

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2008 - 45

INTRODUCED BY:



AN ORDINANCE

AMENDING SECTION 24-1.1 SFCC 1987 REGARDING THE CITY OF SANTA FE
UNIFORM TRAFFIC CODE; AMENDING SECTION 12-6-12.2 OF THE CITY OF
SANTA FE UNIFORM TRAFFIC CODE REGARDING OPERATING A MOTOR
VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND
SECTION 12-6-13.13 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE
REGARDING MANDATORY SEAT BELT USE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 24-1.1 SFCC 1987 (being Ord. #2006-34 as amended) is
amended to read:

24-1.1 Creation of City of Santa Fe Uniform Traffic Code.

A. Pursuant to Section 3-17-6 NMSA 1978, the New Mexico Uniform Traffic
Ordinance 2004 Compilation containing all revisions through ~~[July 1, 2007]~~ April 2008, compiled
by the New Mexico municipal league is adopted by reference and incorporated as if fully set out
herein, except as amended by the governing body. ~~[The amendments are as set forth in Exhibit A~~

1 ~~attached to the end of this chapter.]~~ The New Mexico Uniform Traffic Ordinance 2004
2 Compilation containing all revisions through ~~[July 1, 2007]~~ April 2008 and as amended by the
3 governing body shall be known as "city of Santa Fe uniform traffic code".

4 B. The city of Santa Fe uniform traffic code shall be kept on file at the police
5 department and the city clerk's office and shall be, at all reasonable times, available and subject
6 to inspection. A copy of the uniform traffic code is available to any individual upon request and
7 payment of a reasonable charge as set by the city.

8 Section 2. Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code
9 (being Ord. #2006-34 as amended) is amended to read:

10 **12-6-12.2 OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF**
11 **INTOXICATING LIQUOR OR DRUGS; PENALTIES; SENTENCING; FEES.**

12 A. If a person is convicted of driving a motor vehicle while under the influence of
13 intoxicating liquor or drug (12-6-12.1A through D) the trial judge shall be required to inquire into
14 the past driving record of the person before sentence is entered in the matter. (66-8-110 NMSA
15 1978)

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

20 (1) the results of a test performed pursuant to the Implied Consent Act
21 discloses that the blood of the person charged contains an alcohol concentration of eight one-
22 hundredths or more; (66-8-102 NMSA 1978 as amended)

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

25 (3) the defendant has refused to submit to a chemical test or tests of his

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

2 C. A person under first conviction pursuant to this section shall be punished by
3 imprisonment for not more than ninety days or by a fine of not more than nine hundred ninety-
4 nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or in part or
5 deferred, the period of probation may extend beyond ninety days but shall not exceed one year.
6 Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than 24
7 hours of community service. In addition, the offender may be required to pay a fine of three
8 hundred dollars (\$300.00). The offender shall be ordered by the court to participate in and
9 complete a screening program described in Subsection F of this section and to attend a driver
10 rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the
11 traffic safety bureau of the state transportation department and also may be required to participate
12 in other rehabilitative services as the court shall determine to be necessary. In addition to those
13 penalties, when an offender commits aggravated driving while under the influence of intoxicating
14 liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in
15 jail. If an offender fails to complete, within a time specified by the court, any community service,
16 screening program, treatment program or DWI school ordered by the court or fails to comply with
17 any other condition of parole, the offender shall be sentenced to not less than an additional forty-
18 eight consecutive hours in jail. Any jail sentence imposed pursuant to this section for failure to
19 complete, within a time specified by the court, any community service, screening program,
20 treatment program or DWI school ordered by the court or for aggravated driving while under the
21 influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under
22 advisement. On a first conviction pursuant to this section, time spent in jail for the offense prior
23 to the conviction for that offense shall be credited to any to any term of imprisonment fixed by the
24 court. A deferred sentence pursuant to this subsection shall be considered a first conviction for
25 the purpose of determining subsequent convictions.

1 D. A second or third conviction pursuant to this section shall be punished by
2 imprisonment for not more than one hundred seventy-nine days or by a fine of not more than nine
3 hundred ninety-nine dollars (\$999.00), or both; provided that if the sentence is suspended in
4 whole or part, the period of probation may extend beyond one hundred seventy-nine days but
5 shall not exceed one year. Notwithstanding any provision of law to the contrary for suspension or
6 deferment of execution of a sentence:

7 (1) upon a second conviction, each offender shall be sentenced to a jail term
8 of not less than ninety-six consecutive hours, not less than forty-eight hours of community service
9 and a fine of five hundred dollars (\$500.00). In addition to those penalties, when an offender
10 commits aggravated driving while under the influence of intoxicating liquor or drugs, the
11 offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an
12 offender fails to complete, within a time specified by the court, any community service, screening
13 program or treatment program ordered by the court, the offender shall be sentenced to not less
14 than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph
15 shall not be suspended or deferred or taken under advisement; and

16 (2) upon a third conviction, an offender shall be sentenced to a jail term of
17 not less than thirty consecutive days, not less than 96 hours of community service and a fine of
18 nine hundred ninety-nine dollars (\$999.00). In addition to those penalties, when an offender
19 commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall
20 be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to
21 complete, within a time specified by the court, any community service, screening program or
22 treatment program ordered by the court, the offender shall be sentenced to not less than an
23 additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not
24 be suspended or deferred or taken under advisement.

25 E. Fourth and subsequent offenses shall be prosecuted under state law in magistrate

1 or district court. (66-8-102 NMSA 1978)

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

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

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

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

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

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

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

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

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

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

1 (3) a period of three years, for a third conviction pursuant to this section; or
2 (4) the remainder of the offender's life, for a fourth or subsequent conviction
3 pursuant to this section.

