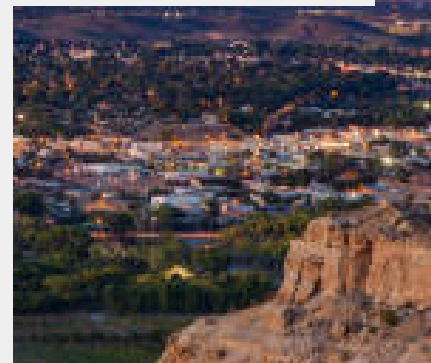
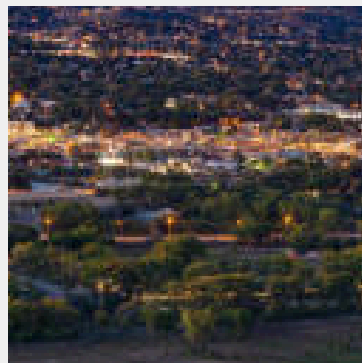
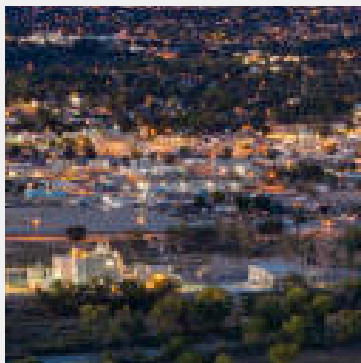
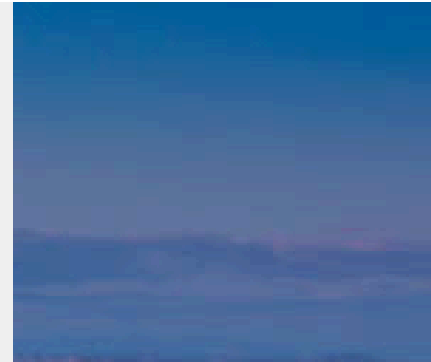
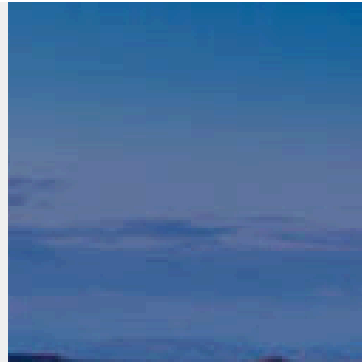

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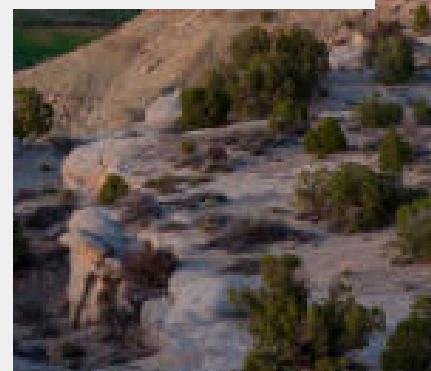
New Mexico Traffic Citation Manual

A Guide for New
Mexico Judges and
Staff

Revised in 2026 by Kevin Fitzwater



NEW MEXICO COURTS
The Judicial Branch of New Mexico



PREFACE

Acknowledgements and History

The 2026 *New Mexico Traffic Citations Manual* (*Traffic Citations Manual* or *Manual*) is a comprehensive revision and update of the 2004 edition. It was revised and updated by the Honorable Kevin Fitzwater, a contracted educator for the Court Education Institute (CEI) with more than 30 years of judicial experience, including service as a Metropolitan Court Judge from 1997 to 2014. CEI gratefully acknowledges Judge Fitzwater's expertise and dedication in bringing this Manual up to date.

The *Manual* traces its origins to the 2001 edition developed by the Judicial Education Center, primarily authored by Judith Olean, Esq., with the invaluable assistance of numerous expert volunteers. That edition was subsequently revised in 2004.

Purpose

The *Traffic Citations Manual* provides courts of limited jurisdiction with a comprehensive resource for handling traffic citation cases of all types, with the exception of DWI cases. For DWI matters, practitioners should consult separate resources such as the *2025 New Mexico DWI Handbook*.

This *Manual* is intended as a convenient secondary source of law and established best practices. It does not constitute legal authority. For specific requirements, users should consult the New Mexico statutes, rules, ordinances, forms, and uniform jury instructions, as well as applicable case law and court procedures.

Style and Format

The *Manual* is written in a descriptive style, with abbreviations kept to a minimum. When abbreviations appear, they are chosen for ready recognizability. Citations to statutes, rules, and cases use the most concise style possible while still providing adequate reference information. The citation conventions used throughout are as follows:

- **Statutes:** New Mexico statutes are cited as § __ - __ - __ (e.g., §66-8-113), without the "NMSA 1978" designation. Federal statutes are cited as __ U.S.C. § __ (e.g., 25 U.S.C. §1901).
- **Rules:** New Mexico judicial rules are cited as Rule __ - __ (e.g., Rule 9-501), without the "NMRA" designation.
- **Cases:** New Mexico cases are cited using the official citation format adopted in 2013 (e.g., 2013-NMCA-112).

Effective Date

The information in this *Manual* is current through March 2026, including legislation signed following the 2026 New Mexico Legislative Session. The *Manual* will be updated periodically as resources allow. To inquire about the status or availability of updates, please contact the New Mexico Court Education Institute at the address below.

Additional Copies

The *Manual* is available free of charge on the New Mexico Court Education Institute Website: courteducation.nmcourts.gov.

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A Legal and Procedural Guide
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CHAPTER 1**JURISDICTION TO HEAR TRAFFIC CASES**

This chapter covers:

- 1.1 Appropriate Court
- 1.2 New Mexico Motor Vehicle Code
- 1.3 Uniform Traffic Ordinance
- 1.4 New Mexico Commercial Driver's License Act

1.1 Appropriate Court

Traffic offenses are typically heard in the courts of limited jurisdiction – specifically, the Municipal, Magistrate and Metropolitan Courts. In some instances, traffic offenses may be heard in the District Court, usually when they constitute additional charges included in a felony trial for vehicular homicide or felony DWI (driving while intoxicated or driving under the influence). Additionally, appeals of traffic convictions from limited jurisdiction courts are heard in District Court. See Manual Section 7.3, Appeal and Remand.

The authority for limited jurisdiction courts to hear traffic offenses comes from §66-8-7, which provides that, unless specified as a felony, all violations of the New Mexico Motor Vehicle Code are misdemeanors. Magistrate and Metropolitan Courts have jurisdiction to hear misdemeanor cases. §§35-3-4, 34-8A-3. Magistrate and Metropolitan Courts have concurrent jurisdiction to hear Municipal codes within their jurisdictions (excepting the codes of municipalities of populations over 2500 and less than 5000 in the Metropolitan Court.) Municipal Courts are given authority to hear “all offenses and complaints under ordinances of the municipality.” §35-14-2(A). A municipality may adopt ordinances “not inconsistent with the laws of New Mexico.” §3-17-1. The Motor Vehicle Code also anticipates the adoption of local ordinances as long as there is no conflict. §66-7-8(A). Section 66-8-130 allows for the adoption of a municipal penalty assessment program as long as it is “similar” to the provisions of the state program. See Manual Chapter 2, Adjudication of Traffic Cases: Penalty Assessment Programs.

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

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

1.2 New Mexico Motor Vehicle Code

The New Mexico Motor Vehicle Code is contained in Articles 1 through 8 of Chapter 66 of the New Mexico Statutes Annotated. Chapter 66 contains all laws relating to the licensing and operation of motor vehicles. A motor vehicle is defined as “every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails.” §66-1-4.11(H). This includes, but is not limited to, automobiles; buses (§66-1-4.2(C)); farm tractors (§66-1-4.6(A)); mopeds (§66-1-4.11(E)); motorcycles (§66-1-4.11(F)); motor homes (§66-1-4.11(G)), certain off-road vehicles (§66-1-4.13(B) and §66-3-1011); and trucks (§66-1-4.17(Q)). A bicycle is not a motor vehicle because it is human powered, nor is a train that runs on stationary rails or tracks. §66-1-4.19(B). A snowmobile is not considered a motor vehicle because it cannot be lawfully operated on public highways. *State v. Eden*, 1989-NMCA-038. Likewise, a boat is not considered a motor vehicle, and falls outside of the New Mexico Motor Vehicle Code. §66-12-3(B). Likewise, an electric-assisted bicycle is not considered a motor vehicle. §66-1-4.11(H). For more on off-highway motor vehicles, including ATVs and snowmobiles, see the Off-Highway Motor Vehicle Act, §§66-3-1001 to -1020. For more on boats, see the Boat Act, §§66-12-1 to -23.

Article 3 of the Motor Vehicle Code covers the registration and titling of vehicles (§§66-3-1) theft of vehicles (§§66-3-501 to -503); laws governing the operation of bicycles (§§66-3-701 to -709); vehicle equipment requirements and prohibitions (§§66-3-801 to -901); off-highway motor vehicles (§§66-3-1001 to -1020); altering or changing engine numbers (30-16D-6), and other vehicles such as electric assistive personal mobility devices (§66-3-1102) and neighborhood electric cars (§66-3-1103). Violations of many of the provisions of Article 3 carry penalties, so it is a good idea to have copies of these laws handy when presiding over court. Note that farm tractors and mopeds are exempt from the registration and titling requirements. §§66-3-1A(3) and (4), 66-3-1101.

Article 4 deals with the licensing of dealers and wreckers (§§66-4-1 to -10), and while it provides for a misdemeanor penalty for a first offense (§66-4-9(A)), violations will probably seldom come before a court of limited jurisdiction.

Violations of the statutes contained in Article 5 will be a staple in the courts of limited jurisdiction, so a thorough knowledge of these provisions is imperative. Sections 66-5-1.1 to -51 set forth the laws regarding driver’s licenses. Also included in these sections are the laws that specify when and under what circumstances a license will be cancelled, suspended or revoked by the Motor Vehicle Division (MVD). §§66-5-24 to -32. Sections 66-5-39, 66-5-39.1, and 66-5-39.2 (which will be discussed in more detail in Manual Chapter 6, Penalties) are the sections that provide for penalties, some mandatory, when a person is convicted of driving on a suspended or revoked driver’s license. Sections 66-5-52 to -72, the “New Mexico Commercial Driver’s License Act,” carry misdemeanor penalties for violations. Another part of Article 5 that will appear frequently in the courts of limited jurisdiction is the “Mandatory Financial Responsibility Act.” §§66-5-201 to -239. These sections set forth, among other provisions, the requirement that a vehicle be insured, the mandatory insurance coverage required, and the penalties for violating the provisions of that act.

Article 6 of the Motor Vehicle Code sets forth the fees to be paid to MVD, and carries no penalties. Therefore, it is not relevant for purposes of this Manual.

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

Article 7 covers traffic signs and signals (§§66-7-101 to -109); reporting of accidents (§§66-7-201 to -215); general traffic laws such as speeding, passing, turning, laws relating to pedestrians, parking, motorcycles, child restraints, seatbelts, and texting while driving (§§66-7-301 to -376); and weight and size limitations for vehicles and trailered loads (§§66-7-401 to -416). Specific matters regarding violations of these sections such as penalties and required proof will be discussed in subsequent chapters of this Manual.

Article 8 is made up of two parts. Part 1 covers offenses relating to vehicle registration. §§66-8-1 to -10. Part 2 is the most significant part of the Motor Vehicle Code as it is used in the courts of limited jurisdiction, and includes penalty assessment misdemeanors, uniform traffic citations, and the Nonresident Violator Compact, §§66-8-101 to -141. Some sections, however, cover DWI laws and other offenses carrying felony penalties, and will not generally be heard in the courts of limited jurisdiction and thus are not covered by this Manual. See §§66-8-101 and -101.1 (offenses of homicide by vehicle, great bodily injury by vehicle, and injury to pregnant woman by vehicle); §§66-8-102 to -112 (laws prohibiting DWI, penalties for DWI, and the provisions of the “Implied Consent Act” which govern the administration of chemical tests to determine drug or alcohol content).

Reckless driving is defined in §66-8-113, careless driving in §66-8-114, and racing on highways in §66-8-115. The “open container law” - having an open container of alcohol in a motor vehicle - and the penalties for violating this provision are contained in §§66-8-138 and 66-8-139. Most of the remainder of Article 8 sets forth the state’s penalty assessment program (Manual Chapter 2, Adjudication of Traffic Cases: Penalty Assessment Programs), requirements for a valid traffic citation, arrest procedures, and citation abstracts (Manual Chapter 8, Abstracts of Record). Sections 66-8-137.1 to -137.4 comprise the Nonresident Violator Compact.

That is a quick tour of the New Mexico Motor Vehicle Code. Many of the provisions cited above will be discussed in greater detail in the chapters to follow. They will be discussed in terms of their penalties (Manual Chapter 2, Adjudication of Traffic Cases: Penalty Assessment Programs and Chapter 6, Penalties), proof needed to convict or dismiss (Manual Chapter 4, Adjudication of Traffic Cases: Pre-Trial), and other miscellaneous matters such as violations committed by juveniles (Manual Chapter 9, Juveniles) or non-residents (Manual Chapter 10, Non-Residents).

1.3 Uniform Traffic Ordinance

Section 3-17-6 allows a municipality to adopt, by ordinance, a traffic code. §3-17-6(A)(8). The requirements of such adoption are that the code “shall provide for minimum requirements at least equal to the state requirements on the same subject.” To this end, many municipalities in New Mexico have adopted the New Mexico Uniform Traffic Code, also known and referred to herein as the Uniform Traffic Ordinance (UTO). The UTO is prepared and kept updated by the New Mexico Municipal League. The UTO was first compiled in 1983, and has been updated as needed since then. Basically, the UTO is the New Mexico Motor Vehicle Code made applicable to municipalities. The offenses in the Motor Vehicle Code that carry penalties beyond the jurisdiction of Municipal Courts are not included in the UTO. See Manual Chapter 6, Penalties. Additionally, some definitions have been re-worded to reflect the UTO’s application within the municipal boundaries rather than the entire state. New definitions have been added where necessary, again to make the UTO usable within the laws governing municipal governments.

The drafters of the UTO have aided in its application by inserting the comparable provisions

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

A municipality may adopt the UTO in total or it may adopt only those sections it chooses. For example, some municipalities have determined that it is beyond their logistical and financial abilities to hear DWI cases. This is due to the potential need for a municipal prosecutor or public defender for indigent defendants, and the cost of mandatory jail sentences. These municipalities, therefore, have adopted the UTO with the exception of the sections pertaining to DWI.

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

1.4 New Mexico Commercial Driver’s License Act

The New Mexico Commercial Driver’s License Act (§§66-5-52 to -72) governs commercial drivers in New Mexico, such as long-haul truck drivers, delivery drivers, and others. The act prohibits any “person” from taking an action which prevents a conviction of a traffic control law violation from appearing on the driving record of a commercial driver’s license (CDL) holder. §66-5-69.1. This prohibition includes “masking,” or deferring imposition of the judgment or diversion. See Manual Section 6.9, Deferral of Sentence. CDL holders thus basically have a choice to plead guilty or no contest and be penalized, or go to trial. Courts should determine whether or not a person is a CDL holder. If yes, the court cannot grant a deferment, even if the holder was operating a non-commercial vehicle at the time.

CHAPTER 2

ADJUDICATION OF TRAFFIC CASES: PENALTY ASSESSMENT PROGRAMS

This chapter covers:

- 2.1 What is a Penalty Assessment Program?
- 2.2 Authority to Adopt a Penalty Assessment Program
- 2.3 Change of Plea
- 2.4 Payment Remitted Late
- 2.5 No Driver's License in Possession – Special Consideration

2.1 What is a Penalty Assessment Program?

A penalty assessment program is a means of designating certain traffic offenses as those that do not require a court appearance. The state (by statute) and most municipalities (by ordinance) have adopted pre-set fines, i.e., penalty assessments, which an offender can elect to pay either by mail, electronically (if available), or in person, without appearing before a judge. Penalty assessment misdemeanors are listed in the New Mexico Motor Vehicle Code at §66-8-116 (those dealing with all drivers); §66-8-116.1 (those dealing with oversize loads); and §66-8-116.2 (those dealing with the Motor Carrier Act). Penalty assessment misdemeanors are also found in local ordinances, and in the Uniform Traffic Ordinance (UTO). Examples of penalty assessment misdemeanors include speeding, safety belt violations, texting, equipment violations, and failure to yield, among others. Courts can also, by written order, add offenses that will be handled like penalty assessment misdemeanors where there is no period of incarceration and the fine is set in the court order. Rules 6-503(A), 7-503(A), 8-503(A).

