

New Mexico Motor Vehicle Laws 2006-2007



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Part 1 — The New Mexico Motor Vehicle Code: Selected Definitions

66-1-4.1. Definitions.

D. “*alcoholic beverages*” means any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol but excluding medicinal bitters;

66-1-4.2. Definitions.

A. “*bicycle*” means every device propelled by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices;

B. “*bureau*” means the traffic safety bureau of the state highway and transportation department;

66-1-4.3. Definitions.

O. “*crosswalk*” means:

(1) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and

(2) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface;

66-1-4.4. Definitions.

D. “*department*” means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

F. “*director*” means the secretary;

J. “*division*”, without further specification, “*division of motor vehicles*” or “*motor vehicle division*” means the department;

K. “*driver*” means every person who drives or is in actual physical control of a motor vehicle, including a motorcycle, upon a highway, who is exercising control over or steering a vehicle being towed by a motor vehicle or who operates or is in actual physical control of an off-highway motor vehicle;

L. “*driver’s license*” means a license or a class of license issued by a state or other jurisdiction to an individual that authorizes the individual to drive a motor vehicle; and

66-1-4.6. Definitions.

B. “*financial responsibility*” means the ability to respond in damages for liability resulting from traffic accidents arising out of the ownership, maintenance or use of a motor vehicle of a type subject to registration under the laws of New Mexico, in amounts not less than specified in the Mandatory Financial Responsibility Act [Chapter 66, Article 5 NMSA 1978] or having in effect a motor vehicle insurance policy. “*Financial responsibility*” includes a motor vehicle insurance policy, a surety bond or evidence of a sufficient cash deposit with the state treasurer;

C. “*first offender*” means a person who for the first time under state or federal law or a municipal ordinance or a tribal law has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any other drug that renders the person incapable of safely driving a motor vehicle, regardless of whether the person’s sentence was suspended or deferred;

66-1-4.8. Definitions.

B. “*highway*” or “*street*” means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

66-1-4.10. Definitions.

C. “*license*”, without modification, means any license, temporary instruction permit or temporary license issued or recognized under the laws of New Mexico pertaining to the licensing of persons to operate motor vehicles;

66-1-4.11. Definitions.

F. “*moped*” means a two-wheeled or three-wheeled vehicle with an automatic transmission and a motor having a piston displacement of less than fifty cubic centimeters, that is capable of propelling the vehicle at a maximum speed of not more than thirty miles an hour on level ground, at sea level;

G. “*motorcycle*” means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding a tractor;

I. “*motor vehicle*” means 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; but for the purposes of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], “*motor vehicle*” does not include “*special mobile equipment*”; and

J. “motor vehicle insurance policy” means a policy of vehicle insurance that covers self-propelled vehicles of a kind required to be registered pursuant to New Mexico law for use on the public streets and highways. A “motor vehicle insurance policy”:

(1) shall include:

(a) motor vehicle bodily injury and property damage liability coverages in compliance with the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978]; and

(b) uninsured motorist coverage, subject to the provisions of Section 66-5-301 NMSA 1978 permitting the insured to reject such coverage; and

(2) may include:

(a) physical damage coverage;

(b) medical payments coverage; and

(c) other coverages that the insured and the insurer agree to include within the policy.

66-1-4.12. Definitions.

C. “nonresident’s operating privilege” means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle, or the use of a motor vehicle owned by the nonresident, in this state.

B. “off-highway motor vehicle” means any motor vehicle operated or used exclusively off the highways of this state and that is not legally equipped for operation on the highways of this state;

E. “operator” means driver, as defined in Section 66-1-4.4 NMSA 1978; and

F. “owner” means a person who holds the legal title of a vehicle and may include a conservator, guardian, personal representative, executor or similar fiduciary, or, in the event that a vehicle is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or, in the event that a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor.

66-1-4.14. Definitions.

E. “person” means every natural person, firm, copartnership, association, corporation or other legal entity;

66-1-4.15. Definitions.

G. “registration” means registration certificates and registration plates issued under the laws of New Mexico pertaining to the registration of vehicles;

I. “registration plate” means the plate, marker, sticker or tag assigned by the division for the identification of the registered vehicle;

K. “revocation” means that the driver’s license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after date of revocation;

L. “right of way” means the privilege of the immediate use of the roadway;

N. “roadway” means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder, and in the event a highway includes two or more separate roadways, the term “roadway” refers to any such roadway separately but not to all such roadways collectively.

66-1-4.16. Definitions.

E. “secretary” means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3 and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

L. “state” means a state, territory or possession of the United States, the District of Columbia or a province of the Dominion of Canada;

M. “state highway” means a public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of transportation;

P. “street” or “highway” means a way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

Q. “subsequent offender” means a person who was previously a first offender and who again, under state law, federal law or a municipal ordinance or a tribal law, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug that rendered him incapable of safely driving a motor vehicle, regardless of whether the person’s sentence was suspended or deferred; and

66-1-4.17. Definitions.

E. “traffic” means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

G. “traffic safety bureau” means the traffic safety bureau of the state highway and transportation department;

K. “trial court” means the magistrate, municipal or district court that tries the case concerning an alleged violation of a

provision of the Motor Vehicle Code;

L. "*tribal court*" means a court created by a tribe or a court of Indian offense created by the United States secretary of the interior;

66-1-4.19. Definitions.

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

66-1-4.21. Additional definitions.

G. "*public highway*" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

66-5-1.1. Definitions.

As used in Sections 66-5-5, 66-5-8 and 66-5-9 NMSA 1978, "traffic violation" means a violation of one or more of the following offenses:

- A. failure to obey traffic-control devices, as provided in Section 66-7-104 NMSA 1978;
- B. failure to obey traffic-control signals, as provided in Section 66-7-105 NMSA 1978;
- C. speeding, as provided in Section 66-7-301 NMSA 1978;
- D. homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;
- E. injury to pregnant woman by vehicle, as provided in Section 66-8-101.1 NMSA 1978;
- F. driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978;
- G. refusal to submit to chemical tests, as provided in Section 66-8-111 NMSA 1978;
- H. reckless driving, as provided in Section 66-8-113 NMSA 1978;
- I. careless driving, as provided in Section 66-8-114 NMSA 1978;
- J. racing on highways, as provided in Section 66-8-115 NMSA 1978; and
- K. failure to yield, as provided in Sections 66-7-328 through 66-7-332.1 NMSA 1978.

New Mexico Motor Vehicle Code, Selected Statutes

(DATE) indicates the last date law was amended

* * * * indicates material omitted.

Licensing laws

66-5-4. Persons exempt from licensure. (2005)

The following persons are exempt from licensure under the Motor Vehicle Code [66-1-1 NMSA 1978]:

- A. any employee of the United States while driving a motor vehicle owned by or leased to the United States and being driven on official business;
- B. any person who is at least fifteen years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may drive a motor vehicle in this state, except that the person shall obtain a license upon becoming a resident and before he is employed for compensation by another for the purpose of driving a motor vehicle;
- C. any nonresident who is at least eighteen years of age whose home state or country does not require the licensing of drivers may drive a motor vehicle for a period of not more than one hundred eighty days in any calendar year if the motor vehicle driven is duly registered in the home state or country of the nonresident;
- D. any driver of a farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highway; and
- E. any driver of an off-highway motorcycle.

66-5-5. Persons not to be licensed. (2005)

The division shall not issue a driver's license under the Motor Vehicle Code to any person:

- A. who is under the age of eighteen years, except the division may, in its discretion, issue:
 - (1) an instruction permit to a person fifteen years of age or over who is enrolled in and attending or has completed a driver education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;
 - (2) a provisional license to any person fifteen years and six months of age or older:
 - (a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months; and
 - (b) who has successfully completed a practice driving component;

(3) a driver's license to any person sixteen years and six months of age or older:

(a) who has had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

(b) who has complied with restrictions on that license;

(c) who has not been convicted of a traffic violation that was committed during the ninety days prior to applying for a driver's license; and

(d) who has not been adjudicated for an offense involving the use of alcohol or drugs during that period and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

(4) to any person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motorcycle is not in excess of one hundred cubic centimeters displacement;

(b) no holder of an initial license may carry any other passenger while driving a motorcycle; and

(c) the director approves and certifies motorcycles as not in excess of one hundred cubic centimeters displacement and by rule provides for a method of identification of such motorcycles by all law enforcement officers;

B. whose license or driving privilege has been suspended or denied, during the period of suspension or denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978 and the Ignition Interlock Licensing Act [66-5-501 NMSA 1978];

C. who is an habitual user of narcotic drugs or alcohol or an habitual user of any drug to a degree that renders the person incapable of safely driving a motor vehicle;

D. who is four or more times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, except as provided in the Ignition Interlock Licensing Act. Five years from the date of the fourth conviction and every five years thereafter, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the four previous convictions shall not prohibit issuance of the license;

E. who has previously been afflicted with or who is suffering from any mental disability or disease that would render him unable to drive a motor vehicle with safety upon the highways and who has not, at the time of application, been restored to health;

F. who is required by the Motor Vehicle Code [66-1-1 NMSA 1978] to take an examination, unless the person has successfully passed the examination;

G. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

H. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

I. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau.

66-5-8. Provisional licenses; instruction permits; driver education students; temporary licenses. (2005)

A. A person fifteen years and six months of age or older who has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school, who has had an instruction permit for at least six months, and who has successfully completed a practice driving component may apply to the division for a provisional license. Successful completion of a practice driving component shall include not less than fifty hours of actual driving by the applicant, including not less than ten hours of night driving. An applicant for a provisional license who cannot drive at night due to low nighttime vision may be exempted from the night driving requirement of this subsection; provided that the applicant submits to the division an ophthalmologic or optometric report from a licensed ophthalmologist or optometrist who attests to the applicant's visual condition and its effect on the applicant's driving ability. The applicant's parent or guardian shall certify that the applicant has completed the practice driving component.

B. When operating a motor vehicle, a provisional licensee may be accompanied by not more than one passenger under the age of twenty-one who is not a member of the licensee's immediate family. A provisional license entitles the licensee, while having the license in his immediate possession, to operate a motor vehicle upon the public highways between the hours of 5:00 a.m. and midnight unless the provisional licensee is eligible for a license restricting driving to daylight hours. A provisional licensee may drive at any hour unless otherwise restricted as provided in this subsection if:

(1) accompanied by a licensed driver twenty-one years of age or older;

(2) required by family necessity as evidenced by a signed statement of a parent or guardian;

(3) required by medical necessity as evidenced by a signed statement from medical personnel;

(4) driving to and from work as evidenced by a signed statement from the licensee's employer;

(5) driving to and from school or a religious activity as evidenced by a signed statement of a school or religious official or a parent or guardian; or

(6) required due to a medical emergency.

C. A provisional license shall not be issued to a person convicted of a traffic violation in the ninety days prior to applying for a provisional license. A provisional license shall be in such form as to be readily distinguishable from an unrestricted driver's license and shall contain an indication that the licensee may drive without supervision.

D. A person fifteen years of age or older who is enrolled in and attending or has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school may apply to the division for an instruction permit. The division, in its discretion after the applicant has successfully passed all parts of the examination other than the driving test, may issue to the applicant an instruction permit. This permit entitles the applicant, while having the permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six months when accompanied by a licensed driver twenty-one years of age or older who has been licensed for at least three years in this state or in another state and who is occupying a seat beside the driver except in the event the permittee is operating a motorcycle.

E. A person fifteen years of age or older who is a student enrolled in and attending a driver education course that is approved by the bureau or offered by a public school and that includes both a DWI education and prevention component and practice driving component may drive a motor vehicle on the highways of this state even though he has not reached the legal age to be eligible for a driver's license or a provisional license. In completing the practice driving component, a person may only operate a motor vehicle on a public highway if:

(1) an approved instructor is occupying a seat beside the person; or

(2) a licensed driver twenty-one years of age or older who has been licensed for at least three years in this state or another state is occupying a seat beside the person.

F. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The permit shall be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

G. A holder of an instruction permit for a motorcycle shall not carry any other passenger while operating a motorcycle.

66-5-9. Application for license, temporary license, provisional license or instruction permit. (2003)

A. An application for an instruction permit, provisional license or driver's license shall be made upon a form furnished by the department. An application shall be accompanied by the proper fee. For permits, provisional licenses or driver's licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act [66-5-52 NMSA 1978], submission of a complete application with payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of six months from the date of application.

B. An application shall contain the full name, social security number or individual tax identification number, date of birth, sex and New Mexico residence address of the applicant and briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal. For foreign nationals applying for driver's licenses the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status. The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number.

