

SEC. CLERK RECORDED 03/13/2013

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**DWI PLANNING COUNCIL**

**January 10, 2013**

**Santa Fe, New Mexico**

This meeting of the Santa Fe County DWI Planning Council was called to order by Chair Allen Steele at approximately 9:02 a.m. on the above-cited date at 2052 S. Galisteo, Santa Fe, New Mexico.

The following individuals present:

**Members Present:**

- Allen Steele, Chair
- Donna Bevacqua-Young
- Richard De Mella
- Glenn Levant
- Grace Quintana-Trujillo
- Tom Starke
- Lisa Wooldridge

**Member(s) Absent:**

[One vacancy]

**Staff Present:**

- Rachel O'Connor, HHS Director
- Lupe Sanchez, DWI Program Coordinator
- Peter Olson, DWI Program
- Jennifer Romero, SFC Teen Court



**Others Present:**

- Shelley Mann-Lev, SFUDPA
- Victor Rodriguez, NMDPS, SID
- Loralee Freilich, DWI Educator
- Melchior Savarese, RLD Prosecutor
- Shelly Moeller, Consultant
- Ramona Flores, SFUDPA
- Pat Lincoln, SFUDPA
- Richard Lucero, CARE Connection
- Mary Justice, CARE Connection
- David Saldivar, Capitol High School student
- Captain Ted Collins, NMSP
- Michael Sanchez, Special Investigator

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

DWI MINUTES  
PAGES: 35

I Hereby Certify That This Instrument Was Filed for Record On The 19TH Day Of March, 2013 at 01:56:09 PM And Was Duly Recorded as Instrument # **1699779** Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Deputy Marcella Salazar Geraldine Salazar  
County Clerk, Santa Fe, NM

[Exhibit 1: Sign-in Sheets]

**III. Approval of the Minutes: December 6, 2012**

Mr. Levant moved to approve. Mr. De Mella seconded and the minutes were unanimously [7-0] approved.

**IV. Approval of the Agenda**

Upon motion by Mr. Levant and second by Mr. De Mella the agenda was unanimously approved.

Those present introduced themselves. Chairman Steele congratulated SFUDPA on the passage of the Airport Road Overlay District at the City Council. Shelley Mann-Lev commended the entire community.

Chairman Steele congratulated Captain Collins on his recent promotion.

**V. Matters from the Council**

**A. Follow-up from Previous Meetings**

Ms. Bevacqua-Young noted that as the legislative session gets underway she will be sending information and analysis on important bills. She offered to include committee comments in the analysis.

As a follow-up to a SWOT analysis meeting Mr. Levant pointed out that the analysis of medical marijuana lack information on potency and/or dosage. He added combining marijuana and alcohol significantly contributes to DWI. He suggested sending a letter to the program coordinator requesting that information. Ms. Bevacqua-Young said she will be meeting with the head attorney and will get information needed.

**VI. Information Items**

**A. Coordinator's Report**

Mr. Sanchez stated they are working on applications for the LDWI and the LDWI detox grants, which are due on February 14<sup>th</sup>.

He said law enforcement is facing a challenge with independent blood draws. A meeting is planned with the hospital on January 15<sup>th</sup>. Chairman Steele said the Governor is planning on introducing legislation on the matter. Mr. Sanchez mentioned an arrested individual requested an independent blood draw at a cost of \$7,000. The concern is that delays can impact the readings.

Regarding legislation, Impact DWI is proposing new measures on ignition interlock. Mr. Starke stating they would like to introduce three measures. One is called no refusal whereby a warrant can be issued to draw blood which expedites cases in court with fewer dismissals. The second is to address the over 50 percent of people who get DWIs and say they do not have a vehicle. The proposed measure would be for a home breathalyzer. This would encourage acquiescence on vehicle ignition locks. The third is to prolong the period of the interlock for violators. Currently there are no sponsors.

Mr. Sanchez stated the reversion grant finally came through which will allow the purchase of equipment and program evaluation. This will also offset some CADDy costs. Contracts are now in place for the prevention RFP.

Chairman Steele raised the issue of the ambiguity about what constitutes prevention. For instance, is the CADDy program prevention? He characterized it as prevention/education. Ms. Mann-Lev stated it fell into the category of harm reduction.

### **Presentation by Melchior Savarese, Rules and Licensing Division**

RLD Prosecutor Savarese said he has worked all over the state prosecuting DWIs, domestic violence and other felonies. He said there are many addictions and alcohol is only one of them. The problem comes from “addicted, immature, irresponsible people.” He spoke of the need of a statewide repository of priors or even beyond statewide. He distributed a packet of material [*Exhibit 2*] containing relevant statutes, news articles, and case law.

Mr. Savarese stated cameras and lapel pins have helped secure convictions. He spoke of the “quicksand of paperwork.”

A discussion ensued regarding presumption of intoxication and the Mystery Shopper program, whereby an actor simulates intoxication. Mr. Savarese said that as a hypothetical it probably could not be prosecuted. However, it could have awareness value. SID investigators watch for actual intoxicated people and use an alcosensor. He commended the committee for its vigilance.

Referring to the packet, Ms. Bevacqua-Young asked that the case in question involving the pregnant woman be followed up on and that the council be updated. Captain Collins said he would monitor it.

## **VI. B. Committee Reports – Law Enforcement**

Mr. Levant stated he received an informal presentation from Mr. Sanchez outlining where the money comes in and where it is spent. The million dollars from LDWI/excise tax goes to the BCC, thence to the planning council where it is to be spent in prevention, law enforcement, screening, compliance, planning and coordination. The planning council reviews grant applications and recommendations are sent to the BCC. The DFA then approves the recommendations and the grants are made. He pointed out the deadlines do not coincide with the council’s meeting schedule so that often recommendations are made without council input. He suggested that a subcommittee be appointed to review the applications prior to their going to the BCC.

### **C. Update on CADDy Evaluation**

Shelly Moeller used a power point to show what the evaluation will look like. She demonstrated a logic model showing why the CADDy program exists. She reviewed the inputs, outputs and assumptions of the chart.

Mr. De Mella challenged the average of 146 riders per night of service. Mr. Sanchez pointed out that a chit is generated for each trip filled out by the driver and passenger. Mr. De Mella said he failed to see how that volume could be generated. Ms. Moeller suggested he do a ride-along to get a better idea of the program.

Mr. Olson passed around a bundle of chits to the committee to peruse.

In response to a question from Ms. Wooldridge, Mr. Sanchez said on an average weekend night there are probably seven cabs on the road. He referred to an article in the *Reporter* featuring a ride-along by a reporter. [Exhibit 3] He added that bartenders commend the program and often make the calls themselves.

Mr. Levant recommended that Ms. Moeller go to the cab company, refer to their dispatch log and compare it to the tickets. He said, "We're getting buffaloed here." Mr. Sanchez disagreed.

Ms. Freilich suggested doing follow-ups with the participants. Mr. Olson said he endeavored to do that without success.

Continuing with her presentation Ms. Moeller spoke of how to design the program most efficiently to achieve the desired outcomes in the logical model. The evaluation will make comparisons with the past and with other counties with and without similar programs, as well as with the various earlier iterations the program has gone through. The key is to determine if there are more or less crashes with the program and how many rides are necessary to have an impact. CADDy falls under prevention, strategic planning and promotion. She asked committee members to contribute any ideas.

Ms. Bevacqua-Young suggested including Thursday as well, since many people start their weekends early. Ms. Wooldridge was pleased that the rides can extend out beyond the city limits.

#### **VI. D. CHRISTUS St. Vincent Sobering Center**

Mary Justice gave a history and overview of the Sobering Center. Since 2006 there have been almost 6,000 intakes. Over time there has been an increase in poly-addiction with the involvement of heroin, cocaine and painkillers. The number of repeat clients has gone down from 40 percent to 23 percent, which she attributed to success in getting clients into long-term treatment.

Ms. Justice said there are now more females and young people. Average stay is 71 hours, but this is increasing.

Richard Lucero, also with the Sobering Center, stressed that the program is voluntary, free of charge, and the most obstacle-free. Clients need to get medical clearance before intake. The goal is to get them through withdrawal and into assessment and rehab. He described the Sobering Center as being social triage, working toward the best possible outcome. Educational programs from AA and NA are offered, giving people choices. However, there are no miracles.

Additionally, they work to help the homeless through their comprehensive program, including through the use of acu-detox. They work on the harm reduction model and currently there are 10 men and five women in the program.

Mr. De Mella asked if there was a need for more beds and more treatment facilities. Mr. Lucero said yes. He said a 28-day rehab helps and the longer a person's patterns are disrupted the more effective it is. Because there are waiting lists there is no seamless transfer.

Ms. Freilich spoke of the need for safe residential facilities. Ms. Justice said the Santa Fe Recovery Center is a local residential facility and they occasionally send people out of state or in other parts of New Mexico.

Mr. Lucero described how people are taken into the Sobering Center through the ER. She spoke highly of the ongoing cooperation with jail personnel; there are new programs being instituted at the jail. Mr. Savarese said jail can play a role in breaking people's patterns.

Ms. Justice spoke of the emergency room HUGS program – High Utilizer Group Services, in conjunction with the jail, hospital and courts. She gave an example of a success story through a 90-day stay.

**VII. Matters from the Public**

None were raised

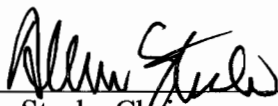
**VIII. Announcements**

A. Next PC meeting February 14, 2013, 9:00 to 10:30

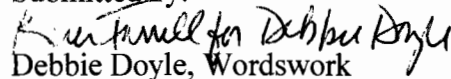
**IX. Adjournment**

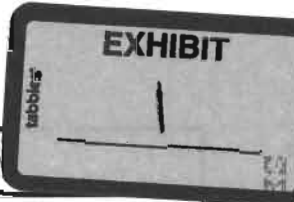
This meeting was declared adjourned at approximately 10:35 a.m.