If an offense has been designated as a penalty assessment misdemeanor by one of the above statutes or a municipal ordinance, the citing officer is required to “offer the alleged violator the option of accepting a penalty assessment.” §66-8-117(A). By signing the citation and agreeing to pay the penalty assessment, the offender is pleading guilty to the offense. The offender then has 30 days to mail the payment to the Motor Vehicle Division (MVD) if the offense is cited under state statute, or whatever time is specified if the offense is cited under a municipal penalty assessment program. A payment postmarked within that 30-day period will be accepted as timely by MVD. §66-8-117(B). See Manual Section 6.5, Fees.

If the offender chooses to contest the penalty assessment, he or she then must appear in court. See Manual Chapter 3, Adjudication of Traffic Cases: Types of Offenses. By agreeing to pay the penalty assessment, the person is pleading guilty. Regardless of whether the person chooses to pay the penalty assessment or appear in court, he or she must sign the citation or be subject to arrest. §66-8-123(D).

2.2 Authority to Adopt a Penalty Assessment Program

All state courts, i.e., Magistrate, Metropolitan and District, are obligated to follow the New Mexico Motor Vehicle Code penalty assessment statutes. The offenses and fines are set by law, and must be adhered to by law enforcement officers and these courts. A municipality, though, unless it has adopted the Motor Vehicle Code by reference, §3-17-6, must specifically adopt a penalty assessment program by municipal ordinance if one is to be used. Section 66-8-130 gives a municipality the authority to adopt a penalty assessment program by ordinance with the mandate that the municipal program be “similar to that established in Sections 66-8-116 through 66-8-117.” In other words, the municipal ordinance must not conflict with state law. *City of Hobbs v. Biswell*, 1970-NMCA-086.

In *Biswell*, the Court of Appeals held that an ordinance with stricter requirements (that is, higher standards, not higher penalties) than the state statute did not necessarily conflict with the statute. Rather, the “question is whether the stricter requirements of the ordinance conflict with the statute,” *Biswell* at ¶23, or whether the ordinance permits an act the statute prohibits or prohibits an act the statute allows. *Incorporated County of Los Alamos v. Montoya*, 1989-NMCA-004 (holding that a municipal DWI ordinance did not conflict with the general statute by imposing mandatory jail time because the penalty did not exceed the statute); see also *Rancho Lobo Ltd. v. De Vargas*, 303 F.3d 1195 (10th Cir. 2002) (holding that a county ordinance did not conflict with a state statute when it imposed stricter standards for obtaining a clear-cutting permit for timber).

Thus, it is important to make sure that there is a corresponding municipal ordinance for each offense listed in the penalty assessment ordinance. Unless there is an ordinance prohibiting a specific activity, a municipality has no authority to punish for that activity, as Municipal Courts do not have jurisdiction over citations written under state statutes.

2.3 Change of Plea

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

Penalty Assessment: I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of [specified amount].

It is clear that, by signing the above statement, the individual is admitting guilt and agreeing to pay the fine. However, it is all too common to hear a person say that he or she was upset, confused, told to sign there, signed in the wrong place, didn’t know what he or she was signing, or give other reasons asking to change the plea.

The New Mexico Court of Appeals has addressed this issue, holding that a defendant has no right to withdraw a guilty plea on a penalty assessment. *Vigil v. Motor Vehicle Division*, 2005-NMCA-057. The Court of Appeals found that the benefits of penalty assessments, the lack of statutory support for such withdrawals, and the potential disruptions to the system weighed against the minimal consequences to the defendant of

having no right to withdraw a guilty plea. Based on *Vigil*, any attempt to withdraw a guilty plea to a penalty assessment will not be allowed unless the defendant raises and proves the defense of coercion or duress. It is highly unlikely that such a defense will be raised, no less proven, as the standard is extremely high. See Rule 14-5130 (elements of duress); see also *State v. Turner*, 2017-NMCA-047 (defining coercion).

A 1969 Opinion of the Attorney General (No. 69-88) also advocates the position that, once signed, an individual's agreement to plead guilty and pay cannot be changed. The opinion treats the signing of the citation as the signing of a contract.

Note that, notwithstanding *Vigil* and the Attorney General opinion, a person can change a plea from not guilty to guilty and choose to pay the penalty.

2.4 Payment Remitted Late

Section 66-8-117(B) requires penalty assessments to be paid "within thirty days from the date of arrest." The state statute and most, if not all, municipal penalty assessment ordinances provide that a payment is timely if it is postmarked by the due date.

If an individual is cited under state statute, payments are to be mailed to MVD or paid online. Most law enforcement officers will supply envelopes to offenders to mail payments to Santa Fe. If the citation is written pursuant to a municipal penalty assessment ordinance, the time for payment will be set in the ordinance. Many municipalities have adopted a time shorter than 30 days. Payment under municipal penalty assessment programs is made directly to the Municipal Court or to whatever entity collects the fines for the city. Payment to the municipality may be made in a variety of ways, as available: mailed, paid online, made in person, or put in a drop box supplied by the court.

2.5 No Driver's License in Possession – Special Consideration

Section 66-5-16 is violated when an individual has a valid license, but does not have it in his or her possession when stopped. However, the statute provides an exception: "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 the citation was issued.

An issue arises when a person pleads guilty on the citation, (see Manual Section 2.3, Change of Plea), and then potentially proceeds to the court to show the judge his or her license, under the assumption that the citation will be dismissed based on the statute. As stated previously, based on *Vigil*, a guilty plea cannot be changed except under very exceptional standards. It may be advisable for law enforcement personnel to be trained to inform a driver that pleading guilty on the citation waives the possibility of having the citation dismissed by the court at a later date, even if proof is provided.

CHAPTER 3 ADJUDICATION OF TRAFFIC CASES: TYPES OF OFFENSES

This chapter covers:

- 3.1 Arrestable Offenses
- 3.2 Penalty Assessment Offenses
- 3.3 “Paperwork” Offenses
 - 3.3.1 No Driver’s License
 - 3.3.2 No Current Registration
 - 3.3.3 No Proof of Financial Responsibility
- 3.4 Other Traffic Offenses

Depending on the charge, a traffic offense may be adjudicated in a variety of ways, including a mandatory or requested court appearance for arrestable and some non-arrestable offenses, payment of a fine (by mail for a penalty assessment or through a court appearance for others), or by providing proof of compliance to the court. Note that court appearances can include appearing via audio and through audio-visual means. Rules 6-110A, 7-110A, and 8-109A. Whether to allow such an appearance is within the discretion of the judge, but it must be conducted in a place with public access and not in a judge’s chambers.

3.1 Arrestable Offenses

The New Mexico Motor Vehicle Code provides that some offenses must be adjudicated in a court before a judge. §66-8-122. These offenses often have a penalty range, i.e., up to a \$1000 fine and/or one year in jail (\$500 fine and/or 90 days in jail for municipal offenses), as well as a possible mandatory minimum penalty. It is up to a judge, after hearing all of the evidence, to determine the appropriate sentence. Motor Vehicle Code offenses that require court appearances include, but are not limited to:

- Driving under the influence, §66-8-102
- Failure to stop for accident involving death, injury, or damage to property, §§66-7-201 to -205
- Reckless driving, §66-8-113
- Arresting officer believes that the person has committed a felony, §66-8-122
- Driving while suspended or driving while revoked, §§66-5-39.1

or when a person:

- Refuses to sign the Uniform Traffic Citation for any offense, or
- Requests an immediate appearance, §66-8-122

Currently, New Mexico does not permit the arrest of an individual for a non-jailable offense. A U.S. Supreme Court case, *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), held that the Fourth Amendment to the U.S. Constitution allowed an officer to arrest an individual for

even minor traffic offenses, such as a seat belt violation. The New Mexico Court of Appeals has declined, on state law grounds, to follow the holding in *Atwater*, however. In *State v. Rodarte*, 2005-NMCA-141, the Court held that an officer cannot arrest a person for a non-jailable offense (minor in possession of alcohol) “in the absence of specific and articulable facts that warrant an arrest” as Article II, Section 10 of the New Mexico Constitution affords greater privacy protections than the U.S. Constitution. *State v. Rodarte*, 2005-NMCA-141 at ¶19. The Court found a “preference for citations rather than arrest” for minor criminal offenses. *Id.*

3.2 Penalty Assessment Offenses

For an offense designated as a penalty assessment misdemeanor (see Manual Chapter 2, Adjudication of Traffic Cases: Penalty Assessment Programs), an offender may choose to plead guilty and pay the penalty assessment, or may choose to plead not guilty and request a court appearance. In this instance, the matter is set for trial and proceeds as described in Manual Chapter 5, Adjudication of Traffic Cases: Trial. One important statutory restriction, though, is that if this person is convicted by the judge or pleads guilty in court, the fine cannot “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.” §66-8-116(C); see similar provision in the Uniform Traffic Ordinance (UTO). This is to ensure that an offender is not penalized for exercising the right to plead not guilty.

Note that once a person pleads guilty on a citation with a penalty assessment, a guilty plea has been entered and the person cannot change his or her plea and request to appear in court. See Manual Section 2.3, Change of Plea.

3.3 “Paperwork” Offenses

There are a few offenses within the Motor Vehicle Code and the UTO that are fairly routine and can be expedited with the help of court staff, such as no driver’s license, no current registration, and others. In these cases, proof of non-violation can be provided to the court clerk. Providing this documentation to the court clerk is the first step; the clerk will then forward the documentation to the judge for review and disposition. Without this documentation, the person must appear before the judge, or if there are any questions, the matter should be set for a court hearing; only a judge can make the final decision in a matter under the court’s jurisdiction.

What follows is a list of common “paperwork” offenses.

3.3.1 No Driver’s License

No Driver’s License in Possession

Section 66-5-16 requires that a person “have his driver’s license in his immediate possession at all times when operating a motor vehicle.” However, the statute provides an exception to conviction: “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.” Thus, if a person pleads not guilty to a citation for this offense, the person can present evidence to the court that he or she had a valid license at the time of the traffic stop. If the person pleads guilty on the citation, a potential conflict exists between the statute and the penalty assessment procedure. See Manual Section 2.5, No Driver’s License in Possession – Special Consideration.

No Valid Driver’s License

Section 66-5-2(A)(1) requires a person to hold “a valid license issued under the provisions of the Motor Vehicle Code” in order to drive a motor vehicle. A person charged with violating this section allegedly has no valid driver’s license. This could mean that the person never had a license, had a license that is expired, had a license that was revoked but the period of revocation is completed and the person has not yet obtained a new license, or had a license that was cancelled by the Motor Vehicle Division (MVD). In these cases, the individual should be required to go before the judge because the penalty imposed will depend on the circumstances. The statute provides, however, that the person cannot be convicted if the person produces, in court, a driver’s license that was valid on the date the citation was issued.

Note that if a person did not have a license that was valid on the date of the citation and is charged with violating §66-5-2(A)(1), this is not a paperwork offense and cannot be handled as such.

3.3.2 No Current Registration

The same general procedure can be used when a person is cited for a violation of §66-3-13, Evidence of Registration to be Signed and Exhibited on Demand. This statute is similar to the above statute requiring the showing of a driver’s license to an officer upon demand, and provides that the person cannot be convicted if the person can show to the court a registration certificate that was valid on the date the citation was issued. The same would apply if a person had a valid sticker on the date the citation was issued, but had neglected to affix it to the license plate.

If a person is also cited for a violation of §66-3-1, Vehicles Subject to Registration, the above procedure can be used, as this statute does contain the same language as §66-3-13 regarding providing proof to a court. Additionally, violation of §66-3-1 is a penalty assessment misdemeanor, so pleading guilty by signing the citation waives the possibility of having the citation dismissed upon showing proof of registration to a court.

3.3.3 No Proof of Financial Responsibility

Another such situation occurs when a person is cited under §66-5-205. The Mandatory Financial Responsibility Act, §§66-5-201 to -239, requires that a specified minimum amount of insurance be purchased for any vehicle registered in the State of New Mexico. Section 66-5-229(C) of the act requires that an owner or driver of a motor vehicle must have evidence of that insurance, which can be in print or electronic form. §66-5-229(D). If an individual is

unable to provide a law enforcement officer with that evidence, then a citation will be issued. As with the driver's license and registration offenses discussed above, that individual may, indeed, have the required insurance, and may even have the proof of that insurance, but not in the vehicle at the time of the officer's request. If this is the case, the statutes provide that the person cannot be convicted if the person shows the court evidence of insurance which indicates that on the date the citation was issued there was proper insurance in effect. §§66-5-205(F), 66-5-229(E). For electronic evidence of insurance, a court may need to establish appropriate methods for submitting proof to the judge.

3.4 Other Traffic Offenses

A final category of traffic offenses includes those offenses that do not fit into other categories, but can't be taken care of by sending in a set fine (penalty assessment) or providing proof of compliance (paperwork offense). Offenses such as passing violations, §66-7-309, fall into this category and cannot be adjudicated without a court appearance.

CHAPTER 4 ADJUDICATION OF TRAFFIC CASES: PRE-TRIAL

This chapter covers:

- 4.1 Notice of Proceedings
 - 4.1.1 Citation
 - 4.1.2 Summons
- 4.2 Failure to Appear
- 4.3 Post-Arrest
- 4.4 Arraignment
 - 4.4.1 Advisement of Rights
 - 4.4.2 Acceptance of Guilty Plea
- 4.5 Plea Agreements

This chapter covers court procedures before a trial, such as notice of proceedings, arraignments, and other procedural matters. Because this Manual covers only traffic offenses, it will not address discovery, motions, and other evidentiary pre-trial matters.

4.1 Notice of Proceedings

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

4.1.1 Citation

Notice by Officer

For most offenses (see §§66-8-122 and 66-8-123 or applicable municipal ordinances), the court date may be set either by the law enforcement officer or by the court. Some jurisdictions give the officers the authority to set the court date, and to notify the defendant of that date in writing on the citation. Several cautions are in order when using this procedure.

First, there must be continuous coordination between the officers and the court. The officers must be aware of the days court will be in session, and more specifically, which days the court will hear which types of cases. For example, many courts will hold separate sessions for cases that involve attorneys. Courts may also set specific days and times for arraignments or probation

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

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

Third, if the officer sets the court date on the citation, there is always the possibility that the date will need to be rescheduled. If this is done, the court must ensure that the officer and the defendant are notified of the new court date, pursuant to court procedures.

Cases are scheduled in two ways. Some courts set cases for a specific time, e.g., every 15 minutes. Other courts have what is called a rolling or trailing docket, meaning all cases are set for the same time, and called in whatever order the court sets, e.g., alphabetical, all officers' cases together, types of cases, etc. If officers assign court dates, they should do so only if the court uses a rolling or trailing docket, because of the potential confusion in setting times.

Notice by Court

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

Some courts operate on a walk-in basis. In these courts, the offender appears before the judge, and, if the person informs the judge that he or she wants to go to trial, a court date is set either by the judge or by the court clerk.

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

4.1.2 Summons

Courts may issue summonses in traffic cases, especially in cases involving automobile crashes. It may be that the officer did not conclude the investigation prior to releasing the individuals from the scene and issuing a citation. Or, persons may have been transported to the hospital making the issuance of a citation at the time of the crash impossible. In these situations, the officer would issue the citation after the fact, deliver the citation to the court, and the court would issue a summons. The summons directs the defendant to appear in court for an arraignment on a specific date with at least 10 days notice (13 days if mailed). Rules 6-204 and 205, 7-204 and 205, and 8-203 and 204. The court rules specify that “[s]ervice of a summons shall be by mail unless the court directs that personal service be made.” Rules 6-205(A), 7-205(A), and 8-204(A).

If a defendant fails to appear after being properly served with a summons, the court may issue an arrest or bench warrant. See Manual Section 4.2, Failure to Appear.

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

4.2 Failure to Appear

When an offender either chooses to come to court on a penalty assessment or is required to appear in court due to the nature of the offense, an “appear by” or “appear on” date and time is set. See Manual Section 4.1, Notice of Proceedings. Unless the offender requests and is granted a continuance by the court, that court date must be honored. If the offender fails to appear on the citation as required, a chain of events is set in motion.