C. An applicant shall indicate whether he has been convicted of driving while under the influence of intoxicating liquor or drugs in this state or in any other jurisdiction. Failure to disclose any such conviction prevents the issuance of a driver's license, provisional license, temporary license or instruction permit for a period of one year if the failure to disclose is discovered by the department prior to issuance. If the nondisclosure is discovered by the department subsequent to issuance, the department shall revoke the driver's license, provisional license, temporary license or instruction permit for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

D. An applicant less than eighteen years of age who is making an application to be granted his first New Mexico driver's license shall submit evidence that he has:

(1) successfully completed a driver education course that included a DWI prevention and education program approved by the bureau or offered by a public school. The bureau may accept verification of driver education course completion from another state if the driver education course substantially meets the requirements of the bureau for a course offered in New Mexico;

(2) had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

(3) complied with restrictions on that license;

(4) not been convicted of a traffic violation committed during the ninety days prior to applying for a driver's license;

(5) not been cited for a traffic violation that is pending at the time of his application; and

(6) not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the date of the application for the driver's license and that there are no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of his application.

E. An applicant eighteen years of age and over, but less than twenty-five years of age, who is making an application to be granted his first New Mexico driver's license shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

F. An applicant twenty-five years of age and over who has been convicted of driving under the influence of intoxicating liquor or drugs, and who is making an application to be granted his first New Mexico driver's license, shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

G. Whenever application is received from a person previously licensed in another jurisdiction, the department may request a copy of the driver's record from the other jurisdiction. When received, the driver's record may become a part of the driver's record in this state with the same effect as though entered on the driver's record in this state in the original instance.

H. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

I. This section does not apply to driver's licenses issued pursuant to the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978].

66-5-11. Application of minors. (1999)

A. The application of any person under the age of eighteen years for an instruction permit, provisional license or driver's license shall be signed and verified by the father, mother or guardian or, in the event there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this article upon a person signing the application of a minor.

B. Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit or license, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct except as otherwise provided in Subsection C of this section.

C. In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him or, if not the owner of a motor vehicle, with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, the division may accept the application of the minor when signed by one parent or the guardian of the minor, and, while such proof is maintained, the parent or guardian is not subject to the liability imposed under Subsection B of this section.

66-5-12. Release from liability. (1999)

Any person who has signed the application of a minor for an instruction permit, a driver's license or provisional license may thereafter file with the division a verified written request that the license of the minor so granted be canceled. Thereupon, the division shall cancel the license of the minor, and the person who signed the application of the minor shall be relieved from the liability imposed under this article, by reason of having signed the application, on account of any subsequent negligence or willful misconduct of the minor in operating a motor vehicle.

66-5-13. Cancellation of license upon death of person signing minor's application. (1999)

The division upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for an instruction permit, a driver's license or provisional license shall cancel the license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this article. This provision does not apply in the event the minor has attained the age of eighteen years.

66-5-14. Examination of applicants. (1995)

A. The department shall examine every first-time applicant for a driver's license or a motorcycle endorsement and may examine other applicants for a driver's license or motorcycle endorsement. The examination shall include a test of the applicant's ability to read and understand highway signs regulating, warning and directing traffic, the applicant's knowledge of the traffic laws of this state and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle except as provided in Section 66-5-7 NMSA 1978 and any further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle or motorcycle safely upon the highways.

B. Regardless of whether an applicant is examined under Subsection A of this section, the department shall test the eyesight of every applicant for a driver's license or motorcycle endorsement.

C. The department is authorized to contract with other persons for conduct of tests of the applicant's ability to exercise ordinary and reasonable control of a motor vehicle. Any such contract may be terminated by the secretary upon written notice for failure of the contractor to perform his duties to the secretary's satisfaction. Contracts under this subsection may provide for the form of notice and the length of the period, if any, between the notice and the effective date of the termination.

D. For purposes of this section, a "first-time applicant" means an applicant other than a person who:

- (1) holds a currently valid driver's license issued by New Mexico or any other jurisdiction at the time of application; or
- (2) does not hold a currently valid driver's license issued by New Mexico or any other jurisdiction at the time of

application but who held a valid driver's license issued by New Mexico or any other jurisdiction within one year prior to the date of application if that driver's license was not revoked under any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] or suspended, canceled or revoked under the laws of any other jurisdiction for reasons similar to those for which revocation is authorized under the Motor Vehicle Code.

66-5-15. Licenses issued to applicants. (2004)

The department shall, upon payment of the required fee, issue to every qualified applicant a driver's license as applied for. The license shall bear the full name, date of birth, current New Mexico physical or mailing address, a full face or front-view photograph of the license holder and a brief description of the licensee and the signature of the licensee. A license shall not be valid unless it bears the signature of the licensee.

66-5-15.1. Notification by licensee. (1989)

Every licensee shall, as a condition of holding a driver's license, agree to notify the director of any change in his physical or mental condition that would impair the licensee's ability to operate a vehicle.

66-5-16. License to be carried and exhibited on demand. (1985)

Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the license upon demand of a magistrate, a peace officer or a field deputy or inspector of the division. However, 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.

66-5-17. Use of license for identification. (1978)

In any criminal prosecution, civil action or administrative proceeding charging violation of a statute, ordinance or regulation concerning the sale, consumption or possession of alcoholic beverages involving minors, proof that the person charged, in good faith, demanded and was shown a valid driver's license shall be valid defense to such prosecution, civil action or administrative proceeding.

66-5-18. Altered, forged or fictitious license; penalty. (2004)

A. A person who uses or possesses an altered, forged or fictitious driver's license, permit or identification card is guilty of a misdemeanor.

B. A person who alters or forges a driver's license, permit or identification card or who makes a fictitious driver's license, permit or identification card is guilty of a fourth degree felony.

C. A person who possesses or uses a fraudulent, counterfeit or forged document to apply for or renew a driver's license, permit or identification card is guilty of a fourth degree felony.

66-5-19. Restricted licenses. (2005)

A. The division, upon issuing a driver's license, or a provisional license has authority, whenever good cause appears, to impose restrictions, including the shortening of the licensure period suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle that the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. At age seventy-five and thereafter, the applicant shall renew the applicant's license on a yearly basis at no cost to the applicant.

B. The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

C. The division may issue a restricted license or a restricted provisional license for driving during daylight hours only to some visually handicapped persons who fail the usual eyesight test. The health standards advisory board created pursuant to the provisions of Section 66-5-6 NMSA 1978 shall evaluate the extent of the visual handicap and its effect on the driving ability of the applicant and, based on its recommendations, the director may issue a restricted license under the following conditions:

- (1) the applicant has no record of moving violations;
- (2) the necessity of the license is shown to the satisfaction of the director; and
- (3) the applicant satisfies the provisions of Section 66-5-206 NMSA 1978 relating to proof of financial responsibility.

D. The division may, upon receiving satisfactory evidence of any violation of the restrictions of the license, suspend the license, but the licensee is entitled to a hearing as upon a suspension under Sections 66-5-1 through 66-5-47 NMSA 1978.

E. It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to the person.

66-5-20. Replacement licenses. (1999)

In the event that a permit or driver's license issued under the provisions of this article is lost, stolen, mutilated or destroyed, or in the event of a name or address change, the person to whom the permit or driver's license was issued may, upon payment of the required fee, obtain a replacement upon furnishing proof of age and identity satisfactory to the department. A person who loses a permit or driver's license and who, after obtaining a replacement, finds the original, shall immediately surrender the original to the department.

66-5-21. Expiration of license; four-year issuance period; eight-year issuance period. (2004)

A. Except as provided in Subsection B of this section, Section 66-5-19 NMSA 1978 and Section 66-5-67 NMSA 1978, all driver's licenses shall be issued for a period of four years, and each license shall expire thirty days after the applicant's birthday in the fourth year after the effective date of the license. A license issued pursuant to Section 66-5-19 NMSA 1978 shall expire thirty days after the applicant's birthday in the year in which the license expires. Each license is renewable within ninety days prior to its expiration or at an earlier date approved by the department. The fee for the license shall be as provided in Section 66-5-44 NMSA 1978. The department may provide for renewal by mail of a driver's license issued pursuant to the provisions of this subsection, pursuant to regulations adopted by the department and may require an examination upon renewal of the driver's license.

B. At the option of an applicant, a driver's license may be issued for a period of eight years, provided that the applicant:

- (1) pays the amount required for a driver's license issued for a term of eight years;
- (2) otherwise qualifies for a four-year driver's license; and
- (3) will not reach the age of seventy-five during the last four years of the eight-year license period.

C. A driver's license issued pursuant to the provisions of Subsection B of this section shall expire thirty days after the applicant's birthday in the eighth year after the effective date of the license.

D. The director may adopt regulations providing for the proration of driver's license fees and commercial driver's license fees due to shortened licensure periods permitted pursuant to Subsection A of Section 66-5-19 NMSA 1978.

66-5-22. Notice of change of address or name. (2004)

Whenever a person, after applying for or receiving a driver's license, moves from the address named in the application or in the issued license or when the name of a licensee is changed by marriage or otherwise, the person shall, within ten days, notify the division of the new address in writing or by electronic media pursuant to department regulations. In the event of a change of name, the license must be delivered by the licensee to the division and the change of name be accomplished on the license itself. The division may require such evidence as it deems satisfactory regarding the change of name.

66-5-23. Records to be kept by the division. (2003)

A. The division shall file every application for a driver's license or a commercial driver's license pursuant to the provisions of the New Mexico Commercial Driver's License Act [66-5-52 NMSA 1978] received by it and shall maintain suitable indexes containing:

- (1) all applications denied and, on each, note the reasons for denial;
- (2) all applications granted;
- (3) the name of every licensee whose license has been suspended or revoked by the division and, after each, note the reasons for the action; and
- (4) the name of every licensee who has violated his written promise to appear in court.

B. The division shall also file all abstracts of court records of conviction or reports that it receives from the trial courts of this state or from a tribal court, which show either that a driver is a first offender or a subsequent offender and whether that offender was represented by counsel or waived the right to counsel, with attention to Article III of the Driver License Compact [66-5-49 NMSA 1978], and in connection therewith maintain convenient records or make suitable notations in order that the individual record of each licensee showing the convictions of the licensee in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times.

66-5-24. Authority of division to cancel license. (1999)

A. The division is authorized to cancel any instruction permit, driver's license or provisional license upon determining that the licensee was not entitled to the issuance of the license or that the licensee failed to give the required or correct information in his application or committed any fraud in making the application.

B. Upon such cancellation, the licensee must surrender the license so canceled to the division.

66-5-25. Suspending privileges of nonresidents; reporting convictions; failures to appear; failures to pay. (2003)

A. The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the division in like manner and for like cause as a driver's license may be suspended or revoked.

B. The division is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, or of notice of failure to appear or upon determination by the division of failure to pay a penalty assessment, to forward the record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

C. Upon a request by a tribe, the division is authorized to forward to a tribal court or other authority, as specified in an applicable intergovernmental agreement, the record of the conviction in this state of a resident driver of a motor vehicle, who is subject to the jurisdiction of the tribe, of any offense under the Motor Vehicle Code [66-1-1 NMSA 1978] or of notice of failure to appear or upon determination by the division of a failure to pay a penalty assessment.

66-5-26. Suspending resident's license; conviction failure to appear, failure to pay in another state or tribal

jurisdiction. (2003)

A. The division is authorized to suspend or revoke the license of a resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state or by a tribe of an offense that if committed within the jurisdiction of this state, would be grounds for the suspension or revocation of the license of a driver.

B. In addition, the division is authorized to suspend the license of a resident of this state, or the privilege of a nonresident to drive a motor vehicle in this state, upon receiving notice of failure to appear or pay a penalty assessment imposed by a tribe or imposed in another state that is a signatory of the Nonresident Violator Compact [66-8-137.1 NMSA 1978] with New Mexico.

66-5-27.1. Recognition of convictions for motor vehicle offenses committed on tribal land; intergovernmental agreements; information sharing with tribal courts. (2003)

A. The department is authorized to enter into an intergovernmental agreement with the appropriate governmental entity of a tribe to permit the exchange of information between the tribal court and the division regarding persons who are adjudicated for a motor vehicle offense that occurred within the jurisdiction of the tribal court.

B. The division is authorized to suspend or revoke the driver's license or driving privilege of a person who has been convicted of a motor vehicle offense by a tribal court; provided that:

(1) the department has entered into an intergovernmental agreement with the tribe that permits the exchange of information on motor vehicle offense convictions between the tribal court and the division; and

(2) the division has received notice from the tribal court, or other authority as provided in the intergovernmental agreement, that the driver has been convicted of a motor vehicle offense that, if committed within the jurisdiction of the state, would be grounds for suspension or revocation of the driver's license or driving privilege of the offender.

66-5-28. Court to forward license to division; definitions of "convicted" and "conviction". (1989)

A. Whenever any person is convicted of any offense for which the Motor Vehicle Code [66-1-1 NMSA 1978] or the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978] requires mandatory revocation of the driver's license of that person by the division, the court in which the conviction is had shall require the surrender to it the driver's license or commercial driver's license then held by the person so convicted, and the court shall forward the driver's license or commercial driver's license to the division, together with the abstract of the conviction.

