



Court Monitoring Handbook

The DWI Resource Center:
DWI Research & Statistics made simple.

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How to Use This Handbook

Purpose:

This handbook is designed as a resource for groups engaged in court monitoring. It is intended for use in orientation programs conducted for volunteers before sending them into the courtroom, and as a reference guide during court proceedings. No prior knowledge of the law or of the court process is expected or necessary.

The examples used in this handbook are drawn from the offense of DWI. This emphasis on DWI is intentional because it is presumed that most readers will be gearing their efforts toward this crime.

Reports:

Once the information is gathered for the particular time period, you must decide how to use that information. What type of reports or statistical information do you want to prepare from the available data? If one of the goals of the court-monitoring program is to disseminate the information to the general public, you will need to contact local media representatives to find out requirements for publishing or broadcasting this type of information. The most crucial element in the compilation of your data is accuracy. Do not misstate the facts, and do not try to compare “apples and oranges.” After you have decided how your group will operate, you are ready to begin.

THE IMPACT OF COURT MONITORING ON DWI ADJUDICATION

This study examined the impact on case outcomes of the monitoring of driving While Intoxicated (DWI) court cases by concerned citizen groups, such as Mothers Against Drunk Driving (MADD) and Remove Intoxicated Drivers (RID). This process termed court monitoring can occur through the review of court records, tracking of DWI victims, and/or regular attendance at DWI court sessions by a member of these or other groups. The purposes of court monitoring are to increase the extent to which DWI cases are prosecuted and to maximize the penalties imposed for a DWI conviction

To eliminate the effects of geography, variability in state laws, socioeconomic status, and other confounding variables, only data from the state of Maine for 1987 were examined. The driving records of all Maine drivers arrested and charged in court for a DWI offense (n=9,137) were examined in conjunction with court monitoring data (397 cases) maintained by the MADD organization in that state. Case monitoring was done through the in-court presence of MADD monitors. The effects of court monitoring were determined by examining case outcome (guilty, not guilty, dismissal of case) and penalty imposed (jail, fine, license suspension) in comparison to cases, which were not monitored.

Results indicate that court monitoring had several effects. First, monitoring was related to somewhat higher conviction rates and somewhat lower case dismissal rates, compared to non-monitored cases. The effects of monitoring were greatest for drivers with blood alcohol levels (BAC's) between .10 and .11 (Maine's legal BAC limit at the time of this study was .10) and in cases where drivers refused a BAC test. For cases at the 'threshold' of DWI, convictions were 10% greater for monitored drivers, while dismissals were over 70% fewer. Monitored cases where drivers refused BAC tests were almost 25% more likely to be convicted and case dismissal rates were nearly 90% lower. For cases with higher BAC's and for repeat DWI offenders, conviction rates approached 100% for both monitored and non-monitored cases, with minimal dismissal rates. For first time DWI offenders, monitored cases were somewhat more likely to result in a conviction and almost half as likely to be dismissed. An examination of case outcomes for non-monitored cases in courts where monitoring occurred did not reveal higher conviction rates when compared to courts where monitoring did not occur at all. This indicates that monitoring did not appear to create a halo effect for non-monitored cases in monitored courts.

With respect to the impact of monitoring on sentencing, almost all convicted DWI offenders, monitored and non-monitored, were likely to be fined and receive a period of license suspension. However, monitored drivers were somewhat more likely to receive a jail sentence than were non-monitored drivers. For both groups, sentence length averaged about two days. Monitoring was not associated with longer jail sentences, greater fines, or longer periods of license suspension.

The author concludes that court monitoring in Maine has the greatest impact on case outcome for first time DWI offenders, for cases where a driver refused a BAC test, and for cases where a driver's BAC is at or slightly above the legal limit. Monitoring was associated in these cases with lower rates of dismissal and higher conviction rates. He also notes that monitoring does not appear to have an impact on penalties imposed for DWI offenses: prior offenses were most important in sentencing decisions. The author recommends that court monitoring should be adopted where it is not currently being used and would be more effective if it were used regularly and focused on cases where judges have the most discretionary power, such as threshold BAC cases and BAC test refusals.

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Court Decorum

Court monitors represent their organization in and out of the courtroom. Maintaining a good image will foster helpful relationships with court personnel – a must for assisting in your monitoring program. Whenever court monitors are in the courthouse or meeting with court or other criminal justice personnel, it is essential that all volunteers show respect for the court and the law. Never interfere with the workings of the court. Do not interrupt court personnel to ask questions while they are performing their duties. One bothersome volunteer can cast a pall over the entire court-monitoring program. Remember that some information can be obtained only through cooperation with court personnel. Only the judge or the prosecuting attorney who made a particular decision can answer some questions. If these people feel you are out to harass them or discredit them in the media, they will be less likely to spend time answering your questions.

The following are general guidelines on courtroom decorum:

In the Courtroom

Be as unobtrusive as possible. Tasteful, conservative dress and dignified conduct are important. The less attention you attract, the less likely you are to disturb or distract the court from its business.

Under no circumstances should you interrupt the court while it is in session. Turn cell phones and pagers OFF.

There should be no gesturing, loud comments, or offensive facial expressions.

Be courteous, despite any provocation.

Remain neutral. Do not betray your personal feelings by facial expressions or remarks.

Do not talk, eat, or do anything to create any distraction while the court is in session.

Do not wear organizational insignia or badges anywhere in the courthouse or while meeting with court personnel.

Outside the Courtroom

Do not talk with any juror about a case on which the juror is sitting.

Do not talk with defendants, defendant's families, or the defense attorney. Never argue with court personnel.