First, the court must issue a summons for the offender to appear, attaching a copy of the citation. Rules 6-205, 7-205, and 8-204. If the defendant fails to appear on the summons (or other court order), the judge may issue a bench warrant for failure to appear. Rules 6-207(A), 7-207(A), and 8-206(A). The warrant cannot issue until the person has failed to appear under court order. The citation is not a court order, which is why the court cannot issue a warrant until a summons has been issued first.

It should be noted that these rules require that the judge have personal knowledge of the failure to appear, or have a sworn written statement of probable cause. “Personal knowledge” means that the judge must call the offender’s name in open court, and personally note the offender’s absence in the court file. It is also important to note that the defendant’s failure to appear must be willful in order for criminal liability to attach. A failure to appear may be justified or excused in certain circumstances. See *State v. Granado*, 2007-NMCA-058; *State v. Elliott*, 2001-NMCA-108.

If the offender is arrested on the bench warrant, or turns him or herself in on the warrant, the court must hold an arraignment and a pre-trial release hearing within three days if the defendant is held in the local detention center, or five days if the defendant is held elsewhere. Rules 6-401,

7-401, and 8-401. The arraignment process is the same as for any other arraignment. See Manual Section 4.4, Arraignment.

The state statutes and some municipal ordinances provide for a separate offense of failure to appear. Section 31-3-9 makes it a petty misdemeanor to fail to appear “in connection with a misdemeanor or a petty misdemeanor proceeding.” The offender is, therefore, subject to further penalty. A separate criminal complaint must issue for the failure to appear charge, and must be sent to the defendant with a summons.

Second, a notice shall be sent to the Motor Vehicle Division (MVD) notifying MVD of the offender’s failure to appear on the summons. §66-8-135(B); see also Appendix C, Notice of Failure to Appear in Court.

Finally, once the offender takes care of the charges, a Notice of Clearance is provided to the offender. See Appendix B, Notice of Clearance. This notice may either be on an MVD- approved form or computer-generated. It is then up to the offender to take the Notice of Clearance to MVD, pay the appropriate fee, and have his or her license reinstated.

4.3 Post-Arrest

Once a person is arrested, the rules require the pre-trial release of that person, with very few exceptions. In 2017 and 2018, the New Mexico Supreme Court changed its rules to reflect the 2016 amendment to Article II, Section 13 of the New Mexico Constitution. Under the new and amended rules, “any defendant eligible for pre-trial release...shall be ordered released pending trial...on the defendant’s personal recognizance or upon the execution of an unsecured appearance bond...but the court shall impose the least restrictive condition or combination of conditions that will reasonably ensure the appearance of the defendant as required and the safety of any other person or the community” unless a court makes written findings of particularized reasons as to why the release will not reasonably ensure the appearance of the defendant. Rules 6-401(B), 7-401(B), and 8-401(B).

For the most part, a defendant arrested for a traffic violation will be released on his or her own recognizance, unless exigent circumstances exist. Exigent circumstances are situations that demand unusual or immediate action, such as when a person’s life or safety is threatened; a suspect’s escape is imminent; or evidence is about to be removed or destroyed. Circumstance Definition, *Black’s Law Dictionary* (12th ed. 2024), available at Westlaw.

In the rare case of an exigent circumstance, the rules set out the factors for determining the type of any bond required and the conditions of release. The rules also clarify that the amount of a secured bond must not be based on a bond schedule.

If a defendant is arrested for a traffic violation and is not released on his or her own recognizance, a probable cause hearing must be held within 48 hours after the defendant is placed into custody. Rules 6-203(A), 7-203(A), and 8-202(A). This is only true for those defendants arrested without a warrant, as is the case for most of the traffic violations noted above. The determination of probable cause is made by the judge based upon the criminal

complaint and a probable cause statement, if applicable; the defendant does not have to be present at a probable cause hearing. At this time, the judge should also set the conditions of release.

4.4 Arraignment

The arraignment is the defendant's first appearance before the judge, and must be held within 30 days of the arrest if the person was released on his or her own recognizance and therefore is not in custody, or three days if exigent circumstances existed and the person is in custody. Rules 6-506, 7-506, and 8-506. At this proceeding, the judge will inform the defendant of the charge(s) against him or her, the maximum and mandatory minimum penalties, advise the defendant of his or her rights, explain the types of pleas available and the consequences of each, and ask the defendant to plead to the charge(s). If the defendant refuses to enter a plea, the court must enter a not guilty plea. If the defendant is still incarcerated, the judge will go over the conditions of release, and, if warranted, change them to allow the defendant to be released.

Many times, usually when an attorney represents a defendant, the court will receive a Waiver of Arraignment and Entry of Plea of Not Guilty. See Forms 9-405A and 405B (these forms may need some modification to take into account nonjury trial offenses). This is a document in which the defendant states that he or she is aware of the right to appear, aware of the charges against him or her, and aware of his or her constitutional rights, but waives the right to appear in court and enters a not guilty plea. Rules 6-501(D), 7-501(D), and 8-501(D).

4.4.1 Advisement of Rights

At a minimum, the judge should advise the defendant of the following at arraignment in both Magistrate and Metropolitan Court:

- Offense(s) charged
- Maximum penalty and any mandatory penalties for the offense(s)
- Right to bail or the possibility of pretrial detention under Rule 5-401(G), if applicable
- Right to counsel if the offense carries with it the possibility of jail time (unless the statute carries mandatory jail time, the judge may inform the defendant that he or she has no right to a court-appointed attorney, but may hire one at his or her own expense)
- Right to representation by an attorney at state expense if the defendant is indigent, if applicable
- Right to remain silent, and that if anything is said it may be used against the defendant
- Right to a jury trial, if applicable
- Right to a preliminary exam, if the case is not within the court's jurisdiction
- Effect of a guilty or no contest plea on the defendant's immigration or naturalization status, and if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequences of a plea (no need to ask immigration status; simply advise the parties of the effect of the plea)

- Effect of a guilty or no contest plea on the defendant's right to bear arms, if the defendant is charged with a crime of domestic violence
- Effect of a guilty or no contest plea for a crime for which registration as a sex offender is or may be required

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

In Municipal Court, the judge should advise the defendant of the following at arraignment:

- Offense(s) charged
- Penalty provided by ordinance for the offense(s)
- Right to bail, if applicable
- Right to counsel if the offense carries with it the possibility of jail time (unless the ordinance carries mandatory jail time, the judge may, at this point, make a written determination that no jail time will be imposed, and then inform the defendant that he or she has no right to a court-appointed attorney, but may hire one at his or her own expense)
- Right to a publicly funded defense if the defendant is indigent, if applicable
- Right to remain silent, and that if anything is said it may be used against the defendant
- Effect of a guilty or no contest plea on the defendant's immigration or naturalization status and shall determine, if the defendant is represented by counsel, that the defendant has been advised by counsel of the immigration consequences of a plea (no need to ask immigration status; simply advise the parties of the effect of the plea) Rule 8-501(A).

Additional items that the judge in any of the courts may address include the presumption of innocence, instructions to the defendant on how to subpoena witnesses, and any collateral consequences of a conviction such as license suspension.

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

If a judge has a number of arraignments at one time, he or she might consider a "mass arraignment." This is a procedure whereby a general explanation of constitutional rights is given by the judge either in person or by video. Then each defendant is called up individually before the judge and informed of the charges against him or her, the potential penalty, and asked to plead. This method can save quite a bit of time. It is important to ensure that everyone is in the room when the general advisements are given. Each person should be asked if he or she understood those advisements when the person is called up. If a non-English speaking person is present, arrangements will need to be made to advise that person through a court interpreter. Rules 6-115, 7-114, and 8-113.

4.4.2 Acceptance of Guilty Plea

Some defendants may choose to plead guilty or no contest at their arraignment. Some may choose to plead guilty or no contest at the start of their trial. Regardless of when such a plea is received, certain safeguards must be observed to ensure that the plea is valid. The general rule is that a judge must determine that a plea is given “knowingly, voluntarily, and intelligently” before the judge may accept that plea and proceed to sentencing. Various inquiries go into this determination. The judge should engage in a discussion with the defendant to determine whether there is a factual basis for the plea – that is, does the defendant know what he or she did; does the defendant understand the essential elements of the charge(s) subject to the plea, and can the defendant explain to the judge the circumstances of the offense. (If attorneys are involved, this factual basis may be established through the attorneys with the defendant standing silent.)

The New Mexico Supreme Court has provided a form, Rule 9-406A, which the judge should use when the possibility of jail exists to determine whether the plea of guilty meets the legal requirements. The judge and the defendant must sign this form. The judge must inform and the defendant must affirm that:

- The defendant understands the charge(s)
- The defendant understands the potential sentence(s), including the mandatory minimum and maximum penalties, and possible sentence enhancements
- The defendant has the right to plead not guilty
- If pleading no contest, the defendant understands that a plea of no contest has the same effect as a plea of guilty in the court
- The defendant, by entering a guilty or no contest plea, waives the following rights to: a trial; a jury trial, if applicable; an attorney, if applicable; confront and cross-examine adverse witnesses; present evidence on his or her own behalf; remain silent; appeal a conviction
- There is a factual basis for the plea
- The plea is voluntary
- It is reasonable for the defendant to plead guilty or no contest under the circumstances
- The defendant understands the consequences of the plea, including the effects of the plea on the defendant’s immigration status if the defendant is a non-citizen
- If applicable, the effect on the constitutional right to bear arms in a domestic violence or felony case
- The obligation to register as a sex offender if applicable

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

4.5 Plea Agreements

Plea agreements are very common. In fact, some statistics show that 90-95% of all criminal cases end in plea agreements and never go to trial. Most plea agreements that are reached in traffic cases occur when attorneys are involved. However, there is no prohibition against the officer communicating with the defendant and working out an agreement to be presented to the judge.

The important thing to remember about plea agreements is that the court takes no part in the initial agreement. It is the judge's job either to approve or disapprove the agreement after it has been entered into between the parties. The judge should neither suggest a possibility of a plea agreement, nor should the judge suggest or be part of the discussion regarding the terms of the agreement.

Some courts allow the parties to enter into a plea agreement regarding the charges only. That is, the agreement may dismiss or reduce some charges in exchange for a plea of guilty to others, but may not contain any matters regarding sentencing, leaving this to the sole discretion of the court. Another common approach is to allow the agreement to contain general sentencing matters, such as "no more than ten days jail" or "a fine not to exceed \$100," or a requirement that the defendant attend a certain program. This leaves the final sentencing up to the judge within the parameters agreed to by the parties, if the judge approves the plea agreement. One other method is to allow the parties to argue for, or "recommend" a particular sentence, but the judge is not bound by the recommendation and can impose any lawful sentence, again, if the judge approves the plea agreement. The court must, however, give the defendant a chance to withdraw the plea agreement if the parties bargained for a specific sentence and the court rejects the sentence. *State v. Pieri*, 2009-NMSC-019, ¶1. See also, Rule 9-408A, Plea and Disposition Agreements for Limited Jurisdiction Courts.

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

CHAPTER 5

ADJUDICATION OF TRAFFIC CASES: TRIAL

This chapter covers:

- 5.1 Order of Trial
 - 5.1.1 Burden of Proof and LOVID
 - 5.1.2 Elements of the Offense
 - 5.1.3 Defenses
 - 5.1.4 Right to Jury Trial
- 5.2 Evidentiary Issues
 - 5.2.1 Radar
 - 5.2.2 Lidar

If there has been a not guilty plea and no plea agreement has been entered in a traffic citation case, the matter will proceed to trial. This chapter will focus on the procedures to be followed, and the legal requirements of a trial.

5.1 Order of Trial

The general order of a trial when attorneys are involved is as follows:

- Pretrial motions
- Jury selection, if applicable
- Judge's charge to jury, if applicable
- Prosecutor's opening statement
- Defendant's opening statement (may be waived at this point and presented at the beginning of the defense case)
- Prosecution's case-in chief (calling of the prosecution's witnesses and admission of exhibits)
 - direct examination by prosecutor
 - cross examination by defense attorney
 - re-direct and re-cross, if necessary and allowed by court
 - judge may ask questions to clarify testimony, but not to establish required elements of the offense
- Prosecution rests (ends its case)
- Defense motion (optional) to dismiss full case or any charge, alleging that the prosecution has not proved its case (called a motion for a directed verdict)
 - if granted, case is over (as to charges for which the motion is granted)
 - if denied, defense case proceeds
- Defense case (proceeds with witnesses and exhibits the same as the case-in-chief); not required because the burden is on the prosecution to prove the defendant's guilt beyond a reasonable doubt
- Prosecution rebuttal case, if the prosecution chooses

- Closing arguments
 - prosecution
 - defense
 - rebuttal by prosecution, if desired
- Jury instructions, if applicable
- Verdict
 - not guilty – ends case; defendant discharged
 - guilty – proceed to sentencing or request pre-sentence report and set for sentencing at a later date
- Judge signs final order and gives a copy to the defendant (which may be a copy of the back of the citation)

If the trial is a pro se trial, i.e., the defendant is representing himself or herself, and the arresting officer is the “prosecutor,” there probably will be no opening statements or closing arguments, and the testimony usually will be done with less questioning. See Rules 6-108, 7-108, and 8-111, which give law enforcement officers the authority to file and prosecute misdemeanor criminal complaints, with several exceptions, such as no jury trials. For a pro se, or self-represented litigant, a trial will typically go something like this:

- Judge calls the case, and informs the parties that the judge will direct the course of the trial
- Judge states charge(s) and asks defendant how he or she pleads
 - if guilty or no contest– judge inquires into whether plea is knowing and voluntary (see Manual Section 4.4.2, Acceptance of Guilty Plea), and proceeds to sentencing or pre-sentence report
 - if not guilty – proceed to trial
- Officer presents testimony – if more than one officer or if “civilian” witnesses, all testify by “telling their story.” For proof required, see Manual Sections 5.1.1, Burden of Proof and LOVID, and 5.1.2, Elements of the Offense
- Defendant may cross-examine the officer and other witnesses, if any
- Defendant testifies, if desired (defendant cannot be required to testify, and this decision cannot be a factor in the final decision)
- Officer may cross-examine the defendant
- Officer presents rebuttal, if necessary
- Judge may ask questions to clarify testimony, but not to establish required elements of the offense
- Judge announces decision
 - not guilty – ends case; defendant discharged
 - guilty – proceed to sentencing or request pre-sentence report and set for sentencing at a later date
- Judge signs final order and gives a copy to the defendant (which may be a copy of the back of the citation)

Unless there is a legal issue that needs to be resolved by the writing of a brief in attorney cases, or the judge is awaiting a pre-sentence report, all decisions should be rendered immediately upon the close of the case.

5.1.1 Burden of Proof and LOVID

Burden of Proof

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

As stated in Rule 14-5060:

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

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

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

LOVID

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

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

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

All of the above must be affirmatively proved by the prosecution or the case must be dismissed. The location of the offense and venue must be stated to prove that the court in which the case is being tried has jurisdiction over both the geographical location of the offense and the type of offense. For example, if a case is tried in a Municipal Court, it must be shown that the offense occurred within the municipal boundaries, and the offense is one that is contained in the municipal ordinances. Both Magistrate and Metropolitan Courts have jurisdiction over any criminal action involving a violation of a motor vehicle law arising in a contiguous county, subject to the defendant's right to move for a change of venue within 15 days after arraignment. §35-3-6.

The defendant must be positively identified in court as the person accused of the charge(s). The date of the offense must be stated so the court can determine whether there are any statutes of limitations violated. Additionally, the defendant needs to know the date of the alleged offense, so that he or she can prepare his or her defense to the charge. This is especially important if there is more than one offense, occurring on different dates.

The prosecution must also present evidence that:

- The officer is a commissioned, salaried law enforcement officer, §66-8-124(A)
- The officer was in uniform indicating official status, i.e., badge of office, §66-8-124(A)
- The officer has completed any relevant training
- The officer had reasonable suspicion to stop the defendant
- Any expert witness has the necessary qualifications, such as education, training, skill, or experience
- Any other relevant evidence

All elements of the offense(s) must be proved. See Manual Section 5.1.2, Elements of the Offense.