Approved by:

  
\_\_\_\_\_  
Allen Steele, Chair  
DWI Planning Council

Submitted by:

  
Debbie Doyle, Wordswork



# DWI PLANNING COUNCIL MEETING

DATE: January 10, 2013

PLACE: 2052 South Galisteo

MEMBER'S NAME	SIGNATURE
Donna M. Bevacqua-Young	<i>Donna M. Bevacqua-Young</i>
Richard De Mella	<i>Richard De Mella</i>
Glenn Levant	<i>Glenn Levant</i>
Grace Quintana-Trujillo	<i>Grace Quintana-Trujillo</i>
Tom Stark	<i>Tom Stark</i>
Allen Steele	<i>Allen Steele</i>
Lisa Wooldridge	<i>Lisa Wooldridge</i>

CASE RECORDED 03/15/2013

# DWI PLANNING COUNCIL MEETING

DATE: January 10, 2013

PLACE: 2052 South Galisteo

GUEST NAME	REPRESENTING	PHONE/E-MAIL
Lupe Sanchez		
Joyce Varela		
Diolinda Roybal		
Peter Olson	DWI Program	
David Sarrivar		
Ted Collins	NMSP D-1	827-9300
Shelly Moeller	<del>SMADPA</del> Dwi CADP Eval	660 9393 psii@mac.com
Richard Lucero	CARE CONNECTION Sobering Center	913-4331 lucero@stvin.org
Lozano		474-9080
Victor Rodriguez	NMSPS	
Michael Sanchez	NMSPS	
Ramon Felix	PMS/SUADPA	
Shelley Mann	SFPS/SFUDPA	
Pat Lincoln	SFUDPA/DFC	plincoln@lba.net
Jennifer Romero	Teen Court of SFC	975-9555
Melchior SAVARESE	RLD Prosecutor	476.4655

SFC CLERK RECORDED 03/13/2013

**60-7B-1. A (1) Selling or Giving Alcoholic Beverages to Minors; Possession:**

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a person, including a person licensed pursuant to the provision of the Liquor Control Act, or an employee, agent or lessee of that person, if he knows or has reason to know that he is violating the provisions of this section, to: (1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises.

**15.10.33.11.A No Sale, Service, Possession or Consumption Permitted:**

Under no circumstances, may minors purchase, be served, possess or consume alcoholic beverages on licensed premises, and nothing in these regulations, including provisions permitting minors on licensed premises, shall be construed as permitting the sale or service to, or possession or consumption of any alcoholic beverage by, a minor on a licensed premises.

**60-7A-16. Sale to Intoxicated Persons:**

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a person to sell or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person if the person selling, serving, procuring or aiding in procurement, knows or has reason to know that he is selling, serving, procuring or aiding in procurement of alcoholic beverages for a person that is intoxicated.

**15.10.51.11.A Sales to Intoxicated Persons:**

No licensee shall sell, serve, procure or aid in the procurement of alcoholic beverages to an intoxicated person if the licensee knows or has reason to know that the person is obviously intoxicated. In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on breath or blood test taken not more than one and one-half hour or ninety minutes after sale, service or consumption of alcoholic beverages shall be presumptive evidence that the person was intoxicated at the time of the last sale. For purposes of this rule, a "sale" shall mean the time at which the person actually paid for the last alcoholic beverage served by the licensee to the intoxicated person.

STATE OF  
NEW MEXICO



PH: (505) 476-4655  
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REGULATION AND LICENSING DEPARTMENT  
OFFICE OF THE SUPERINTENDENT

**MELCHIOR F.R. SAVARESE III**  
PROSECUTOR

TONEY ANAYA BUILDING  
2550 CERRILLOS ROAD  
SANTA FE, NM 87505  
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WEB: www.rld.state.nm.us



**TITLE 15            GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 10        ALCOHOLIC BEVERAGES GENERAL PROVISIONS**  
**PART 61            CITATIONS - FINES AND PENALTIES**

**15.10.61.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.  
[3/31/97; 15.10.61.1 NMAC - Rn, 15 NMAC 10.6.1.1, 10/15/06]

**15.10.61.2        SCOPE:** These regulations apply to all licensees and applicants for licensure under the New Mexico Liquor Control Act.  
[3/31/97; 15.10.61.2 NMAC - Rn, 15 NMAC 10.6.1.2, 10/15/06]

**15.10.61.3        STATUTORY AUTHORITY:** Section 60-6C-4(M) NMSA 1978 of the Liquor Control Act authorizes the director to adopt reasonable regulations setting forth uniform standards of penalties with respect to fines and suspensions. More generally, Section 60-4B-5 NMSA 1978 of the Liquor Control Act authorizes the director to issue and file all regulations and orders necessary to implement and enforce the provisions of the Liquor Control Act. In addition, Sections 9-16-6(D) and 9-16-6(B)(2) NMSA 1978 of the Regulation and Licensing Department Act authorize the superintendent, or the superintendent's designee, to make and adopt such rules and regulations as necessary to carry out the duties of the department.  
[3/31/97; 7/15/99; 15.10.61.3 NMAC - Rn, 15 NMAC 10.6.1.3, 10/15/06]

**15.10.61.4        DURATION:** Permanent  
[3/31/97; 15.10.61.4 NMAC - Rn, 15 NMAC 10.6.1.4, 10/15/06]

**15.10.61.5        EFFECTIVE DATE:** March 31, 1997, unless a later date is cited at the end of a section or paragraph. Repromulgated and reformatted for New Mexico Administrative Code (NMAC) effective March 31, 1997. Certain paragraphs within this subpart [now part] remain unchanged from the following rule: AGD Regulation 6C-9, Compromise, filed 9-25-90.  
[3/31/97; 15.10.61.5 NMAC - Rn, 15 NMAC 10.6.1.5, 10/15/06]  
[Note: The words, *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections in the history notes appearing in brackets.]

**15.10.61.6        OBJECTIVE:** These regulations set forth uniform standards for penalties, which may be imposed by the superintendent of the regulation and licensing department or the superintendent's designee. This schedule of penalties will be used as a guide for the settlement of citations in those cases where a formal hearing is not requested and will also be followed generally in cases where a formal hearing is requested. These regulations are intended to comply with Section 60-6C-4(M) NMSA 1978 which requires the director (superintendent) to adopt reasonable regulations setting forth standards of penalties concerning penalties imposed by the director (superintendent). They are also intended to establish violation codes for consistent tracking within the alcohol and gaming department of the regulation and licensing department.  
[3/31/97; 7/15/99; 2/29/00; 15.10.61.6 NMAC - Rn, 15 NMAC 10.6.1.6, 10/15/06]

**15.10.61.7        DEFINITIONS:** Unless otherwise defined in 15 NMAC 10.1.1 [now 15.10.2 NMAC], terms used in these regulations have the same meanings as set forth in the Liquor Control Act. This paragraph 15 NMAC 10.6.1.7.1 has been moved and renumbered to 15 NMAC 10.1.1.7.20 [now Subsection T of 15.10.2.7 NMAC]  
[3/31/97; 7/15/99; 15.10.61.7 NMAC - Rn, 15 NMAC 10.6.1.7, 10/15/06]

**15.10.61.8        SCHEDULE OF PENALTIES:**

**A.            Violations involving sales to minors or intoxicated persons within a twelve (12) month period.**

Code	Description
90	Sale to intoxicated person
105	Sale to a minor

- (1) The first offense will result in a fine ranging from \$1,000 to \$2,000 and suspension of all alcohol sales for one business day.
- (2) The second offense will result in a fine ranging from \$2,000 to \$3,000 and suspension of all alcohol sales for seven business days.
- (3) Three or more offenses shall result in a fine of \$10,000 and revocation of the liquor license.

**B.            Any combination of three offenses involving sales to minors and/or sales to intoxicated persons occurring within a twelve-month period shall result in a fine of \$10,000 and revocation of the liquor license.**

This rule was filed as 15 NMAC 10.1.1.

**TITLE 15 GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS**  
**PART 2 DEFINITIONS**

**15.10.2.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.2 SCOPE:** These regulations apply to all licensees and applicants for licensure under the New Mexico Liquor Control Act.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.3 STATUTORY AUTHORITY:** Sections 9-16-6(D) and 9-16-6(B)(2) NMSA 1978 of the Regulation and Licensing Department Act authorize the superintendent, or the superintendent's designee, to make and adopt such rules and regulations as necessary to carry out the duties of the department. Section 60-3A-7 NMSA 1978 gives the regulation and licensing department authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act.  
[7/15/99; Recompiled 12/31/01]