Angry, emotional confrontation, shouting matches, and other inappropriate behavior must be avoided.

Do not attempt to give legal advice of any kind to anyone, especially the victim or his/her family.

If you need a question answered about court procedures, look in this handbook first; second, ask another court monitor; third, ask the director of the court monitoring program.

If all else fails and the question must be answered immediately, ask the court personnel, but only if you can do so without interfering with their work.

Meet the local judges, prosecuting attorneys, and other court personnel to learn about pertinent local rules regarding court decorum. Include this local information in the blank pages following Section 1 of this handbook.

Where to go

Metropolitan Court is located on the northwest corner of 4th Street and Lomas. Parking is available at many downtown locations, and a map is included herein for your information.

Forms

The DWI Resource Center collects data that can be used in many different ways so it is important to keep accurate records of what occurs during the different steps of the judicial process. Notes may be helpful for understanding the implications of various decisions, behaviors and documenting unusual scenarios or outcomes.

Some specific guidelines for the various forms include the following:

- Complete ALL information on the Case Info Sheets.
- Write legibly since others will be reviewing the information. The information you gather will become part of a report that documents patterns and practices, both positive and negative.
- Take several Case Info Sheets and Quick Case Notes with you.
- Return completed Case Info Sheets to the DWI Resource Center as described in the job description.

New Mexico's Court System

In a criminal case, the offense charged and the place of the offense determines which court has jurisdiction. There are three types of courts in New Mexico:

Courts of limited jurisdiction, are courts of three types: municipal courts, magistrate courts, and metropolitan courts.

District courts called courts of original jurisdiction, which are courts administered by the state. (Metropolitan Court is also administered by the state)

Appellate courts include the Supreme Court and the Court of Appeals.

1. **Courts of limited jurisdiction**, as their name implies, are not full-service courts. These courts do not hear felonies, which are crimes carrying penalties of more than one year in jail. Felonies are heard in district court. Additionally, they are not courts of record (with the exception of Metro Court, which is a *court of record* for DWI and DV cases only – a record is made of court proceedings.

(A) Municipal Courts are at the most basic level in the court hierarchy. Municipal courts are city courts, which can hear only petty misdemeanor cases alleging violations of municipal (city) ordinances; municipal courts cannot hear civil cases. In other states, these courts are variously referred to as traffic court, police court, and justice of the peace.

A municipal judge does not need to be an attorney. Municipal judges are elected for terms of four (4) years and they must attend an annual judicial training program. All other qualifications are specified in the ordinance of the municipality from which the judge is elected.

Municipal ordinances are enacted by the governing body of the city, e.g. the city council, to promote and protect the health, welfare, safety, and morals of the inhabitants of the city. This means that under its police power, municipalities pass ordinances regulating zoning, building, sanitation, and those criminal offenses and traffic violations, which affront the public order and public peace.

The criminal offenses for which ordinances may be enacted include petty misdemeanors such as assault, DWI, shoplifting under a certain dollar amount, and disturbing the peace. Traffic violations under ordinances are identical or very similar to state traffic statutes. However, municipal courts do not handle theft of an automobile and vehicular homicide, as these offenses are not petty misdemeanors, but felonies.

An individual arrested for DWI by a city police officer will usually be charged with a violation of the municipal DWI ordinance, tried in the municipal court, and sentenced by a municipal judge as outlined above. Municipal court convictions for traffic offenses are reported to the state motor vehicle division to be included on the offender's driving record, points are

assessed and driver's licenses suspended whether the conviction is for a municipal ordinance or a state law.

(B) Magistrate courts are state courts with judges elected in each county. Except for Bernalillo County, there is at least one magistrate in each county in New Mexico. The number of magistrate judges assigned to each court is based on the population of the county.

A magistrate judge, like a municipal judge, does not need to be an attorney. The magistrate must be a qualified elector and reside in the district for which elected. S/he must be a high school graduate or equivalent and must attend a qualification-training program within 45 days of election or, appointment additionally each magistrate shall attend one (1) magistrate-training program every year.

Magistrate courts have jurisdiction to hear civil cases, with some exceptions, when the amount of damages does not exceed \$2,000. Criminal trials of misdemeanors and petty misdemeanors under state law or county ordinances are heard in magistrate court. The magistrate court also may hold arraignments and preliminary hearings in felony cases, but not trials.

(C) Metropolitan Court is a combined municipal/magistrate court, and is a state court. Any class A county with a population of more than 200,000 persons may combine its municipal and magistrate courts into a single metropolitan court. Bernalillo is the only New Mexico County that currently meets the population requirement. Because the metropolitan court is a hybrid, its jurisdiction encompasses those of the municipal and magistrate courts, plus some. That is, like the magistrate court, metropolitan court holds arraignments and preliminary hearings, but not trials in felony matters.

Metropolitan court judges must be licensed attorneys who have practiced law for at least three years, a requirement that does not apply to either magistrate or municipal judges. Metropolitan court judges are required to fulfill continuing education requirements as set forth by the New Mexico Supreme Court. Metropolitan Court became a Court of Record for DWI and Domestic Violence cases in 1994. This means all court proceedings in these cases is recorded and if any of these cases are appealed they are appealed 'on the record' in District Court.

2. District courts are state courts with original jurisdiction to hear DWI cases. However, the district court will not usually hear misdemeanor DWI cases (1st, 2nd or 3rd) unless the DWI is one of several charges being tried. For instance, a person charged with the felony crime of vehicular homicide in addition to the DWI charge would be tried in district court. A fourth offense DWI is a felony and will be heard in the District Court.