5.1.2 Elements of the Offense

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

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

The elements of this offense that must be proven by the prosecution are:

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

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

A second example is driving on a revoked driver's license, §66-5-39.1(A):

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

The elements of this offense that must be proven by the prosecution are:

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

This offense can be somewhat difficult to prove because it involves evidence outside of the testimony of the officer or witnesses. There must be proof that the defendant's driver's license was revoked. This usually involves the prosecution obtaining a certified copy of the defendant's driving record from MVD showing that on the date of the offense the defendant's license was within a period of revocation. Rule 11-803. This is not enough, though. Now the prosecution must prove that the defendant either knew or should have known that his or her license was revoked.

This can be proven in several ways. Any statements made by the defendant at the time of the traffic stop can be used to prove knowledge. Certified mail receipts signed by the defendant showing that the Notice of Revocation was received by the defendant can be used as proof of knowledge. The "should have known" standard is a bit harder to quantify. This usually is based on circumstantial evidence that, based on past actions, the defendant must have been aware that his or her license was revoked. Of course, the defendant can rebut all of this evidence of knowledge.

5.1.3 Defenses

After the prosecution has presented its case, the defendant may testify or present witnesses who tell a different version of events. It is then up to the judge or jury to determine which witnesses are more credible. A defendant may also testify that he or she did commit the act he or she was

accused of, but has a defense and therefore should be found not guilty. A legal defense absolves the defendant of guilt. An example of a legal defense is self-defense. In a battery trial, if the defendant testifies that he punched the other person after being punched himself, and he was only defending himself, and if that testimony is credible or raises a reasonable doubt, the defendant should be acquitted. Of course, a defendant does not have to testify or present witnesses, and this cannot be held against him or her.

Some common defenses that may arise in traffic cases are:

- The directional traffic sign was down or was obscured
- The defendant did not realize his or her speedometer was broken, and did not realize he or she was exceeding the speed limit (this defense should only work once!)
- The defendant was facing an emergency (this one is tough – if the defendant testifies he or she was rushing a severely injured friend to the hospital, is the defendant justified in speeding or should he or she have called an ambulance which can legally speed?)
- The defendant's conduct was not voluntary (a "friend" reached over and grabbed the steering wheel or stepped on the gas pedal)
- The defendant enters a plea of insanity. In this case the matter should be transferred immediately to the District Court for further proceedings. Rules 6-507, 7-507, and 8-507
- The defendant is not competent to stand trial (raised as a motion for a competency evaluation). If the court finds that there is a reasonable belief that the defendant is not competent, the case should be transferred to the District Court for a determination of competency. Rules 6-507.1, 7-507.1, and 8-507.1

5.1.4 Right to Jury Trial

In Magistrate Court, either party may demand trial by jury for any offense except contempt, penalty assessment misdemeanors, or offenses that do not prescribe jail time. §35-8-1, Rule 6-602(A). If the offense carries a penalty or the aggregate penalty for all offenses charged is more than six months in jail, the trial shall be by jury unless waived by the defendant. Rule 6-602(B).

In Metropolitan Court, either party may demand trial by jury for any offense for which the penalty exceeds 90 days but is less than six months. If the penalty exceeds six months, a jury trial must be held unless the defendant waives that right with the approval of the court and consent of the state. §34-8A-5(B), Rule 7-602.

Juries are comprised of six persons. The rules for jury selection are similar to those in District Court, including the parties' rights to challenges and voir dire. There is no requirement that an individual be represented by an attorney in order to have a jury trial, so it may be helpful for the court to come up with some basic instructions for a pro se defendant on how to defend a case before a jury.

There is no statutory authority for jury trials in Municipal Court. A jury trial is required by the New Mexico Constitution, however, for any punishment of six months or more. In order to

avoid jury trials, municipalities have limited the potential punishment under their ordinances to less than six months so that the right to a jury is not constitutionally triggered (even though they are statutorily authorized to impose lengthier sentences for DWI). In addition, because the right to a jury attaches if the potential aggregate sentence for multiple convictions is six months or more, Municipal Courts avoid imposing consecutive sentences that would amount to or exceed six months.

5.2 Evidentiary Issues

Certain issues come up time and again in traffic cases. Some, like “I wasn’t given my Miranda warnings” can be disposed of quickly. (These warnings are not required in minor traffic stops – only when a defendant is taken into custody and questioned.) Others regarding the operation of certain equipment can be more problematic. This gets into the realm of scientific evidence, and an explanation of how and when to allow such testimony is warranted.

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

- What is the reliability of the scientific principles upon which the expert testimony rests?
- Will the testimony help the fact finder OR will it mislead or overwhelm the judge or jury?
- Does the scientific research fit the features of the issue?
- Will it waste time or confuse the issues?

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

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

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

In traffic cases, when an officer testifies about the results of the radar or lidar equipment used for detecting speed, the officer is not giving an opinion, he or she is stating a fact. The issue the court must decide is whether the equipment meets the standard for admissibility, and if it does, whether the officer is qualified to operate it and testify about it. Note that if one officer operates the equipment while another stops the vehicle and writes the citation, both officers must testify as to their role.

If the equipment meets the standard, the officer must then pass the following test:

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

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

5.2.1 Radar

Use of radar devices is the traditional way in which officers have measured speed. Most officers receive training in the use of these devices at the police academy. The main objection to radar is generally that there is no precise way for the officer to know which vehicle is being tracked and therefore leaves open the possibility for an argument that “it was the car next to me that was speeding.” The other objection is that something interfered with the radar. Since radar has a wide beam, and may even look past the first vehicle, “target tracking” must be clearly articulated by the officer. Secondly, the officer must be able to clearly explain away any allegation of interference. If the officer cannot, the results will be in question.

Newer radar devices allow officers to pinpoint specific vehicles, and are not as sensitive to interference, but an officer must have training and experience before being allowed to testify as to these devices.

5.2.2 Lidar

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

CHAPTER 6 PENALTIES

This chapter covers:

- 6.1 General Information
- 6.2 Penalty Assessment
- 6.3 Mandatory Court Appearance
- 6.4 Fines: Agreement to Pay
- 6.5 Fees
 - 6.5.1 Magistrate and Metropolitan Court Fees for Penalty Assessment Misdemeanors
 - 6.5.2 Magistrate and Metropolitan Court Fees for Motor Vehicle Code Violations Other than Penalty Assessment Misdemeanors
 - 6.5.3 Municipal Courts
- 6.6 Suspend/Revoke Driver's License
- 6.7 Jail
- 6.8 Suspension of Sentence
- 6.9 Deferral of Sentence
- 6.10 Driving Safety School
- 6.11 Community Service

6.1 General Information

Under the New Mexico Motor Vehicle Code, the maximum penalty for a misdemeanor is “a fine of not more than three hundred dollars (\$300) or imprisonment for not more than ninety days or both.” §66-8-7(B). The Uniform Traffic Ordinance (UTO) and municipal ordinances also set maximum penalties. This maximum does not apply to those offenses for which a specific penalty has been set either by statute or ordinance. For example, penalties for traffic offenses (other than driving while intoxicated) may be a set fine (as in a penalty assessment offense); may provide a range of fines (such as \$0 to \$500 or \$0 to \$1000, depending on the jurisdiction); or may contain the possibility of a fine and jail time (such as a fine of \$0 to \$500 or \$0 to \$1000 and/or a term of jail up to 90 or 364 days, depending on the jurisdiction). Additionally, some traffic offenses have mandatory penalties, such as the mandatory fine and jail required when a person is convicted of driving when his or her license has been revoked for an alcohol related offense. §66-5-39.1. In offenses with mandatory penalties, the judge has no discretion to impose a lesser penalty than that required by the statute or ordinance. The judge may, of course, impose a harsher penalty than the mandatory one, subject to the limits set forth in the law and the jurisdiction of the court.

In addition to the imposition of fines and jail time, a judge has the discretion to suspend or defer a sentence and impose conditions on the offender. See Manual Sections 6.8, Suspension of Sentence; 6.9, Deferral of Sentence; 6.10, Driving Safety School; and 6.11,

Community Service. In the case of an offense with a mandatory penalty, the judge must impose that penalty, but may suspend, but not defer, additional fines and/or jail time on certain conditions.

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

6.2 Penalty Assessment

Certain offenses have penalties set by the legislature or by the municipality. The set fine is known as a penalty assessment. See Manual Chapter 2, Adjudication of Traffic Cases: Penalty Assessment Programs. These offenses, as previously discussed, do not require court appearances, although the offender may request a court date. If the offender chooses to plead guilty and pay the specified amount, the offender is required to mail, pay electronically (if available), or hand-deliver the penalty assessment to the court if the offense is cited under a municipal ordinance, or to the Motor Vehicle Division (MVD) in Santa Fe if cited under state statute. If the offender chooses to plead not guilty or no contest and appear in court but is found guilty, the amount due will usually include not only the set fine, but any mandatory court fees that are due, including the docket fee. See Manual Section 6.5, Fees. Note that the fine imposed by the court cannot exceed the set penalty assessment fine (plus court fees), and any probationary period cannot exceed 90 days. §66-8-116(C).

6.3 Mandatory Court Appearance

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

The first task for the judge after conviction of a defendant on such an offense is to determine the maximum allowable penalty. As noted above, the maximum penalty for a misdemeanor under the Motor Vehicle Code is "a fine of not more than three hundred dollars (\$300) or imprisonment for not more than ninety days or both." §66-8-7(B). The UTO and municipal

ordinances also set maximum penalties. This maximum does not apply to those offenses for which a specific penalty has been set either by statute or ordinance. Under §3-17-1, a municipality has the authority to enact ordinances with a maximum penalty of \$500 and up to 90 days in jail or both. (There are some exceptions to this maximum, such as driving while intoxicated, but that is beyond the scope of this Manual.) If an offense is cited under a municipal ordinance, it is necessary to check the sentencing provisions, since not all municipalities have adopted the maximum allowed by state law.

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

It is uncommon, though not unheard of, to impose jail time for traffic offenses. There are some judges who impose jail time if the conduct is of a willful and wanton nature, such as that required for reckless driving, §66-8-113. A conviction for reckless driving may be distinguished from other offenses, as it contains no language prohibiting the suspension or deferral of the sentence, as does the law prohibiting driving under a revoked license, §66-5-39.1. Thus, it can be argued that the mandatory jail and fine for reckless driving must be imposed but can then be suspended.

6.4 Fines: Agreement to Pay

It is all too common that, upon hearing how much is owed, the offender states that he or she does not have the money to pay it all at once and would like to work out a "payment plan." Section 31-12-3(A) allows any person sentenced to pay a fine and fees or costs owed to the court in any criminal proceeding in installments or to perform community service in lieu of paying fees or costs. See Rules 6-207.1, 7-207.1, and 8-206.1, which set out the types of payment arrangements in the order of priority. Section 6.11 of this Manual, Community Service, will discuss the imposition of community service in lieu of fines, but that should only be used in those situations where the defendant will not be able to make payment even in installments. If the defendant has the ability to pay something, and over time can pay the full amount, an Agreement to Pay should be set up. The Supreme Court has approved forms for this use. See Rule 9-605 for use in Magistrate and Metropolitan Court, and Rule 9-606 for use in Municipal Court. In Metropolitan Court, however, formal Agreements to Pay are not used. Instead, defendants can pay fines and fees or costs owed by paying and/or performing community service in whatever amounts the defendant decides, provided that all amounts are paid or the value in hours of community service are completed, by the due date set by the court.

The order of priority is as follows: full payment at the time of sentencing; full payment within 30 days of sentencing if the defendant cannot pay at the time of sentencing; or if the defendant cannot pay within 30 days, an Agreement to Pay is required. The agreement must require the largest possible payment amounts, with the first installment due no later than 30 days after sentencing; installments in intervals of 30 days or less; and all payments made in the shortest practicable time.

It is important to keep track of the defendant's payments. Most of the court computer programs will do this tracking automatically, and contain some notification method to inform the court clerk if payment has not been made on time. In rare circumstances, it may be reasonable to modify the payment schedule, but only if the defendant can prove to the court's satisfaction that some significant unplanned event has seriously hampered the ability to pay according to the original agreement. Rules 6-207.1(A)(4) and 8-206.1(A)(4) limit the court to three modifications, and require written findings of good cause shown. In Metropolitan Court, the defendant may request a hearing on or before the deadline to pay for an extension of the deadline or for other relief. Rule 7-207.1(D).

A court may develop its own procedures for notifying defendants of payment or community service due, including telephone calls, emails, texts, and written notices. These procedures can ultimately save the court valuable time by providing offenders with multiple opportunities for compliance prior to the need for a summons and/or warrant.

When a defendant fails to comply with a court-ordered payment, request a modification before the due date, or perform community service by the deadline, the court must issue a summons within five days after the deadline. For failure to comply with a summons, the Municipal and Magistrate Courts must issue a bench warrant within five days of the failure to comply; Metropolitan Court does not state a time limit for issuance of a bench warrant. See Rule 7-207.1(C)(3).

6.5 Fees

Whether an offense is acknowledged by mail, adjudicated by a court, results from a guilty, not guilty, or no contest plea, and regardless of whether a sentence is suspended or deferred, court fees (sometimes called "costs") must be imposed. The amount of those fees depends upon the court that has jurisdiction over the offense and sometimes the offense itself. Fees must be authorized by either the state legislature, or by the local governing body in limited circumstances. See Manual Section 6.5.3, Municipal Courts.

Court fees must be collected, unless the judge finds that the defendant is unable to pay. See Manual Section 6.4, Fines: Agreement to Pay. Because the fees are all turned over to the state or some other agency, they cannot be waived or suspended and must be collected even if the sentence is deferred. See Manual Section 6.9, Deferral of Sentence. These designated entities expect to receive the fee from any conviction regardless of the outcome of the rest of the sentence, and rely on the fees for at least part of their operating expenses. Most court computer programs will assess fees before fines; that is, if the offender is making payments,

payments will first be applied to fees and then to any fines due. What follows is a discussion of court fees as the various courts impose them.

6.5.1 Magistrate and Metropolitan Court Fees for Penalty Assessment Misdemeanors

Except as otherwise provided by law, no costs or fees shall be charged or collected in the magistrate or metropolitan court. §35-6-1(A).

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

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

For non-penalty assessment violations of the Motor Vehicle Code, §35-6-1(B) prohibits fees, except as otherwise provided by law, in Magistrate and Metropolitan Courts.

6.6 Suspend/Revoke Driver's License

Conviction of certain offenses may result in the suspension or revocation of the offender's driver's license. The most common of these offenses is driving while intoxicated, for which revocation is mandatory, but which is not covered in this Manual. MVD also has the authority to suspend or revoke a driver's license in the following cases, effective October 1, 2019:

- Suspension, §66-5-30(A) – offenses include, but are not limited to, an accumulation of points, being incompetent to drive, or being a habitually reckless or negligent driver. The penalty for driving while a license is suspended may include jail or a fine, plus immobilization of the vehicle for 30 days. §66-5-39.
- Administrative suspension, §66-5-30(B) – offenses include failure to comply with a Nonresident Violator Compact citation. For driving while a license has been administratively suspended, the violation is a penalty assessment misdemeanor. §66-5-39.2.
- Revocation, §66-5-30(D) – after a hearing, the hearing officer shall rescind, modify, or extend the license suspension or revoke the license. If the person is convicted of driving on a revoked license, the person will have an additional one-year period tacked onto the end of the revocation period; mandatory jail and possible fines are imposed for driving while a license is revoked. §66-5-39.1(D).

Note that MVD suspends or revokes a person's license; it is not within the authority of the court. It is the court's responsibility to send the abstract of record to MVD so that it may take the appropriate action. See Manual Chapter 8, Abstracts of Record, for a full discussion

of abstracts of record. A judge may, however, recommend to MVD that a person's driver's license be suspended. Section 66-5-30(A)(9) allows for a Municipal or Magistrate (and presumably Metropolitan) Court judge to recommend up to a three month suspension for an individual who "has accumulated seven points, but less than eleven points." This can be useful in the case of a young driver who has repeated traffic violations showing a lack of judgment or maturity.

6.7 Jail

Some traffic offenses carry the potential for up to 90 days in jail in Municipal Court and 364 days in Magistrate and Metropolitan Court. Some offenses carry mandatory jail time, such as driving during the time when a person's license has been revoked for driving under the influence of alcohol or drugs, or an Implied Consent Act Violation. §66-5-39.1(B), 66-8-111. If a person is convicted of that offense, the statute, and municipal ordinances prohibiting the same offense, require the imposition of "not less than seven consecutive days [in jail] ... and the ... imprisonment shall not be suspended, deferred or taken under advisement." §66-5-39.1(B). Because this statute is very clear on its face, a judge has no choice but to sentence an individual to jail upon a conviction for driving on a revoked driver's license if the statutory requirements are met. The seven-day jail term must be consecutive, meaning that the jail time be spent all at once; it cannot be split over several weekends. However, credit for time served in jail prior to the conviction must be given. Our courts have yet to determine whether an individual may be allowed to participate in a work-release program during the period of mandatory jail time.