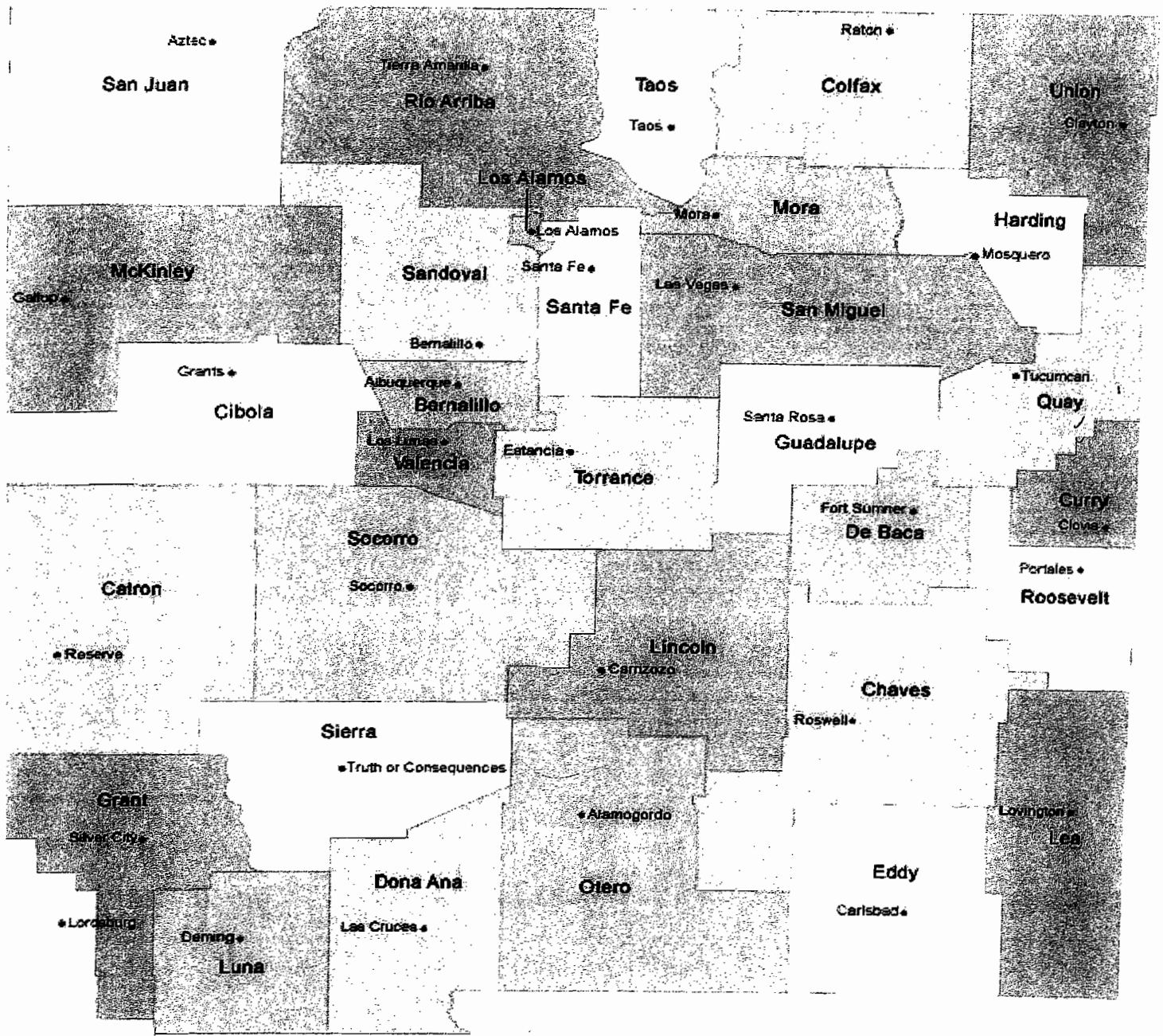
**15.10.2.4 DURATION:** Permanent.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.5 EFFECTIVE DATE:** July 15, 1999, unless a later date is cited at the end of a section or paragraph.  
[7/15/99; Recompiled 12/31/01]  
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**15.10.2.6 OBJECTIVE:** This regulation is intended to locate all definitions of terms used in the Liquor Control Act, or in these regulations in one regulation.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 15, Chapter 10 and Chapter 11, have the same meanings as set forth in the Liquor Control Act:

- A. "Affiliate of the licensee" means any of the following:
  - (1) A corporation is an affiliate of a licensee if:
    - (a) the corporation, or its officers, directors or controlling shareholders, owns a majority of stock of a licensee that is itself a corporation; or
    - (b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, if the licensee owns a majority of the corporation.
  - (2) A limited liability company is an affiliate of a licensee if:
    - (a) the limited liability company, or its manager or controlling members, owns a majority of the stock of a licensee that is a corporation;
    - (b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, owns the controlling membership interest in the limited liability company; or
    - (c) licensee that is a corporation is the manager of the limited liability company.
- B. "Alcoholic beverage display area" means that portion of a licensee's premises in which all alcoholic beverages on display for sale are contained.
- C. "Applicant" means (a) an individual 19 years of age or older seeking a server permit under the Alcohol Server Education Article of the Liquor Control Act; or (b) a person applying for a liquor license.
- D. "Approved operator" means the licensee or lessee approved by the department to operate a liquor license.
- E. "Bartender" means a person who pours alcohol into a container, or who opens alcohol in containers, for immediate service and consumption on the premises, except for the service of wine or beer at a customer's table in a restaurant.
- F. "Bona fide guest" means a person who is invited personally by the host at no charge to the guest to attend.



• County Seat  
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**SANTA FE NEW MEXICAN.com**

## Violations shut down Española liquor store, bar

By Julie Ann Grimm | The New Mexican

12/13/2012

The New Mexico Regulation and Licensing Department has shut down Fairview Liquor Store and Bar in Española for violation of liquor laws, including serving alcohol to minors.

The head of the agency says the action should serve as a warning to all alcohol establishments in the state to be vigilant about serving minors and intoxicated individuals this holiday season.

“Serving alcohol to minors and intoxicated patrons is a serious issue that has resulted in fatal automobile accidents and injuries time and again,” J. Dee Dennis Jr., superintendent of the Regulation and Licensing Department, said in a written statement. “These violations could also result in a liquor establishment losing its license, significant penalties and civil lawsuits from the victims.”

In an agreement finalized with the state on Wednesday, Fairview Liquor Store and Bar pleaded no contest to two charges of serving alcohol to minors and one charge of selling package liquor after prescribed hours for alcohol sales, and paid \$11,000 in fines, the state reported.

The state alleges that in August 2009, the business served alcohol to a minor who allegedly drove drunk and killed a pedestrian in Española and that the store was charged twice with liquor sales violations in 2010.

As part of the agreement, Fairview Liquor is required to sell its liquor license within 45 days or have it revoked permanently by the state. Fairview’s liquor license has been suspended and the liquor store has been closed since last July.

“This liquor establishment has shown total disregard to our laws time and again, and we’re pleased to announce that they will not be able operate another liquor establishment again,” Dennis said.

The department’s online records list the owner of the license as Jose C. Roybal.

SOC CLERK RECORDED 03/13/2013

2

# Liquor Store Investigated in Deadly Crash

By VIC VILLA  
Journal Staff Writer

Española police on Tuesday seized surveillance video and other items from a liquor store where vehicular homicide suspect Justin Martinez allegedly bought booze before running over a pedestrian last weekend.

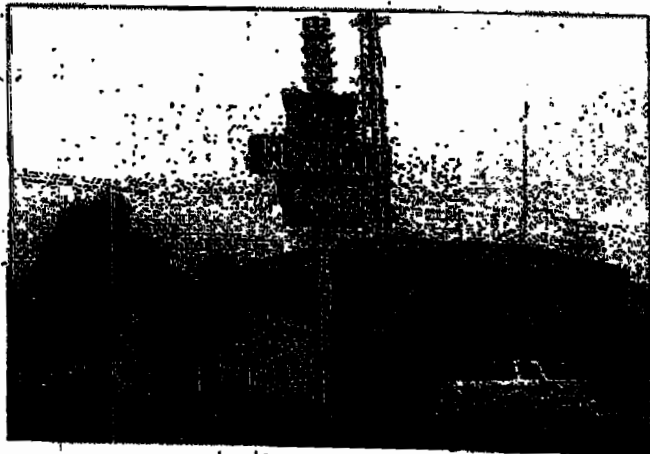
In another development, the Journal has learned that the 18-year-old Martinez — who is in custody for the death of Robert Duran — had a previous DWI as a juvenile, according to the state Motor Vehicle Division.

Investigators will look over tapes taken from Red's liquor store on North Riverside Drive and speak with employees who were working during the hours leading up to the accident, according to Española police Sgt. Christian Lopez.

"We need to see who sold the stuff," he said. "After that, we'll probably end up charging them."

But, the owner of the business, Jose "Red" Roybal, told the Journal that he has a hard time believing anyone from his store sold Martinez the alcohol. "We card everyone here," he said. "One by one. We don't sell to kids. I have a very valuable place here and I take things very seriously."

However, Roybal, who was working at the store



DEAN HANSON/JOURNAL

Surveillance video and other items from Red's Restaurant and Lounge were seized by Española police on Tuesday. Police contend Justin Martinez, 18, bought vodka there before hitting and killing a pedestrian.

the night in question, said he was not stationed at the cash registers and that two other employees also were on duty then.

Although Roybal said one of his employees denied to him that he served Martinez, the owner stated that there will be consequences if he finds out otherwise. "I'd fire him," he said. "That's a bad offense. And (the police) will pick him up."

Roybal said he would regret knowing that one of his employees sold booze to a teen who may have killed another person in a drunken driving accident. "I don't

sell to kids," he said. "I am against that totally."

The liquor store where Martinez allegedly bought the booze is connected to Red's Steakhouse, which is also owned by Roybal. In addition to the surveillance tapes, police also confiscated a "small amount of cocaine" and items from the store that had traces of cocaine, according to police documents.

Police claim that Martinez admitted to them after his arrest that he bought a 760 milliliter bottle of Smirnoff vodka from Red's after two female friends of his picked him from his

job at Ohkay Casino. Martinez told officers that he "took several shots from the bottle of vodka" before the accident, according to a previously filed probable cause statement.

Information included in the search warrant affidavit indicates that Saturday night was not the first time Martinez had purchased liquor from the establishment. Martinez told police that he "commonly goes to 'Red's' because he knows the clerks and the security guards who work there," according to the affidavit.

The document also states that Martinez "does not get 'carded' there because they 'know him'" and that he had bought booze there a week before the accident.