It is more likely that the district court will be involved in a DWI case as an appellate court. Appeals of criminal convictions in a magistrate, municipal, or metropolitan court are made to the district court. If the appeal is from a conviction under a municipal ordinance, the district court can only punish to the extent allowed for violations of municipal ordinances.

Children's court is a special division of the district court. Cases involving juveniles (under 18 years old) charged with serious traffic violations such as DWI are tried in children's court.

Depending on the seriousness of the crime, and depending on a host of other factors beyond the scope of this chapter, children can be charged in the adult division of the district court.

3. Appellate Courts:

(A) Court of Appeals: If a defendant is still unsatisfied after appealing to district court, or if the original trial was heard in district court, the next stop is the Court of Appeals. Here, no trial is held, the Court reviews the record of the district court proceeding together with arguments of counsel presented in briefs and sometimes-oral arguments. No testimony is heard in the Court of Appeals.

(B) New Mexico Supreme Court: If still not satisfied, the defendant may request review by the Supreme Court, which may or may not hear the case. An appeal to the Supreme Court in a criminal case is not a matter of right, although there are certain exceptions. The Court determines if the questions presented are of such a magnitude as to require further review and another decision.

Conclusion:

Most DWI cases are settled at the initial level. Some are appealed to the district court. Very few go to the Court of Appeals and fewer still to the Supreme Court. Some interested parties have advocated that a DWI court, similar to family court, be established in the interest of consistent findings and sentencing. Others have suggested that the municipal courts should not have jurisdiction over DWI offenses. Whatever the final decision, it is apparent that DWI is a serious problem requiring substantial resources from law enforcement and the courts. The job of any court hearing for a DWI case is to render a fair decision based on the evidence and impose proper sanctions upon convictions.

The Criminal Process

The arrest, trial, and sentencing of a defendant are stages in the criminal process. Once a law enforcement officer arrests a defendant, certain fundamental rights of the defendant are triggered. The law enforcement and prosecutorial functions must ensure that these rights are protected or there will be no further trial or sentencing, even if the defendant is guilty. After arrest, the defendant may employ a defense attorney. The courts will get involved almost at the outset by holding an arraignment of the defendant as soon as practical after the arrest. A defendant's journey through the criminal justice system may take days, if the defendant pleads guilty at arraignment, or it may take years, if the defendant appeals his conviction.

This section explains the basic steps in the criminal process. You will notice that there are several points at which the process may end (usually by a guilty plea), or it may go on to the next step.

A. The Initial Contact/Arrest

In order for an initial stop to be valid, the officer must have reasonable suspicion to stop. This means the officer must have specific facts for suspecting the law has been broken which s/he can later relate to the court to justify stopping the defendant. This reasonable suspicion standard is not as strict as the standard of probable cause, which will be discussed in the context of grounds for arrest. One way to phrase the test of reasonable suspicion is, "if the average person had observed the same facts as the officer, would that person have believed a law had been or was being violated?"

Once the officer has made initial contact with the defendant, the investigation phase begins. The officer will obtain the defendant's identification and may ask some general questions about what the defendant has been doing. At this stage, the officer is determining whether there is probable cause to arrest the defendant for a crime. Probable cause is defined in the law as follows: If the facts and circumstances are available to the arresting officer are such as to warrant a person of prudence and caution to believe that an offense has been committed by the defendant, then there is sufficient reason or probable cause to arrest. At this point, the officer must have something more than reasonable suspicion. There must be definite facts the officer can point to, which led

In a typical DWI case, the reasonable suspicion to stop usually stems from the officer's observation of erratic driving or some other driving violation. Once the officer determines there is reasonable suspicion to stop the vehicle, s/he initiates a traffic stop through the use of flashing lights and sirens. After the vehicle comes to a stop, the officer approaches the driver and requests personal and vehicle identification information. At this point the officer may identify certain characteristics that indicate that the driver may be under the influence of intoxicating alcohol or drugs. Such characteristics may include, among others, the odor of alcohol on the driver's breath or coming from the vehicle, slurred speech, difficulty in understanding the officer's requests, difficulty in retrieving identification from wallet and/or glove box, and a general disheveled appearance.

The trained officer will take all of these observations into account and determine whether they warrant further investigation. At this point, the officer may ask the driver if s/he has had anything to drink, and if so, what, how much, and when. If the officer concludes that there is enough preliminary evidence to justify gathering more specific information, the officer may then ask the driver to leave the vehicle and perform a series of field sobriety tests. Most officers in New Mexico use three standardized field sobriety tests: the walk and turn test, the one leg stand test, and the horizontal gaze nystagmus test. The officer will take notes during the driver's performance of these tests to be included later in the official incident report and to assist with court testimony.

Once the field sobriety tests are completed, the officer should have enough information to decide whether there is probable cause to arrest the driver for driving while under the influence of intoxicating liquor or drugs. The officer will be able to factor into his determination his/her opinion of the driver's sobriety or lack thereof. If, based on the officer's observation of the driver at the time of the initial stop, the driver's performance of the field sobriety test, and other relevant information, the officer believes the individual was driving while under the influence of intoxicating liquor, probable cause exists for the officer to place the driver under arrest.

B. Chemical Testing

Once a DWI arrest has been made, the provisions of the implied Consent Act are triggered. The driver must submit to a chemical test of his/her breath or blood for the purpose of determining blood alcohol content (B.A.C.). If the driver withdraws this consent and refuses to submit, no test shall be forcibly given; however, the defendant's New Mexico driver's license will be revoked for one year through an administrative procedure, which is completely separate from any actions taken through the criminal courts. Additionally, the fact that the defendant refused to submit to a chemical test may be introduced by the prosecution as evidence of the defendant's guilt – the rationale being that only one who was afraid of the results of the test would refuse it.

