

1 This instruction is applicable in all cases involving a statute.

2 The blank lines in the third paragraph of the instruction are to be completed by referring
3 either to the plaintiff, the defendant or other pleading designation of the party or to the name of
4 the party as may be applicable under the circumstances.

5 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
6 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

7 **Committee commentary.** — The violation of a statute which is enacted for the benefit or
8 protection of the party claiming injury from the violator or enacted for the benefit or protection of
9 a class of the public to which such person is a member is negligence per se. *Hayes v. Hagemeyer*,
10 1963-NMSC-095, 75 N.M. 70, 400 P.2d 945[~~(1963)~~]; *Bouldin v. Sategna*, 1963-NMSC-017, 71
11 N.M. 329, 378 P.2d 370[~~(1963)~~]; *Zamora v. J. Korber & Co.*, 1954-NMSC-120, 59 N.M. 33, 278
12 P.2d 569[~~(1954)~~]. The same principle of law is applicable to the violation of a municipal
13 ordinance. *Jackson v. [Southwestern] Sw. Pub. Serv. Co.*, 1960-NMSC-027, 66 N.M. 458, 349
14 P.2d 1029[~~(1960)~~]. This instruction will find its greatest utility in motor vehicle cases. A minor
15 driver is held to the same standard of an adult driver in motor vehicle cases. *Adams v. Lopez*, 1965-
16 NMSC-120, 75 N.M. 503, 407 P.2d 50[~~(1965)~~].

17 Instructions are drafted for the benefit of the jury and not for the court or lawyer, and, therefore,
18 terms such as "negligence per se" should be omitted, as such terms, rather than having any special
19 meaning to the jury, are only confusing. However, the New Mexico law is specific that the
20 violation of the statute which is enacted for the benefit or protection of the party claiming injury
21 from the violator or for the benefit or protection of a class of the public to which such person is a
22 member is negligence per se.

1 The test for negligence per se is the following: (1) there must be a statute which prescribes certain
2 actions or defines a standard of conduct, either explicitly or implicitly; (2) the defendant must
3 violate the statute; (3) the plaintiff must be in the class of persons sought to be protected by the
4 statute, and (4) the harm or injury to the plaintiff must generally be of the type of harm or injury
5 the legislature, through the statute, sought to prevent. *Archibeque v. Homrich*, 1975-NMSC-066,
6 88 N.M. 527, 543 P.2d 820[~~(1975)~~].

7 The legislature did not explicitly state whom it sought to protect in NMSA 1953, Section 64-18-8
8 (1972) and NMSA 1953, Section 64-18-16 (1972)[~~NMSA, 1953 Comp.~~] (similar provisions at
9 NMSA 1978, Section 66-7-308 (1978) and NMSA 1978, Section 66-7-317 (1978)[~~NMSA 1978~~]);
10 nevertheless, it is reasonable to assume that it was the motoring public in general, including
11 passengers, and that the harm sought to be prevented was head-on collisions or sideswiping the
12 opposite-moving traffic, since it is doubtful that the statute could have been intended by the
13 legislature to apply to a one-car accident of unknown cause in which driver and passenger were
14 killed (regardless of the fact that evidence showed the car crossed into the left-hand lane before its
15 final plunge), and the district court properly refused to submit a negligence per se instruction based
16 on these statutes to the jury. *Archibeque*[~~v. Homrich~~], 1975-NMSC-066[~~, 88 N.M. 527, 543 P.2d~~
17 ~~820 (1975)~~] (statutes repealed but legal theory still applicable).

18 It was not error for the trial court to instruct the jury in the language of Section 64-18-24 [~~NMSA,~~
19 ~~1953 Comp.~~](similar provision at NMSA 1978, Section 66-7-325 (1978)[~~NMSA 1978~~]), which
20 requires the giving of a signal before stopping, decreasing speed or turning right or left from a
21 public highway, where plaintiff motorist who had stopped his vehicle in time to avoid striking a
22 nonsignaling vehicle was struck from the rear by defendant; the court did not interject a false issue
23 into the case in that the lead car's failure to signal went to the issue of proximate cause with respect

1 to this lawsuit, and another instruction informed the jury that a statutory violation must have been
2 the proximate cause. *Sandoval v. Cortez*, 1975-NMCA-088, 88 N.M. 170, 538 P.2d 1192[~~(Ct.~~
3 ~~App. 1975)~~] (specific statute repealed but not the legal principle).
4 The application of the doctrine of excuse or justification for violation of the statute is well
5 recognized in New Mexico under proper circumstances. *See Whitfield Tank Lines v. Navajo*
6 *Freight Lines*, 1977-NMCA-052, 90 N.M. 454, 564 P.2d 1336[~~(Ct. App.)~~], cert. denied, 90 N.M.
7 637, 567 P.2d 486 (1977); *Kight v. Butscher*, 1977-NMCA-037, 90 N.M. 386, 564 P.2d 189[~~(Ct.~~
8 ~~App.)~~], cert. denied, 90 N.M. 636, 567 P.2d 485 (1977); *Tenorio v. Nolen*, 1969-NMCA-068, 80
9 N.M. 529, 458 P.2d 604[~~(Ct. App. 1969)~~]; *Hayes*[~~v. Hagemeyer~~], 1963-NMSC-095[~~75 N.M. 70,~~
10 ~~400 P.2d 945 (1963)~~].
11 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]