Roybal told the Journal that he had never seen the teenager before.

Lopez said Martinez admitted to a previous DWI after the crash and that his license had been revoked because of it. The Journal confirmed the officer's information with MVD spokesman S.U. Mahesh, who said the teen was arrested for DWI on Nov. 26, 2008, and that his license had been revoked for a year after that incident.

Mahesh did not know the specifics of the arrest or whether Martinez was convicted.

Martinez faces charges

that include vehicular homicide after he allegedly plowed into Duran with a 1992 Honda Civic he was driving 60 mph in a 25 mph zone on South McCurdy Road. The vehicle belonged to one of the girls who picked him up after work.

Lopez said that when police responded to the scene at about 12:49 a.m. Sunday, Duran was already dead.

Police said Martinez tried unsuccessfully to avoid striking Duran — who was walking west, leaving his girlfriend's residence, back to his home across the street — by swerving to the right of the victim. This action caused the teen driver to lose control and crash into a rock wall near where Duran was hit.

Martinez was accompanied by two female passengers — 16-year-old Donna Gee and 15-year-old Markita Trujillo — who were both injured in the crash. Police say all three teens had been drinking that evening.

Martinez is being held on a \$250,000 cash-only bond on charges that include vehicular homicide, great bodily injury by vehicle, and two counts each of selling or giving alcoholic beverages to minors and abandonment or abuse of a child.

AUG. 26, 2009 10:11AM

COHOL & GAMING DIVISION

NO. 4740 P. 3/3

AUG 26 2009  
 10:11 AM  
 COHOL & GAMING DIVISION

2009 AUG 26 10:11 AM COHOL & GAMING DIVISION

**STATE OF NEW MEXICO  
REGULATION AND LICENSING DEPARTMENT  
ALCOHOL AND GAMING DIVISION**

**IN THE MATTER OF:**

**JOSE C. ROYBAL,  
D/B/A/ FAIRVIEW LIQUOR STORE AND BAR,  
a/k/a RED'S REASTAURANT AND BAR  
P.O. BOX 3236  
FAIRVIEW, N.M. 87533  
Liquor License # 0331,**

**Cause No. 2012-16**

**Respondent,**

**CHARGE**

You are hereby notified that the Director of New Mexico Alcohol and Gaming Division (Director) has before her sufficient evidence that probable cause exists which if not satisfactorily explained or rebutted, will justify the Director in suspending or revoking, or imposing a fine or both, against Licensee **Jose C. Roybal D/B/A/ FAIRVIEW LIQUOR STORE AND BAR a/k/a RED'S REASTAURANT AND BAR Liquor License # 0331, CITATION # 9493**, to operate as a licensed liquor establishment in the State of New Mexico, Rio Arriba County.

Such contemplated action exists pursuant to NMSA 1978 Sections 60-6C-1, 60-6C-2, 60-6C-4, and 60-7B-1 of the Liquor Control Act, and NMAC Sections 15.10.33.11 of the Rules and Regulations filed in accordance with the Liquor Control Act.

**60-7B-1. A (1) Selling or Giving Alcoholic Beverages to Minors; Possession:**

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a person, including a person licensed pursuant to the provision of the Liquor Control Act, or an employee, agent or lessee of that person, if he knows or has reason to know that he is violating the provisions of this section, to: (1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises.

**15.10.33.11.A No Sale, Service, Possession or Consumption Permitted:**

Under no circumstances, may minors purchase, be served, possess or consume alcoholic beverages on licensed premises, and nothing in these regulations, including provisions permitting minors on licensed premises, shall be construed as permitting the sale or service to, or possession or consumption of any alcoholic beverage by, a minor on a licensed premises.

**The nature of the grounds relied upon for filing this Charge Document is based upon the following probable cause:**

**Count 1, Sale to Minor:**

On or about August 22, 2009 SID Agent Auboney Burns and SID Agent Michael Blea started an investigation when they were contacted by Espanola Police Department Officer(s) Michelle Ortega and Sgt. Lopez regarding a sale and or service of alcoholic beverage(s) to a minor Justin Martinez who was eighteen (18) years old at the time of

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sale and or purchase. Mr. Martinez admitted purchasing alcoholic beverage(s) a bottle of 730 ml vodka from the liquor establishment Respondent Fairview Liquor Store and Bar owned by Jose C. Roybal also known as Red's Restaurant and Bar LL# 0331.

Justin Martinez, Donna Gee and Markeeta Trujillo were all minors who purchased and consumed the alcoholic beverage and did admit to the purchase and consumption of the alcoholic beverages after the sale of alcohol from the Respondent's establishment Fairview. These three minors, Martinez, Gee and Trujillo were all apprehended in a car after the fatality of Mr. Robert Duran. The car driven by Justin Martinez struck Mr. Duran while driving over 60 mph in a 25mph zone, traveling north on McCurdy Road in Espanola. After striking and killing Mr. Duran the three minors crashed the car into a wall, on or about August 22, 2012, in the County of Rio Arriba, State of New Mexico.

The minor Justin Martinez admitted purchasing and did purchase from the Respondent's establishment and employee an alcoholic beverage, which was vodka. The facts show that the Respondent Fairview LL #0331 under the management of the owner Mr. Roybal sold alcoholic beverage(s) to a minor, Justin Martinez.

As a result of the above information, investigation and facts the SID Officer(s) issued the Establishment owner Jose Roybal and his business Licensee # 0331 the Citation # 9493.

**The names and addresses of the witnesses who are expected to give testimony or evidence against the Licensee are:**

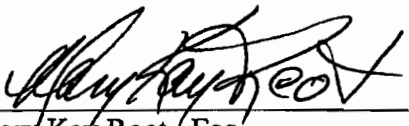
1. SID Agent SID Agent Auboney Burns, SID Agent Michael Blea, Victor Rodriguez 4491 Cerrillios Road, Santa Fe, N.M. 87507 phone 827-9063
2. Justin Martinez, 19198 HWY 84, Hernandez , N.M. 87537
3. Donna Gee, 20, 142 Road, Mendanles, N.M. 87548 location description county road 142 State Road 233 house 20
4. Markeeta Trujillo, 20, 142 Road, Mendanles, N.M. 87548, location description county road 142 State Road 233 house 20
5. Espanola Police Department Officer(s) Michelle Ortega and Sgt. <sup>Christian Lopez</sup> Lopez, 411 Paseo De Oate, Espanola, N.M. 87532 , phone 505 747-6002
6. Leah Gonzales permit # 78224, additional information to be supplied on the witness list
7. Aaron Mata permit # 210802, additional information to be supplied on the witness list
8. Gabriel Archuleta permit# 169514, additional information to be supplied on the witness list
9. Jose C. Roybal, P.O. BOX 3236, FAIRVIEW, N.M. 87533 and Fairview and or Reds Restaurant & Bar, 1668 N. Riverside Drive- Taos Hwy, Espanola, New Mexico 87532

The Department reserves the right to supplement this witness list as necessary with due notice to the Respondent and to join the establishment and server charges in the best interest of the administration of justice and judicial economy..

Wherefore you are hereby notified of the above Charge, probable cause and witness(es), whereby this case is pursued and prosecuted through the RLD administrative hearing procedures.

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Date: 10-10-12

  
Mary Kay Root, Esq.  
Director AGD and Deputy Superintendent  
Alcohol and Gaming Division  
Regulation and Licensing Department

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading was sent to the following parties via certified mail return receipt and or e-mail on this 10th day of October, 2012.

Jose C. Roybal  
3307 Calle de Daniel, NW  
Albuquerque, NM 87104

Jose C. Roybal  
P.O. Box 3236  
Fairview, N.M. 87533

Fairview and or Reds Restaurant & Bar,  
1668 N. Riverside Drive- Taos Hwy  
Española, New Mexico 87532

Melchior Savarese, Prosecutor  
2550 Cerrillos Rd.  
Santa Fe, NM 87505  
Melchior.Savarese@State.nm.us

  
Shannon Garcia Paralegal

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1953 Comp., § 64-8-10, enacted by Laws 1978, ch. 35, §

References. — For authority of officer to issue citation for illegal operation plate, see 66-3-17 NMSA 1978.

## PART 2

## TRAFFIC OFFENSES

## 66-8-101. Homicide by vehicle; great bodily harm by vehicle.

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

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

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

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

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

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

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

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

History: 1953 Comp., § 64-8-101, enacted by Laws 1978, ch. 35, § 1981, ch. 370, § 1; 1983, ch. 76, § 1; 1989, ch. 226, § 1; 1991, ch. § 1; 2004, ch. 42, § 2.

Cross references. — For the penalty for a felony, see 66-8-9 NMSA

For uniform jury instructions to be used with 66-8-101 NMSA 1978, see 40 NMRA.

## 66-8-101.1. Injury to pregnant woman by vehicle.

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

B. As used in this section:

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

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

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

History: Laws 1985, ch. 239, § 2.

Cross references. — For injury to pregnant woman, see 30-3-7 NMSA 1978.

## DWI 66-8-102. Driving under the influence of intoxicating liquor or drugs; aggravated driving under the influence of intoxicating liquor or drugs; penalties.

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

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

C. It is unlawful for:

(1) a person to drive a vehicle in this state if the person has an alcohol concentration of eight one hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle; or

(2) a person to drive a commercial motor vehicle in this state if the person has an alcohol concentration of four one hundredths or more in the person's blood or breath within three hours of driving the commercial motor vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.