B. For the purposes of Subsection A of this section and Sections 66-5-29, 66-8-102 and 66-8-117 NMSA 1978, the terms "conviction" and "convicted" mean that the alleged violator has entered a plea of guilty or nolo contendere or been found guilty in the trial court and has waived or exhausted all of his rights to an appeal. For the purposes of any other provisions of the Motor Vehicle Code, the terms "conviction" and "convicted" mean a final conviction in the trial court. For the purposes of the Motor Vehicle Code, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court or promise to mail payment on a penalty assessment when unvacated is equivalent to a conviction.

66-5-29. Mandatory revocation of license by division. (2005)

A. The division shall immediately revoke the instruction permit, driver's license or provisional license of a driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

- (1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;
- (2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code [66-1-1 NMSA 1978];
- (3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;
- (4) any felony in the commission of which a motor vehicle is used;
- (5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or
- (7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Except as provided in the Ignition Interlock Licensing Act [66-5-501 NMSA 1978] and in Subsection C, D or E of this section, a person whose license has been revoked under this section shall not be entitled to apply for or receive a new license until one year from the date that the conviction is final and all rights to an appeal have been exhausted.

C. A person who upon adjudication as a delinquent for driving while under the influence of intoxicating liquor or drugs or conviction pursuant to Section 66-8-102 NMSA 1978 is subject to license revocation under this section for an offense pursuant to which the person was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to:

- (1) one year for a first offender; or
- (2) for a subsequent offender:
 - (a) two years for a second conviction;
 - (b) three years for a third conviction; or
 - (c) the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review, as

provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

D. Upon receipt of an order from a court pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-22 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's license or driving privileges of the convicted person. A person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until one year from the date that the conviction is final and all rights to an appeal have been exhausted.

66-5-30. Authority of division to suspend or revoke license. (2003)

A. The division is authorized to suspend the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the licensee:

- (1) has been convicted of an offense for which mandatory revocation of license is required upon conviction;
- (2) has been convicted as a driver in an accident resulting in the death or personal injury of another or serious property damage;
- (3) has been convicted with such frequency of offenses against traffic laws or rules governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
- (4) is an habitually reckless or negligent driver of a motor vehicle;
- (5) is incompetent to drive a motor vehicle;
- (6) has permitted an unlawful or fraudulent use of the license;
- (7) has been convicted of an offense in another state or tribal jurisdiction that if committed within this state's jurisdiction would be grounds for suspension or revocation of the license;
- (8) has violated provisions stipulated by a district court in limitation of certain driving privileges;
- (9) has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code [66-1-1 NMSA 1978] or pursuant to the laws of the tribe;
- (10) has failed to pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or
- (11) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. Upon suspending the license of a person as authorized in this section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request in the county wherein the licensee resides unless the division and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The director may, in his discretion, extend the twenty-day period. Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing, the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of the license or revoke the license.

66-5-31. Division may require reexamination. (1978)

The division, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may request that, upon written notice of at least five days to the licensee, he submit to an examination. Upon the conclusion of such examination, the division shall take action as may be appropriate and may suspend the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under Section 66-5-19 NMSA 1978. Refusal or neglect of the licensee to submit to such examination shall be ground for suspension of his license.

66-5-32. Period of suspension or revocation. (2005)

A. The division shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year except as permitted under Subsection C of this section and Sections 66-5-5 and 66-5-39 NMSA 1978.

B. Except as provided in the Ignition Interlock Licensing Act [66-5-501 NMSA 1978], a person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause that has been removed, except that after the expiration of the periods specified in Subsections B and C of Section 66-5-29 NMSA 1978 from the date on which the revoked license was surrendered to and received by the division, the person may make application for a new license as provided by law.

C. The suspension period for failure to appear or failure to remit the penalty assessment shall, at the discretion of the director, be extended indefinitely subject to the provisions of Subsection B of Section 66-5-30 NMSA 1978.

66-5-33.1. Reinstatement of driver's license or registration; fee. (1999)

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement,

ment, compliance with all appropriate provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] and the payment of a fee of twenty-five dollars (\$25.00) is a prerequisite to the reinstatement of any license or registration.

B. If a driver's license was suspended or revoked for driving while under the influence of intoxicating liquor or drugs, for aggravated driving while under the influence of intoxicating liquor or drugs or for a violation of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], an additional fee of seventy-five dollars (\$75.00) is required to be paid to reinstate the driver's license. Fees collected pursuant to this subsection are appropriated to the local governments road fund. The department shall maintain an accounting of the fees collected pursuant to this subsection and shall report that amount upon request to the legislature.

66-5-34. No operation under foreign license during suspension or revocation in this state. (1978)

Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this article shall not operate a motor vehicle in this state under a license, permit or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained, when and as permitted under this article.

66-5-35. Limited driving privilege upon suspension or revocation; hearing; review. (2005)

A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor vehicles, a person may apply to the department for a license or permit to drive, limited to use allowing the person to engage in gainful employment, to attend school or to attend a court-ordered treatment program, except that the person shall not be eligible to apply:

- (1) for a limited commercial driver's license or an ignition interlock license in lieu of a revoked or suspended commercial driver's license;
- (2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act [66-8-105 NMSA 1978], except as provided in the Ignition Interlock Licensing Act [66-5-501 NMSA 1978];
- (3) for a limited license when the person's driver's license was revoked pursuant to the provisions of Section 66-8-102 NMSA 1978, except as provided in the Ignition Interlock Licensing Act;
- (4) for a limited license when the person's driver's license is denied pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978, except as provided in the Ignition Interlock Licensing Act; or
- (5) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

B. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be transferred to the department of transportation. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The department of transportation shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

C. The department, within twenty days of denial of an application for a limited driver's license or permit pursuant to this section, shall afford the applicant a hearing in the county in which the applicant resides, unless the department and the licensee agree that the hearing may be held in some other county. The department may extend the twenty-day period, provided that the extension is in writing and made no later than fifteen days after receipt of an application. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to whether the applicant has shown proof of financial responsibility for the future and enrollment in an approved DWI school and an approved alcohol screening program and meets established uniform criteria for limited driving privileges adopted by rule of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in this subsection are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

D. A person adversely affected by an order of the hearing officer may seek review within thirty days in the district court in the county in which the person resides. On review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or permit to drive.

66-5-37. Unlawful use of license. (1989)

It is a misdemeanor for any person to:

- A. display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit or commercial driver's license or permit;
- B. lend his driver's license or permit or commercial driver's license or permit to any other person or knowingly permit the use of his license or permit by another;
- C. display or represent as one's own any driver's license or permit or commercial driver's license or permit not issued to him;

D. fail or refuse to surrender to the division upon its lawful demand any driver's license or permit or commercial driver's license or permit which has been suspended, revoked or canceled;

E. use a false or fictitious name in any application for a driver's license or permit or commercial driver's license or permit or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application;

F. permit any unlawful use of the driver's license or permit or commercial driver's license or permit issued to him; or

G. do any act forbidden or fail to perform any act required by Sections 66-5-1 through 66-5-47 NMSA 1978 or the provisions of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978].

66-5-38. Making false affidavit perjury. (1978)

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of the Motor Vehicle Code [66-1-1 NMSA 1978] to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable.

66-5-39. Driving while license suspended or revoked; providing penalties. (1993)

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 suspended or revoked and who knows or should have known that his license was suspended or revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished notwithstanding the provisions of Section 31-18-13 NMSA 1978 by imprisonment for not less than four days or more than three hundred sixty-four days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than one thousand dollars (\$1,000). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. Notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], upon conviction under this section, that person shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars (\$300) or not more than one thousand dollars (\$1,000) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. Any municipal ordinance prohibiting driving with a suspended or revoked license shall provide penalties no less stringent than provided in this section.

B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section or a municipal ordinance that prohibits driving on a suspended or revoked license, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle.

C. The division, upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of the person was suspended, shall extend the period of suspension for an additional like period, and, if the conviction was upon a charge of driving while a license was revoked, the division shall not issue a new license for an additional period of one year from the date the person would otherwise have been entitled to apply for a new license.

66-5-40. Permitting unauthorized minor to drive. (1978)

No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or is in violation of any of the provisions of this article.

66-5-41. Permitting unauthorized person to drive. (1978)

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or is in violation of any of the provisions of this article.

66-5-44. Licenses and permits; duration and fee; appropriation. (1999)

A. There shall be paid to the department a fee of ten dollars (\$10.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of twenty dollars (\$20.00) shall be paid to the department. Each license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. For each permit and instruction permit, there shall be paid to the department a fee of two dollars (\$2.00). The term for each permit shall be as provided in Sections 66-5-8 and 66-5-9 NMSA 1978.

C. The director with the approval of the governor may increase the amount of the fees provided for in this section by an amount not to exceed three dollars (\$3.00) for the purpose of implementing an enhanced driver's license system; provided that for a driver's license issued for an eight-year period, the amount of the fees shall be twice the amount charged for other driver's licenses. The additional amounts collected pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing.

D. There shall be paid to the department a driver safety fee of three dollars (\$3.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of six dollars (\$6.00) shall be paid to the

department. The fee shall be distributed to each school district for the purpose of providing defensive driving instruction through the state equalization guarantee distribution made annually pursuant to the general appropriation act.

66-5-44.1. Provisional licenses; duration and fee; appropriation. (1999)

A. There shall be paid to the division a fee of thirteen dollars (\$13.00) for each provisional license or duplicate provisional license. Each provisional license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. The director with the approval of the governor may increase the amount of the fee provided for in this section by an amount not to exceed three dollars (\$3.00) for the purpose of implementing an enhanced driver's license system. The additional amounts collected pursuant to this subsection are appropriated to the division to defray the expense of the new system of licensing.

C. The fees collected pursuant to the provisions of Subsection A of this section are appropriated to the division to defray the expense of implementing the new system of provisional licensing.

66-5-47. Photographs; evidence of applicant's age. (1999)

A. The department shall reproduce the likeness of drivers, subject to the following conditions:

(1) photographs or other reproductions of the likeness of all persons shall show a full face or front view; and

(2) photographs or other reproductions of the likeness of all persons under the age of twenty-one years shall have a printed legend, indicating that the person is under twenty-one, which shall be displayed in such manner as to be easily read by any person inspecting the license.

B. Each applicant for an initial license or a replacement license shall produce evidence of the applicant's age. Proof of an applicant's age shall be a birth certificate, certified copy of a birth certificate, a church record purporting to show the date of birth and baptism, an acknowledged copy of the church record, a valid passport or other evidence which the secretary deems sufficient. The date of birth shown on any driver's license or any instruction permit issued by the department shall coincide with the date of birth shown on the proof of applicant's age.

Financial Responsibility

66-5-205. Vehicle must be insured or owner must have evidence of financial responsibility; penalties. (1998)

A. No owner shall permit the operation of an uninsured motor vehicle, or a motor vehicle for which evidence of financial responsibility as was affirmed to the department is not currently valid, upon the streets or highways of New Mexico unless the vehicle is specifically exempted from the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978].

B. No person shall drive an uninsured motor vehicle, or a motor vehicle for which evidence of financial responsibility as was affirmed to the department is not currently valid, upon the streets or highways of New Mexico unless he is specifically exempted from the provisions of the Mandatory Financial Responsibility Act.

C. For the purposes of the Mandatory Financial Responsibility Act, "uninsured motor vehicle" means a motor vehicle for which a motor vehicle insurance policy meeting the requirements of the laws of New Mexico and of the secretary is not in effect or a surety bond or evidence of a sufficient cash deposit with the state treasurer.

D. The provisions of the Mandatory Financial Responsibility Act requiring the deposit of evidence of financial responsibility as provided in Section 66-5-218 NMSA 1978, subject to certain exemptions, may apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments or written settlement agreements upon causes of action arising out of ownership, maintenance or use of vehicles of a type subject to registration under the laws of New Mexico.

E. Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be sentenced to a fine not to exceed three hundred dollars (\$300).

66-5-205.1. Uninsured motorist citation; requirements to be followed at time of accident; subsequent procedures; insurer notification requirements; suspension procedures. (2001)

A. When a law enforcement officer issues a driver who is involved in an accident a citation for failure to comply with the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], the law enforcement officer shall at the same time:

(1) issue to the driver cited a temporary operation sticker, valid for thirty days after the date the sticker is issued, and forward by mail or delivery to the department a duplicate of the issued sticker; and

(2) remove the license plate from the vehicle and send it with the duplicate of the sticker to the department or, if it cannot be removed, permanently deface the plate.

B. The department shall return or replace, in its discretion, a license plate removed under the provisions of Paragraph (2) of Subsection A of this section or replace a license plate defaced under that paragraph when the person cited for failure to comply with the provisions of the Mandatory Financial Responsibility Act furnishes proof of compliance to the department and pays to the division a reinstatement fee of twenty-five dollars (\$25.00). If a person to whom the temporary operation sticker is

issued furnishes to the department, within fifteen days after the issuance of the sticker, evidence of financial responsibility in compliance with the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] and in effect on the date and at the time of the issuance of the sticker, the department shall replace or return the license plate and waive the twenty-five dollar (\$25.00) reinstatement fee.