If the driver does not withdraw consent to submit to a test, the officer will decide what type of test will be given. In most situations, the breath test will be chosen over a blood test. It is faster to administer, the results are immediate, and the facilities for giving the test are more accessible to all officers. A blood test will be given in cases where a crash has occurred and the driver is being transported to a hospital, or when there is a problem with the breath-testing machine. Additionally, the defendant may request a blood test after a breath test has been given. The officer may request a blood test if the breath test results seem unreasonably low in relation to the defendant's actions, and the officer wishes to use the blood test to screen for the presence of drugs other than alcohol.

C. Booking and Formal Charging

Once a driver has been arrested, s/he is usually transported to the police station, jail, or other law enforcement facility for booking. It is also likely that the breath test will be given at this location after 20-minute observation period. During booking, the driver will be asked a series of questions for the purposes of identification and administrative paperwork required by the law enforcement agency. The arresting officer may, at this time, begin writing the police

report. The officer will also decide what charges will be brought and begin preparing the criminal complaint and/or traffic citations. After booking, depending on the conditions of release imposed, the defendant can:

- Post bond and be released
- Be released on own recognizance, known as ROR
- Be transported to jail until a bond is posted from some other source such as a bail bond company
- Be released by the judge after arraignment
- If the charge is serious, such as vehicular homicide, and the defendant cannot raise the bond, the defendant may remain in custody after arraignment.

(Note: Although the terms *bond* and *bail* are often used interchangeable, they are not exactly the same thing. A defendant can post a sum of cash called a bond with the court, which s/he will receive back after fulfilling the conditions set by the court. Bailing someone out of jail is the process of posting a bond, which can be done by the person him/herself in cash, or by a bondsman who agrees to deposit a sum in cash with the court if the person does not comply with conditions set by the court.)

The formal complaints filed by the officer will be transmitted to the appropriate court so that they may be served on the defendant at the time of arraignment.

D. Arraignment

At arraignment the judge reads formal charges to the defendant. The defendant will have the opportunity to enter a plea at arraignment. If the defendant pleads not guilty, a trial date will be set, and the judge will set conditions of release if the defendant is still in custody at arraignment. The judge will also inform the defendant of his right to representation by an attorney and, if the defendant is indigent, determine if the defendant desires a court-appointed attorney. If the defendant waives his right to an attorney, the waiver should be noted in the court record.

If the defendant pleads guilty or no contest, the judge must determine that the plea is knowing and voluntary prior to accepting it and entering a finding of guilt. The judge must ensure that the defendant understands both the charges and the consequences of the plea

before accepting a guilty plea. A no-contest plea is treated the same as a guilty plea in this regard, and for purposes of sentencing. If the judge accepts the guilty or no-contest plea, the defendant will either be sentenced immediately or sent for pre-sentence evaluation and told to report back on a specific date for sentencing. See Section 5 for a complete discussion of sentencing.

If the defendant refuses to enter a plea at the arraignment, the court will automatically enter a plea of not guilty and set the case for trial. Counsel at the arraignment may represent a defendant if s/he chooses.

E. Pre-Trial

During the time between arraignment and trial, the case is prepared. The amount of case preparation will vary depending on the complexity of the case, the possible sanctions, and other factors. Witnesses are interviewed and documents reviewed and assembled. Depending on the court rules, discovery may take place. Through discovery, the defense can learn what the prosecution's evidence will be.

The Rules of Criminal Procedure for the various courts in New Mexico allow the defense to request from the prosecution all information that the prosecution has within its custody and control, which will be used, at the defendant's trial. In a DWI case, if a formal discovery order is requested by the defendant and signed by the judge, the prosecution must give the following to the defendant: a copy of the police report and officer's statements; a list of all prosecution witnesses; a copy of the blood alcohol concentration (BAC) test card; the defendant's prior police and motor vehicle record; calibration and maintenance records for the breath testing machine; the name of the manufacturer of the machine; the date of purchase and initial certification of the machine; the instrument log for the machine; any information known about radio frequency testing involving the machine; and any other information material to the preparation of the defense or anything obtained from or belonging to the defendant.

The prosecution has no reciprocal right to discovery. Defense attorneys will use the discovery process to delay the trial. Additionally, discovery is very helpful in plea negotiations. Often, once the defense attorney sees the evidence that the prosecution will present at trial, the potential for with the competency of a potential witness to testify. Finally, once the witnesses have all been interviewed, the attorney may decide that a plea bargain is the most beneficial disposition for the case.

F. Plea Bargaining

A great many DWI cases are plea bargained. If the defense attorney feels that there is no way to win the case, s/he may use the information obtained to try to get the best deal for the client.

Before trial, both DA and defense attorney should interview witnesses who will testify for their side. A pre-trial interview accomplishes several things: first, it gives the attorney a first-hand account of what happened at the time of the defendant's arrest; second, it enables the attorney to piece together the entire incident through the recollections of various witnesses; third, during the pre-trial interview, the attorney will discover any problems with the testimony or criminal cases) are disposed of before trial by a Plea and a Disposition Agreement. In the plea agreement, the prosecution and the defense may specify not only the charges to which the defendant will plead, but also the ultimate sentence s/he will receive. In New Mexico, the judge is prohibited from taking any part in plea negotiations. The judge's only role is to accept or reject the agreement.

If the agreement is accepted, the court is bound by the terms of the entire agreement. If it is rejected, the entire agreement is void. That is, if the judge agrees with the pleas but not the sentence, the entire agreement, not just the sentencing portion, must be rejected.