D. Aggravated driving under the influence of intoxicating liquor or drugs consists of:

(1) driving a vehicle in this state with an alcohol concentration of sixteen one hundredths or more in the driver's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle;

(2) causing bodily injury to a human being as a result of the unlawful operation of a motor vehicle

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while driving under the influence of intoxicating liquor or drugs; or

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

E. A first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours of community service. In addition, the offender may be required to pay a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection K of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

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

(1) upon a second conviction, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, not less than forty-eight hours of community

service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, not less than ninety-six hours of community service and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

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

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

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

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

K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirements imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

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

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

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

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

or

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

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

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

N. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the traffic safety bureau. Unless determined by the bureau to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

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

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

(3) a period of three years, for a third conviction pursuant to this section; or

(4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

O. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle under the influence of intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that he person has not had violations of the interlock device.

P. An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the time period the ignition interlock device has been in use.

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

R. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction,

territory or possession of the United States or of a tribe, when that ordinance or law is equivalent to New Mexico law for driving under the influence of intoxicating liquor or drugs, and prescribes penalties for driving under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

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

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

U. As used in this section:

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

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

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

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

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

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

**History:** 1941 Comp., § 68-2317, enacted by Laws 1953, ch. 139, § 54; 1953 Comp., § 64-22-2; Laws 1955, ch. 184, § 8; 1965, ch. 251, § 1; 1969, ch. 210, § 2; recompiled as 1953 Comp., § 64-8-102, by Laws 1978, ch. 35, § 510; 1979, ch. 71, § 7; 1981, ch. 370, § 2; 1982, ch. 102, § 1; 1983, ch. 76, § 2; 1985, ch. 178, § 2; 1987, ch. 97, § 3; 1988, ch. 56, § 8; 1993, ch. 66, § 7; 1997, ch. 43, § 1; 1997, ch. 205, § 1; 1999, ch. 61, § 1; 2002, ch. 82, § 1; 2003, ch. 51, § 10; 2003, ch. 90, § 3; 2003, ch. 164, § 10; 2004, ch. 42, § 1; 2005, ch. 241, § 5; 2005, ch. 269, § 5; 2007, ch. 321, § 10; 2007, ch. 322, § 1; 2008, ch. 72, § 3; 2010, ch. 29, § 1.

**Cross references.** — For definitions of "conviction" and "convicted", see 66-5-28 NMSA 1978.

For mandatory revocation of driver's license by the division, see 66-5-29 NMSA 1978.

For Ignition Interlock Licensing Act, see 66-5-501 NMSA 1978.

For violation being a felony if homicide committed, see 66-8-101 NMSA 1978.

For funding of local government corrections fund by penalty assessment fees, see 66-8-116 NMSA 1978 and 66-8-119 NMSA 1978.

For immediate appearance before magistrate for violation, see 66-8-122 NMSA 1978.

For the prohibition of a minor's operation of a motor vehicle while possessing liquor, see 66-8-138 to 66-8-140 NMSA 1978.

For operating snowmobiles while under the influence, see 66-9-8 NMSA 1978.

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For crime laboratory fee, see 31-12-7 NMSA 1978.  
 For crime laboratory fund, see 31-12-9 NMSA 1978.  
 For court automation fund, see 34-9-10 NMSA 1978.  
 For the criminal jurisdiction of magistrate courts, see 35-3-4 NMSA 1978.  
 For court automation fee, see 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.  
 For uniform jury instructions to be used with 66-8-102 NMSA 1978, see 14-4501 to 14-4503 NMRA.

#### 66-8-102.1. Guilty pleas; limitations.

Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act [66-8-105 NMSA 1978] disclose that the blood or breath of the person charged contains an alcohol concentration of:

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

**History:** Laws 1982, ch. 102, § 2; 1984, ch. 72, § 4; 1993, ch. 66, § 8; 2003, ch. 51, § 11; 2003, ch. 90, § 4.

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

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

**History:** Laws 1993, ch. 66, § 16.

#### 66-8-102.3. Imposing a fee; interlock device fund created.

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

B. The "interlock device fund" is created in the treasury. The fee imposed pursuant to Subsection C of this section shall be collected by the motor vehicle division of the taxation and revenue department and deposited in the interlock device fund.

C. All money in the interlock device fund is appropriated to the traffic safety bureau of the department of transportation to cover part of the costs of installing, moving and leasing ignition interlock devices for people who are required, pursuant to conviction under Section 66-8-102 NMSA 1978 or adjudications under Subsection (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or driver's license suspensions pursuant to the provisions of the Implied Consent Act or as a condition of parole, to install those devices on their vehicles. Provided that money is available in the interlock device fund, the traffic safety bureau shall pay for one vehicle per offender, up to fifty dollars (\$50.00) for the cost of installation, up to fifty dollars (\$50.00) for the cost of removal and up to thirty dollars (\$30.00) for verified active usage of the interlock device. The traffic safety bureau shall not pay any amount above the cost of removal or usage of an interlock device.

D. Indigency shall be determined by the traffic safety bureau based on proof of enrollment in one or more of the following types of public assistance:

- (1) temporary assistance for needy families;
- (2) general assistance;
- (3) the supplemental nutritional assistance program, also known as "food stamps";
- (4) supplemental security income;
- (5) the federal food distribution program or other Indian reservations; or
- (6) other criteria approved by the traffic safety bureau.

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

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

**History:** Laws 2002, ch. 82, § 2; 2003, ch. 92, § 1; 2005, ch. 26, § 2; 2006, ch. 20, § 1; 2007, ch. 324, § 2; 2010, ch. 29, § 2.

**Cross references.** — For Ignition Interlock Licensing Act, see 66-8-501 NMSA 1978.

#### 66-8-102.4. Uniform police reports and procedures for DWI arrests.

A. The department of public safety, in collaboration with the motor vehicle division of the taxation and revenue department and the traffic safety bureau of the department of transportation, shall develop and periodically review and update standard arrest reports and procedures to be used by law enforcement officers when making an arrest for a violation of the provisions of Section

NMSA 1978 or similar municipal or county or-

law enforcement officer making an arrest for violation of the provisions of Section 66-8-102 NMSA or of similar municipal or county ordinances shall file standard arrest reports and procedures developed and approved by the department of public safety in accordance with the provisions of Subsection A of this sec-

History: Laws 2005, ch. 269, § 8.

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

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

History: 1953 Comp., § 64-22-2.1, enacted by Laws 1967, ch. 160, § 1, recomplied as 1953 Comp., § 64-8-103, by Laws 1978, ch. 35, § 512.

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

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

History: 1953 Comp., § 64-8-104, enacted by Laws 1978, ch. 35, § 512.

Cross references. — For promulgation and approval of methods to test persons operating motor vehicle under influence of drugs or alcohol, see 24-1-22 NMSA 1978.

**66-8-105. Implied Consent Act; short title.**

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

History: 1953 Comp., § 64-8-105, enacted by Laws 1978, ch. 35, § 13.

Cross references. — For limited driving privilege after revocation, see 66-5-35 NMSA 1978.

**66-8-106. Repealed.**

Repeals. — Laws 1990, ch. 120, § 45 repealed 66-8-106 NMSA 1978, as enacted by Laws 1978, ch. 35, § 514, relating to definition of "director", effective July 1, 1990. For provisions of former section, see the 1989 NMSA 1978 on New Mexico One Source of Law DVD. For present comparable provisions, see 66-1-4.4 NMSA 1978.

**66-8-107. Implied consent to submit to chemical test.**

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

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

History: 1953 Comp., § 64-8-107, enacted by Laws 1978, ch. 35, § 515; 1979, ch. 71, § 8; 1985, ch. 178, § 3; 1985, ch. 187, § 1; 1993, ch. 66, § 9.

**66-8-108. Consent of person incapable of refusal not withdrawn.**

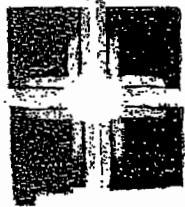
Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by Section 66-8-107 NMSA 1978, and the test or tests designated by the law enforcement officer may be administered.

History: 1953 Comp., § 64-8-108, enacted by Laws 1978, ch. 35, § 516.

**66-8-109. Administration of chemical test; payment of costs; additional tests.**

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

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an



NMDOT

# The High Cost of DWI In New Mexico 2007-2008



The New Mexico Department of Transportation, Traffic Safety Bureau

DWI Offense	Jail <sup>1</sup>	Fines and Fees <sup>2</sup>	Administrative License Revocation <sup>3</sup>	Criminal License Revocation <sup>3</sup>	Other
<b>1<sup>st</sup></b> Misdemeanor	<b>Maximum:</b> 90 days 66-8-102E  <b>Mandatory:</b> <b>48 hours</b> if offender fails to comply with any condition of probation. 66-8-102E	<b>Maximum fine:</b> \$500 66-8-102E <b>License fee:</b> \$100 66-5-33.1 <b>Crime lab fee:</b> \$65 31-12-7A <b>Community fee:</b> \$75 31-12-7B <b>Interlock license fee:</b> \$45, 66-5-35C <b>Alcohol screening:</b> \$100-200 <b>DWI school:</b> up to \$150 <b>Ignition interlock fee:</b> \$960/year or more <b>Corrections fee:</b> \$20, 35-6-1D(1)	<b>Under 21 (.02+ BAC)</b> 1 year, 66-8-111C(2) <b>Age 21+ (.08+ BAC)</b> and <b>Commercial Driver (CDL)</b> (.04+ BAC) <b>Both 6 months,</b> 66-8-111C <b>No limited license</b> 66-5-35A(2) <sup>4</sup> <b>Refusal:</b> 1 year 66-8-111B <b>Ignition interlock license available</b> 66-5-503 <sup>7</sup>	<b>Upon Conviction:</b> 1 year 66-5-29A(2) and 66-5-29C(1) <b>No limited license</b> 66-5-35A(3) <sup>4</sup> <b>Ignition interlock license required</b> 66-8-102N(1) <sup>8</sup>  The criminal <i>per se</i> standard is .08, (.04 for CDL) tested within 3 hours of driving when the BAC is from alcohol consumed before or while driving.	<b>Mandatory:</b> Screening, 66-8-102E & K DWI school, 66-8-102E. Community service, minimum 24 hrs, 66-8-102E Ignition Interlock installed for 1 year, 66-8-102N(1) <sup>6</sup> <b>Court discretion:</b> Treatment, 66-8-102E & K; Probation, up to 1 year, 66-8-102E <sup>9</sup> <b>Aggravated DWI<sup>5</sup>, Mandatory:</b> Jail: Additional 48 hours jail if convicted of aggravated DWI, 66-8-102D & E