C. The secretary shall adopt and promulgate rules prescribing the form and use of the sticker required to be issued under Subsection A of this section.

D. The secretary shall adopt and promulgate rules requiring insurance carriers to report canceled, terminated and newly issued motor vehicle insurance policies each month to the department. Information pertaining to each motor vehicle shall be made a part of that vehicle file for one year.

E. Within ten days of notification by the insurance carrier of a termination or cancellation of a motor vehicle insurance policy, the department shall demand satisfactory evidence from the owner of the motor vehicle that he meets the requirements of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978]. Failure to provide evidence of financial responsibility within twenty days after the department has mailed its demand for proof:

(1) constitutes reasonable grounds to believe that a person is operating a motor vehicle in violation of the provisions of Section 66-5-205 NMSA 1978; and

(2) requires the department to suspend the person's registration as provided in Section 66-5-236 NMSA 1978.

F. The department shall notify the superintendent of insurance if an insurance carrier fails to provide monthly reports to the department regarding motor vehicle insurance policy information as required by Subsection D of this section.

66-5-206. Registration without insurance or evidence of financial responsibility prohibited; suspension required. (1998)

A. The department shall not issue or renew the registration for any motor vehicle not covered by a motor vehicle insurance policy or by evidence of financial responsibility currently valid meeting the requirements of the laws of New Mexico and of the secretary, unless specifically exempted from the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978].

B. Upon a showing by its records or other sufficient evidence that the required insurance or evidence of financial responsibility has not been provided or maintained for a motor vehicle, the department shall suspend its registration of the motor vehicle.

66-5-208. Evidence of financial responsibility; amounts and conditions. (1983)

"Evidence of financial responsibility," as used in the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], means evidence of the ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the evidence, arising out of the ownership, maintenance or use of a vehicle of a type subject to registration under the laws of New Mexico, in the following amounts:

A. twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one person in any one accident;

B. subject to this limit for one person, fifty thousand dollars (\$50,000) because of bodily injury to or death of two or more persons in any one accident;

C. ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one accident; and

D. if evidence is in the form of a surety bond or a cash deposit, the total amount shall be sixty thousand dollars (\$60,000).

66-5-230. Surrender of license and registration. (1985)

A. Any person whose license or registration is suspended under any provision of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] or whose policy of insurance or bond, when required under the Mandatory Financial Responsibility Act, is canceled or terminated shall immediately return his license or registration to the division. If any person fails to return to the division the license or registration as provided in this section, the division shall forthwith notify the person by certified mail that within ten days after receipt of such notice he shall return to the division by mail his license or registration or shall be subject to the full penalty prescribed by law.

B. Any person willfully failing to return the license or registration as required in Subsection A of this section shall be fined not more than one thousand dollars (\$1,000) or imprisoned not to exceed six months or both.

66-5-231. Forged evidence. (1983)

Any person who forges or, without authority, signs any evidence of financial responsibility or who files or offers for filing any such evidence knowing or having reason to believe that it is forged or signed without authority shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one year or both.

66-5-232. Sampling; letter to owner. (1998)

A. The department, at various times as it considers necessary or appropriate to assure compliance with the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], shall select for financial responsibility affirmation an appropriate sample number of the motor vehicles registered in New Mexico. The department is authorized to emphasize, in accordance with rules adopted by the department, for affirmation of financial responsibility, individuals whose affirmations of financial responsibility have previously been found to be incorrect.

B. When a motor vehicle is selected for financial responsibility affirmation under Subsection A of this section, the department shall mail an affirmation form to the registered owner of the motor vehicle notifying him that his motor vehicle has been selected for financial responsibility affirmation and requiring him to respond and to affirm, by at least one signature shown on the affirmation form, the existence of evidence satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act for the motor vehicle.

C. Failure by an owner to return the affirmation of financial responsibility to the department within fifteen days after mailing by the department or a determination by the department that an affirmation is not accurate constitutes reasonable grounds under Section 66-5-235 NMSA 1978 to believe that a person is operating a motor vehicle in violation of Section 66-5-205 NMSA 1978 or has falsely affirmed the existence of means of satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act.

D. The department may investigate all affirmations required by the Mandatory Financial Responsibility Act returned to the department. If the owner affirms the existence of a motor vehicle insurance policy covering the motor vehicle, the department may forward the affirmation to the listed insurer to determine whether the affirmation is correct. An insurer shall mail notification to the department within twenty working days of receipt of the affirmation inquiry in the event the affirmation is not correct. The notification shall be prima facie evidence of failure to satisfy the financial responsibility requirements of the Mandatory Financial Responsibility Act. The department may determine the correctness of affirmation of other means of satisfying the financial responsibility requirements of that act for the motor vehicle.

E. The department may use accident reports as basic material for the construction of its sampling procedure.

F. No civil liability shall accrue to the insurer or any of its employees for reports made to the department under this section when the reports are made in good faith based on the most recent information available to the insurer.

G. The affirmation form used when sampling shall require the report of the name of the company issuing the policy, the policy number or any other information that identifies the policy.

66-5-233. Affirmation form. (1998)

The affirmation of financial responsibility required under Sections 66-5-208, 66-5-225 and 66-5-226 NMSA 1978 shall be in a form prescribed by the department and shall require an applicant to provide such information as may be required by the department. If a person affirms the existence of a motor vehicle insurance policy, the affirmation form shall require him to report at least the name of the insurer issuing the policy and the policy number.

66-5-235. False affirmation; violation. (1998)

When the department has reasonable grounds to believe that a person is operating a motor vehicle in violation of Section 66-5-205 NMSA 1978 or has falsely affirmed the existence of a motor vehicle insurance policy or the existence of some other means of satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], the department shall demand satisfactory evidence from the person that the person meets the requirements of that act as provided in Section 66-5-233 NMSA 1978. If the person cannot provide evidence of financial responsibility within twenty days after receipt of the department's demand for satisfactory proof of financial responsibility, the department may suspend the person's registration as provided in Section 66-5-236 NMSA 1978.

Ignition Interlock Licenses

66-5-501. Short title. (2003)

Sections 1 through 4 of this act [66-5-501 to 66-5-504 NMSA 1978] may be cited as the "Ignition Interlock Licensing Act".

66-5-502. Definitions. (2005)

As used in the Ignition Interlock Licensing Act [66-5-501 NMSA 1978]:

A. "denied" means having an instructor's permit, driver's license or provisional license denied for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978;

B. "ignition interlock device" means a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person;

C. "ignition interlock license" means a driver's license issued to a person by the division that allows that person to operate a motor vehicle with an ignition interlock device after that person's instructor's permit, driver's license or provisional license has been revoked or denied. The division shall clearly mark an ignition interlock license to distinguish it from other driver's licenses; and

D. "revoked" means having an instructor's permit, driver's license or provisional license revoked for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Section 66-8-102 or 66-8-111 NMSA 1978.

66-5-503. Ignition interlock license; requirements; exclusions. (2003)

A. A person whose instructor's permit, driver's license or provisional license has been revoked or denied may apply for an ignition interlock license from the division.

B. An applicant for an ignition interlock license shall:

- (1) provide proof of installation of the ignition interlock device by a traffic safety bureau-approved ignition interlock installer on any vehicle the applicant drives; and
- (2) sign an affidavit acknowledging that:
 - (a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license; and
 - (b) the applicant shall maintain the ignition interlock device and keep up-to-date records in the motor vehicle showing required service and calibrations and be able to provide the records upon request.
- C. A person who has been convicted of homicide by vehicle or great bodily injury by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, shall not be issued an ignition interlock license.

66-5-504. Penalties. (2003)

A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device in violation of the Ignition Interlock Licensing Act [66-5-501 NMSA 1978] shall be subject to the penalties provided in Section 66-5-39 NMSA 1978.

Some Rules of the Road

66-7-201. Accidents involving death or personal injuries. (1989)

A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 66-7-203 NMSA 1978. Every such stop shall be made without obstructing traffic more than is necessary.

B. Any person failing to stop or to comply with the requirements of Section 66-7-203 NMSA 1978 where the accident results in great bodily harm or death is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any person who knowingly fails to stop or to comply with the requirements of Section 66-7-203 NMSA 1978 where the accident results in great bodily harm or death is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Any person failing to stop or comply with the requirements of Section 66-7-203 NMSA 1978 where the accident does not result in great bodily harm or death is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

E. The director shall revoke the license or permit to drive and any nonresident operating privilege of the person so convicted.

66-7-202. Accidents involving damage to vehicle. (1978)

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 66-7-203 NMSA 1978. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

66-7-203. Duty to give information and render aid. (1978)

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

66-7-204. Duty upon striking unattended vehicle. (1978)

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

66-7-205. Duty upon striking fixtures or other property upon a highway. (1978)

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request exhibit his driver's license and shall make report of such accident when and as required in Section 66-7-207 NMSA 1978.

66-7-206. Immediate notice of accidents. (1991)

The driver of a vehicle involved in an accident resulting in bodily injury to or death of any person or property damage to an apparent extent of five hundred dollars (\$500) or more shall immediately, by the quickest means of communication, give notice of the accident to the police department if the accident occurs within a municipality; otherwise to the office of the county sheriff or the nearest office of the New Mexico state police.

66-7-207. Written reports of accidents. (1991)

A. The driver of a vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of five hundred dollars (\$500) or more shall within five days after the accident forward a written report of the accident to the state highway and transportation department.

B. The state highway and transportation department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the state highway and transportation department and may require witnesses of accidents to render reports concerning the accidents to the state highway and transportation department.

C. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall, within twenty-four hours after completing the investigation, forward a written report of the accident to the state highway and transportation department.

66-7-301. Speed regulation. (2002)

A. No person shall drive a vehicle on a highway at a speed greater than:

- (1) fifteen miles per hour on all highways when passing a school while children are going to or leaving school and when the school zone is properly posted;
- (2) thirty miles per hour in a business or residence district;
- (3) seventy-five miles per hour; and
- (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 [state] highway and transportation department, provided that the posted speed limit shall be determined by an engineering study performed by the state highway and transportation department.

B. In every event, speed shall be so controlled by the driver as may be necessary:

- (1) to avoid colliding with a person, vehicle or other conveyance on or entering the highway;
- (2) to comply with legal requirements as may be established by the state highway and transportation department or the New Mexico state police division of the department of public safety 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 [state] highway and transportation department.

C. The speed limits set forth in Subsection A of this section may be altered as authorized in Section 66-7-303 NMSA 1978.

66-7-302.1. Speed limit; conviction; use limited. (1991)

A. The division shall not use a violation under Paragraph (3) or (4) of Subsection A of Section 66-7-301 NMSA 1978 for the purpose of suspending or revoking a driver's license unless the driver was exceeding the speed of seventy-five miles an hour.

B. An insurer shall not consider a violation under Paragraph (3) or (4) of Subsection A of Section 66-7-301 NMSA 1978 as a moving traffic violation against a person, unless the person was exceeding the speed of seventy-five miles an hour, for the purpose of establishing rates of motor vehicle insurance charged by the insurer nor shall the insurer cancel or refuse to renew any policy of insurance for such a violation.

66-7-303. Establishment of speed zones. (1996)

A. Whenever the secretary of highway and transportation determines upon the basis of an engineering survey and traffic investigation, a detailed report of which is filed with the traffic safety bureau of the state highway and transportation department, that any speed established by law is greater or less than is reasonable or safe under the conditions found to exist upon any part of a state highway, the secretary of highway and transportation may declare the speed limit for that part, and that speed limit shall be authorized and effective when appropriate signs giving notice thereof are erected at that particular part of the highway; provided that no speed limit shall be declared greater than seventy-five miles per hour. The declaration of speed limits by the secretary of highway and transportation shall not be considered rules for purposes of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. Whenever a local authority determines upon the basis of an engineering survey and traffic investigation that any speed limit permitted under state law or local ordinance is greater or less than is reasonable or safe under the conditions found to exist upon any part of a highway within its jurisdiction, it may declare a speed limit for that part, and that speed limit shall be authorized and effective when appropriate signs giving notice thereof are erected at that particular part of the highway; provided that no speed limit shall be declared greater than seventy-five miles per hour.

C. Engineering surveys and traffic investigations made by local authorities shall be on a form approved by the secretary of highway and transportation. If engineers are not available to the local authorities, the state highway and transportation

department may make the surveys and investigations for the local authorities.

D. Speed zones may be marked by a sign containing a flashing yellow light and, when the light is in operation, the speed limit, instructions or regulations on the sign are in effect.

E. Alteration of speed limits on state highways by local authorities is not effective until approved by the secretary of highway and transportation.

F. The provisions of Subsections A and B of this section shall not apply to changes of speed limit in construction zones authorized pursuant to Section 66-7-303.1 NMSA 1978.