If the judge rejects the agreement, the prosecution and defense may attempt further negotiations or the case may proceed to trial. If the case goes to trial, the defendant's earlier plea and incriminating statements made during plea negotiations cannot be used against the defendant.

G. The Trial

There are two types of trials - Bench Trial and Jury trial. A trial takes place if neither side is willing to plea bargain, they are unable to reach an acceptable plea bargain, or the judge has rejected the plea agreement. The prosecution is confident that there is enough evidence to prove the defendant guilty beyond a reasonable doubt; the defense is just as confident that the defendant will be acquitted. It is now time for the trial.

The following is a brief chronology of a criminal trial:

(1) Voir Dire: The questioning of potential jurors by the attorneys for both sides in order to explore potential biases and decide whether to select a person for the jury. During jury selection, each side has a limited number of peremptory challenges; i.e. rejecting a potential juror for no stated reasons, and an unlimited number of challenges for cause, i.e., rejecting a potential juror because of a specific reason such as bias against the defendant, relationship to the defendant, etc. Once jurors are selected, the judge swears them in.

(2) Initial Instructions: the judge reads Initial jury instructions such as those explaining the process to the jury.

(3) Preliminary Matters: If there is no jury(it will be a bench trial), the first thing the judge will ask the attorneys is whether they have any preliminary matters. If there is a jury, this question will be asked prior to voir dire or just after the initial instructions are read. Preliminary matters usually consist of any motions or requests that must be settled prior to the presentation of evidence. At his time, the attorneys may ask, "the rule be invoked". This means that all persons who are to testify in the case must leave the courtroom until it is their time to testify. The purpose of this rule is to prevent witnesses from changing their stories based upon the testimony of other witnesses. Other preliminary matters might include a motion to suppress evidence or a request for clarification of some aspect of procedure.

(4) Opening Statement: The prosecution is the first to give an opening statement. The opening statement tells the court and the jury about evidence, which the prosecution will introduce to prove its case. The opening statement is not the time for legal argument; that comes at the end of the trial during the closing argument. The defendant also may make an opening statement, but may reserve this opportunity until the close of the prosecution's case, just prior to the defense case. *Note:* Opening statements are not always a part of the when there is a jury. If the trial is a bench trial(no jury), the case may start with the prosecution calling its first witness.

(5) State's Case: The case-in-chief is also known as the prosecution's case or the state's case. During this part of the trial, the prosecution presents its evidence of the defendant's guilt. The prosecution must be able to prove this guilt *beyond a reasonable doubt* or it has not met its *burden of proof*. If, at the end of the state's case, the defense feels that the prosecution has not met its burden of proof, the defense will move for a directed verdict. A directed verdict is a request to the judge to dismiss because the state has not produced enough evidence to take the case to the jury. The judge will hear the motion out of the presence of the jury if there is one. If the motion is granted, the trial is over. If the motion is denied, the case continues.

(6) Defendant's Case: The defense will now present its witnesses and physical evidence. If the opening statement was not made at the beginning of the trial, it will be presented before the defense calls its first witness.

(7) Rebuttal: The judge may allow the prosecution to present evidence rebutting the defendant's case. After that, the defense may be able to present evidence directed to the prosecution's rebuttal evidence (surrebuttal). It is within the judge's discretion to allow the presentation of rebuttal and/or surrebuttal evidence.

(8) Jury Instructions: If this is a jury trial, the judge will read applicable jury instructions to the jury.

(9) Closing Arguments: Both sides will argue their case to the fact finder (judge or jury). The prosecution goes first, and may be allowed to present a rebuttal argument if the judge allows it.

(10) Finding/Verdict: The fact finder will announce the finding, i.e. guilty or not guilty. The judges will either sentence the defendant or set a future date for sentencing and order the defendant to undergo a pre-sentence evaluation.

(11) Sentencing See Section 5 for a complete discussion of sentencing.

H. Appeal

If the defendant does not agree with the court's finding, s/he may appeal to the next higher court. If the initial trial was held in the municipal, magistrate, or metropolitan court, the appeal will be to the district court. See Section 3 for a complete discussion of the court system in New Mexico.

I. Victims' of Crime Act

The Victim's of Crime Act explicitly grants to victims and witnesses certain rights in the course of criminal proceedings. The stated purpose of the Act is to inform the court of a crime's impact and ensure that the victims and witnesses are protected and treated respectfully. See Section 6 for the text of the Act and an interpretation.

Sentencing

The goal of the criminal justice system is the sentencing of the convicted defendant in order to effectuate punishment, restitution, rehabilitation and deterrence. All of these goals may be satisfied by the particular sentence given the defendant. For examples, punishment can be imposed through a jail term and/or a fine. Restitution can be accomplished by requiring the defendant to pay for financial loss suffered by the victim. The important goal of rehabilitation may be served by requiring the defendant to attend treatment or enroll in a substance abuse program. Deterrence is a result of sentencing, rather than a part of a sentence. Future crimes will be deterred only if the sentence has an impact on the defendant and the general public.

There are two types of sentences: discretionary and mandatory. A discretionary sentence is one that the judge does not have to impose. She/he may take into account various factors for and against the defendant when drawing up the various sanctions of a discretionary sentence. A mandatory sentence is one, which must be imposed. It is required by law and leaves the judge no room to debate its appropriateness for a particular defendant. If the defendant is found guilty of the corresponding crime, the judge has no choice but to sentence the defendant in accordance with the law prescribing the mandatory sentence.