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DWI Offense	Jail <sup>1</sup>	Fines and Fees <sup>2</sup>	Administrative License Revocation <sup>3</sup>	Criminal License Revocation <sup>3</sup>	Other
<b>2<sup>nd</sup></b>  Misdemeanor	<b>Maximum:</b> 364 days 66-8-102F  <b>Mandatory:</b> 96 hours Also: mandatory extra 7 days if offender fails to comply with sentence 66-8-102F(1)	<b>Maximum fine:</b> \$1,000 66-8-102F <b>Mandatory fine:</b> \$500 66-8-102F(1)  All other costs and fees same as first offense	.02+ BAC (under 21) .04+ BAC(Commercial DL) .08+ BAC or any refusal: All 1 year revocation 66-8-111B and 66-8-111C  No limited license 66-5-35A(2) <sup>4</sup> Ignition interlock license available 66-5-503 <sup>7</sup>	<b>Upon Conviction:</b> 2 years 66-5-29A(3), and 66-5-29C(2)(a)  No limited license 66-5-35A(3)  Ignition interlock license required 66-8-102N(2) <sup>6</sup>	<b>Mandatory:</b> Treatment: 66-8-102L <sup>8</sup> Screening: 66-8-102K Community service, minimum 48 hrs, 66-8-102F(1) Ignition interlock installed for 2 years, 66-8-102N(2) <sup>6</sup> <b>Court discretion:</b> Probation, up to 5 years, 66-8-102F <sup>9</sup> Aggravated DWI <sup>5</sup> , Mandatory: Additional 96 hours jail if convicted of aggravated DWI, 66-8-102D & F(1)  Albuquerque, Dona Ana County, Las Cruces, Torrance County: Forfeiture of vehicle in civil action
<b>3<sup>rd</sup></b>  Misdemeanor	<b>Maximum:</b> 364 days 66-8-102F  <b>Mandatory:</b> 30 days Also: mandatory 60 days if offender fails to comply with sentence 66-8-102F(2)	<b>Maximum fine:</b> \$1,000 66-8-102F <b>Mandatory fine:</b> \$750 66-8-102F(2)  All other costs and fees same as first offense	Same as second offense	<b>Upon Conviction:</b> 3 years 66-5-29A(3) and 6-5-29C(2)(b)  No limited license 66-5-35A(3)  Ignition interlock license required 66-8-102N(3) <sup>6</sup>	<b>Mandatory:</b> Treatment: 66-8-102L <sup>8</sup> Screening, 66-8-102K Ignition interlock installed for 3 years, 66-8-102N(3) <sup>6</sup> Community service, minimum 96 hours, 66-8-102F(2) <b>Court discretion:</b> Probation, up to 5 years, 66-8-102F <sup>9</sup> Aggravated DWI <sup>5</sup> , Mandatory: Jail: <u>Additional 60 consecutive days jail if convicted of aggravated DWI, 66-8-102D &amp; F(2)</u>  Albuquerque, Dona Ana County, Las Cruces, Torrance County, Santa Fe (City and County): Forfeiture of vehicle in civil action

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DWI Offense	Jail <sup>1</sup>	Fines and Fees <sup>2</sup>	Administrative License Revocation <sup>3</sup>	Criminal License Revocation <sup>3</sup>	Other
<b>4<sup>th</sup></b>  4 <sup>th</sup> Degree Felony	<b>Maximum:</b> <b>18 months</b> 66-8-102G  <b>Mandatory:</b> <b>6 months</b> 66-8-102G	<b>Maximum fine:</b> \$5,000 31-18-15E(7)  All other costs and fees same as first offense	Same as second offense	Upon Conviction: The remainder of the offender's life Ignition interlock license required, 66-5-29A(3) & 66-5-29C(2)(c) Person may apply to district court for restoration of license after five years if not subsequently convicted of DWI. 66-5-5D, 66-8-102O	<b>Mandatory:</b> Treatment: 66-8-102M <sup>6</sup> Screening, 66-8-102K <b>Install ignition interlock for the remainder of the offender's life</b> 66-8-102N(4)6 Offender may apply to district court every five years for removal of the interlock, which can be removed for good cause, 66-8-102O  Albuquerque, Dona Ana County, Las Cruces, Torrance County, Santa Fe (City and County): Forfeiture of vehicle in civil action
<b>5<sup>th</sup></b>  4 <sup>th</sup> Degree Felony	<b>Maximum:</b> <b>2 years</b> 66-8-102H  <b>Mandatory:</b> <b>1 year</b> 66-8-102G	<b>Maximum fine:</b> \$5,000 31-18-15E(7)  All other costs and fees same as first offense	Same as second offense	Same as fourth offense	Same as fourth offense
<b>6<sup>th</sup></b>  3 <sup>rd</sup> Degree Felony	<b>Maximum:</b> <b>30 months</b> 66-8-102I  <b>Mandatory:</b> <b>18 months</b> 66-8-102I	<b>Maximum fine:</b> \$5,000 31-18-15E(7)  All other costs and fees same as first offense	Same as second offense	Same as fourth offense	Same as fourth offense



DWI Offense	Jail <sup>1</sup>	Fines and Fees <sup>2</sup>	Administrative License Revocation <sup>3</sup>	Criminal License Revocation <sup>3</sup>	Other
<b>7<sup>th</sup></b> or subsequent 3 <sup>rd</sup> Degree Felony	<b>Maximum:</b> 3 years 66-8-102J <b>Mandatory:</b> 2 years, 66-8-102J	<b>Maximum fine:</b> \$5,000 31-18-15E(7)  All other costs and fees same as first offense	Same as second offense	Same as fourth offense	Same as fourth offense
<b>Driving While Revoked</b> Misdemeanor	<b>Maximum:</b> 364 days 66-5-39A <b>Mandatory:</b> 7 days, 66-5-39A	<b>Maximum fine:</b> \$1,000 66-5-39A <b>Mandatory fine:</b> \$300 66-5-39A	There is no administrative sanction for driving while revoked for DWI.	1 year added to current revocation period, 66-5-39C	30 days immobilization of vehicle driven by offender, 66-5-39B Albuquerque, Dona Ana County, Las Cruces, Torrance County, Santa Fe (City and County): Forfeiture of vehicle in civil action
<b>DWI Vehicular Homicide</b> 3 <sup>rd</sup> Degree Felony	<b>Maximum:</b> 6 years 31-18-15A(5)	<b>Maximum fine:</b> \$ 5,000 31-18-15E(5)	Depends on number of prior offenses, no limited license or interlock license allowed 66-5-35A(5) and 66-5-503C <sup>7</sup>	Depends on number of prior DWI offenses. No limited license or interlock license allowed.	<b>Mandatory:</b> 4 years extra jail time added for every prior DWI conviction within the last 10 years, 66-8-101D, including tribal convictions, 66-8-101E(2)

**Footnotes:**

**Mandatory jail time** must be consecutively served. **2. Fines and fees** do not include increased insurance costs, treatment, lost wages, towing and storage, court costs and attorney fees. **3. Revocation:** Licenses are administratively revoked for driving with .08 BAC or higher (21 and older), .02 BAC or higher (under 21), .04 or higher (commercial driver's licenses) and any refusal. The results of a chemical test given more than 3 hours after driving may be introduced as evidence of the BAC in the driver's blood or breath at the time of the test (not the time of driving) and the judge or jury will determine how much weight to give the evidence. 66-10-110E. Licenses remain revoked until offenders apply to reinstate them. These are violations of the Implied Consent Act, 66-8-105 through 112. **4. Bodily injury:** A violation of the Implied Consent Act is not part of the criminal sentence. **5. Aggravated DWI** consists of: (1) Refusal to take a BAC test at time of arrest for DWI; OR (2) Testing at a BAC of .08 or higher within 3 hours of driving when the BAC is from alcohol consumed before or while driving; OR (3) Causing bodily injury to someone while driving under the influence of alcohol or other drugs, 66-8-102D. See 66-8-102T(1) for "bodily injury." **6. Criminal ignition interlock provisions:** Interlock must be installed on all vehicles driven by the offender AND offender must obtain ignition interlock license. **7. An Ignition Interlock license** allows drivers to drive without time and place restrictions and is available to every revoked driver except those who have committed vehicular homicide or great bodily injury by vehicle while under the influence of intoxicating liquor or drugs. An interlock is defined as "a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person." 66-5-502B. Out-of-state drivers convicted elsewhere of DWI within the last 10 years who apply for a NM license are eligible ONLY for an interlock license, according to the same schedule as NM offenders 66-5-5E. The penalty for driving without an interlock when it's required by license is the same as driving while revoked, 66-5-504, 66-5-39. For an ignition interlock license application go to <http://ipl.unm.edu/traff/pubs/mvd10792.pdf>. **8. Treatment is mandatory**, as follows, for a second or third conviction: not less than a 28-day inpatient residential or in-custody substance abuse treatment program approved by the court; not less than a 90-day outpatient treatment program approved by the court; a drug court program approved by the court; OR any other substance abuse treatment program approved by the court. For any felony conviction, the Corrections Department is required to provide substance abuse counseling and treatment to the offender, while the offender is in custody and on probation or parole. **9. Probation violations:** On any offense, if the offender violates probation under a suspended or deferred sentence, the judge may impose any sentence originally available and credit shall not be given for time served by the offender on probation, 66-8-102S.