In addition to mandatory jail time, a judge may impose additional time in jail for other traffic offenses up to the maximum allowed for the offense. Unless there are specific statutory restrictions, the additional jail time may be fully imposed, partially suspended, or entirely suspended. Any time actually served may include provisions for work release. It may also be served non-consecutively, that is, several days at a time over a specified period of time. These details should be worked out at sentencing and made a part of the Judgment and Sentence form. Any change after the completion of the Judgment and Sentence form would require a hearing before the judge to reconsider or modify the sentence. See Rules 9-601, Judgment and Sentence form (commitment or probation), and 9-602, Judgment and Sentence form.

Note that juveniles cannot be sent to jail by a limited jurisdiction court, but only by the Children's Court. See Manual Chapter 9, Juveniles.

6.8 Suspension of Sentence

Unless prohibited by statute or ordinance, a judge has the power to suspend all or any part of a sentence. Section 35-15-14 gives a Municipal judge the authority to suspend a sentence if an ordinance has been adopted allowing it. Section 31-20-3 gives the power of suspension to Magistrate and Metropolitan Court judges. Procedurally, the judge imposes a sentence, then suspends all or part of it. The suspension is for a specified period of time, and usually involves conditions that the defendant must meet. The defendant is on probation for some period of the suspension. See §31-19-1(C) for Magistrate and Metropolitan Court judges and

§35-15-14(A)(2) for Municipal Court judges (*but see State v. Candelaria*, 1991-NMCA-107). The total period of probation is limited to the “maximum allowable incarceration time for the offense, or as otherwise provided by law.” §31-20-5(A); for Municipal Courts, see §35-15-14. As noted above in Manual Section 6.2, Penalty Assessment, if a person is put on probation for committing a penalty assessment misdemeanor, even though there is no allowable jail, a probationary period of up to 90 days is allowed. §66-8-116(C).

A judge may order the defendant to comply with certain conditions during the period of probation. The general rule is that any conditions are acceptable if the judge determines that they are “necessary to ensure that the defendant will observe the laws...” §31-20-6. The conditions of probation should be “reasonably related” to the offense committed. Common conditions of probation in traffic cases are attendance at a driving safety school (see Manual Section 6.10, Driving Safety School), that the offender get no citations during the probationary period, that the defendant not have more than a specific number of people in the vehicle at any one time (usually used for juveniles), that the defendant not drive at night, or any other condition deemed appropriate by the judge.

If the defendant complies with the probationary conditions, at the end of the probationary period the sentence will be deemed to have been complied with, and the file may be closed. If there is a violation of the conditions, the defendant will need to be summoned back to court on a probation violation. See Manual Section 7.2, Probation Violation, for a full discussion of probation violations.

Note that even if the entire sentence, i.e., fines and jail, is suspended, court fees must still be imposed and paid by the defendant, as court fees cannot be waived, deferred, or suspended.

6.9 Deferral of Sentence

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

As with a suspended sentence, the offender is put on probation during the period of deferral. The same rules as to the length of probation apply here. The rules regarding conditions of probation are no different if the sentence is suspended or deferred. If the offender violates the terms, the probation violation could be addressed by the court. See Manual Section 7.2, Probation Violation. Additionally, since sentencing is deferred on conditions, if the offender does not meet those conditions, the judge then has the authority to impose any sentence that could have been imposed at the time of the initial deferral. In that case, however, the defendant must be given credit for all time served on probation, §31-21-15(B), excluding any

time that the defendant was a fugitive. See §31-21-15(C); see also *State v. Kenneman*, 1982-NMCA-145. A defendant is entitled to credit against his or her probationary term for any time that the defendant is in custody in another jurisdiction. *State v. Hinojos*, 2014-NMCA-067. If the judge imposes the sentence after a violation of probation, then the conviction is entered on the defendant's record. If there are no additional violations at the end of the deferral period, the charge will be dismissed, and will not appear on the defendant's driving record.

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

It is important to know that deferrals and diversion programs are not permitted for moving violations of a commercial driver's license (CDL) holder under §66-5-69.1. Commercial drivers therefore have to either plead guilty or no contest and be penalized, or plead not guilty and go to trial. Note that a conditional discharge constitutes a conviction under the Commercial Driver's License Act, and must therefore be reported to MVD. §66-5-54(E)(7).

6.10 Driving Safety School

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

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

6.11 Community Service

An offender can be ordered to perform community service under two scenarios. First, if an offender truly is unable to pay a fine, then community service may be imposed in lieu of the fine. The hours spent performing community service shall be credited "at twice the rate of the prevailing state minimum wage" until the defendant's obligation is paid in full. §31-12-3(B). Second, community service may also be imposed as a condition of probation, and not

tied to the payment of fines. See §31-20-6(D) for Magistrate and Metropolitan Courts and §35-15-14(A)(2) for Municipal Courts.

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

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

CHAPTER 7 POST-ADJUDICATION

This chapter covers:

- 7.1 Failure to Pay
- 7.2 Probation Violation
- 7.3 Appeal and Remand

7.1 Failure to Pay

Failure to pay can occur in two circumstances: failure to pay a penalty assessment, or failure to pay under an Agreement to Pay. See Manual Sections 6.2, Penalty Assessment and 6.4, Fines: Agreements to Pay. The procedure for a failure to pay a penalty assessment or a monetary penalty received as part of a sentence is similar to that for a failure to appear in court. See Manual Section 4.2, Failure to Appear. If an offender has accepted the penalty assessment, i.e., agreed to plead guilty and pay the set amount either by mail, electronically, or in person, a date is given within which the payment is due. For state violations, the offender has 30 days to pay. §66-8-117(B). For municipal violations, the time is whatever is specified in the ordinance.

If payment in full has not been received by the due date, a summons must be issued within five days after the due date. The court is prohibited from issuing a bench warrant for failure to pay fines and fees or costs unless the offender fails to timely respond to a summons. A notice is sent to the Motor Vehicle Division (MVD) informing the offender of the failure and MVD then has the authority to administratively suspend the person's driver's license. §66-5-30(B). The process for clearing the license is the same as that for failure to appear. See Manual Section 4.2, Failure to Appear.

If the offender fails to timely respond to the summons, the court can then issue a bench warrant. If the offender is arrested on the warrant, he or she may be released from custody upon payment of the amount owed to the court; no fines for contempt or failure to appear may be added. If the offender does not pay, the court must hold a hearing within three days of the arrest to determine if the person is able to pay. If he or she is unable to pay, the judge may allow the defendant to enter into an Agreement to Pay, including converting fines and fees or costs to community service. If the person is able to pay but is willfully refusing, he or she may be jailed. See §33-3-11, Manual Section 6.4, Fines: Agreement to Pay.

7.2 Probation Violation

For the minor traffic violations that are the subject of this Manual, a probation violation hearing will rarely be needed. This is mainly because, due to the nature of the offenses, the conditions of any probation will be relatively minor. Additionally, since jail time is not often imposed, it is not economically feasible to continue to bring someone back to court for a \$50 fine. Probation, if imposed, is usually of a very short duration, and the conditions will not be

onerous. Therefore, most offenders will do what is required – especially if their sentence was deferred and it means a dismissal of the charge – so there will be few, if any, probation violations. But there are always a few.

When an offender’s sentence has been imposed but suspended, see Manual Section 6.8, Suspension of Sentence, or sentencing has been deferred, see Manual Section 6.9, Deferral of Sentence, the offender is put on probation for a definite period of time and required to comply with certain conditions. If the offender fails to comply with those conditions, a probation violation hearing may be set. For example, say an offender is sentenced to 90 days in jail and fined \$500. The entire jail sentence is suspended as well as \$400 of the fine. The offender is placed on six month probation with the conditions that he or she attend driving safety school, perform 20 hours of community service, and receive no traffic citations during the period of probation. On the 30th day of his or her probation, the offender is cited for reckless driving. Because this is a violation of the terms of the offender’s probation, he or she should be brought back to court to answer for the probation violation.

The rules of probation violation are very clear. An offender is given credit for one day in jail for every day spent on probation (except for a DWI offense per §66-8-102(U)). This means that our hypothetical offender, if found to have violated his or her probation, can be sentenced to no more than 60 days in jail, since he or she has already “served” 30 days. There is no corresponding rule regarding fines, so the entire suspended fine may be imposed.

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

...the court may continue the original probation or revoke the probation and either order a new probation with any condition provided for in §§31-20-5 or 31-20-6, or require the probationer to serve the balance of the sentence imposed or any lesser sentence. If imposition of the sentence was deferred, the court may impose any sentence which might originally have been imposed, but credit shall be given for time served on probation.

§31-21-15(B).

7.3 Appeal and Remand

Trials for traffic offenses are not recorded for purposes of an appellate record, and appeals from these cases to the District Court are de novo; that is, a new trial is held in the District Court, as opposed to just a review of the record of the proceedings below. See Rules 5-826(A) and (J), 5-827(A) and (J), 5-828; see also Rules 6-703, 7-703, and 8-703. Appeals follow the Rules of Criminal Procedure for the District Court.

If a person chooses to appeal a conviction of a traffic violation, a notice of appeal must be filed in District Court no more than 15 days from the filing of the Judgment and Sentence or other final order, with a copy of the notice of appeal filed promptly thereafter with the trial

court. The trial court is then required to forward to the District Court the record which consists of a title page, a copy of all papers and pleadings, a copy of the Judgment and Sentence, and any exhibits. If the appeal is from a trial on the record, any transcript of the proceedings made by the Metropolitan Court. Rules 5-826(F), 5-827(F), 5-828.

After hearing all of the evidence, if the District Court finds the defendant guilty it may impose “the same, a greater or a lesser penalty as that imposed in the municipal court.” §35-15-8. Presumably the same applies to appeals from the Magistrate and Metropolitan Courts, although there is no specific language in the statute. Note, however, that for penalty assessment cases, the fine in the District Court cannot exceed the penalty assessment amount, as the monetary penalty is set by statute or ordinance. See Manual Chapter 2, Adjudication of Traffic Cases: Penalty Assessment Programs.

Imposition of any sentence, fine, fee, or probation from the trial court must be stayed until the District Court case ends. Usually, the District Court will only impose the sentence, but not actually collect fines or make arrangements for the offender to report to jail. The case is remanded to the lower court with instructions to carry out the sentence imposed by the District Court. If there is any probation, it is up to the lower court to monitor that probation. In the case of appeals from Municipal Courts, any fines assessed by the District Court must be remitted to the municipality. §35-15-13.

CHAPTER 8 ABSTRACTS OF RECORD

This chapter covers:

- 8.1 What is an Abstract?
 - 8.1.1 Abstract of Record on Citation
 - 8.1.2 Judgment and Sentence Form
 - 8.1.3 Written Plea Agreement
- 8.2 When to Send
- 8.3 How to Fill Out
- 8.4 Failure to Pay/Failure to Appear
- 8.5 Insufficient Funds Checks
- 8.6 Amendment of Abstract
- 8.7 Removal of Suspend Status

8.1 What is an Abstract?

An abstract of record, or citation abstract, is the document that is sent to the Driver Services Bureau of the Motor Vehicle Division (Driver Services Bureau), and provides information regarding the offense charged, the offense pled or found guilty to, the plea or finding by the court to the charge, and the sentence imposed. The information from the abstract is entered onto the offender's permanent driver's record, so that it may be accessed by law enforcement or the courts to determine a person's past driving history for sentencing or other purposes.

Accuracy in filling out abstracts is critical. Incorrect information could lead to a person being penalized more or less severely and could lead to the incarceration of a person in error. The Motor Vehicle Division (MVD) will also use this information to determine whether suspension or revocation of a person's driving privileges is warranted, so the consequences to an individual can be quite serious. The court must ensure that all information is correct and timely before sending it to MVD because while removing inaccuracies from a person's driving record is possible, it is sometimes hard to undo the damage just with a paperwork correction.

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

8.1.1 Abstract of Record on Citation

The citation, issued by the law enforcement officer, is comprised of four copies. One copy is designated as the abstract copy; this copy will be sent to the Driver Services Bureau as the official abstract of record. See Appendix D, Abstract Copy.

Another copy is designated as the defendant's copy, and goes to the offender. On the reverse of this copy are instructions regarding payment of the citation, appearing in court, directions if the defendant is given a warning rather than a citation requiring action, and the address for sending payment. See Appendix D, Defendant's Copy.

A third copy is designated as the issuing agency copy, and goes to the law enforcement officer who issued the citation. On the reverse of this copy is a section for the officer to write notes regarding the offense observed and to list any witnesses. The officer usually uses a copy of this when testifying in court, and the original is turned in to the person in the law enforcement agency responsible for reporting citations. See Appendix A, Issuing Agency Copy.

The final copy is the court copy, and is turned in to the court with jurisdiction over the offense. This copy will remain with the court. See Appendix A, Court Copy.

Note that the citation may be a paper citation or an electronic version of a paper citation. §31-1-6(B). The New Mexico State Police, for example, now use electronic versions. Regardless of the form used, a physical copy must be given to the offender; an electronic copy may be filed with the court. §31-1-6 (D).

The reverse of the court copy and the abstract copy are similar. The court copy has some additional information not contained on the abstract of record. The court copy contains a statement that may be signed by the offender indicating the person's desire to waive his or her rights and plead guilty. Additionally, if a warrant is issued due to failure to pay or appear, there is a place on the court copy for that information. Other than these two major differences, the two copies are very similar. The individual items of the abstract of record will be discussed below in Manual Section 8.3, How to Fill Out.

An abstract of record must be filled out and sent to MVD for every traffic citation turned in to the court, unless the citation was dismissed. Note that both Metropolitan and Magistrate Courts use an electronic process to send abstract information to MVD (see Appendix D, Electronic Reporting of Citation Dispositions and Suspensions/Clearances to MVD); a paper version is given to MVD when an amended abstract is sent in.

An abstract will be filled out by the Municipal Court for any penalty assessment citations paid to the court. For Magistrate and Metropolitan Court, the court and MVD copies of citations for penalty assessment offenses will be sent to the Driver Services Bureau, which will be added to the person's record until the penalty assessment is paid. For offenses where there is a court appearance, the Municipal, Magistrate or Metropolitan Court will fill out and mail the abstract to the Driver Services Bureau.

No abstract is to be filled out for a warning. In fact, warning citations should not even be forwarded to the court; they should remain with the appropriate law enforcement agency for statistical and citation tracking records only.

8.1.2 Judgment and Sentence Form

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

8.1.3 Written Plea Agreement

In a few traffic cases, usually when the offender is represented by an attorney, a written plea agreement may be presented to the court. See Rules 9-408 and 9-408A. The plea agreement will contain information similar to that contained on the Judgment and Sentence form, i.e., the original charges, the charges pled to, any charges that were reduced or dismissed, the names of the attorneys, the sentence if approved by the court (see Manual Section 4.5, Plea Agreements), conditions of probation (if applicable and allowed by the court), and any other information necessary to the disposition of the case. As with the Judgment and Sentence form, this document is not sent to MVD, but is kept in the court file.

8.2 When to Send

State law requires that the abstract of record be forwarded to the Driver Services Bureau within 10 days of final action. Final action occurs upon the later of entry of final disposition on a conviction, the time for filing an appeal has passed, or a higher court has denied the appeal. §66-8-135 (C), Rules 6-703, 7-703, 8-703.

If the sentence is deferred on the condition that the offender perform some act such as attending Driving Safety School, the abstract of record should not be sent in unless the offender fails to comply within the required time period. If the offender does not comply with the conditions of the deferral, he or she may be brought back into court for sentencing. If the offender complies with the conditions of the deferral, the abstract does not need to be sent in. For more discussion on the effect of a deferred sentence, see Manual Sections 6.9, Deferral of Sentence.