In 1994 mandatory minimum sanctions were enacted as well as the crime of Aggravated DWI. Aggravated DWI is when the offender:

- 1) Refused to take a BAC test at the time of arrest
- 2) Took the BAC test and had a BAC of .16 or higher:
- 3) Caused bodily injury to someone while driving under the influence of alcohol or other drug.

One of the major problems faced by the prosecution in a DWI case is the proof of prior convictions. The record from the Motor Vehicle Division (MVD) indicating prior DWI convictions is just one step in the process. It must also be shown that defendant either was represented by counsel or waived his/her right to counsel during the trial(s) of the previous DWI charge(s). This information must report to the MVD. Additionally, if the defendants pled guilty to any of the prior DWI charges, it must be shown that the plea was knowing and voluntary. These obstacles are burdensome but not insurmountable. The prosecution can request the records from the court where the prior convictions were entered and get copies of the attorney's entry of appearance or a signed waiver of counsel. The prosecution can also request copies of any plea agreements signed by the defendant and indicating the voluntariness of the plea or anything tending to show that the plea was not induced or coerced.

Most significant is the fact that the judges can impose jail time even if prior convictions cannot be proven beyond a reasonable doubt. Notice in the HIGH COST of DWI chart that a first offense DWI can carry up to a 90 day jail sentence, and up to one year can be imposed for a second or third offense. A first offender can go to jail for 90 days without any proof of prior offenses. A second or third offense offender can go to jail for a full year with proof of only one prior. A fourth and more offense is a felony and can be sentenced up to 18 months imprisonment.

In other words, the judge may impose jail time if she/he feels the circumstances warrant it even if it is not possible to prove every single conviction showing either representation by counsel or proper waiver of counsel.

The judge may order a pre-sentence evaluation or screening report for most subsequent offenders and some first offenders, to assist in determining the appropriate sentence, including treatment and probation. The typical DWI screening program is a three-step process. The defendant is administered several standardized test, and interviews are conducted with the defendant and the defendant's spouse or "significant other". Professional evaluators who determine whether the defendant has a problem with alcohol and/or drugs, and recommends treatment if appropriate perform the testing and interviewing. The screener reports his/her findings to the court along with recommendations for treatment. Such recommendations may consist of requiring the defendant to attend Alcoholics Anonymous meetings for a specified period of time or to enroll in outpatient or inpatient treatment. If the judge decides to accept these recommendations, she/he will make the meeting or the treatment a condition of probation. That is, jail time and/or a fine will be imposed, but will suspend for a specified period of time provided the defendant abides by the conditions set by the court. If the defendant does not, she/he can be brought back to court and made to serve the jail time and/or required to pay fines.

The judge may impose conditions of probation other than or in addition to those mentioned above. The defendant may be required to make restitution to any victims, she/he may be required to perform a number of hours of community service, she/he may be prohibited from drinking alcohol or from frequenting places where alcohol is served, and/or she/he may be required to report to a probation officer on a regular basis. The judge has very broad discretionary powers in the matter of setting conditions of probation, as long as the condition is reasonably related to the offense.

If a defendant has been convicted or more than one offense the judge may make the sentences for those separate offenses either *concurrent* or *consecutive*. The general rule in the law is that sentences for separate offenses will be served at the same time. For example, if the defendant is sentenced to 45 days in jail for DWI and 15 days in jail for driving on a revoked license, the 15 days will be served at the same time the 45 days are being served, resulting in the defendant serving only the 45 days. A judge may, however, require that the sentences be served consecutively, or, one after the other. In the above example, consecutive sentences would require that the defendant serve 60 days in jail. Because only sentences of less than one year are allowed to be served in the city or county jail, if a defendant receives combined sentences totaling one year or more and they are to be served consecutively, the time will be served in a facility operated by the State Corrections Department.

A GUIDE TO SENTENCING DUI OFFENDERS

(Source: National Highway Traffic Safety Administration (NHTSA) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA).

Sanctions That Work Best

Data on the effectiveness of different sanctions are inadequate and conflicting. However, available information supports the following three generalizations:

Consistency in sentencing must be balanced with the need to tailor sanctions and treatment to individual offenders (Donovan and Marlatt 1982; Perrine et al. 1988; Wells-Parker et al. 1990).

- When dealing with recidivists, the focus of sentencing must shift from deterrence to incapacitation (Jacobs et al. 1988).
- Ideally, an evaluation of an offender, administered and interpreted by qualified professionals, should be conducted before deciding which sanctions to impose (Popkin et al. 1988).

Treatments That Work Best

Two generalizations can be made about treatment effectiveness:

- Treatments that combine strategies, such as education in conjunction with therapy and aftercare, appear to be most effective for repeat as well as first-time offenders (Wells-Parker et al. 1995).
- The more severe the alcohol problem, the more intensive should be the treatment (Simpson and Mayhew 1991).

Data are insufficient to determine the most effective specific treatment strategy for each offender. In general, evidence supports a 7 to 9 percent reduction of DUI recidivism and crashes averaged across all offender and treatment types (Wells-Parker et al. 1995).

Characteristics of a Good Treatment Program

Regardless of treatment type, a treatment program must do at least the following (Center for Substance Abuse Treatment 1994):

- Create a treatment plan for each client with specific, measurable goals.
- Provide for family involvement.

- Provide for aftercare.
- Be willing to report back to the court to help enforce compliance with the order for treatment.
- Have medical backup to ensure safe detoxification and healthcare if required.
- Be sensitive to ethnic, gender, and other differences that might affect treatment effectiveness; and
- Have bilingual capability, if needed.