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# DWI Campaigns

**Working to Protect New Mexico Families through Operation DWI and You Drink & Drive. You Lose Campaigns.**

Law enforcement agencies throughout New Mexico are *Working to Protect New Mexico Families* in the fight against DWI by implementing both state and national programs-*Operation DWI and You Drink & Drive. You Lose* campaigns.

Law enforcement agencies conduct sobriety checkpoints and saturation patrols every month. These coordinated efforts to combat drunk driving are in addition to the routine DWI enforcement activities of each state, city, county, tribal, and campus police agency.

Research indicates that public education, combined with highly visible law enforcement, is a powerful tool in decreasing the number of people who drink and drive.



**OPERATION DWI.**

# Penalties

## Minimum Blood Alcohol Levels at Which Driver License is Revoked

UNDER 21 ▶	.02% BAC
COMMERCIAL DRIVER LICENSE ▶	.04% BAC
21 AND OVER ▶	.08% BAC

<b>First Offense</b>	MISDEMEANOR	<ul style="list-style-type: none"> <li>6 months to 1 year license revocation (1 year if under 21).</li> <li>Up to 90 days jail.</li> <li>Mandatory: DWI school, alcohol evaluation, ignition interlock for 1 year, community service.</li> <li>Other: treatment.</li> </ul>
<b>Second Offense</b>	MISDEMEANOR	<ul style="list-style-type: none"> <li>2-year license revocation.</li> <li>Up to 364 days jail, 96 hours mandatory.</li> <li>Up to \$1,000 fine, \$500 mandatory.</li> <li>Other Mandatory Penalties: Alcohol evaluation, community service, treatment, ignition interlock for 2 years.</li> <li>Other: Up to 5 years probation.</li> </ul>
<b>Third Offense</b>	MISDEMEANOR	<ul style="list-style-type: none"> <li>3-year license revocation.</li> <li>Up to 364 days jail, mandatory 30 days.</li> <li>Up to \$1,000 fine, \$750 mandatory.</li> <li>Other Mandatory Penalties: Alcohol evaluation, community service, treatment, ignition interlock for 3 years.</li> <li>Other: Up to 5 years probation.</li> </ul>
<b>Fourth Offense</b>	FELONY-FOURTH DEGREE	<ul style="list-style-type: none"> <li>Lifetime license revocation, with 5-year court review.</li> <li>Up to 18 months prison, 6 months mandatory.</li> <li>Up to \$5,000 fine.</li> <li>Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with 5-year court review.</li> </ul>
<b>Fifth Offense</b>	FELONY-FOURTH DEGREE	<ul style="list-style-type: none"> <li>Lifetime license revocation, with 5-year court review.</li> <li>Up to 2 years prison, 1 year mandatory.</li> <li>Up to \$5,000 fine.</li> <li>Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with 5-year court review.</li> </ul>
<b>Sixth Offense</b>	FELONY-THIRD DEGREE	<ul style="list-style-type: none"> <li>Lifetime license revocation, with 5-year court review.</li> <li>Up to 30 months prison, 18 months mandatory.</li> <li>Up to \$5,000 fine.</li> <li>Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with 5-year court review.</li> </ul>
<b>Seventh or Subsequent Offense</b>	FELONY-THIRD DEGREE	<ul style="list-style-type: none"> <li>Lifetime license revocation, with 5-year court review.</li> <li>Up to 3 years prison, 2 years mandatory.</li> <li>Up to \$5,000 fine.</li> <li>Other Mandatory Penalties: Alcohol evaluation, treatment, lifetime ignition interlock with 5-year court review.</li> </ul>
<b>Aggravated DWI</b>	.16 BAC or above, refusal to take BAC test, or cause bodily injury while DWI	<ul style="list-style-type: none"> <li>1st Offense, Mandatory: Additional 2 days jail.</li> <li>2nd Offense, Mandatory: Additional 4 days jail.</li> <li>3rd Offense, Mandatory: Additional 60 days jail.</li> </ul>
<b>Driving While Revoked for DWI</b>	MISDEMEANOR	<ul style="list-style-type: none"> <li>1-year revocation added to current revocation period.</li> <li>Up to one year in jail, 7 days mandatory.</li> <li>Up to \$1,000 fine; \$300 mandatory.</li> <li>Other: 30 days immobilization of vehicle driven by offender.</li> <li>Driving without an interlock when it's required by an interlock license is driving while revoked.</li> </ul>
<b>Selling or Giving Alcohol to a Minor</b>	FELONY-FOURTH DEGREE	<ul style="list-style-type: none"> <li>To knowingly sell, serve or give alcoholic beverages to a minor, or to permit a minor to consume alcoholic beverages, or to assist a minor to buy alcoholic beverages. Does not apply to parents serving their own children in their home, to an adult spouse of a minor, or to the use of alcohol in religious services. Minor here means...</li> </ul>

of Intoxicating Liquor or Drugs

Level of Offense	Maximum Incarceration	Mandatory Minimum	Maximum Fine	Maximum Probation	Other Mandatory	Ignition Interlock	Authority
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1 <sup>st</sup> offense	90 days	24 to 48 hours consecutive	\$500	1 year	DWI school	1 year	§ 66-8-102(E), (N) & (O)
1 <sup>st</sup> offense aggravated	90 days	48 hours consecutive	\$500	1 year	DWI school	1 year	§ 66-8-102(E), (N)
2 <sup>nd</sup> offense <sup>†</sup>	364 days	96 hours consecutive	\$1,000 \$500 mandatory	5 years	48 hours community service	2 years	§ 66-8-102(F), (F)(1), (L), (N) & (P)
2 <sup>nd</sup> offense aggravated <sup>†</sup>	364 days	192 hours consecutive	\$1,000 \$500 mandatory	5 years	48 hours community service	2 years	§ 66-8-102(F), (F)(1), (L), (N) & (P)
3 <sup>rd</sup> offense <sup>†</sup>	364 days	30 days consecutive	\$1,000 \$750 mandatory	5 years	96 hours community service	3 years	§ 66-8-102(F), (F)(2), (L) & (N)
3 <sup>rd</sup> offense aggravated <sup>†</sup>	364 days	90 days consecutive	\$1,000 \$750 mandatory	5 years	96 hours community service	3 years	§ 66-8-102(F), (F)(2), (L) & (N)
4 <sup>th</sup> offense 4 <sup>th</sup> degree felony	18 months	6 months	\$5,000	5 years		rest of Defendant's life	§ 66-8-102(G) & (N)
5 <sup>th</sup> offense 4 <sup>th</sup> degree felony	2 years	1 year	\$5,000	5 years		rest of Defendant's life	§ 66-8-102(H) & (N)
6 <sup>th</sup> offense 3 <sup>rd</sup> degree felony	30 months	18 months	\$5,000	5 years		rest of Defendant's life	§ 66-8-102(I) & (N)
7 <sup>th</sup> & subsequent offense 3 <sup>rd</sup> degree felony	3 years	2 years	\$5,000	5 years		rest of Defendant's life	§ 66-8-102(J) & (N)

<sup>†</sup> Upon a 2nd or 3rd conviction the Court must impose: either a 28 day in-patient program, a residential or in-custody treatment program, a 90 day outpatient program or a drug court program approved by the court. § 66-8-102(L)

Upon any conviction defendant must participate in and complete an alcohol or drug abuse screening program and, if necessary, a treatment program. He must also pay a \$65 lab fee and a \$75 "comprehensive community programs" fee. §§ 66-8-102(K) & 31-12-7

All convictions require the installation of an Ignition Interlock Device on all cars driven by the defendant. § 66-8-102(N)

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« Will Paul Ryan make a difference in NM races this fall? Susana: "At least he had the courage to come up with a budget" [ABQ girls win Little League Softball World Series UPDATE: Photos of title game](#) »

**Heartbreaking: After accident, California woman petitions to toughen NM's drunk driving laws**

A California woman whose heartbreaking story has garnered attention across the state is fighting to make New Mexico's drunk driving laws tougher — and she has the support of Gov. [Susana Martinez](#).

[Aileen Smith](#), who was seven months pregnant and looking forward to giving birth to a boy she and her husband had already named Dimitri, lost the unborn child after a car accident in June in which the driver of the other car is charged with pulling out in front of them on Interstate 25 in San Miguel County, leading to an accident that left Smith with injuries to her abdomen and sternum.

Doctors at Christus St. Vincent Regional Medical Center in Santa Fe were unable to save the unborn baby.

Ramon Hernandez of Las Vegas, NM, has pled not guilty to vehicular homicide and felony DWI. State Motor Vehicle Division records show Hernandez had at least four prior DWI convictions and his license had been revoked prior to the crash.

Smith has established an online petition calling on the state to hand out tougher penalties for drunk drivers: <http://www.change.org/petitions/justice-for-dimitri-stronger-dwi-laws>

The site features a heartrending photo of Smith holding her child after doctors performed a Ceaasrean section in their attempt to save the baby:



"It is my mission to see justice done for my son, Dimitri," Smith writes on the petition page. "We were hit while on our way to see our family in San Diego and celebrate the pending arrival of the first child born to our family in over two decades. Please support our cause in installing stronger DWI laws in New Mexico."