66-7-305. Minimum speed regulation. (2003)

A. A person shall not drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or to be in compliance with law.

B. Whenever the state transportation commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or to be in compliance with law; provided that local authorities in municipalities of more than one hundred thousand population may prohibit vehicles that by virtue of weight or design are slow moving on local arterials during peak hours of traffic.

66-7-332. Operation of vehicles on approach of authorized emergency vehicles.

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 roadway 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.

C. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive and park with due regard for the safety of all persons using the highway.

66-7-333. Pedestrians subject to traffic regulations. (1978)

A. Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 66-7-105 NMSA 1978 unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in Sections 66-7-333 through 66-7-340 NMSA 1978.

B. Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly [strictly] comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

66-7-334. Pedestrians' right-of-way in crosswalks. (1978)

A. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. Subsection A shall not apply under the conditions stated in Section 66-7-335B NMSA 1978.

D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

66-7-335. Crossing at other than crosswalks. (1978)

A. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

B. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

C. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place

except in a marked crosswalk.

66-7-355. Riding on motorcycles. (1991)

A. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, shall have his feet upon the footrests provided on the machine and shall not carry any other person nor shall any other person ride on the motorcycle unless it is designed to carry more than one person. If a motorcycle is designed to carry more than one person, the passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the motorcycle. The passenger shall have his feet upon the footrests attached for passenger use.

B. Any person operating a motorcycle not having a fixed windshield of a type approved by regulation of the secretary shall wear an eye protective device which may be a faceshield attached to a safety helmet, goggles or safety eyeglasses. All eye protective devices shall be of a type approved by regulations promulgated by the director.

66-7-356. Mandatory use of protective helmets. (1991)

A. No person under the age of eighteen shall operate a motorcycle unless he is wearing a safety helmet securely fastened on his head in a normal manner as headgear and meeting the standards specified by the director. The director shall adopt rules and regulations establishing standards covering the types of helmets and the specifications therefor and shall establish and maintain a list of approved helmets meeting the standards and specifications of the director. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person under the age of eighteen unless the lessee or renter shows such person a valid driver's license or permit and possesses the safety equipment required of an operator who is under the age of eighteen. No person shall carry any passenger under the age of eighteen on any motorcycle unless the passenger is wearing a securely fastened safety helmet, as specified in this section, meeting the standards specified by the director.

B. Failure to wear a safety helmet as required in this section shall not constitute contributory negligence.

66-7-369. Child passenger restraint; enforcement. (2005)

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 a school bus, unless all passengers less than eighteen years of age are properly restrained.

B. Each person less than eighteen years of age shall be properly secured in a child passenger restraint device or by a safety belt, unless all seating positions equipped with safety 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 forty 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 sixty 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 twelve years of age shall be properly secured in a child passenger restraint 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, by a child booster seat 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.

66-7-370. Short title. (1985)

This act [66-7-370 to 66-7-373 NMSA 1978] may be cited as the "Safety Belt Use Act".

66-7-372. Safety belt use required; exception. (2001)

A. Except as provided by Section 66-7-369 NMSA 1978 and in Subsection B of this section, each occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less manufactured with safety belts in compliance with federal motor vehicle safety standard number 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in motion on any street or highway.

B. This section shall not apply to an occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of the United States postal service while performing the duties of a rural letter carrier.

66-7-373. Enforcement programs. (2001)

A. Failure to be secured by a child passenger restraint device or by a safety belt as required by the Safety Belt Use Act [66-7-370 NMSA 1978] shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

B. The bureau in cooperation with the state department of public education and the department of health shall, to the extent that funding allows, provide education to encourage compliance with the use of restraint devices in reducing the risk of

harm to their users as well as to others.

C. The bureau shall evaluate the effectiveness of the Safety Belt Use Act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits to the national highway traffic safety administration and the federal highway administration under 23 U.S.C. 402.

D. The provisions of the Safety Belt Use Act shall be enforced whether or not associated with the enforcement of any other statute.

66-7-506. Bureau; functions; powers; duties. (1993)

The bureau shall have the following powers and duties:

A. organize, plan and conduct a statewide program of activities designed to prevent accidents and to reduce the incidence of DWI in New Mexico;

B. coordinate activities and programs of the departments, divisions and agencies of this state now engaged in promoting traffic safety;

C. provide accident prevention information and publicity to all appropriate media of information and develop other means of public information;

D. cooperate with all public and private agencies and organizations interested in the promotion of traffic safety and accident prevention;

E. serve as a clearinghouse for all traffic safety materials and information used throughout this state;

F. cooperate in promoting research, special studies and analysis of problems concerning the safety and welfare of the citizens of New Mexico;

G. cooperate fully with national safety organizations in bringing about greater effectiveness in nationwide accident prevention activities and programs;

H. make studies and suitable recommendations, through the director and the secretary of highway and transportation, to the legislature concerning safety regulations and laws;

I. prepare and submit each year a written report to the governor concerning the activities of the bureau and activities concerning assistance to local organizations and officials;

J. institute and administer a statewide motorcycle training program funded as provided for in Section 66-10-10 NMSA 1978;

K. institute and administer an accident prevention course for elderly drivers as provided for in Section 59A-32-14 NMSA 1978;

L. cooperate with the state department of public education to develop a regulatory framework for instructional and administrative processes, including licensure requirements for instructors, and a curriculum for instruction in defensive driving with a DWI education and prevention component to be offered statewide in secondary schools as an elective;

M. institute and administer a DWI prevention and education program for elementary and secondary school students, funded as provided for in Section 66-5-35 NMSA 1978; and

N. include at least two hours of DWI prevention and education training in all driver education courses approved by the bureau.

Driving While Impaired Crimes

66-8-7. Penalty for misdemeanor. (1989)

A. It is a misdemeanor for any person to violate any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] unless the violation is declared a felony.

B. Unless another penalty is specified in the Motor Vehicle Code, every person convicted of a misdemeanor for violation of any provision of the Motor Vehicle Code shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than ninety days or both.

66-8-101. Homicide by vehicle; great bodily harm by vehicle. (2004)

A. Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle.

B. Great bodily harm by vehicle is the injuring of a human being, to the extent defined in Section 30-1-12 NMSA 1978, in the unlawful operation of a motor vehicle.

C. A person who commits homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while violating Section 66-8-113 NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code [66-1-1, except 66-7-102.1 NMSA 1978] shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

D. A person who commits homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or while under the influence of any drug, as provided in Subsection C of this section, and who has incurred a prior DWI conviction within ten years of the occurrence for which he is being sentenced under this section shall have his basic sentence increased by four years for each prior DWI conviction.

E. For the purposes of this section, "prior DWI conviction" means:

(1) a prior conviction under Section 66-8-102 NMSA 1978; or

(2) a prior conviction in New Mexico or any other jurisdiction, territory or possession of the United States, including a tribal jurisdiction, when the criminal act is driving under the influence of alcohol or drugs.

F. A person who willfully operates a motor vehicle in violation of Subsection C of Section 30-22-1 NMSA 1978 and directly or indirectly causes the death of or great bodily harm to a human being is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

66-8-101.1. Injury to pregnant woman by vehicle. (1985)

A. Injury to pregnant woman by vehicle is injury to a pregnant woman by a person other than the woman in the unlawful operation of a motor vehicle causing her to suffer a miscarriage or stillbirth as a result of that injury.

B. As used in this section:

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception; and

(2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion; and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

C. Any person who commits injury to pregnant woman by vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while violating Section 66-8-113 NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code [66-1-1 NMSA 1978] shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

66-8-102. Persons under the influence of intoxicating liquor or drugs; aggravated driving while under the influence of intoxicating liquor or drugs; penalty. (2005)

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; or

(2) a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), 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). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau 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 probation, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection 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, any 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 subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an 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). 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 seven hundred fifty dollars (\$750). 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 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.

G. Upon a fourth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall not be suspended, deferred or taken under advisement.

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within 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.

L. 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 treatment 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 program approved by the court.

The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

N. Upon a conviction pursuant to this section, 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 bureau. 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.

O. 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.

P. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

Q. 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, when that ordinance or law is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes 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.

R. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

S. 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.

T. As used in this section:

(1) "bodily injury" means an injury to a person that is 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) "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; and

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

66-8-102.1. Guilty pleas; limitations. (2003)

Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle.

66-8-102.2. Municipal and county ordinances; unlawful alcohol concentration level for driving while under the influence of intoxicating liquor or drugs. (1993)

No municipal or county ordinance prohibiting driving while under the influence of intoxicating liquor or drugs shall be enacted that provides for an unlawful alcohol concentration level that is different than the alcohol concentration levels provided in Subsections C and D of Section 66-8-102 NMSA 1978.

66-8-102.3. Imposing a fee; creating a fund. (2006)

A. A fee is imposed on a person convicted of driving while under the influence of intoxicating liquor or drugs pursuant to Section 66-8-102 NMSA 1978 or adjudicated as a delinquent on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act [66-8-105 NMSA 1978], in an amount determined by rule of the traffic safety bureau of the department of transportation not to exceed one hundred dollars (\$100) but not less than fifty dollars (\$50.00) for each year the person is required to operate only vehicles equipped with an ignition interlock device in order to ensure the solvency of the interlock device fund. The fee shall not be imposed on an indigent person. The fee imposed by this subsection shall be collected by the vendor who provides an ignition interlock device to the person. The vendor shall remit the fees collected on a quarterly basis to the traffic safety bureau of the department of transportation.

B. The "interlock device fund" is created in the state treasury. The fee imposed pursuant to Subsection A of this section shall be distributed to the fund by the traffic safety bureau of the department of transportation.

C. All money in the interlock device fund is appropriated to the traffic safety bureau of the department of transportation to cover the costs of installing and removing and one-half of the cost of leasing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978 or adjudications on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or driver's license revocations pursuant to the provisions of the Implied Consent Act, to install those devices in their vehicles. Indigency shall be determined by the sentencing court.

D. Any balance remaining in the interlock device fund shall not revert to the general fund at the end of any fiscal year.

E. The interlock device fund shall be administered by the traffic safety bureau of the department of transportation. No more than five percent of the money in the interlock device fund in any fiscal year shall be expended by the traffic safety bureau of the department of transportation for the purpose of administering the fund.

66-8-103. [Blood-alcohol tests directed by police, judicial or probation officer; persons qualified to perform tests; relief from civil and criminal liability.] (1978)

Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol test. No such physician, nurse, technician or technologist who withdraws blood from any person in the performance of a blood-alcohol test that has been directed by any police officer, or by any judicial or probation officer, shall be held liable in any civil or criminal action for assault, battery, false imprisonment or any conduct of any police officer, except for negligence, nor shall any person assisting in the performance of such a test, or any hospital wherein blood is withdrawn in the performance of such a test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of any police officer, except for negligence.

66-8-104. Blood-alcohol tests; police, judicial or probation officer unauthorized to make arrest or direct test except in performance of official duties authorized by law. (1978)

Nothing in Sections 66-8-103 or 66-8-104 NMSA 1978 is intended to authorize any police officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol test, except in the performance of his official duties and as otherwise authorized by law.

66-8-105. Implied Consent Act; short title. (1978)

Sections 66-8-105 through 66-8-112 NMSA 1978 may be cited as the "Implied Consent Act."

66-8-107. Implied consent to submit to chemical test. (1993)

A. Any person who operates a motor vehicle within this state shall be deemed to have given consent, subject to the provisions of the Implied Consent Act [66-8-105 NMSA 1978], to chemical tests of his breath or blood or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug.

B. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor or drug.

66-8-108. Consent of person incapable of refusal not withdrawn. (1978)

Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by Section 66-8-107 NMSA 1978, and the test or tests designated by the law enforcement officer may be administered.

66-8-109. Administration of chemical test; payment of costs; additional tests. (1993)

A. Only the persons authorized by Section 66-8-103 NMSA 1978 shall withdraw blood from any person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction a chemical test was administered under Section 66-8-107 NMSA 1978.

66-8-110. Use of tests in criminal actions or civil actions; levels of intoxication; mandatory charging. (2003)

A. The results of a test performed pursuant to the Implied Consent Act [66-8-105 NMSA 1978] may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor;

(2) an alcohol concentration of at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, unless the person is driving a commercial motor vehicle; and

(b) the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor; or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

C. The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

(2) four one hundredths or more if the person is driving a commercial motor vehicle.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act [66-8-105 NMSA 1978].

E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter.

66-8-111. Refusal to submit to chemical tests; testing; grounds for revocation of license or privilege to drive. (2005)

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of the person's privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) six months or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) one year or until all conditions for license reinstatement are met, whichever is later, if the person was less than twenty-one years of age at the time of the arrest, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) of this subsection.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." The statement may be signed and submitted electronically in a manner and form approved by the department. A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38 NMSA

1978.

66-8-111.1. Law enforcement officer agent for department; written notice of revocation and right to hearing. (2003)

On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the department issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section 66-8-111 NMSA 1978.