8.3 How to Fill Out

Completing the abstract of record is mostly a matter of checking boxes and filling in blanks. It sounds simple, but it bears repeating that accuracy is paramount. Mistakes can be costly to courts, the system, and the offender. The abstract of record copy (see Appendix D, Abstract Copy) includes:

- Court Docket Number (Case Number), Court Date and Sentencing Date – Fill these in at the top of the form. The court date and sentencing date probably will be the same date.
- Defendant’s Plea – Check the box that corresponds with the defendant’s plea. If the defendant has pled “guilty” or “no contest,” the court finding must be guilty unless the court refuses to accept the guilty plea, in which case the defendant’s plea should be changed to “not guilty.”
- Court Disposition– Check the appropriate box (Guilty, Not Guilty, Dismissed No Prosecution, or Dismissed on Motion). If the prosecutor or the officer fails to appear in court the case should be checked as “Dismissed No Prosecution.” If the defense or prosecution makes a motion to dismiss that is granted by the court the case should be checked as “Dismissed on Motion.” Note that “Guilty” is the only disposition that needs to be sent to MVD.
- Sentence of the Court – Check all that apply and insert the appropriate amount in the far right column. If a fine is imposed and none of it is suspended, do not check the amount suspended box.
 - For the court cost box, insert any court fees or costs not specifically listed on the form.
 - The statutorily imposed fees such as the corrections fee, judicial education fee, and others (see Manual Chapter 6, Penalties) must be collected for each offense.
 - The warrant fee will only be imposed by those courts that are authorized to collect it and only in cases where a defendant has failed to appear and a warrant has been issued.
- Remarks - This section may be used for many things.
 - If a defendant has been charged with one offense and found or pled guilty to another, lesser offense, that will be noted here by striking through the original offense and adding the new offense, marked as “amended.”
 - If MVD needs to be informed of anything, such as the judge’s recommendation that the individual’s license be suspended (see §66-5-30(A)(9)), put that information here.
- The form must then be signed by the judge (a facsimile signature is allowed) or the authorized representative (usually the court clerk), and the court’s name and address inserted. The form is then complete.

8.4 Failure to Pay/Failure to Appear

A notice of Failure to Appear in Court or Failure to Pay is sent to MVD so appropriate action may be taken by MVD. §66-8-135(B). This form may be generated by any of the approved case management systems in use by the courts or it may be on an approved MVD form. See Appendix C, Notice of Failure to Appear in Court (Residents). Certain information, if available, must be contained on the form (but see Rules 6-114, 7-113, 8-112 regarding protected information):

- Court name, address, and court code
- Offender's citation number (includes County Code, Agency Code, and citation number – example: 01 201 1878754 9)
- Offender's name and address
- Offender's date of birth
- Offender's social security number
- Court or payment date not complied with
- Original violation
- Violation date

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

Depending on the caseload of each court, this information, in the form of a "suspend list," can be sent in as each instance occurs or on a weekly basis. With the computer software programs in use by the courts, the computer may be programmed to automatically generate the list on a certain day or on a weekly basis. The clerk must manually check the list to ensure that no one is on the list who has recently paid, but for whom the computer has not yet processed his or her payment. Note that MVD requires a separate list for each person (which may include multiple violations for the same individual), since suspensions are scanned directly to the person's record.

A list must also be prepared for any non-New Mexico resident who fails to appear or pay. See Manual Chapter 10, Non-Residents. The same information must be provided on this list. MVD will forward the appropriate paperwork to the home state of the alleged violator in accordance with the Nonresident Violator Compact.

8.5 Insufficient Funds Checks

If a person pays with a check that is returned by the bank due to insufficient funds (or not sufficient funds - NSF) or a closed account, it is as if that person failed to pay. If the abstract of record has already been sent to MVD, the person will be included on the suspend list and no amended abstract of record need be prepared. The citation will go on their record, and the offender will have to come to court to "make good" on the NSF check and pay any late fees,

NSF processing fees, or warrant fees that may have accrued. If the abstract has not yet been sent, it should be handled as if there was a failure to pay, and the person's information should be included on the suspend list sent to MVD. In most cases, the abstract will already have been sent on since it may take up to two weeks to be notified by the bank that a check has not cleared. It would be impractical to amend the abstract to reflect a failure to pay at this time, and it has more impact to suspend the driving privileges and have the violation appear on the person's record.

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

8.6 Amendment of Abstract

Occasionally, information already transmitted to the Driver Services Bureau on an abstract of record must be amended. If amendment becomes necessary, a form should be used to indicate what part of the abstract must be changed, and the reason for the amendment. Some courts have developed their own form for this purpose based on MVD requirements. See Appendix D, Abstract. Others communicate the information in letter form. Whichever way the court chooses, ensure that all the necessary information is included.

8.7 Removal of Suspend Status

When a person whose license has been suspended due to a failure to pay or failure to appear takes care of that violation, two actions are required by the court. First, a Notice of Clearance must be prepared and given to the offender. This may be a computer-generated form. See Appendix B, Notice of Clearance. It is the offender's responsibility to take this form to the local MVD office, pay any reinstatement fees and get his or her license back. The court does not send an "Unsuspend" list to MVD. Second, the court then sends the abstract of record to the Driver Services Bureau showing that the case has been adjudicated, and the abstract is filled out as provided above.

CHAPTER 9 JUVENILES

This chapter covers:

- 9.1 Jurisdictional Issues
- 9.2 Failure to Pay/Failure to Appear
- 9.3 Graduated Driver's License

9.1 Jurisdictional Issues

As a general rule, Magistrate, Metropolitan and Municipal Courts have no jurisdiction over offenses committed by juveniles (persons who have not yet reached their 18th birthday). An exception, however, is provided for most traffic offenses. Section 32A-2-29 gives Municipal, Magistrate and Metropolitan Courts original exclusive jurisdiction to hear traffic offenses committed by a child under either the Motor Vehicle Code or municipal ordinances.

Offenses excepted from this authority of the limited jurisdiction courts are: driving under the influence, reckless driving, driving on a suspended or revoked driver's license, and other serious traffic offenses listed as "delinquent acts." §32A-2-3(A). If one of these serious offenses is committed along with other traffic violations, all charges will go to the Children's Court where it will have exclusive jurisdiction over all the charges arising from the incident. §32A-2-6. For example, if a 17-year old is arrested for driving while intoxicated, speeding and failing to wear a seatbelt, all offenses would be heard in the Children's Court, even though the lower courts otherwise have jurisdiction over the speeding and seat belt charges. This is so that one court, here the Children's Court, can "see the whole picture" and deal with the incident as a whole, instead of having two courts deal with pieces of the same incident.

In addition, if any of the offenses that are heard in the lower courts have the potential for imposing jail time, the limited jurisdiction court may not sentence the juvenile to jail. Only the Children's Court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations. §32A-2-29(F).

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

While judges can make a local rule that parents must appear, it is not required by the state rules or statutes. Parents, if they do appear in court with their minor child(ren) cannot speak on behalf of the child(ren) unless they are an attorney representing the child(ren). Rule 8-107.

9.2 Failure to Pay/Failure to Appear

If a juvenile fails to appear in court for a traffic violation or fails to pay a penalty assessment when due, the procedure is similar to that for adults. The court sends a notice to the Motor Vehicle Division (MVD) and the juvenile's driver's license may be administratively suspended until the citation is paid. See Manual Section 9.3, Graduated Driver's License, for a discussion of the consequences when the juvenile is driving with a graduated driver's license.

The main difference between adults and juveniles in this area is that only the Children's Court has the authority to incarcerate a juvenile; a Magistrate, Municipal or Metropolitan judge does not have this authority. §32A-2-29(F). A traffic bench warrant form for juveniles is found at Rule 9-212B. This form may be used by Municipal, Magistrate and Metropolitan Court judges when a juvenile fails to appear for a traffic offense, fails to pay fines on a traffic offense or fails to comply with conditions of probation for traffic offenses. This warrant differs from an "adult warrant" in that it may be served only under the following conditions:

- The defendant may be arrested "only during court hours after confirming a judge is available for immediate appearance." The defendant may not be incarcerated; or
- A children's court judge has approved the arrest and incarceration of the juvenile.

Rule 9-212B.

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

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

9.3 Graduated Driver's License

In 2000, New Mexico joined several other states in instituting a Graduated Driver License law. The law requires anyone under 18 to go through a three-stage program in order to obtain a driver's license. This law is known as the Graduated Driver License law. §§66-5-5, 66-5-8, 66-5-9, 66-5-11, 66-5-12, 66-5-13. The three stages are summarized as follows:

Stage 1 – Instruction Permit

1. A person at least 15 years of age may obtain an instruction permit:
 - a. with permission of a parent or guardian, or other responsible adult as described in §66-5-11;

- b. upon enrollment and attendance in or completion of a state-approved private or public school driver education program that includes a DWI education and prevention component;
 - c. after passing a written and vision test; and
 - d. upon paying the appropriate fee.
2. The person must have the instruction permit for at least six months and during that time must:
 - a. complete the driver education program;
 - b. drive with an adult (at least 21 years old) who has had a driver's license for at least three years;
 - c. complete at least 50 hours of driving, not less than 10 of which must be at night (this must be certified to in writing by the parent or guardian); and
 - d. have no traffic convictions and no pending violations; 30 days will be added to the six months for each traffic adjudication or conviction committed during the time the person was driving with an instruction permit.

Stage 2 – Provisional License

1. In order to obtain a provisional license, the teen must:
 - a. successfully complete all requirements of Stage 1;
 - b. be at least 15 1/2 years old; and
 - c. pass a driving test.
2. The person must have the provisional license for at least 12 months and during that time:
 - a. may not have more than one passenger (other than an immediate family member) under the age of 21 in the vehicle unless there is also a licensed driver over the age of 21 in the vehicle;
 - b. may not drive between the hours of midnight and five a.m. unless a licensed driver over the age of 21 is in the vehicle (the law provides exceptions for school, work, family and medical need or religious functions, as long as the teen has a signed permission statement);
 - c. must have no traffic convictions and no pending violations; 30 days will be added to the 12 months for each traffic adjudication or conviction committed during the time the person was driving with a provisional license; and
 - d. must not have been adjudicated for an offense involving the use of alcohol or drugs during the time the person was driving with a provisional license and must have no pending adjudications.

Stage 3 – Full License

An individual at least 16 1/2 years old who has held a provisional license for at least 12 months and successfully completed all the requirements of Stage 2 described above is eligible for a full license.

Because of the requirements and restrictions imposed on drivers in the Graduated Driver's License program, judges and court clerks must be aware of their duties under that program. If a juvenile has been cited for a traffic violation that is pending or appears in court for a traffic violation prior to going on to the next step, and is found guilty of the violation, MVD

must be notified immediately. This is so that MVD can take the appropriate action and, if necessary, refuse to allow the juvenile to proceed to the next stage.

If a sentence is deferred and then the conviction dismissed, the conditions of deferral will have to be completed prior to the dismissal, with an extra 30 days added to the time before the juvenile can proceed to the next stage. Also, if the juvenile fails to comply with the conditions of the deferral, the court will need enough time to determine whether to impose sentencing and send the abstract to MVD in time for processing.

CHAPTER 10 NON-RESIDENTS

This chapter covers:

10.1 The Compact

10.2 How to Proceed

What happens when a person from another state gets a citation for a moving violation in New Mexico? If the non-resident pays the citation, the abstract is sent to the Motor Vehicle Division (MVD), just as for a resident who pays a citation. If the non-resident fails to either appear in court as ordered or pay the penalty assessment, an interstate compact comes into play. By statute, New Mexico can also enforce a citation from another state if the violator is a New Mexico resident.

10.1 The Compact

Sections 66-8-137.1 to 66-8-137.4 comprise the Nonresident Violator Compact (NRVC). This is an agreement signed by over 40 states that addresses the action to be taken in certain situations. Under the compact, the person from Texas who gets a speeding ticket in New Mexico and either fails to appear or to pay will have his or her Texas driver's license suspended if provided for in Texas law until the New Mexico citation is resolved. The compact only applies to moving violations; it does not apply to parking or standing violations, equipment violations, weight and size limitations, or hazardous materials transportation.

Prior to the adoption of the NRVC, a non-resident violator either had to post bail or be taken into custody if the citation was written in a state other than the state of residence. This was to ensure that the person did not leave the state, return home, and fail to take care of the citation. Since there was no way to serve a misdemeanor warrant across state lines, that person would, in effect, get off with no penalty--either in the person's home state or in the state in which the citation was received. The drafters of the compact responded to the widespread perception that the posting of bond or incarceration of an offender based on nonresident status was unfair and "a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine and thus is compelled to remain in custody until some arrangement can be made." §66-8-137.1, Article I(A)(5). In order to fulfill the dual goals of ensuring that the citation is taken care of while not unduly burdening the non-resident, the Nonresident Violator Compact was adopted.

10.2 How to Proceed

The NRVC provides for the non-resident to sign a citation promising to pay or appear (unless the offense provides for immediate arrest). If the person fails to pay or appear, the court notifies MVD by sending the abstract of record showing a violation of the Nonresident Violator Compact in the "Remarks" section. NRVC abstracts should be sent separately from

all other abstracts and documents. MVD then forwards the necessary information on to the offender's home state. §66-5-30(C). The home state, "in accordance with the home jurisdiction's procedures," will begin the action to suspend the offender's driver's license. §66-8-137.1, Article IV(A). Once the citation has been taken care of, and MVD has provided proof to the home jurisdiction, action to reinstate the license in the home state may be taken. Payment for citations based on statutory violations must be made to MVD; if the violation is of an ordinance, the payment should be sent to the municipality. If payment is sent to the court, a "Rescission of Notice" should be sent to MVD so that the home state can be notified. See Appendix C, Rescission of Notice of Failure to Appear (Non-Residents).

If the citation was written under state law and the offender signed the penalty assessment, all action will be taken by MVD once the due date to receive payment has passed with no payment received. If the offender is from a state that is not a member of the NRVC, the court can still send the abstract to MVD. If MVD chooses to send it to the home jurisdiction, action may be taken by the home state regardless of the state's participation in the compact.

CHAPTER 11

COMMERCIAL DRIVER'S LICENSES

This chapter covers:

- 11.1 Overview
- 11.2 Masking Prohibited
 - 11.2.1 Conviction Defined
 - 11.2.2 Deferring Imposition of Judgment
 - 11.2.3 Diversion Program
 - 11.2.4 Reduction to Lesser Offense
- 11.3 Reporting Convictions

The focus of this chapter is on commercial drivers who receive citations for committing traffic violations, whether driving a commercial or private vehicle. These citations may be issued by local law enforcement or by specialized motor carrier enforcement officers of the New Mexico State Police. This chapter will not focus on the laws and rules regulating commercial vehicles and commercial vehicle drivers.

11.1 Overview

The Commercial Motor Vehicle Safety Act (CMVSA) was enacted by the federal government in 1986. The goals of the CMVSA were to: (1) prevent commercial motor vehicle drivers from concealing driving records by having more than one driver's license, (2) require that all commercial motor vehicle drivers demonstrate minimum levels of knowledge and skills, and (3) subject commercial vehicle drivers to uniform sanctions for unsafe driving practices. To ensure that this mandate be implemented, the CMVSA required all states to comply with the testing, licensing standards, and sanctions imposed by the CMVSA. Further, if the states did not comply, the CMVSA imposed sanctions on the states in the form of loss of federal highway funds. In 1989, New Mexico adopted the New Mexico Commercial Driver's License Act (§§66-5-52 to -72) to comply with the CMVSA. The purpose of the CMVSA and the New Mexico Commercial Driver's License Act can be summed up as follows: One Driver – One License – One Record.

Following up on the CMVSA, in 2000 the federal government created the Federal Motor Carrier Safety Administration (FMCSA). The purpose of this agency is to regulate the safety of commercial vehicles and operators, and to prevent commercial motor vehicle related injuries and fatalities. This agency is responsible for regulations regarding mandatory drug testing of holders of Commercial Driver's Licenses (CDL), training of commercial drivers, inspection of commercial vehicles, and medical standards for drivers of commercial vehicles. New Mexico has adopted the Motor Transportation Act (§§65-1-1 to -6, 65-3-1 to -14, and 65-5-1 to -5) to implement these regulations. Laws and regulations pertaining to the inspection of commercial vehicles and licensing of drivers are carried out and enforced by the New Mexico Public Regulation Commission and the New Mexico State Police.