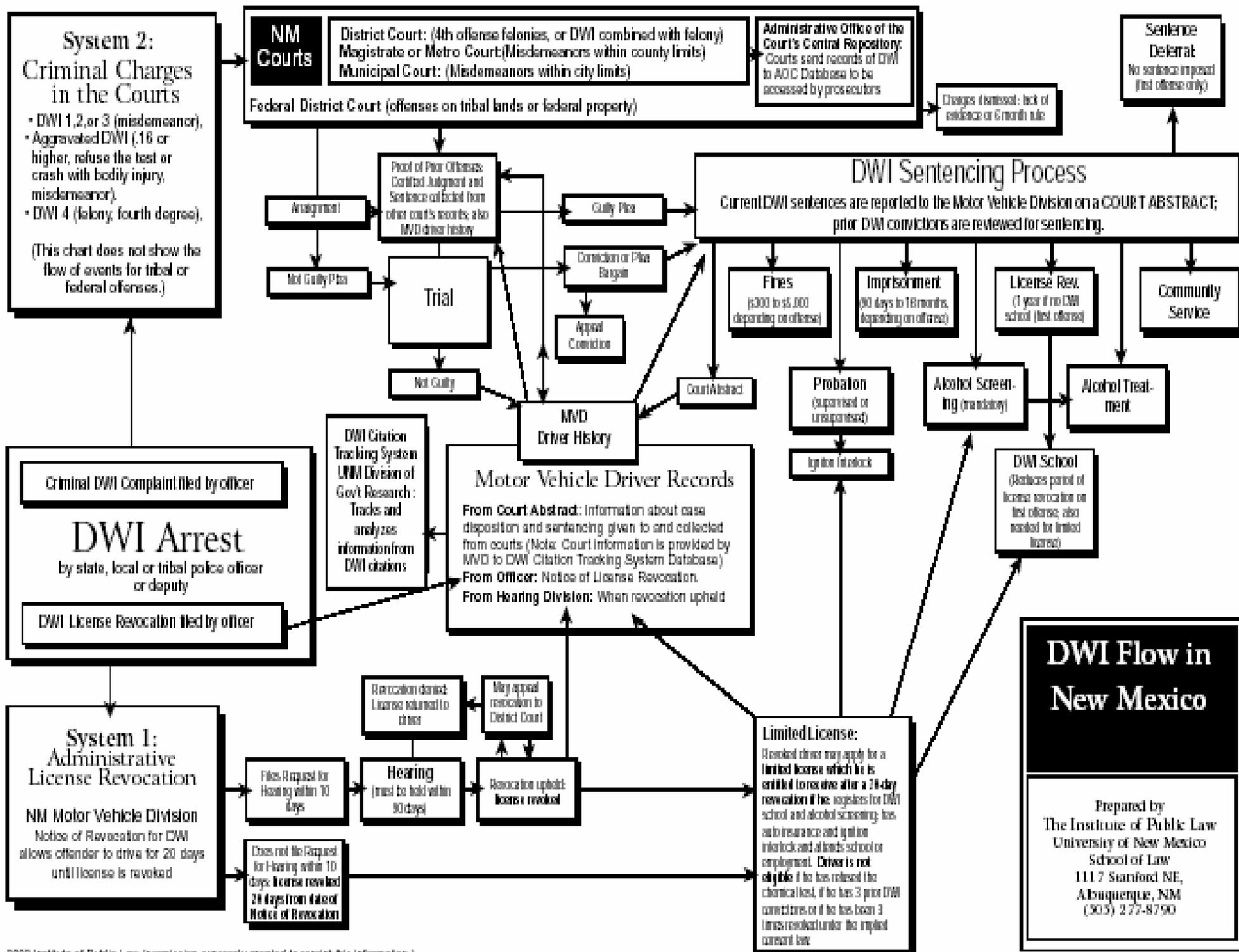
The High Cost of DWI in New Mexico 2005



The New Mexico Department of Transportation, Traffic Safety Bureau

DWI Offense	Jail ¹	Fines and Fees ²	License Revocation ³		Other
			Administrative	Criminal	
1st Misdemeanor 66-8-102E	Maximum: 90 days Mandatory: 48 hours if offender fails to comply with any condition of probation. 66-8-102E	Maximum fine: \$500 66-8-102E License fee: \$100 66-5-33.1 Crime lab fee: \$65 31-12-7A Community fee: \$75 31-12-7B Interlock license fee: \$45, 66-5-35C Alcohol screening: \$100-200 DWI school: up to \$150 Ignition interlock fee: \$960/year or more Corrections fee: \$20, 35-6-1D(1)	Under 21 (.02+ BAC) 1 year, 66-8-111C(2) Age 21+ (.08+ BAC) and Commercial Driver (CDL) (.04+ BAC) Both 6 months, 66-8-111C No limited license 66-5-35A(2) ⁴ Refusal: 1 year 66-8-111B Ignition interlock license available 66-5-503 ⁷	Upon Conviction: 1 year 66-5-29A(2) and 66-5-29C(1) No limited license 66-5-35A(3) ⁴ Ignition interlock license required 66-8-102N(1) ⁶ The criminal <i>per se</i> standard is .08, but .04 for commercial driver licenses (CDL).	Mandatory: Screening, 66-8-102E & K DWI school, 66-8-102E Community service, 24-48 hrs, 66-8-102E Ignition Interlock installed for 1 year, 66-8-102N(1) ⁶ Court discretion: Treatment, 66-8-102E & K; Probation, up to 1 year, 66-8-102E ⁹ Aggravated DWI⁵, Mandatory: Jail: Additional 48 hours jail if convicted of aggravated DWI, 66-8-102D & E
2nd Misdemeanor 66-8-102F	Maximum: 364 days Mandatory: 96 hours Also mandatory extra 7 days if offender fails to comply with sentence 66-8-102F(1)	Maximum fine: \$1,000 66-8-102F Mandatory fine: \$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) ⁴ Ignition interlock license available 66-5-503 ⁷	Upon Conviction: 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) ⁶	Mandatory: Treatment: 66-8-102L ⁸ Screening: 66-8-102K Community service, 48 hrs, 66-8-102F(1) Ignition interlock installed for 2 years, 66-8-102N(2) ⁶ Court discretion: Probation, up to 5 years, 66-8-102F ⁹ Aggravated DWI⁵, Mandatory: Additional 96 hours jail if convicted of aggravated DWI, 66-8-102D & F(1) Albuquerque, Dona Ana County, Las Cruces: Forfeiture of vehicle in civil action
3rd Misdemeanor 66-8-102F	Maximum: 364 days Mandatory: 30 days Also mandatory 60 days if offender fails to comply with sentence 66-8-102F(2)	Maximum fine: \$1,000 66-8-102F Mandatory fine: \$750 66-8-102F(2) All other costs and fees same as first offense	Same as second offense	Upon Conviction: 3 years 66-5-29A(3) and 66-5-29C(2)(b) No limited license 66-5-35A(3) Ignition interlock license required 66-8-102N(3) ⁷	Mandatory: Treatment: 66-8-102L ⁸ Screening, 66-8-102K Ignition interlock installed for 3 years, 66-8-102N(3) ⁶ Community service, 96 hours, 66-8-102F(2) Court discretion: Probation, up to 5 years, 66-8-102F ⁹ Aggravated DWI⁵, Mandatory: Jail: Additional 60 consecutive days jail if convicted of aggravated DWI, 66-8-102D & F(2) Albuquerque, Dona Ana County, Las Cruces, Torrance County: Forfeiture of vehicle in civil action
4th 4 th Degree Felony 66-8-102G	Maximum: 18 months 66-8-102G Mandatory: 6 months 66-8-102G	Maximum fine: \$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	Mandatory: Treatment: 66-8-102M ⁸ Screening, 66-8-102K Install ignition interlock for the remainder of the offender's life 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: Forfeiture of vehicle in civil action
