A) above is subject to being towed at the expense of the vehicle owner upon authorization by law enforcement personnel or by the property owner or manager of a parking lot. (NMSA §§ 66-1-4.4E and 66-7-352.5)

(D) State, county and municipal law enforcement personnel may issue citations for violations of § 12-9-9 in their respective jurisdictions, whether the violation occurs on public property or private property.

(E) Parking enforcement personnel of each of the state educational institutions designated in Article 12, Section 11 of the Constitution of New Mexico may issue citations for violations of subsection (A) above within the exterior boundaries of lands under the control of their respective institutions, except portions of those lands that are public highways or streets. (NMSA 66-7-352.6)

(Ord. 219, passed 8-15-2006)

**§ 70.09 PREFERENCE TO VEHICLES UPON STREETS (§ 12-6-15).**

Section 12-6-15 is hereby amended to read as follows:

(A) The provisions of Article VI of this Ordinance relating to the operation of vehicles, refer exclusively to the operation of vehicles upon the streets or highways, except where a different place is specifically referred to in a given section or § 12-6-15(B).

(B) The provisions of Article VI of this Ordinance, Section 12-6-12.1 through 12-6-12.3, Section 12-6-4, Section 12-6-5.7, Section 12-6-12.4, Section 12-6-12.9, Section 12-6-13.8, Section 12-9-9 and Section 12-6-12.7 of this Ordinance shall apply upon the streets and highways and in privately-owned parking lots throughout this municipality which are open to the public as a matter of course as business invitees.

(Am. Ord. 202, passed 10-15-2002; Am. Ord. 211, passed 7-20-2004)

**§ 70.10 PERMITTED TRAFFIC CONTROL DEVICES (§ 12-5-15).**

Section 12-5-15 is hereby adopted to read as follows:

(A) Private parties and commercial entities constructing streets, alleys, and rights-of-way within the village shall place and maintain traffic control devices necessary to regulate, warn, and guide traffic on those streets, alleys, and rights-of-way. The traffic control devices shall conform to standards and conventions provided by Section 12-5-2. The village shall have jurisdiction to approve all traffic control devices placed and maintained by those private parties, contractors, or developers. When such streets, alleys, and rights-of-way are ceded to the village and accepted by the village as public rights-of-way for public use, the village assumes responsibility for the placement and maintenance of necessary traffic control devices.

(B) Construction contractors and public utilities are permitted to erect temporary traffic control devices to protect the public, workers, and equipment during short term projects. The devices shall conform to the provisions of Section 12-5-2, and the Chief of Police or his or her designated representative shall be notified at least 24 hours prior to the initiation of planned projects and the location of such projects. In the event of an emergency project, the Police Department shall be notified as soon as possible concerning the project location. A short-term project for the purpose of this section is a project that may be completed in less than eight hours but shall not take more than five consecutive days to complete.

(C) Parties or entities required to place and maintain traffic control devices in their construction areas or on their projects shall review the current edition of the "Manual on Uniform Traffic Control Devices" on file at the village office or consult the New Mexico State Highway and Transportation Department to obtain in guidance on standards and conventions provided by Section 12-5-2.

(Ord. 211, passed 7-20-2004)

**§ 70.11 PROHIBITED SIGNAGE (§ 12-5-16).**

Section 12-5-16 is hereby adopted to read as follows:

(A) No traffic control device or its support shall bear any advertising or commercial message, or any other message that is not essential to traffic control. Traffic control devices erected and placed by a private party or commercial entity shall not identify the party or entity placing the device.

(B) No sign bearing a commercial or advertising message shall contain a traffic control device as a component of that sign.

(C) Any unauthorized traffic control device placed on a village right-of-way by a private individual or organization, or commercial entity shall constitute a public nuisance and such unofficial and nonessential devices shall be removed upon instruction by the Chief of Police.