In order to properly apply the laws pertaining to CDL drivers, it is imperative that the judge know whether the driver has a CDL at the start of the proceedings. The judge must examine the traffic citation to determine the class of the driver's license. This will be indicated by the officer checking either A, B, or C in the license type box, which are standard across the country. Note that some states, such as Texas, have, in addition to a CDL Class "C" license, a class "C" license that is not a CDL, so the officer must carefully review the license before checking the license type box on the citation. All three of these designations are for a specific type of commercial driver's license, e.g., weight of vehicle (A); vehicle plus trailer, buses (B); or 16 or more passengers or transporting of hazardous materials (C). Ensure that the officer has checked off either a CDL class or other type of license before proceeding.

11.2 Masking Prohibited

Federal regulations prohibit "masking" of traffic control violations (except parking violations) committed by commercial driver's license holders. 49 CFR §384.226. Masking means to defer imposition of judgment, allow for entry into a diversion program, or take any action that would result in a conviction not appearing on a CDL driver's driving record. Section 66-5-69.1 is New Mexico's version of the anti-masking provision required by federal law and is applicable to all New Mexico courts.

11.2.1 Conviction Defined

For purposes of a CDL driver, a conviction is any of the following:

- an un-vacated finding of guilty by a court
- an accepted plea of guilty or *nolo contendere*
- the payment of a fine (penalty assessment) or court costs
- an assignment to a diversion program or driving safety school
- a conditional discharge as provided in §31-20-13

§66-5-54(E).

11.2.2 Deferring Imposition of Judgment

A judge shall not defer imposition of judgment or sentence if the defendant holds a commercial driver's license. This is true whether the driver was driving a commercial motor vehicle or private vehicle at the time of receiving the citation. A judge cannot put a commercial driver on probation, and dismiss the charge if conditions of probation are met. A judge cannot "take under advisement" a charge against a commercial driver's license holder. If a holder of a CDL pleads guilty or is found guilty, a sentence must be imposed and the conviction reported in accordance with the law.

11.2.3 Diversion Program

Typically, a diversion program is used to give a defendant time to do certain things to avoid having a conviction appear on a driving record. If the driver holds a CDL, a diversion program for this purpose is **strictly prohibited** and falls within the definition of masking. As stated above, all convictions must be reported, and a judge is prohibited from taking any action that would "erase" a conviction after it has been entered. A CDL

driver could be sentenced to a diversion program or a driving safety school, but program completion cannot result in a dismissal of the charge.

11.2.4 Reduction to Lesser Offense

A judge may be presented with a plea agreement that reduces or dismisses a charge or charges against a CDL driver. In these cases, and in cases where proof beyond a reasonable doubt cannot be proven at trial, a judge has some discretion regarding the reduction of a charge to a lesser offense. If the original offense cannot legitimately be proven, and the law permits reduction, the judge may reduce the charge to a lesser offense without having the reduction considered as masking. If, however, it can be proven that the driver actually committed the offense, a judge cannot reduce the charge. If a judge does so, this falls within the definition of masking.

11.3 Reporting of Convictions

Because of the serious consequence facing CDL drivers, convictions must be reported promptly. Records of convictions must be sent to the Motor Vehicle Division (MVD) within 10 days of the conviction. §66-8-135(C). If the violator has an out of state CDL, MVD must forward the conviction to the violator's licensing state within 10 days. §66-5-69. A resident's conviction information must be posted on his or her record "with the same speed" used to post a non-resident's conviction information. §66-5-69.

Additionally, MVD is required to report the conviction to the Commercial Driver's License Information System (CDLIS). CDLIS was created by the CMVSA and is the federal data collection and information system that was created to track all CDL holders. CDLIS is there to ensure that the one driver, one license, one record requirement is being complied with, and to be a central location for the reporting of all convictions.

Drivers with convictions can have their privilege to operate disqualified for specified periods of time if they are convicted of a disqualifying act, defined as a serious traffic violation, major offense, railroad-highway grade crossing offense, or violation of an out-of-service order. 49 CFR §§383.5, 383.51, §§66-5-54(E), (G), (T); see also Appendix E, CDL Disqualification Benchcard.

APPENDIX A

Uniform Traffic Citation



MVD-11015
REV. 07/19

MICROFILM NUMBER, DO NOT PRINT ABOVE THIS LINE

CLOVIS POLICE
DEPARTMENT

COUNTY CODE AGENCY CODE

0 5 2 1 3 1355371 4

STATE OF NEW MEXICO
UNIFORM TRAFFIC CITATION

NAME (LAST)

NAME (FIRST)

PHONE NUMBER

MAILING ADDRESS

CITY

STATE

ZIP CODE

CITY

STATE

ZIP CODE

STATE ID PROVIDED DRIVER LICENSE NUMBER

DATE OF BIRTH

SOCIAL SECURITY NUMBER

SEX HEIGHT

WEIGHT

EYE COLOR

LICENSE PLATE NUMBER

STATE

VER YR

COLOR

TYPE / MAKE / MODEL

CITY LICENSE TYPE

HAZMAT PL

PASS 18+

DOT NUMBER

TRAFFIC

WEATHER

ROAD

LIGHT

ACCIDENT

MD HV CL FG RN SN DS D W I S DS DE

☐ STATUTE 66-7-301
SPEEDING

☐ ☐ ☐ MPH IN A ☐ ☐ ZONE

DATE TIME

09 16 25 17 17 22 3 13

LOCATION

OFFICER'S PRINTED NAME

OFFICER'S SIGNATURE

ESSENTIAL FACTS

Driver stated he didn't have insurance.

☐ PENALTY ASSESSMENT: I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of \$177.00. OFFICER MAY NOT ACCEPT PAYMENT

☐ TRAFFIC ARRAIGNMENT: You are hereby ordered to appear in METROPOLITAN COURT / MUNICIPAL COURT

ON 09/17/20 at 10:23 PM

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

☒ COURT APPEARANCE: I acknowledge receipt of this notice and without admitting guilt agree to appear in

MAGISTRATE METRO MUNICIPAL or TRIBAL court

Address 3077 W 4th St. Clovis, NM 87101

on (or by) 30 Sept 20 at 2:00 PM

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

Signature [Signature] Agree to the above marked determination.

ABSTRACT COPY

05 213 1355371 4

ABSTRACT OF RECORD

COURT DOCKET NUMBER

13553714

COURT DATE

10/23/2025

SENTENCING DATE

DEFENDANT'S PLEA

☒ Nolo Contendere

☐ Guilty

☐ Not Guilty

COURT DISPOSITION

☒ Guilty

☐ Not Guilty

☐ Dismissed no Prosecution

☐ Dismissed on Motion

SENTENCE OF THE COURT

☒ Fine

☐ Amount Suspended

☐ Jail

☐ Time Suspended

☐ Bond Forfeit

☐ Court Costs

\$ 174

\$

Days

Days

\$

\$

☐ Correction Fee

☐ Court Automation Fee

☐ Judicial Education Fee

☐ Traffic Safety Fee

☐ Warrant Fee

☐ Facility Fee

☐ Other

\$

\$

\$

\$

\$

\$

\$

Total Jail Days

Total Costs \$ 174

Remarks

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

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

Printed Name

Name of Court

Date

Address

Post Office

VICKI A. KELLEY
CLOVIS MUNICIPAL COURT #2
P.O. BOX 872
CLOVIS, NM 87611

12/18/25

DISPOSITION BY OFFICER AND COURT

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

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

Motor Vehicle Division
NMPA Department
P.O. Box 25130
Santa Fe, NM 87504-25130

NEW MEXICO STATE
POLICE

COUNTY CODE

AGENCY CODE

☐ NTC

06

790

9820359 9

STATE OF NEW MEXICO
UNIFORM TRAFFIC CITATION

NAME (LAST)		NAME (FIRST)		NAME (MIDDLE)		NAME (SUFFIX)	
PHYSICAL ADDRESS				CITY		STATE	ZIP CODE
MAILING ADDRESS				CITY		STATE	ZIP CODE
STATE	ID PROVIDED	DRIVER LICENSE NUMBER		DATE OF BIRTH	SEX	HEIGHT	WEIGHT
	NO				M	5' 05"	180
PHONE NUMBER				EMAIL ADDRESS			
LICENSE PLATE NUMBER		STATE	VEH YR	COLOR	TYPE	MAKE	MODEL
		TX	2013	BLK	HEAVY TRUCK	FRET	2-DOOR
CMV	LICENSE TYPE	HAZ MAT PL	PASS 16+	DOT NUMBER			
YES		NO	NO	3781295			
TRAFFIC	WEATHER	ROAD		LIGHT		ACCIDENT	
MEDIUM	CLEAR	DRY		LIGHT		NO	
☐ STATUTE 66-7-301		☐ SC	☐ CZ	☐ STATUTE 66-5-229C NO INSURANCE PROOF		☒ STATUTE	
SPEEDING		ZONE		☐ STATUTE 66-7-372 NO SEAT BELTS		☐ ORDINANCE	
MPH IN A				65-01-26			
DATE	TIME	IDENTIFICATION		DISTRICT		MILE POST	
12/30/24	08:30	6258		D3		21	
LOCATION: ON W NM HIGHWAY 176 2 MILES EAST OF PEARSON LN							
OFFICER'S PRINTED NAME				OFFICER'S SIGNATURE			
SANTINI, MANUEL							
VIOLATION: FAILURE TO COMPLY WITH WEIGHT DISTANCE REQUIREMENTS OF THE WEIGHT DISTANCE TAX ACT - 1ST CONVICTION							
Essential VEH EV/ NO INS/ NO WD PERMIT/ INVALID CDL							
Facts:							

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

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

☒ **COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in **EUNICE MAGISTRATE** (575) 394-3368 _____ JD initials
1008 12TH ST EUNICE 88231 on (or by) **01/30/2025** at **9:00 AM**

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

I agree to the above marked determination.

Signature X

☐ Booked ☐ Non-English
☐ Unable to Sign

06 790 9820359 9



COURT DOCKET NUMBER	M-29-TR-2024-02459	COURT DATE	01/30/2025	SENTENCING DATE	
I, the undersigned do hereby enter my appearance on the complaint of the offense charged on the above. I have been informed of my right to trial, that signature to this plea of guilty will have the same force and effect as a judgement of the court, and this record will be sent to the Licensing Authority of this state (or the state where I received my license to drive). I do hereby PLEAD GUILTY to said offense as charged and WAIVE my rights to a hearing by court.					
Amount of Fine:	Signature	Date:			
DEFENDANT'S PLEA:	☐ GUILTY ☐ NOT GUILTY ☐ NOLO CONTENDERE				
COURT DISPOSITION:	☐ GUILTY ☐ FINES ☐ FINES SUSPENDED ☐ NOT GUILTY ☐ DISMISSED				
SENTENCE OF THE COURT					
☐ Fine \$	☐ Bond Forfeit \$	☐ Traffic Safety Fee \$			
☐ Amount Suspended \$	☐ Court Costs \$	☐ Warrant Fee \$			
☐ Jail Days	☐ Correction Fee \$	☐ Facility Fee \$			
☐ Time Suspended Days	☐ Court Automation Fee \$	☐ Other \$			
Total Jail Days	☐ Judicial Education Fee \$				
Total fines and costs \$					
Remarks : STN# / Arrest # :					
This is a correct abstract of the court's disposition of the citation issued to the defendant as a result of the offense shown above.					
Judge's Signature	Printed Name		Date		
Name of Court	EUNICE MAGISTRATE		Judge's Address		
Final Posting	Date		Date		
Warrant Issued	Date		Date		
Jailed - See Arrest Number	Defendant Absent Issued Bench Warrant		AM PM		
DISPOSITION BY OFFICER AND COURT					
COURT APPEARANCE OR TRAFFIC ARRAIGNMENT: Officer must forward this abstract to the court. The court must complete the above and mail to the MVD.					
PENALTY ASSESSMENT: Officer must forward this abstract to the Motor Vehicle Division, NMPA Department, P.O. Box 25130 Santa Fe, NM 87504-25130.					

COURT COPY

Electronically filed in the court on
12/31/2024 at 6:26 AM



MVD-11015
REV. 07/13

MICROFILM NUMBER, DO NOT PRINT ABOVE THIS LINE

BERNALILLO COUNTY
SHERIFF
DEPARTMENT

COUNTY CODE

AGENCY CODE

0 2 1 0 2

42276774

STATE OF NEW MEXICO UNIFORM TRAFFIC CITATION

NAME (LAST)

NAME (FIRST)

PHYSICAL ADDRESS

MAILING ADDRESS

CITY

STATE

ZIP CODE

CITY

STATE

ZIP CODE

STATE ID PROVIDED DRIVER LICENSE NUMBER

DATE OF BIRTH

SOCIAL SECURITY NUMBER

SEX

HEIGHT

WEIGHT

EYE COLOR

LICENSE PLATE NUMBER

STATE

VEH YR

COLOR

TYPE / MAKE / MODEL

C M V

LICENSE TYPE

HAZMAT PL

PASS 16+

DOT NUMBER

TRAFFIC

WEATHER

ROAD

LIGHT

ACCIDENT

LT HV FG RN SN DS W I S DS DK Y

☒ Y

STATUTE 66-7-301

SPEEDING

☐ CZ

☐ STATUTE 66-5-229C
NO INSURANCE PROOF

☐ STATUTE

☐ ORDINANCE

☐ 75 MPH IN A ☐ 65 ZONE

☐ RH

☐ STATUTE 66-7-372
NO SEAT BELTS

DATE

TIME

IDENTIFICATION

DISTRICT

MILE POST

12 13 25 12 25 3 19 2 OUT 163

LOCATION

OFFICER'S PRINTED NAME

OFFICER'S SIGNATURE

ESSENTIAL FACTS

E/B 40 WEAVEN T/G PAGES DMC 80

☒ **PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of

OFFICER MAY NOT ACCEPT PAYMENT \$ ☐ 74.00

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

on DECEMBER 29, 20 25 at 1000 PM

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

☐ **COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in

Ⓜ MAGISTRATE Ⓜ METRO Ⓜ MUNICIPAL or Ⓜ TRIBAL court.

Address

on (or by) _____, 20 _____ at _____ PM

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

Signature

Agree to the above marked determination.

COURT COPY

0210242275774



COURT DOCKET NUMBER	COURT DATE	SENTENCING DATE
I, the undersigned do hereby enter my appearance on the complaint of the offense charged on the reverse side of the order or summons. I have been informed of my right to trial, that my signature to this plea of guilty will have the same force and effect as a judgment of the court, and this record will be sent to the Licensing Authority of this state (or the state where I received my license to drive). I do hereby PLEAD GUILTY to said offense as charged and WAIVE my rights to a hearing by court.		
Amount of Fine	Signature	
COURT DISPOSITION		
☐ Guilty ☐ Fines ☐ Fines Suspended ☐ Not Guilty ☐ Dismissed no Prosecution ☐ Dismissed on Motion		
SENTENCE OF THE COURT		
☐ Fine \$ _____ ☐ Amount Suspended \$ _____ ☐ Jail Days _____ ☐ Time Suspended Days _____ ☐ Bond Forfeit \$ _____ ☐ Court Costs \$ _____ ☐ Correction Fee \$ _____ ☐ Court Automation Fee \$ _____ ☐ Judicial Education Fee \$ _____ ☐ Traffic Safety Fee \$ _____ ☐ Warrant Fee \$ _____ ☐ Facility Fee \$ _____ ☐ Other \$ _____		
Total Jail Days _____		Total Costs \$ _____
Remarks _____ _____ _____		
Final Posting	Date	
	Date	
Warrant Issued	Date	
	Date	
Judge's Signature	Defendant Absent Issued Bench Warrant _____ AM PM	
Jailed - See Arrest Number		



COUNTY CODE

AGENCY CODE

NTC

MICROFILM NUMBER, DO NOT PRINT ABOVE THIS LINE

NEW MEXICO STATE
POLICE

06

790

9820356 5

STATE OF NEW MEXICO
UNIFORM TRAFFIC CITATION

NAME (LAST)		NAME (FIRST)		NAME (MIDDLE)		NAME (SUFFIX)	
PHYSICAL ADDRESS				CITY		STATE	
MAILING ADDRESS				CITY		STATE	
STATE	ID PROVIDED	DRIVER LICENSE NUMBER		DATE OF BIRTH	SEX	HEIGHT	WEIGHT
	NO				M	5' 05"	180
PHONE NUMBER				EMAIL ADDRESS			
LICENSE PLATE NUMBER		STATE	VEH YR	COLOR	TYPE	MAKE	MODEL
		TX	2013	BLK	HEAVY TRUCK	FRET	2-DOOR
CMV	LICENSE TYPE	HAZ MAT PL	PASS 16+	DOT NUMBER			
YES		NO	NO	3781295			
TRAFFIC	WEATHER	ROAD	LIGHT	ACCIDENT			
MEDIUM	CLEAR	DRY	LIGHT	NO			
☒ STATUTE 66-7-301		☐ SC		☐ CZ		☐ STATUTE 66-5-229C NO INSURANCE	
SPEEDING						PROOF	
70 MPH IN A 55		ZONE		☒ RH		☐ STATUTE 66-7-372 NO SEAT BELTS	
						66-07-301	
DATE		TIME	IDENTIFICATION	DISTRICT		MILE POST	
12/30/24		08:30	6258	D3		21	
LOCATION: ON W NM HIGHWAY 176 2 MILES EAST OF PEARSON LN							
OFFICER'S PRINTED NAME				OFFICER'S SIGNATURE			
SANTINI, MANUEL							
VIOLATION: SPEEDING (OVER 11 - 15)							
Essential VEH EV/ NO INS/ NO WD PERMIT/ INVALID CDL							
Facts:							

- ☒ **PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of **\$30.00** JD initials
- ☐ **TRAFFIC ARRAIGNMENT:** You are hereby ordered to appear in _____ on _____ at _____
- My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered. _____ initials
- ☐ **COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in _____ on (or by) _____ at _____ initials
- ☐ **WARNING NOTICE:** I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.