66-8-112. Revocation of license or privilege to drive; notice; effective date; hearing; hearing costs; review. (2003)

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to this section, the date that the department issues the order following that hearing. The date of notice of revocation is:

(1) the date the law enforcement officer serves written notice of revocation and of right to a hearing pursuant to Section 66-8-111.1 NMSA 1978; or

(2) in the event the results of a chemical test cannot be obtained immediately, the date notice of revocation is served by mail by the department. This notice of revocation and of right to a hearing shall be sent by certified mail and shall be deemed to have been served on the date borne by the return receipt showing delivery, refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the department.

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars (\$25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to regulations adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

C. The department may postpone or continue any hearing on its own motion or upon application from the person and for good cause shown for a period not to exceed ninety days from the date of notice of revocation and provided that the department extends the validity of the temporary license for the period of the postponement or continuation.

D. At the hearing, the department or its agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

E. The hearing shall be limited to the issues:

(1) whether the law enforcement officer had reasonable grounds to believe that the person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs;

(2) whether the person was arrested;

(3) whether this hearing is held no later than ninety days after notice of revocation; and either

(4) whether:

(a) the person refused to submit to a test upon request of the law enforcement officer; and

(b) the law enforcement officer advised that the failure to submit to a test could result in revocation of the person's privilege to drive; or

(5) whether:

(a) the chemical test was administered pursuant to the provisions of the Implied Consent Act; and

(b) the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:

(1) the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drugs;

(2) the person was arrested;

(3) this hearing is held no later than ninety days after notice of revocation; and

(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised him that his failure to submit to the test could result in the revocation of his privilege to drive; or

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the department, the person's license shall not be revoked.

H. A person adversely affected by an order of the department may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. The district court, upon thirty days' written notice to the department, shall hear the case. On review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the person's license or privilege to drive based on the record of the administrative proceeding.

I. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian.

66-8-113. Reckless driving. (1987)

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.

B. Every person convicted of reckless driving shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, upon a first conviction by imprisonment for not less than five days nor more than ninety days, or by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100), or both and on a second or subsequent conviction by imprisonment for not less than ten days nor more than six months, or by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or both.

C. Upon conviction of violation of this section, the director may suspend the license or permit to drive and any nonresident operating privilege for not to exceed ninety days.

66-8-114. Careless driving. (1978)

A. Any person operating a vehicle on the highway shall give his full time and entire attention to the operation of the vehicle.

B. Any person who operates a vehicle in a careless, inattentive or imprudent manner, without due regard for the width, grade, curves, corners, traffic, weather and road conditions and all other attendant circumstances is guilty of a misdemeanor.

Penalty Assessment Misdemeanors

66-8-116. Penalty assessment misdemeanors; definition; schedule of assessments. (2006)

A. As used in the Motor Vehicle Code [66-1-1 NMSA 1978], "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsection D of this section, the listed penalty assessment is established:

<u>COMMON NAME OF OFFENSE</u>	<u>SECTION VIOLATED</u>	<u>PENALTY ASSESSMENT</u>
Permitting unlicensed minor to drive	66-5-40	\$ 10.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
Speeding	66-7-301	
(1) up to and including ten miles an hour over the speed limit		15.00
(2) from eleven up to and including fifteen miles an hour over the speed limit		30.00
(3) from sixteen up to and including twenty miles an hour over the speed limit		65.00
(4) from twenty-one up to and including twenty-five miles an hour over the speed limit		100.00
(5) from twenty-six up to and including thirty miles an hour over the speed limit		125.00
(6) from thirty-one up to and including thirty-five miles an hour over the speed limit		150.00

(7) more than thirty-five miles an hour over the speed limit		200.00
Unfastened safety belt	66-7-372	25.00
Child not in restraint device or seat belt	66-7-369	25.00
Minimum speed	66-7-305	10.00
Speeding	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access violation	66-7-320	10.00
Controlled access violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-331	10.00
Failure to yield	66-7-332	50.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344 through 66-7-346	10.00
Railroad-highway grade crossing violation	66-7-341 and 66-7-343	10.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize- overweight permit	66-7-413	50.00
Improper equipment	66-3-801	10.00
Improper equipment	66-3-901	20.00
Improper emergency signal	66-3-853 through 66-3-857	10.00
Operation interference	66-7-357	5.00
Littering	66-7-364	300.00
Improper parking	66-7-349 through 66-7-352 and 66-7-353 through 66-7-355	5.00
Improper parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing occupied house trailer	66-7-366	5.00
Improper opening of doors	66-7-367	5.00
No slow-moving vehicle emblem or flashing amber light	66-3-887	5.00
Open container - first violation	66-8-138	25.00

B. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a 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, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.

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

66-8-116.3. Penalty assessment misdemeanors; additional fees. (2003)

In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

- A. in a county without a metropolitan court, twenty dollars (\$20.00) to help defray the costs of local government corrections;
- B. a court automation fee of ten dollars (\$10.00);
- C. a traffic safety fee of three dollars (\$3.00), which shall be credited to the traffic safety education and enforcement fund;
- D. a judicial education fee of two dollars (\$2.00), which shall be credited to the judicial education fund;
- E. a brain injury services fee of five dollars (\$5.00), which shall be credited to the brain injury services fund; and
- F. a court facilities fee as follows:
 - in a county with a metropolitan court.....\$24.00
 - in any other county.....10.00

66-8-117. Penalty assessment misdemeanors; option; effect. (1990)

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.

B. Except for penalty assessments made under a municipal program authorized by Section 66-8-130 NMSA 1978, payment of any penalty assessment must be made by mail to the division within thirty days from the date of arrest. Payments of penalty assessments are timely if postmarked within thirty days from the date of arrest. The division may 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.

66-8-123. Conduct of arresting officer; notices by citation. (1989)

A. Except as provided in Section 66-8-122 NMSA 1978, unless a penalty assessment or warning notice is given, whenever a person is arrested for any violation of the Motor Vehicle Code [66-1-1 NMSA 1978] or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation, shall complete the information section and prepare a notice to appear in court, specifying the time and place to appear, have the arrested person sign the agreement to appear as specified, give a copy of the citation to the arrested person and release him from custody.

B. Whenever a person is arrested for violation of a penalty assessment misdemeanor and elects to pay the penalty assessment, the arresting officer, using the uniform traffic citation, shall complete the information section and prepare the penalty assessment notice indicating the amount of the penalty assessment, have the arrested person sign the agreement to pay the amount prescribed, give a copy of the citation along with a business reply envelope addressed to the motor vehicle division, Santa Fe to the arrested person and release him from custody. No officer shall accept custody or payment of any penalty assessment. If the arrested person declines to accept a penalty assessment notice, the officer shall issue a notice to appear.

C. The arresting officer may issue a warning notice but shall fill in the information section of the uniform traffic citation and give a copy to the arrested person after requiring his signature on the warning notice as an acknowledgment of receipt. No warning notice issued under this section shall be used as evidence of conviction for purposes of suspension or revocation of license under Section 66-5-30 NMSA 1978.

D. In order to secure his release, the arrested person must give his written promise to appear in court or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.

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

F. A law enforcement officer who arrests a person without a warrant for a misdemeanor violation of the Motor Carrier Act, the Criminal Code, the Liquor Control Act or other New Mexico law may use the uniform traffic citation, issued pursuant to procedures outlined in Section 31-1-6 NMSA 1978, Subsections B through E, in lieu of taking him to jail.

66-8-124. Arresting officer to be in uniform. (1989)

A. No person shall be arrested for violating the Motor Vehicle Code [66-1-1 NMSA 1978] or other law relating to motor vehicles punishable as a misdemeanor except by a commissioned, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating his official status.

B. Notwithstanding the provisions of Subsection A of this section, a municipality may provide by ordinance that uniformed private security guards may be commissioned by the local police agency to issue parking citations for violations of clearly and properly marked fire zones and handicapped zones. Prior to the commissioning of any security guard the employer of the security guard shall agree in writing with the local police agency to said commissioning of the employer's security guard. The employer of any security guard commissioned under the provisions of this section shall be liable for the actions of that security guard in carrying out his duties pursuant to that commission. Notwithstanding the provisions of the Tort Claims Act [41-4-1 NMSA 1978], private security guards commissioned under this section shall not be deemed public employees under that act.

66-8-125. Arrest without warrant. (1978)

A. Members of the New Mexico state police, sheriffs and their salaried deputies and members of any municipal police force, may arrest without warrant any person:

- (1) present at the scene of a motor vehicle accident;
- (2) on a highway when charged with theft of a motor vehicle; or
- (3) charged with crime in another jurisdiction, upon receipt of a message giving the name or a reasonably accurate description of the person wanted, the crime alleged and a statement he is likely to flee the jurisdiction of the state.

B. To arrest without warrant, the arresting officer must have reasonable grounds, based on personal investigation which may include information from eyewitnesses, to believe the person arrested has committed a crime.

C. Members of the New Mexico state police, sheriffs, and their salaried deputies and members of any municipal police force may not make arrest for traffic violations if not in uniform; however, nothing in this section shall be construed to prohibit the arrest, without warrant, by a peace officer of any person when probable cause exists to believe that a felony crime has been committed or in nontraffic cases.

66-8-126. Failure to obey notice to appear. (1978)

A. It is a misdemeanor for any person to violate his written promise to appear in court, given to an officer upon issuance of a uniform traffic citation, regardless of the disposition of the charge for which the citation was issued.

B. A written promise to appear in court may be complied with by appearance of counsel.

66-8-135. Record of traffic cases. (2005)

A. Every trial court judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court.

B. Within ten days of the later of entry of judgment and sentence or failure to appear on a charge of violating the Motor Vehicle Code [66-1-1 NMSA 1978] or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every trial court judge, including children's court judges, or the clerk of the court in which the entry of judgment and sentence or failure to appear occurred shall prepare and forward to the department an abstract of the record containing:

- (1) the name and address of the defendant;
- (2) the specific section number and common name of the provision of the NMSA 1978 or local law, ordinance or regulation under which the defendant was tried;
- (3) the plea, finding of the court and disposition of the charge, including fine or jail sentence or both, forfeiture of bail or dismissal of the charge;
- (4) an itemization of costs assessed to the defendant;
- (5) the date of the hearing;
- (6) the court's name and address;
- (7) whether the defendant was a first or subsequent offender; and
- (8) whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required by Subsection B of this section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required by Subsection B of this section in the manner prescribed by the department.

E. Every court of record shall also forward a like report to the department upon conviction of any person of any felony if a motor vehicle was used in the commission. With the prior approval of the department, the information required by this subsection may be submitted electronically to the department. The report shall be forwarded to the department within ten days of the final decision of the court or of any higher court that reviews the matter and from which the decision of no appeal or review is successfully taken.

F. The failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal.

G. The department shall keep records received on motorists licensed in this state at its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for three years from the date of their receipt, after which they shall be destroyed by the department except for records of convictions under Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be destroyed until fifty-five years from the date of their receipt. Any record received on a motorist licensed in another state or country shall be forwarded to the licensing authority of that state or country.

66-8-138. Consumption or possession of alcoholic beverages in open containers in a motor vehicle prohibited; exceptions. (2001)

A. No person shall knowingly drink any alcoholic beverage while in a motor vehicle upon any public highway within this state.

B. No person shall knowingly have in his possession on his person, while in a motor vehicle upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed.

C. It is unlawful for the registered owner of any motor vehicle to knowingly keep or allow to be kept in a motor vehicle, when the vehicle is upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed, unless the container is kept in:

- (1) the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk;
- (2) the living quarters of a motor home or recreational vehicle;
- (3) a truck camper; or
- (4) the bed of a pick-up truck when the bed is not occupied by passengers.

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not apply to any passenger in a bus, taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act [65-2A-1 NMSA 1978] or proper legal authority.

D. The provisions of this section do not apply to:

- (1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that person's motor vehicle for medicinal purposes; or
- (2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or agent's motor vehicle.

66-8-139. Penalties. (1991)

A. Whoever is guilty of a second or subsequent violation of any provision of Section 66-8-138 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 66-8-7 NMSA 1978.

B. In addition to any other penalty or disposition ordered pursuant to law, upon conviction for a second or subsequent violation of the provisions of Section 66-8-138 NMSA 1978, the convicted person shall have his driver's license revoked for a period of three months upon a second violation and for one year upon a third or subsequent violation.

C. This section does not affect the authority of a municipality under a proper ordinance to prescribe penalties for possession or consumption of alcoholic beverages while driving a motor vehicle. A violation under a municipal ordinance prescribing penalties for possession or consumption of alcoholic beverages while driving a motor vehicle shall be deemed to be a violation under this section for purposes of determining second, third and subsequent violations of this section.

66-10-11. Driving safety training considered by the court. (1993)

In addition to other sentencing or penalty provisions of law, when a person is convicted of a penalty assessment misdemeanor or other misdemeanor committed while operating a motor vehicle, each court is authorized to and shall consider ordering that offender to take any driving safety course certified by the bureau but shall not specify a particular provider.