(D) It shall be unlawful to maintain any such prohibited signage.  
(Ord. 211, passed 7-20-2004)

**§ 70.12 ADMINISTRATIVE DESIGNATION (§ 12-5-17).**

Section 12-5-17 is hereby adopted to read as follows:

(A) *Responsibility.* The Chief of Police is responsible for the administration of this Article and reasonable rules and regulations may be prescribed by the Chief of Police to carry out the intent and purpose of this Article.

(B) *Investigation.* The Chief of Police or his or her designated representative shall have the authority to investigate any complaint concerning violations of this chapter.

10B

**Tularosa - Traffic Code**

(C) *Enforcement.* The Chief of Police or his or her designated representative shall have the authority to issue citations for violation of this chapter and to perform such other duties as are prescribed herein.

(D) *Traffic control devices and signage authority.* The Chief of Police is responsible for identifying, selecting and approving locations and types of all traffic control devices located on all streets, alleys, and rights-of-way. The Chief of Police is responsible for approving or disapproving requests for the placements and types of traffic control devices by private parties, commercial entities, contractors, or developers under the provisions of this chapter. (Ord. 211, passed 7-20-2004)

**§ 70.13 SCHOOL BUS (§ 12-1-67).**

Section 12-1-67 is amended to read as follows:

**SCHOOL BUS** means any motor vehicle operating under the jurisdiction of the State Board of Education or private school or parochial school interests which is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

(1) Operated by a common carrier, subject to and meeting all requirements of the State Corporation Commission but not used exclusively for the transportation of students;

(2) Operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the State Corporation Commission but is not used exclusively for transportation of students; or

(3) Operated as a per capita feeder as defined in NMSA § 22-16-6. (NMSA § 66-1-4.16) (Ord. 215, passed 8-16-2005)

**§ 70.14 SUBSEQUENT OFFENDER (§ 12-1-77).**

Section 12-1-77 is amended to read as follows:

**SUBSEQUENT OFFENDER** means a person who was previously a first offender and who again, under state law, federal law, or municipal ordinance, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which rendered the person incapable of safely driving a motor vehicle regardless of whether the person's sentence is suspended or deferred. (NMSA § 66-1-4.16) (Ord. 215, passed 8-16-2005)

**§ 70.15 VEHICLE (§ 12-1-88).**

Section 12-1-88 is amended to read as follows:

**VEHICLE** means every device in, upon, or by which, any person or property is or may be transported or drawn upon a street, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

(NMSA § 66-1-4.19) (Ord. 215, passed 8-16-2005)

**§ 70.16 OPERATION OF VEHICLE ON APPROACH OF AUTHORIZED EMERGENCY VEHICLE; OF ONCOMING VEHICLE - YIELD RIGHT-OF-WAY (§ 12-6-7.4).**

Section 12-6-7.4 is amended to read as follows:

(A) Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the street clear of any intersection and shall stop and remain in that position, until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(B) Upon approaching a stationary authorized emergency vehicle displaying flashing emergency lights, unless otherwise directed, the driver of a vehicle shall:

(1) If reasonably safe to do so, drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or

(2) If it is not reasonably safe to drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop.

(NMSA § 66-7-332)

(C) Upon the immediate approach of an oncoming vehicle overtaking or attempting to overtake a vehicle proceeding in the same direction, the driver of that vehicle shall yield the right-of-way and shall drive to a position to and as close as possible to the right-hand edge or curb of the roadway and shall remain as close as possible to the right-hand edge or curb of the roadway until the oncoming vehicle has passed.

(NMSA § 66-7-332.1)

(D) This section shall not operate to relieve the driver of an authorized emergency vehicle or the driver of an oncoming vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(NMSA §§ 66-7-322 and 66-7-322.1) (Ord. 215, passed 8-16-2005)

**§ 70.17 CHILD PASSENGER RESTRAINT; PENALTY; ENFORCEMENT (§ 12-6-13.12).**

Section 12-6-13.12 is amended to read as follows:

(A) A person shall not operate a passenger car, van or pickup truck in this state except for an authorized emergency vehicle, public transportation or school bus unless all passengers less than 18 years of age are properly restrained.

