

DWI UNIFORM TRAFFIC ORDINANCE 12-6-12.2

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

A. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drug (12-6-12.1A 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. (66-8-110 NMSA 1978)

B. When a person is charged with a violation of 12-6-12.1A through D, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to violation 12-6-12.1A, 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; (66-8-102 NMSA 1978 as amended)

(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 breath or blood. (66-8-102 NMSA 1978)

C. A person under first conviction pursuant to this section shall be punished by imprisonment for not more than ninety days or by a fine of not more than nine hundred ninety-nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours and not more than forty-eight hours of community service. In addition, the offender may be required to pay a fine of three hundred dollars (\$300.00). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection 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 forty-eight 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 forty-eight 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 to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection 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 one hundred seventy-nine days or by a fine of not more than nine hundred ninety-nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or part, the period of probation may extend beyond one hundred seventy-nine 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 ninety-six consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500.00). 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 ninety-six 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 paragraph 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 thirty consecutive days, ninety-six hours of community service and a fine of nine hundred ninety-nine dollars (\$999.00). 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 sixty 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 sixty consecutive days in jail. A penalty imposed pursuant to this paragraph 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. (66-8-102 NMSA 1978)

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 subsection shall not be suspended, deferred or taken under advisement.

G. 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:

(1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse program approved by the court;

(2) not less than a ninety-day outpatient treatment program approved by the court;

(3) a drug court program approved by the court; or

(4) any other substance abuse treatment approved by the court.

The requirement imposed pursuant to this section shall not be suspended, deferred or taken under advisement. (66-8-102 NMSA 1978)

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. (66-8-102 NMSA 1978)

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 Subsection 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 12-6-12.1A, 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, may 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 subsection, 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 12-6-12.1A, B, C or D shall be assessed, in addition to any other fee or fine, a fee of sixty-five dollars (\$65.00) 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 seventy-five dollars (\$75.00) 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 35-14-7 NMSA 1978. The municipality shall maintain the fees pursuant to this subsection in separate funds and transfer the fees collected pursuant to this subsection to the administrative office of the courts for credit to the crime laboratory fund and the traffic safety fund. (31-12-7 through 31-12-9 NMSA 1978)

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. (66-8-102 NMSA 1978)

N. As used in this section and in 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; and

(2) "conviction" means adjudication of guilt and does not include imposition of a sentence.

(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 twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen 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. (66-8-102.M NMSA 1978)

P. A law enforcement officer making an arrest for a violation of the provisions of 12-6-12.2 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.