The Point System from The New Mexico Administrative Code

18.19.5.50 NMAC POINT SYSTEM - PURPOSE - DEFINITIONS

A. Section 66-5-30 NMSA 1978 authorizes the department to suspend the driver's license of an individual who has been convicted of violations of the traffic laws with such frequency as to show disrespect for those laws or has been found to be an habitually reckless or negligent driver of a motor vehicle. To provide a reasonable, objective and fair method by which the department may determine whether an individual shows disrespect for the traffic laws of this state through frequency of conviction for violations or is habitually reckless or negligent and to promote the public safety by removing such drivers from the roads, the department establishes a "point system" with 18.19.5.50 through 18.19.5.56 NMAC. This point system continues the point system in effect prior to July 1, 1992.

B. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, "conviction" means an adjudication of guilt including a finding of guilty by a court, a plea of guilty entered by the court, a plea of *nolo contendere* accepted by the court, a plea of guilty pursuant to a penalty assessment misdemeanor (Sections 66-8-116 through 66-8-119 NMSA 1978 or the forfeiture of bail or other collateral deposited to secure the violator's appearance in court; "conviction" also includes a conviction for a traffic violation in any other state, territory or possession of the United States, the District of Columbia and any province of the Dominion of Canada so long as the conviction in that jurisdiction is for a violation of a traffic law for which points would be assessed if the conviction were for a violation of the traffic laws of this state. "Conviction" does not include the imposition of sentence.

C. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, "driver" means an individual who operates a motor vehicle upon the trafficways of this state whether or not that individual holds a valid driver's license issued either by this state under the provisions of the Motor Vehicle Code or by another jurisdiction under the laws of that jurisdiction.

D. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, "trafficway" means a public highway or any other place, such as a parking lot, which is open for driving of motor vehicles by members of the general public and which is subject to the traffic control regulation of the state or a political subdivision of the state.

18.19.5.51 NMAC POINT SYSTEM - ASSESSMENT AND EXPUNGING OF POINTS FOR VIOLATIONS OF TRAFFIC LAWS

A. Violations for which points shall be assessed are either violations pursuant to the traffic laws of this state or violations of the traffic laws of other jurisdictions for which points would be assessed if the violation had occurred in New Mexico. Points shall be assessed by the department in accordance with the schedule in 18.19.5.52 NMAC following conviction for any scheduled traffic law violation or the equivalent violation in the other jurisdiction if the violation occurred in another jurisdiction. Notification of a conviction of a traffic violation subject to the assessment of points shall be forwarded to the department by the convicting court. Points shall be assessed regardless of whether the violation occurred on a state, county or municipal road or on another trafficway. The department shall keep a record of points assessed for a period of one year from the date the violation occurred.

B. Points assessed to a driver will be expunged by the department automatically at the end of the twelfth month following the month in which the violation for which the points were assessed occurred.

18.19.5.52 NMAC POINT SYSTEM - SCHEDULE OF POINTS FOR VIOLATION

A. Points to be assessed for conviction of violations on or after October 1, 1996 of provisions of the Motor Vehicle Code are scheduled in Subsections B through G below.

B. Eight (8) points for violation of the following section:

66-7-301 Speeding 26 or more mph over the posted speed limit on any trafficway if the limit is 15, 30 or 75 mph

66-7-301 Speeding 26 or more mph over the posted speed limit on any trafficway if the limit is other than 15, 30 or 75 mph and the speed was at least 76 mph

C. Six (6) points for violations of the following sections:

66-7-347 Passing school bus taking on or discharging passengers or displaying warning not to pass

66-8-113 Reckless driving

66-8-115 Contest racing on public trafficway

D. Five (5) points for violation of the following section:

66-7-301 Speeding 16 to 25 mph over the posted speed limit on any trafficway if the limit is 15, 30 or 75 mph

66-7-301 Speeding 16 to 25 mph over the posted speed limit on any trafficway if the limit is other than 15, 30 or 75 mph and the speed was at least 76 mph

E. Four (4) points for violations of the following section:

66-7-332 Failure to yield right of way to an authorized emergency vehicle

F. Three (3) points for violations of the following sections:

(1) CARELESSNESS

66-8-114 Careless Driving

(2) FAILURE TO YIELD/OBEY TRAFFIC CONTROL DEVICES

66-7-104 Failure to obey traffic instructions stated on traffic sign or shown by traffic control device

66-7-328 Failure to yield right of way in a manner required at unsigned intersection

66-7-329 Vehicles turning left at intersection

66-7-330 Failure to yield right of way at yield sign, after stop sign or when emerging from private trafficway

66-7-331 Failure to yield right of way at yield sign, after stop sign or when emerging from private trafficway

66-7-341 Failure to obey traffic instructions stated on traffic sign or shown by traffic control device

66-7-342 Failure to obey traffic instructions stated on traffic sign or shown by traffic control device

66-7-343 Certain vehicles must stop at railroad grade crossings

66-7-346 Failure to yield right of way at yield sign, after stop sign or when emerging from private trafficway

(3) FOLLOWING/BACKING

66-7-318 Following too closely

66-7-354 Improper backing

(4) TURNING MOVEMENTS/LANE POSITION

66-7-322 Making improper turn

66-7-323 Making improper turn

(5) PASSING/LEFT OF CENTER

66-7-308 Failure to drive on right side of roadway when required

66-7-309 Passing vehicles proceeding in opposite directions

66-7-310 Improper overtaking or passing of a vehicle

66-7-311 Improper overtaking or passing of a vehicle

66-7-312 Passing with insufficient distance allowed for other vehicles or with inadequate visibility

66-7-313 Driving to the left of center of roadway when prohibited

66-7-315 Passing where prohibited by posted signs or pavement markings

(6) SPEEDING

66-7-301 Speeding 6 to 15 mph over the posted speed limit on any trafficway if the limit is 15, 30 or 75 mph

66-7-301 Speeding 6 to 15 mph over the posted speed limit on any trafficway if the limit is other than 15, 30 or 75 mph and the speed is at least 76 mph

G. Two (2) points for violations of the following sections:

66-3-801 Operating with any defective equipment resulting in inability to control vehicle movement properly

66-3-840 Operating with defective brakes

66-3-901 Operating with any defective equipment resulting in inability to control vehicle movement properly

66-7-325 Failure to signal intention to change vehicle direction or to reduce speed suddenly

66-7-326 Giving wrong signal

66-7-357 Overloading vehicle with passengers or cargo

66-7-369 Failure to restrain child passenger properly

66-7-372 Failure to use seatbelt properly

18.19.5.53 NMAC POINT SYSTEM - WARNING AT 6 POINTS

Upon the accumulation by the driver of at least six points, the department may warn the driver of the possibility of suspension of the driver's license.

18.19.5.54 NMAC POINT SYSTEM - SUSPENSION OF DRIVER'S LICENSE AT 7 TO 10 POINTS

If a driver has been assessed from seven to ten points for violations occurring within a period of one year and the department receives a recommendation from a municipal or magistrate judge that the driver's license be suspended for a period not to exceed three months, the department shall automatically suspend the license for the period recommended by the municipal or magistrate judge up to a period of three months. If the judge does not specify the recommended length of the period of suspension, the department will presume that the recommendation is for a period of three months. The department shall notify the driver of the fact of the suspension of the driver's license and of the beginning and ending dates of the suspension.

18.19.5.55 NMAC POINT SYSTEM - SUSPENSION AT 12 POINTS

Upon the assessment of points to a driver which causes the total points accumulated by that driver to equal or exceed twelve points for violations occurring within a period of twelve consecutive months, the department shall suspend the driver's license for a period of twelve months. The department shall notify the driver of the fact of the suspension of the driver's license under 18.19.5.55 NMAC, the beginning date of the suspension and the driver's right to a hearing under the provisions of Subsection B of Section 66-5-30 NMSA 1978. The driver shall surrender the driver's license to the department immediately upon receiving notice of the suspension unless the driver requests a hearing under the provisions of Subsection B of Section 66-5-30 NMSA 1978, in which case the license shall be surrendered immediately upon a final decision adverse to the driver.

18.19.5.57 NMAC REINSTATEMENT OF SUSPENDED LICENSE - CONDITIONS

The department shall not reinstate a driver's license to any person whose license has been suspended under the provisions of 18.19.5.55 NMAC unless the conditions specified in 18.19.5.57 NMAC are met.

A. That person presents proof satisfactory to the department showing successful completion in a timely manner by that person of an approved driver improvement course. The course must be approved by the traffic safety bureau of the state highway and transportation department. Completion of the course must have occurred within 90 days immediately preceding the application for reinstatement of the license.

B. The driver must also successfully complete the written driver's examination and the vision examination which are administered by the department prior to the reinstatement of the driver's license.

Part 2 — Other Laws

3-17-1. Ordinances; purposes. (1993)

The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of:

C. enforcing obedience to the ordinances by prosecution in the municipal court and metropolitan courts and upon conviction the imposition of:

(2) for a violation of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than three hundred sixty-four days or both; and

4-37-3. Enforcing county ordinances; jurisdiction. (1993)

A. County ordinances may be enforced by prosecution for violations of those ordinances in any court of competent jurisdiction of the county. Penalties for violations of any county ordinances shall not exceed a fine of three hundred dollars

(\$300) or imprisonment for ninety days or both the fine and imprisonment; except that a county may enact and enforce ordinances that impose the following penalties in addition to any other penalty provided by law:

(3) no more than imprisonment for three hundred sixty-four days or a fine of one thousand dollars (\$1,000), or both, for violation of an ordinance regarding driving while under the influence of intoxicating liquor or drugs.

24-1-22. Scientific laboratory division; testing methods; certification. (2003)

A. The scientific laboratory division of the department of health is authorized to promulgate and approve satisfactory techniques or methods to test persons believed to be operating a motor vehicle or a motorboat under the influence of drugs or alcohol and to issue certification for test operators and their instructors that shall be subject to termination or revocation at the discretion of the scientific laboratory division. The scientific laboratory division is further authorized to establish or approve quality control measures for alcohol breath testing and to establish or approve standards of training necessary to ensure the qualifications of individuals conducting these analyses or collections.

B. The scientific laboratory division shall establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples.

C. All laboratories analyzing breath, blood or urine samples pursuant to the provisions of the Implied Consent Act [66-8-105 NMSA 1978] and the Boating While Intoxicated Act [66-13-1 NMSA 1978] shall be certified by the scientific laboratory division. The certification shall be granted in accordance with the rules and regulations of the scientific laboratory division and shall be subject to termination or revocation for cause.

Other Criminal Laws

30-1-12. Definitions. (1963)

As used in the Criminal Code [30-1-1 NMSA 1978]:

A. "great bodily harm" means an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body;

30-6-1. Abandonment or abuse of a child. (2005)

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

E. Whoever commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, he is guilty of a first degree felony.

F. Whoever commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. Whoever commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. Whoever commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the

manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital.

30-25-1. Perjury. (1963)

Perjury consists of making a false statement under oath or affirmation, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding, knowing such statement to be untrue.

Whoever commits perjury is guilty of a fourth degree felony.

31-12-7. Motor vehicles; influence of intoxicating liquor or drugs; fee upon conviction. (1997)

Notwithstanding the provisions of Section 66-8-102 NMSA 1978 or any municipal ordinance that prohibits driving while under the influence of intoxicating liquor or drugs, a person convicted of a violation of Section 66-8-102 NMSA 1978 or a violation of a municipal ordinance that prohibits driving while under the influence of intoxicating liquor or drugs shall be assessed by the court, in addition to any other fee or fine:

A. a fee of sixty-five dollars (\$65.00) to defray the costs of chemical and other tests used to determine the influence of liquor or drugs; and

B. 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 and for other traffic safety purposes.

31-12-8. Controlled substances; fee upon conviction; municipal ordinance requirement. (1988)

A. A person convicted of a violation of the provisions of the Controlled Substances Act [30-31-1 NMSA 1978] or a person convicted of distribution or possession of a controlled substance pursuant to municipal ordinance shall be assessed, in addition to any other fee or fine, a fee of seventy-five dollars (\$75.00) to defray the costs of chemical and other analyses of controlled substances.

B. Every municipality which has enacted an ordinance making possession or distribution of a controlled substance unlawful shall enact an ordinance to require assessment of the fee pursuant to Subsection A of this section and to provide for transmittal of the money collected to the administrative office of the courts pursuant to Section 31-12-9 NMSA 1978, notwithstanding the provisions of Section 35-14-7 NMSA 1978. All fees collected under this section shall be subject to an audit by the state auditor.