I agree to the above marked determination.

Signature X

06 790 9820356 5

☐ Booked☐ Unable to Sign

06 790 9820356 5



INSTRUCTIONS TO MOTORIST

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

PENALTY ASSESSMENT: If this is a penalty assessment notice, your signature constitutes an acknowledgement of guilt and no court appearance is required. You must remit the prescribed penalty amount indicated on the face of this citation within thirty days of the date of issuance. Failure to remit the penalty amount within the required time frame will result in the suspension of your driver's license and driving privileges and subject you to payment of an additional reinstatement fee.

Inure proper credit for payment by enclosing this copy of the citation with your check or money order made payable to the Motor Vehicle Division (or applicable jurisdiction indicated below) and mail to the address given below. DO NOT SEND CASH.

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

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

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

STATE PENALTY ASSESSMENT ADDRESS	LOCAL PENALTY ASSESSMENT ADDRESS
THREE WAYS TO PAY ONLINE at www.mvd.newmexico.gov - click on Pay My Citation CALL toll free 888-683-4636 - choose option 2 MAIL to: MOTOR VEHICLE DIVISION NMPA DEPARTMENT P.O. BOX 25130 SANTA FE, NM 87504-25130	Please remit payment amount indicated on face of this citation to :

DEFENDANT COPY

APPENDIX B

Notice of Clearance

State of New Mexico
NOTICE OF COMPLIANCE FOR FAILURE TO APPEAR IN COURT
REPORTING AGENCY INFORMATION

FILED
11th JUDICIAL DISTRICT COURT
San Juan County
12/18/2025 4:45 PM
JODIE SCHWEBEL
CLERK OF THE COURT
Alejandra Vaugl

COURT NAME: San Juan County
COURT ADDRESS: Aztec District Court 103 S. Oliver Aztec, NM 87410

COURT CODE: D-1116-CR-2025-00804

CITATION INFORMATION

Citation Number(s):	Violation Date:
---------------------	-----------------

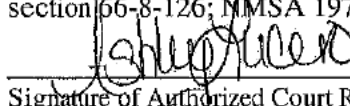
CLEARANCE

VIOLATOR'S INFORMATION

[REDACTED]					
2661 LA PLATA HWY B Farmington, NM 87401					
DOB	SS#	Vio. Code	NM Stat. NO	Court Date	Report/Action Begin Date
[REDACTED]	[REDACTED]	XC4	66-5-30	12/8/2025	12/18/2025

OFFICIAL USE ONLY

This clearance is to notify Motor Vehicle Division that the person listed as violator has complied with the provisions of section 66-8-126; NMSA 1978.



Signature of Authorized Court Representative

December 18, 2025
Date

Original to MVD
Copy in Court File
Copy to Defendant



D-1116-CR-2025-00804

Court Information:

San Juan County ; Address: phone (fax) web site: www.nmcourts.gov

D-CR-ADMIN_MOTOR VEHICLE DEPARTMENT/NOTICE OF COMPLIANCE FOR FAILURE TO APPEAR IN COURT

APPENDIX C

Notice of Failure to Appear; Rescission of Notice of Failure to Appear

STATE OF NEW MEXICO
NOTICE OF FAILURE TO APPEAR IN COURT
New Mexico Licensee/Resident Only
REPORTING AGENCY INFORMATION

FILED IN
CITY OF CLOVIS
2025 DEC 23 AM 9:09
MUNICIPAL COURT

REPORTING DATE

12/23/2025

COURT NAME: Clovis Municipal Court
COURT ADDRESS: 217 W 4TH Street
Clovis, NM 88101

COURT CODE 86
AGENCY CODE 213
COUNTY CODE 05

CITATION INFORMATION

Citation #	Original Offense Description	Violation Code	Violation Date
13565064	SPEED LIMITS	66-7-301/12-6-1.2	

SUSPENSION

VIOLATOR'S INFORMATION

Name: [REDACTED]		Date of Birth: [REDACTED]
Mailing Address [REDACTED] 88101	Social Security # [REDACTED]	Driver's State and License Number [REDACTED]

VIOLATION CODE: XC4
NM STATUE NO. 66-5-30

Additional Comments:

OFFICIAL USE ONLY



12/23/2025

Signature of Authorized Court Representative Date
MVD COPY

Court Contact Information:

City of Clovis Municipal Court Phone: 575-769-7860 Fax: 575-763-9607 Email: court@cityofclovis.org

NRVC
STATE OF NEW MEXICO- MOTOR VEHICLE DIVISION
RESCISSON OF NOTICE OF FAILURE TO APPEAR IN COURT
REPORTING AGENCY INFORMATION

FILED IN
CITY OF CLOVIS
MUNICIPAL COURT
2025 DEC 18 PM 4:04

COURT NAME: **Clovis Municipal Court**
COURT ADDRESS: **217 W 4TH Street**
Clovis, NM 88101

REPORTING DATE
12/18/2025
COURT CODE **86**
AGENCY CODE **213**
COUNTY CODE **05**

CITATION INFORMATION

Citation #	Violation Description	Total Paid
13548094	LIMITATIONS ON BACKING	\$0.00

CLEARANCE

VIOLATOR'S INFORMATION

Name:	[REDACTED]		Date of Birth	[REDACTED]
Mailing Address	[REDACTED]		Social Security #	[REDACTED]
[REDACTED]		Driver's State and License #		
[REDACTED]		[REDACTED]		

Additional Comments:

OFFICIAL USE ONLY

 **12/18/2025**
Date

Signature of Authorized Court Representative

MVD COPY
UNDER NON-RESIDENT VIOLATOR COMPACT

APPENDIX D

Abstracts

010580484 3

ABSTRACT OF RECORD



MICRO FILM NUMBER, DO NOT WRITE, STAPLE OR PUNCH ABOVE THIS LINE

STATE OF NEW MEXICO
COUNTY OF: BERNALILLO
CITY OF: ALBUQUERQUE

DWI CITATION

COUNTY
CODE: 02MVD- 10811
REV. 11 / 05

COURT DOCKET NO.		NAME	
HEARING DATE	COUNSEL REQUESTED	ADDRESS	
	COUNSEL WAIVED	CITY STATE ZIP CODE	
COUNSEL NAME		DRIVER LICENSE NUMBER STATE EXPIRES CLASS ENDORSEMENTS	
ADDRESS		DATE OF BIRTH AGE SEX HEIGHT WT SOCIAL SECURITY NUMBER	
CITY STATE ZIP CODE		COLOR YEAR MAKE MODEL TYPE STATE LICENSE PLATE NUMBER	
PLEA OF DEFENDANT NOLO GUILTY NOT GUILTY		TRAFFIC WEATHER ROAD LIGHT ACCIDENT	
COURT FINDING: GUILTY NOT GUILTY DISMISSED		CMV HZ MT PASSENGER (16 OR MORE) DOT NUMBER	
NOLLE PROSEQUI			
SENTENCE OF COURT:			
FINE \$ SUSPENDED AMT.\$ (IF ANY)			
JAIL DAYS SUSPENDED DAYS (IF ANY)			
LAB FEES \$ BOND FORFEIT \$ COSTS \$			
REMARKS	CITATION		
DWI SCHOOL	THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING :		
THIS IS A CORRECT ABSTRACT OF COURT ACTION FOR DEFENDANT AND OFFENSE SHOWN.	☒ 66-8-102 NMSA 1978 ☐ STATUTE OR ORDINANCE and SECTION :		
SIGNATURE OF MAGISTRATE OR JUDGE	COMMON NAME OF OFFENSE : <i>Driving Under the influence of Intoxicating Liquor or Drug</i>		
PRINTED NAME OF MAGISTRATE OR JUDGE	ON AT HRS LOCATION		
NAME OF COURT DATE	MILEPOST OR NEAREST INTERSECTION		
ADDRESS POST OFFICE	DISTRICT : D5		
	ESSENTIAL FACTS :		
	REFER TO OI REPORT		
DISTRIBUTION	PRINTED OFFICER'S NAME BLOOD ALCOHOL CONCENTRATION		
	OFFICER'S SIGNATURE I.D.NO SHIFT CURRENT DATE		
THIS COPY TO BE RETAINED BY THE COURT	☐ MAGISTRATE ☐ MUNICIPAL YOU ARE TO APPEAR IN ☐ METROPOLITAN ☐ OTHER : COURT		
COURT COPY	ADDRESS : ON OR BEFORE AT		

STATE OF NEW MEXICO
BERNALILLO COUNTY
METROPOLITAN COURT

ABSTRACT OF RECORD

CITATION NUMBER:

DEFENDANT:

NAME: Date of Birth: Social Security No.: Driver's License No.

VIOLATION:

Common Name: Statute Section: Date:
DWI Driving While Under the Influence of Liquor and/or 66-8-102(C)(1)
Drugs (.08 or Above)(1st Offense)

COURT DOCKET NO. DATE OF HEARING: PLEA OF DEFENDANT:

 Counsel Requested
 Counsel Waived

FINDING OF COURT:

SENTENCE OF COURT

 FINES AND FEES PREVIOUSLY REPORTED.
 NO FINES AND FEES ASSESSED.
 FINE \$ AND TOTAL FEES OF \$ INCLUDING \$85 LAB FEE
 DWI School

JAIL DAYS:

REMARKS (Note any suspended sentence)

SUSPENDED:

The foregoing is a **True Record** of the sentence of the above case.

Clerk's Name:
Date:

Judge
Metropolitan Court Judge
401 Lomas NW Albuquerque, NM 87102
Phone: 841-8151 Fax: 222-4831

APPENDIX E

Commercial Driver's License Additional Resources

Disclaimer
This material is based upon work supported by the Federal Motor Carrier Safety Administration (FMCSA) under Grant No. FM-CDL-0346-19-01-00. The FMCSA is a component of the United States Department of Transportation. Any opinions, findings, and conclusions, or recommendations expressed in this publication are those of the authors, and they do not necessarily reflect the view of the FMCSA and/or the U.S. Department of Transportation.



CDL/CMV
Disqualification
BENCHCARD



DISQUALIFICATION OF DRIVERS

*These are federal regulations.
Check your state laws for your jurisdiction modifications.*



49 CFR §383.51

1. A person required to have a CLP or CDL who is disqualified must not drive a CMV.
2. An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.
3. A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.
4. Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.
5. The disqualification period must be in addition to any other previous periods of disqualification.
6. Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) must not be reinstated.

Table 1 to § 383.51 DISQUALIFICATIONS FOR MAJOR OFFENSES

Table 1 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

If a driver operates any motor vehicle and is convicted of:	For a first conviction or refusal to be tested <i>while operating a CMV</i> , a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...	For a first conviction or refusal to be tested <i>while operating a non-CMV</i> , a CLP or CDL holder must be disqualified from operating a CMV for...	For a first conviction or refusal to be tested <i>while operating a CMV transporting hazardous materials</i> required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...	For a second conviction or refusal to be tested in a <i>separate incident of any combination of offenses in this Table while operating a CMV</i> , a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...	For a second conviction or refusal to be tested in a <i>separate incident of any combination of offenses in this Table</i> while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for...
(1) Being under the influence of alcohol as prescribed by State law	1 year	1 year	3 years	Life	Life
(2) Being under the influence of a controlled substance	1 year	1 year	3 years	Life	Life
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV	1 year	Not applicable	3 years	Life	Not applicable
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.72 of this part	1 year	1 year	3 years	Life	Life
(5) Leaving the scene of an accident	1 year	1 year	3 years	Life	Life
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table	1 year	1 year	3 years	Life	Life
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV	1 year	Not applicable	3 years	Life	Not applicable
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide	1 year	Not applicable	3 years	Life	Not applicable
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement
(10) Using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11)	Life-not eligible for 10-year reinstatement	Not applicable	Life-not eligible for 10-year reinstatement	Not applicable	Life-not eligible for 10-year reinstatement

Table 2 to § 383.51 DISQUALIFICATIONS FOR SERIOUS TRAFFIC VIOLATIONS

Table 2 to §383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

If a driver operates any motor vehicle and is convicted of:

	For a second conviction of any combination of offenses in this Table in a <i>separate incident within a 3-year period while operating a CMV</i> , a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table <i>in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder</i> must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for...	For a third or subsequent conviction of any combination of offenses in this Table <i>in a separate incident within a 3-year period while operating a CMV</i> , a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table <i>in a separate incident within a 3-year period while operating a non-CMV</i> , a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for...
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit	60 days	60 days	120 days	120 days
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property	60 days	60 days	120 days	120 days
(3) Making improper or erratic traffic lane changes	60 days	60 days	120 days	120 days
(4) Following the vehicle ahead too closely	60 days	60 days	120 days	120 days
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days
(6) Driving a CMV without obtaining a CDL ¹	60 days	Not applicable	120 days	Not applicable
(7) Driving a CMV without a CDL in the driver's possession	60 days	Not applicable	120 days	Not applicable
(8) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported	60 days	Not applicable	120 days	Not applicable
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving. ²	60 days	Not applicable	120 days	Not applicable
(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV. ²	60 days	Not applicable	120 days	Not applicable

¹ Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

² Driving, for the purpose of this disqualification, means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

Table 3 to § 383.51 DISQUALIFICATION FOR RAILROAD-HIGHWAY GRADE CROSSING OFFENSES

If the **driver is convicted of operating a CMV** in violation of a Federal, State or local law because:

(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train

For a **first conviction** a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...

No less than 60 days

For a **second conviction** of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...

No less than 120 days

For a **third or subsequent conviction** of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...

No less than 1 year

(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear

No less than 60 days

No less than 120 days

No less than 1 year

(3) The driver is always required to stop, but fails to stop before driving onto the crossing

No less than 60 days

No less than 120 days

No less than 1 year

(4) The driver fails to have sufficient space to drive completely through the crossing without stopping

No less than 60 days

No less than 120 days

No less than 1 year

(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing

No less than 60 days

No less than 120 days

No less than 1 year

(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance

No less than 60 days

No less than 120 days

No less than 1 year

Table 4 to § 383.51 DISQUALIFICATION FOR VIOLATING OUT-OF-SERVICE ORDERS

Disqualification for violating out-of-service orders. Table 4 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified when the driver is operating a CMV at the time of the violation, as follows:

If the driver **operates a CMV** and is convicted of...

For a **first conviction** while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...

No less than 180 days or more than 1 year

For a **second conviction** in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...

No less than 2 years or more than 5 years

For a **third or subsequent conviction** in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...

No less than 3 years or more than 5 years

(1) (1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials

(2) (2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver

No less than 180 days or more than 2 years

No less than 3 years or more than 5 years

No less than 3 years or more than 5 years



*Created by The National Judicial College with funding and content provided by
the Federal Motor Carrier Safety Administration.*

Commercial Driver's License: Additional Resources

For additional information regarding Commercial Driver's Licenses, please visit the following links:

- <https://cdlresources.org/>
- <https://cdltribajustice.org/#benchcard>
- <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/law-enforcement-and-judiciary>

As always, it is your responsibility to ensure you are complying with the most current version of the law. Please double check the statutes and case law to ensure accuracy.