(B) Each person less than 18 years of age shall be properly secured in a child passenger restraint device or by a seat belt, unless all seating positions equipped with seat belts are occupied, as follows:

(1) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag;

(2) Children one year of age through four years of age, regardless of weight, or children who weigh less than 40 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards;

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards; and

(4) Children seven years of age through 12 years of age shall be properly secured in a child passenger device or by a seat belt.

(C) A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.

(D) Failure to be secured by a child passenger restraint device or by a safety belt as required by this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages. (NMSA § 66-7-369) (Am. Ord. 202, passed 10-15-2002; Am. Ord. 215, passed 8-16-2005)

**§ 70.18 OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES; SENTENCING; FEES (§ 12-6-12.2).**

Section 12-6-12.2 is amended to read as follows:

(A) If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drug (Section 12-6-12.1(A) through (D)) the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter.  
(NMSA § 66-8-110)

(B) When a person is charged with a violation of Section 12-6-12.1(A) through (D), any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to violation 12-6-12.1(A), (B), (C) or (D) and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized if:

(1) The results of a test performed pursuant to the Implied Consent Act discloses that the blood of the person charged contains an alcohol concentration of eight one-hundredths or more;

(2) Four one-hundredths or more if the person is driving a commercial vehicle; or

(3) The defendant has refused to submit to a chemical test or tests of his or her breath or blood. (NMSA § 66-8-102)

(C) A person under first conviction pursuant to this section shall be punished by imprisonment for not more than 90 days or a fine of not more than \$999, or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond 90 days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than 24 hours and not more than 48 hours of community service. In addition, the offender may be required to pay a fine of \$300. The offender shall be ordered by the court to participate in and complete a screening program described in division (F) of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the Traffic Safety Bureau of the State Transportation Department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than 48 consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of parole, the offender shall be sentenced to not less than an additional 48 consecutive hours in jail. Any jail sentence imposed pursuant to this section for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, time spent in jail for the

offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this division shall be considered a first conviction for the purpose of determining subsequent convictions.

(D) A second or third conviction pursuant to this section shall be punished by imprisonment for not more than 179 days or by a fine of not more than \$999, or both; provided that if the sentence is suspended in whole or part, the period of probation may extend beyond 179 days but shall not exceed one year. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) Upon a second conviction, each offender shall be sentenced to a jail term of not less than 96 consecutive hours, 48 hours of community service and a fine of \$500. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than 96 consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this division shall not be suspended or deferred or taken under advisement; and

(2) Upon a third conviction, an offender shall be sentenced to a jail term of not less than 30 consecutive days, 96 hours of community service and a fine of \$999. In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than 60 consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional 60 consecutive days in jail. A penalty imposed pursuant to this division shall not be suspended or deferred or taken under advisement.

(E) Fourth and subsequent offenses shall be prosecuted under state law in magistrate or district court.  
(NMSA § 66-8-102)

(F) Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, with a time specified by the court, an alcohol or drug abuse screening program approved by the Department of Finance and Administration and if necessary, a treatment program approved by the court. The requirement imposed pursuant to this division shall not be suspended, deferred or taken under advisement.

(G) (1) Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

(a) Not less than a 28-day inpatient, residential or in-custody substance abuse program approved by the court;

(b) Not less than a 90-day outpatient treatment program approved by the court;

(c) A drug court program approved by the court; or

(d) Any other substance abuse treatment approved by the court.

(2) The requirement imposed pursuant to this section shall not be suspended, deferred or taken under advisement.

(NMSA § 66-8-102)

(H) Upon a conviction pursuant to Section 12-6-12.1, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the Traffic Safety Bureau of the Department of Transportation. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

(1) A period of one year for a first offender;

(2) A period of two years for a second conviction pursuant to this section;

(3) A period of three years for a third conviction pursuant to this section; or

(4) The remainder of the offender's life for a fourth or subsequent conviction pursuant to this section.