31-12-9. Crime laboratory fund created; appropriation. (1991)

There is created in the state treasury the "crime laboratory fund". All fees collected pursuant to the provisions of Sections 31-12-7 and 31-12-8 NMSA 1978 shall be transmitted monthly to the administrative office of the courts for credit to the crime laboratory fund. All balances in the crime laboratory fund of fees collected pursuant to the provisions of Subsection A of Section 31-12-7 NMSA 1978 are appropriated to the administrative office of the courts for payment upon invoice to the scientific laboratory division of the health and environment department [department of health], the New Mexico state police crime laboratory division and the Albuquerque police crime laboratory for costs related to chemical and other tests and analyses described in those sections and incurred by these laboratories and local law enforcement agencies. Payments out of the crime laboratory fund of fees collected pursuant to the provisions of Subsection A of Section 31-12-7 NMSA 1978 shall be made on vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the department of finance and administration. All balances in the crime laboratory fund of fees collected pursuant to the provisions of Subsection B of Section 31-12-7 NMSA 1978 are appropriated to the traffic safety bureau of the transportation program division of the state highway and transportation department to provide funds to approved comprehensive community programs for the prevention of driving while under the influence of alcohol or drugs and for other traffic safety purposes. Payment out of the crime laboratory fund of fees collected pursuant to the provisions of Subsection B of Section 31-12-7 NMSA 1978 shall be made on vouchers issued and signed by the chief of the traffic safety bureau upon warrants drawn by the department of finance and administration.

31-17-1. Victim restitution. (2005)

A. It is the policy of this state that restitution be made by each violator of the Criminal Code [30-1-1 NMSA 1978] to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section, unless the context otherwise requires:

(1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;

(2) "actual damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, "actual damages" includes damages for wrongful death;

(3) "criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and

(4) "restitution" means full or partial payment of actual damages to a victim.

B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the

defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is currently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan, taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. An order requiring an offender to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable, if valid, pursuant to this section, the Victims of Crime Act [31-26-1 NMSA 1978] or Article 2, Section 24 of the constitution of New Mexico. Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.

E. The probation or parole officer, when assisting the defendant in preparing the plan of restitution, and the court, before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant; the defendant's age, education, employment circumstances, potential for employment and vocational training, family circumstances and financial condition; the number of victims; the actual damages of each victim; what plan of restitution will most effectively aid the rehabilitation of the defendant; and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of pecuniary damages of each victim.

F. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, pursuant to the provisions of Subsection C of this section.

G. At any time during the probation or parole period, the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

H. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

I. This section and proceedings pursuant to this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

J. The rightful owner of any stolen property is the individual from whom the property was stolen. When recovering his property, the rightful owner of the stolen property shall not be civilly liable to any subsequent holder, possessor or retainer of the property for the purchase or sale price of the property or for any other costs or expenses associated with the property. Any subsequent holder, possessor or retainer of returned stolen property shall return the property to the rightful owner. The subsequent holder, possessor or retainer shall have a cause of action against the person from whom he obtained the property for actual damages.

31-18-15. Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions. (2005)

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony resulting in the death of a child, life imprisonment;
- (2) for a first degree felony, eighteen years imprisonment;
- (3) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
- (4) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;
- (5) for a second degree felony, nine years imprisonment;
- (6) for a third degree felony resulting in the death of a human being, six years imprisonment;
- (7) for a third degree felony for a sexual offense against a child, six years imprisonment;
- (8) for a third degree felony, three years imprisonment; or
- (9) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant

to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

- E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:
- (1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);
 - (2) for a first degree felony, fifteen thousand dollars (\$15,000);
 - (3) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);
 - (4) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);
 - (5) for a second degree felony, ten thousand dollars (\$10,000);
 - (6) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);
 - (7) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000); or
 - (8) for a third or fourth degree felony, five thousand dollars (\$5,000).

31-20-3. Order deferring or suspending sentence; diagnostic commitment. (1985)

Upon entry of a judgment of conviction of any crime not constituting a capital or first degree felony, any court having jurisdiction when it is satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may either:

- A. enter an order deferring the imposition of sentence;
- B. sentence the defendant and enter an order suspending in whole or in part the execution of the sentence; or
- C. commit the convicted person, if convicted of a felony and not committed for diagnostic purposes within the twelve-month period immediately preceding that conviction, to the department of corrections [corrections department] for an indeterminate period not to exceed sixty days for purposes of diagnosis, with direction that the court be given a report when the diagnosis is complete as to what disposition appears best when the interest of the public and the individual are evaluated.

31-20-5. Placing defendant on probation. (2004 AARS)

A. When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the magistrate, metropolitan or district court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish. Except for sex offenders as provided in Section 31-20-5.2 NMSA 1978, the total period of probation for district court shall not exceed five years and the total period of probation for the magistrate or metropolitan courts shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.

- B. If a defendant is required to serve a period of probation subsequent to a period of incarceration:
- (1) the period of probation shall be served subsequent to any required period of parole, with the time served on parole credited as time served on the period of probation and the conditions of probation imposed by the court deemed as additional conditions of parole; and
 - (2) in the event that the defendant violates any condition of that parole, the parole board shall cause him to be brought before it pursuant to the provisions of Section 31-21-14 NMSA 1978 and may make any disposition authorized pursuant to that section and, if parole is revoked, the period of parole served in the custody of a correctional facility shall not be credited as time served on probation.

The Children's Code

32A-2-3. Definitions. (2005)

As used in the Delinquency Act [32A-2-1 NMSA 1978]:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including the following offenses:

- (1) an offense pursuant to municipal traffic codes or the Motor Vehicle Code [66-1-1 NMSA 1978]:
 - (a) driving while under the influence of intoxicating liquor or drugs;
 - (b) failure to stop in the event of an accident causing death, personal injury or damage to property;
 - (c) unlawful taking of a vehicle or motor vehicle;
 - (d) receiving or transferring of a stolen vehicle or motor vehicle;
 - (e) homicide by vehicle;
 - (f) injuring or tampering with a vehicle;
 - (g) altering or changing of an engine number or other vehicle identification numbers;
 - (h) altering or forging of a driver's license or permit or any making of a fictitious license or permit;
 - (i) reckless driving;

- (j) driving with a suspended or revoked license; or
- (k) an offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include an establishment, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

32A-2-19. Disposition of an adjudicated delinquent offender. (2005)

H. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act [66-5-101 NMSA 1978], and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

32A-2-22. Continuance under supervision without judgment; consent decree; disposition. (2005)

G. If a consent decree has been entered pursuant to the filing of a delinquency petition based on Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978 for a child who is fifteen years of age or older, a condition of the consent decree agreement may be the denial of the child's driving privileges or the revocation of the child's driver's license for a period of ninety days. For the second or subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the entry by the court of a decree consenting to the revocation or denial of the child's driver's license or driving privileges, the court shall send the decree to the motor vehicle division of the taxation and revenue department. Upon receipt of the decree from the court consenting to the denial or revocation of the child's driving privileges or driver's license, the director of the motor vehicle division of the taxation and revenue department shall revoke or deny the delinquent child's driver's license or driving privileges. Nothing in this section shall prohibit the delinquent child from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act [66-5-501 NMSA 1978], and nothing in this section precludes the delinquent child's participation in an appropriate educational, counseling or rehabilitation program.

32A-2-29. Motor Vehicle Code violations. (2003)

A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code [66-1-1 NMSA 1978] or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

B. If the court acquires jurisdiction over a child pursuant to any of those Motor Vehicle Code violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

C. All traffic offenses which the child is found to have committed by the municipal, magistrate or metropolitan court or for which the child is adjudicated delinquent by the children's court shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code and shall not be subject to the confidentiality provisions of the Delinquency Act [32A-2-1 NMSA 1978].

D. Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations.

Miscellaneous Court Statutes

34-8A-6. Metropolitan court; rules; appeal. (1993)

C. The metropolitan court is a court of record for criminal actions involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence. A criminal action involving domestic violence means an assault or battery under any state law or municipal or county ordinance in which the alleged victim is a household member as defined in the Family Violence Protection Act [40-13-1 NMSA 1978]. Any party aggrieved by a judgment rendered by the metropolitan court in a criminal action involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The manner and method of appeal shall be set forth by supreme court rule.

D. The metropolitan court is not a court of record for criminal actions other than driving while under the influence of intoxicating liquors or drugs or domestic violence actions. Any party aggrieved by a judgment rendered by the metropolitan court in a criminal action, other than driving while under the influence of intoxicating liquors or drugs or domestic violence action, may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The appeal shall be de novo.

35-6-1. Magistrate costs; schedule; definition of "convicted". (2003)

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

docket fee, criminal actions under Section 29-5-1 NMSA 1978

.....\$ 1.00;

docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section 35-6-3 NMSA 197820.00.

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

docket fee, ten dollars (\$10.00) of which shall be deposited in the court automation fund and fifteen dollars (\$15.00) of which shall be deposited in the civil legal services fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 62.00;

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

copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process .50

Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund; and

copying fee, for computer-generated or electronically transferred copies, per page 1.00.

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

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

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

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

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

(1) corrections fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:

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

in a county without a metropolitan court 20.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;

(3) traffic safety fee, to be collected upon conviction from persons convicted of violating any provision of the Motor

Vehicle Code [66-1-1 NMSA 1978] involving the operation of a motor vehicle.. 3.00;

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code [66-1-1 NMSA 1978], convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment 2.00;

(5) brain injury services fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] involving the operation of a motor vehicle. 5.00;

and

(6) court facilities fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:

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

in any other county 10.00.

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

35-14-11. Municipal ordinance; court costs; collection; purpose. (2006)

A. Every municipality shall enact an ordinance requiring assessment of corrections fees, judicial education fees and court automation fees to be collected as court costs and used as provided in this section.

B. A municipal judge shall collect the following costs:

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

(2) a judicial education fee of two dollars (\$2.00); and

(3) a court automation fee of six dollars (\$6.00).

C. The fees are to be collected upon conviction from persons convicted of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by the imposition of a term of imprisonment.

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

(1) municipal jailer or juvenile detention officer training;

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

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

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

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

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

(7) providing electronic monitoring systems.

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

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

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

H. As used in this section, "convicted" means the defendant has been found guilty of a criminal charge by a municipal judge, either after trial, a plea of guilty or a plea of nolo contendere.

Liquor Control Act

60-7A-22. Drinking in public establishments; selling or serving alcoholic beverages other than in licensed establishments; selling or delivering alcoholic beverages from a drive-up window. (1998)

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is a violation of the Liquor Control Act for any person not a licensee to sell, serve or permit the consumption of

alcoholic beverages in his public establishment or private club.

C. It is a violation of the Liquor Control Act for any licensee to sell or deliver alcoholic beverages from a drive-up window.

60-7B-1. Selling or giving alcoholic beverages to minors; possession of alcoholic beverages by minors. (2004)

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a person, including a person licensed pursuant to the provisions of the Liquor Control Act, or an employee, agent or lessee of that person, if he knows or has reason to know that he is violating the provisions of this section, to:

(1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises;

(2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;

(3) deliver alcoholic beverages to a minor; or

(4) aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is not a violation of the Liquor Control Act, as provided in Subsection A or C of this section, when:

(1) a parent, legal guardian or adult spouse of a minor serves alcoholic beverages to that minor on real property, other than licensed premises, under the control of the parent, legal guardian or adult spouse; or

(2) alcoholic beverages are used in the practice of religious beliefs.

C. It is a violation of the Liquor Control Act for a minor to buy, attempt to buy, receive, possess or permit himself to be served with alcoholic beverages.

D. When a person other than a minor procures another person to sell, serve or deliver alcoholic beverages to a minor by actual or constructive misrepresentation of facts or concealment of facts calculated to cause the person selling, serving or delivering the alcoholic beverages to the minor to believe that the minor is legally entitled to be sold, served or delivered alcoholic beverages, and actually deceives that person by that misrepresentation or concealment, then the procurer and not the person deceived shall have violated the provisions of the Liquor Control Act.

E. As used in the Liquor Control Act, "minor" means a person under twenty-one years of age.

F. In addition to the penalties provided in Section 60-6C-1 NMSA 1978, a violation of the provisions of Subsection A of this section is a fourth degree felony and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. A violation of the provisions of Subsection C of this section is a misdemeanor and the offender shall be punished as follows:

(1) for a first violation, the offender shall be:

(a) fined an amount not more than one thousand dollars (\$1,000); and

(b) ordered by the sentencing court to perform thirty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor;

(2) for a second violation, the offender shall:

(a) be fined an amount not more than one thousand dollars (\$1,000);

(b) be ordered by the sentencing court to perform forty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor; and

(c) have his driver's license suspended for a period of ninety days. If the minor is too young to possess a driver's license at the time of the violation, then ninety days shall be added to the date he would otherwise become eligible to obtain a driver's license; and

(3) for a third or subsequent violation, the offender shall:

(a) be fined an amount not more than one thousand dollars (\$1,000);

(b) be ordered by the sentencing court to perform sixty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor; and

(c) have his driver's license suspended for a period of two years or until the offender reaches twenty-one years of age, whichever period of time is greater.

H. A violation of the provisions of Subsection D of this section is a fourth degree felony and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.