4 I. A person who is issued an ignition interlock license and operates a vehicle that is
5 not equipped with an ignition interlock device is driving with a license that was revoked for
6 driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent
7 Act and may be subject to the penalties provided in section 12-6-12.6.

8 J. A person who is issued an ignition interlock license and who knowingly and
9 deliberately tampers or interferes or causes another to tamper or interfere with the proper and
10 intended operation of an ignition interlock device may be subject to the penalties for driving with
11 a license that was revoked for driving under the influence of intoxicating liquor or drugs or a
12 violation of the Implied Consent Act as provided in Section 12-6-12.6. (66-5-504 NMSA 1978)

13 ~~[I-]~~K. Five years from the date of conviction and every five years thereafter, a fourth or
14 subsequent offender may apply to a district court for removal of the ignition interlock device
15 requirement provided in this section and for restoration of a driver's license. A district court may,
16 for good cause shown, remove the ignition interlock device requirement and order restoration of
17 the license; provided that the offender has not been subsequently convicted of driving a motor
18 vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an
19 alcohol screening and proof from the interlock vendor that the person has not had violations of
20 the interlock device. (66-8-102 NMSA 1978)

21 ~~[I-]~~L. Except as otherwise prohibited in this section, a municipal judge may suspend in
22 whole or in part the execution of sentence or place the defendant on probation for a period not
23 exceeding one year on terms and conditions that municipal judge deems best, or both, or defer
24 sentence. If the municipal judge decides to defer the execution of a sentence, such deferral shall
25 be granted only as allowed in Subsection L of this section. A suspension of execution of sentence

1 or probation, or both, as allowed pursuant to this section, shall be granted only when the
2 municipal judge is satisfied it will serve the ends of justice and of the public, and that the
3 defendant's liability for any fine or other punishment imposed if fully discharged upon successful
4 completion of the terms and conditions of probation.

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

16 ~~[L.]~~N. A person convicted of driving a motor vehicle while under the influence of
17 intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D shall be assessed, in addition to
18 any other fee or fine, a fee of sixty-five dollars (\$65.00) to defray the cost of chemical and other
19 tests used to determine the influence of alcohol or drugs. Additionally, the person shall be
20 assessed a fee of seventy-five dollars (\$75.00) to fund comprehensive community programs for
21 the prevention of driving while under the influence of intoxicating liquor or drugs or for other
22 traffic safety purposes. The municipal court shall collect the fees and maintain the fees in
23 separate funds and transfer the fees along with other funds collected by the court per 35-14-7
24 NMSA 1978. The municipality shall maintain the fees pursuant to this subsection in separate
25 funds and transfer the fees collected pursuant to this subsection to the administrative office of the

1 courts for credit to the crime laboratory fund and the traffic safety fund. (31-12-7 through 31-12-
2 9 NMSA 1978)

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

7 (66-8-102 NMSA 1978)

8 ~~[N.]P.~~ As used in this section and in 12-6-12.1:

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

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

14 (3) "commercial motor vehicle" means a motor vehicle or combination of
15 motor vehicles used in commerce to transport passengers or property if the motor vehicle:

16 (a) has a gross combination weight rating of more than twenty-six
17 thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten
18 thousand pounds;

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

21 (c) is designed to transport sixteen or more passengers, including the
22 driver; or

23 (d) is of any size and is used in the transportation of hazardous
24 materials, which requires the motor vehicle to be placarded under applicable law.

25 ~~[O.]Q.~~ A conviction pursuant to a municipal or county ordinance in New Mexico or a

1 law of any other jurisdiction, territory, or possession of the United States or of a tribe where that
2 ordinance is equivalent to New Mexico law for driving while under the influence of intoxicating
3 liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor
4 or drugs shall be deemed to be a conviction pursuant to this section for purposes of determining
5 whether a conviction is a second or subsequent conviction. (66-8-102.M NMSA 1978)

6 [P.]R. A law enforcement officer making an arrest for a violation of the provisions of
7 12-6-12.2 or of similar municipal or county ordinances shall use standard arrest reports and
8 procedures developed and approved by the Department of Public Safety in accordance with
9 Section 8 of Laws of 2005, Chapter 269.

10 **Section 3. Section 12-6-13.13 of the City of Santa Fe Uniform Traffic Code**
11 **(being Ord. #2006-34) is amended to read:**

12 **12-6-13.13 MANDATORY USE OF SEATBELTS.**

13 A. Except as provided by Section 12-6-13.12 and in Subsection B of this section,
14 each occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less
15 manufactured with safety belts in compliance with federal motor vehicle safety standard number
16 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in
17 motion on any street or highway.

18 B. This section shall not apply to an occupant of a motor vehicle having a gross
19 vehicle weight of ten thousand pounds or less who possesses a written statement from a licensed
20 physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of
21 the United States postal service while performing the duties of a rural letter carrier. (66-7-372
22 NMSA 1978)

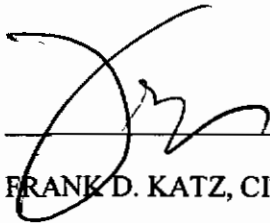
23 C. Each person violating Subsection A of Section 12-6-13.13 shall be fined [an
24 amount not less than twenty-five dollars (\$25.00) or more than fifty dollars (\$50.00) including
25 court costs.] as set forth in the Traffic Violation Penalty Assessment Schedule, Exhibit A of this

1 Code.

2 D. Failure to be secured by a child passenger restraint device or by a safety belt as
3 required in this Section shall not in any instance constitute fault or negligence and shall not limit
4 or apportion damages.

5 E. The provisions of this Section shall be enforced whether or not associated with
6 the enforcement of any other statute. (66-7-373 NMSA 1978)

7 APPROVED AS TO FORM:

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10 FRANK D. KATZ, CITY ATTORNEY