(I) Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device.

(NMSA § 66-8-102)

(J) Except as otherwise prohibited in this section, a municipal judge may suspend in whole or in part the execution of sentence or place the defendant on probation for a period not exceeding one year on terms and conditions that municipal judge deems best, or both, or defer sentence. If the municipal judge decides to defer the execution of a sentence, such deferral shall be granted only as allowed in division (L) of this section. A suspension of execution of sentence or probation, or both, as allowed pursuant to this section, shall be granted only when the municipal judge is satisfied it will serve the ends



of justice and of the public, and that the defendant's liability for any fine or other punishment imposed if fully discharged upon successful completion of the terms and conditions of probation.

(K) If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of Section 12-6-12.1(A), (B), (C) or (D), a first offender, at the discretion of a trial court after a presentence investigation, including an inquiry to the Motor Vehicle Division of the Transportation Department concerning the driver's driving record, shall receive a deferred sentence on the condition that the driver attend a driver rehabilitation program, also known as the "driving-while-intoxicated-school", approved by the court and the division and such other rehabilitative services as the court may determine to be necessary; however, imposition of a deferred sentence shall classify the person as a first offender. The municipal court shall forward to the division the abstract of all proceedings and the report of the disposition of the case. For the purpose of this division, marijuana, as defined in the Controlled Substance Act, shall be classified as a drug.

(L) A person convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of Section 12-6-12.1(A), (B), (C) or (D) shall be assessed, in addition to any other fee or fine, a fee of \$65 to defray the cost of chemical and other tests used to determine the influence of alcohol or drugs. Additionally, the person shall be assessed a fee of \$75 to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs or for other traffic safety purposes. The municipal court shall collect the fees and maintain the fees in separate funds and transfer the fees along with other funds collected by the court per NMSA § 35-14-7. The municipality shall maintain the fees pursuant to this division in separate funds and transfer the fees collected pursuant to this division to the administrative office of the courts for credit to the crime laboratory fund and the traffic safety fund.

(NMSA §§ 31-12-7 through 31-12-9)

(M) With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

(NMSA § 66-8-102)

(N) As used in this section and in Section 12-6-12.1:

(1) **BODILY INJURY** means an injury to a person not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

(2) **CONVICTION** means adjudication of guilt and does not include imposition of a sentence; and

(3) **COMMERCIAL MOTOR VEHICLE** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (a) Has a gross combination weight rating of more than 26,000 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- (b) Has a gross vehicle weight rating of more than 26,000 pounds;
- (c) Is designed to transport 16 or more passengers, including the driver; or
- (d) Is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law.

(O) A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory, or possession of the United States or of a tribe where that ordinance is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.  
(NMSA § 66-8-102M)

(P) A law enforcement officer making an arrest for a violation of the provisions of Section 12-6-12.1 or of similar municipal or county ordinances shall use standard arrest reports and procedures developed and approved by the Department of Public Safety in accordance with Section 8 of Laws of 2005, Chapter 269.  
(Am. Ord. 202, passed 10-15-2002; Am. Ord. 215, passed 8-16-2005; Am. Ord. 219, passed 8-15-2006)

#### **§ 70.19 ORDINANCE AVAILABLE FOR INSPECTION.**

A copy of the 2004 New Mexico Uniform Traffic Ordinance is available for inspection during the Village Clerk's/Treasurer's normal and regular business hours at the Village Offices, 705 St. Francis Drive, Tularosa, New Mexico.  
(Ord. 211, passed 7-20-2004)

#### **§ 70.20 COPIES OF ORDINANCE FOR PURCHASE.**

A copy of the Tularosa 2004 New Mexico Uniform Traffic Ordinance may be purchased from the Village Clerk/Treasurer at the cost of publication.  
(Ord. 211, passed 7-20-2004)