[Capitol Report New Mexico](#) talked to Gov. Martinez yesterday (Aug. 14) about the case and Martinez said she wants lawmakers to tackle the issue in the next legislative session:

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[More Information](#)

In a post accompanying an [Associated Press](#) article that ran in the [Sacramento Bee](#), Smith wrote in the story's "comments" section:

"In New Mexico you can have up to 7 DWIs before any real consequences. The statistics being reported by the Governor's office say that 40% of auto accidents are due to drunk driving. 60% of the time it is a repeat drunk driver. There is a real need to strengthen the DWI law in New Mexico. Help us by signing the petition, and bring justice to Dimitri."

In the AP story, the attorney for Hernandez said authorities are "going to have to prove" his client was behind the wheel at the time of the crash.

The story also quotes Smith's husband, Zach, who attended St. John's College in New Mexico, saying, "I lived in Santa Fe for a year and I knew the drunken driving laws were lax back then. I come from California, where if you have a third DWI, they put you away."

Aileen Smith is from San Diego and she and her husband currently live in Colorado Springs.

[Aileen Smith](#), [Associated Press](#), [drunk driving](#), [Sacramento Bee](#), [Susana Martinez](#)

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## NEW CASES TRENDS IN DWI

For many years New Mexico was number one in the country for alcohol-related fatalities. During the 1980's and 1990's vehicular homicide claimed over 300 people a year. There has been some progress: That number is now less than 130 fatalities a year.

Court cases for many years have held that an intoxicated person "in control" of a vehicle could be charged with DWI. It became a

confusing area. In 2010, the Supreme Court of New Mexico sought to bring clarification to the issue.

DWI and physical control

In a commercial parking lot, Defendant was passed out behind the wheel of his vehicle. The keys were on the front passenger seat. An Albuquerque police officer, waking him up, determined he was under the influence. He was arrested for being “in control” of the vehicle.

Supreme Court said this wasn’t enough. The state must show the person had the intent to drive. A person cannot be convicted for what he might have done. State v. Sims (2010).

DWI and Inference of Past Driving

An officer in San Juan County saw a vehicle in the parking lot of a convenience store. Defendant was inside the vehicle, intoxicated. He admitted consuming five cans of a six-pack and throwing the cans out the window while driving to the store. A sixth can – open – was in the car. The car wouldn’t start – possibly dead battery – and he asked for assistance to tow it. After saying he was too drunk to take any tests, he was arrested for felony DWI.

While there was no direct evidence of Defendant’s driving or that he was in actual control (there was no intent to drive), Supreme Court noted substantial circumstantial evidence existed – his admissions alone – for a jury to infer Defendant drove while intoxicated before the officer arrived. State v. Mailman (2010).

Lesson learned: Think forward, think backward

An intoxicated person is in a vehicle on the side of road. First, think forward: did the person intend to drive the vehicle? Second, think backward: how did the person get there?

DWI – Misdemeanor Arrest Rule

In Santa Fe, an employee at a mall saw a very intoxicated man get into a van and drive away. The employee gave a description of the van and the license plate to dispatch. A sergeant, arriving at the man’s house, felt the engine. It was still warm. The man staggered to the door, highly intoxicated, and admitted driving the van earlier.

Supreme Court held the misdemeanor arrest rule no longer applies to DWI. An arrest for DWI can be made even though it doesn’t occur in the officer’s presence. City of Santa Fe v. Martinez (2010).

Lesson learned:

The misdemeanor arrest rule no longer applies to DWI. Another helpful tool in confronting DWI (and other misdemeanors) is the police team concept:

Police Team Concept (DWI)

An Albuquerque police officer stopped Defendant for a traffic violation. After observing signs of DWI, he called for a DWI officer to complete the investigation. The DWI officer arrested Defendant for DWI.

The police team concept is an exception to the misdemeanor arrest rule. The first officer’s primary duty was to patrol the streets, not to perform DWI investigations. Thus, his observations could properly be passed to the DWI officer to complete the investigation. Court of Appeals held evidence seized was admissible. State v. Mitchell (2010).

Lesson learned:

DWI is an exception to the misdemeanor arrest rule. This rule requires a misdemeanor to occur in an officer’s presence. Another exception, as shown by this case, is the police team concept.



DWI – Vehicle Forfeiture

News item: Wheels in lockup

Santa Fe is now seizing vehicles for DWI offenses. Generally, a seizure is done after two convictions. The forfeiture program began in Albuquerque which has an auction about every three months. The proceeds go to DWI education and enforcement.

Legislation for a state-wide program passed the House in 2011, but died in the Senate. Santa Fe New Mexican, May 1, 2011.

Additional notes:

There are options short of seizing a vehicle. For example, some departments may “boot” a vehicle for a certain amount of time.

**FREEDOM OF SPEECH – HATE SPEECH**

The First Amendment protects freedom of speech. And, according to the United States Supreme Court, it also protects hate speech.

News item: Supreme Court Rules for Funeral Protesters

The Topeka, Kansas based Westboro Baptist Church has gained notoriety by picketing at funerals of fallen warriors with signs claiming “God Hates You,” “Thank God for Dead Soldiers,” and “God Hates Fag Soldiers.” They believe God is punishing the military (and America) for its tolerance of homosexuality.

The United States Supreme Court, citing freedom of speech, upheld their right to do so. Albuquerque Journal, March 3, 2011.

Note:



# SANTA FE REPORTER

## LOCAL NEWS AND CULTURE

### Drunk Riding

Cost of your cab ride home: \$1. Not getting a DWI: priceless.

Joey Peters

Why drive when you can ride for \$1?

It's Saturday night in Santa Fe and I'm out drinking. Closing time is approaching—it's near 2 am—and I need to get home, but I have too much bourbon in my belly to drive.

I dial the number for the only cab company in town (an antiquated law gives Capital City Cab a monopoly) and a disciplined voice greets me. He asks where I need to be picked up.

"Matador," I say. "Gimme five minutes and I'll be right over," he politely responds.

The cab ride is part of Santa Fe County's Chauffeur and Designated Driver program (CADDy), which subsidizes weekend cab rides. The program, an attempt to curb drunk driving, has gone through many iterations since it kicked off six years ago; the latest is \$1 cab rides on Friday and Saturday nights.

The driver, who wears a black leather jacket and a brown cowboy hat and looks like Garrett Morris with lighter skin, pulls up in front of the downtown bar in less than five minutes.

I get in the cab, but before we can speak to each other, he gets a call from Dawn, who's at a bar in the Railyard and needs a cab for herself and her friends. Her voice indicates that she, like me, has had too much to drink to safely drive home. But I think I keep my composure better than she does.

"I don't wanna stand up!" I overhear her saying to her friends while she's on the phone with the cabbie. She also demands that he call her when he arrives to pick her group up.

After they hang up, the cabbie explains that he's also the overnight dispatcher. I tell him I'm a reporter, to which he responds with reserve, noting that I have to clear interviews through his management. He won't give me his name (Capital City Cab didn't return my phone calls for this story).

"How many calls have you had tonight?" I ask. "I had quite a few pickups tonight," he responds quietly.

"How many would you say? Five, 10, a dozen?" He pauses. "I'd say quite a few," he repeats. It continues like this for a while, until he finally gives in with a compromise. "I can tell you basic things that have already been in the paper," he says.

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Namely: The CADDy program costs riders just \$1 each for every Friday night and Saturday night ride up to \$25. The county pays for the rest as long as the ride costs less than \$25; if it's more, the customer pays the difference. Last year, CADDy gave 13,000 rides and cost taxpayers roughly \$150,000.

Lupe Sanchez, the Santa Fe County DWI Program coordinator, says he expects the price tag to be the same this year, despite changes to the program. So far, CADDy is on track to meet last year's numbers, with roughly 6,330 rides between July and December. Sanchez says that equals around 115-120 rides per night.

The cab metering, however, is average. My home is two miles from the Matador, an \$8.93 trip. Passengers in need of a longer ride, be warned that you may have to pay the difference.

It's also unclear how much the program is doing to reduce DWI offenses. "I would like to think it is," Sanchez says, but adds that it's hard to gauge since the county supports other DWI initiatives, including funding two public awareness campaigns and helping sponsor monthly DWI checkpoints, where police and state patrol officers man an intersection, stopping every car to ask drivers if they've had anything to drink.

"It is multifaceted," Lisa Kelloff, president of [Safer New Mexico Now](#), says of tackling DWI. "There's education, prevention, law enforcement, media."

At least one thing's clear: Overall DWI arrests in the county have decreased since CADDy launched in 2007. That year, there were around 1,270 arrests. In 2011, that number fell to 1,096, although the drop wasn't consistent over the years—DWI arrests jumped to 1,333 in 2008, for instance.

Another plus: preliminary statistics show that drunken driving-related deaths in the county dropped to seven in 2011, from a high of 20 in 2010.

CADDy's perks have changed over its six years. Last year, for instance, the CADDy program charged a total of \$5 for one to two passengers and \$10 for three or more passengers. At the time, the service worked for roundtrips and didn't restrict where passengers could go.

"We had a lot of people abusing it, like going to Walmart to do groceries," Sanchez says. Who can blame them?

On the ride home, the cabbie tells me that passengers sometimes get confused about tipping him: Some will leave him 15 percent of the meter cost, while others will tip 15 percent on the dollar—ie, 15 cents. Before I reach in my pocket for a \$3 tip, the cabbie hands me a questionnaire. CADDy requires each passenger to fill one out at the end of the ride. I write down my name, how many people I'm traveling with (none), whether I'd use the service again (yes) and what can be done to improve it. I leave the last question blank, but wonder about the things other people write there. "It depends how drunk they are," Sanchez says. "[Some] we get say, 'You should serve chicken wings.'"

*Editor's note: An earlier version of this article misstated the cost of the author's ride home on the meter. It was \$8.97, not 'more than \$18.' SFR regrets the error.*