5th 4 th Degree Felony 66-8-102H	Maximum: 2 years 66-8-102H Mandatory: 1 year 66-8-102G	Maximum fine: \$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 Albuquerque, Dona Ana County, Las Cruces, Torrance County: Forfeiture of vehicle in civil action
6th 3 rd Degree Felony 66-8-102I	Maximum: 30 months 66-8-102I Mandatory: 18 months 66-8-102I	Maximum fine: \$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 Albuquerque, Dona Ana County, Las Cruces, Torrance County: Forfeiture of vehicle in civil action
7th or subsequent 3 rd Degree Felony 66-8-102J	Maximum: 3 years 66-8-102J Mandatory: 2 years 66-8-102J	Maximum fine: \$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 Albuquerque, Dona Ana County, Las Cruces, Torrance County: Forfeiture of vehicle in civil action
Driving While Revoked Misdemeanor 66-5-39	Maximum: 364 days 66-5-39A Mandatory: 7 days, 66-5-39A	Maximum fine: \$1,000 66-5-39A Mandatory fine: \$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: Forfeiture of vehicle in civil action
DWI Vehicular Homicide 3 rd Degree Felony	Maximum: 6 years 31-18-15A(5)	Maximum fine: \$ 5,000 31-18-15E(5)	Depends on number of prior DWI offenses, no limited license or interlock license allowed 66-5-35A(5) and 66-5-503C ⁷	Depends on number of prior DWI offenses. No limited license or interlock license allowed.	Mandatory: 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)

1. **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. These are violations of the Implied Consent Act, 66-8-105 through 112. Licenses remain revoked until offenders apply to reinstate them. Note that a violation of the Implied Consent Act is not part of the *criminal* sentence. 4. **Limited licenses** are no longer available to persons who have been convicted of DWI. 5. **Aggravated DWI consists of:** (1) Refusal to take a BAC test at time of arrest for DWI; **OR** (2) Driving with a BAC of .16 or higher; **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. 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/myd10792.pdf>. 8. **Treatment is mandatory**, as follows, for a second or third conviction: not less than a 90-day inpatient residential or in-custody substance abuse treatment program approved by the court; or a 90-day outpatient treatment program approved by the court; a drug court program.



Looking Up A Metro Court Docket

1. Go to www.metrocourt.state.nm.us
2. Left-hand column choose **Doing Business**
3. Choose **Case Look up**
4. Left-hand column choose **Category**
5. Choose judge name
6. Under Judge name drop down – choose a judge
7. Enter date of the docket you want and hit ‘search’
8. Under judge code click on the number (in blue)

Docket should appear

METRO COURT CODES

Event Code	Description	Event Code	Description
AB	Applied Bond	AC	Administrative Conversion
AD	Appeal Disposition	AP	Appealed
AS	Amended Sentence	BA	Bond Arraignment
BB	Bond Warrant - Templates	BR	Motion for Bond Reduction
BW	Bond Warrant	CA	Custody Arraignment
CC	M/Compel Selection of Counsel	CE	Comp Evaluation
CH	Contempt	CL	Clearance
CM	Transfer to Judge Brown	CN	Motion for Continuance
CO	Motion-Order for Consolidation	CR	Consider Conditions of Release
CS	Community Service Conversion	CT	Criminal Trial
CW	Custody Warrant	DC	Drug Court
DF	Dismissal Filed	DI	Dismissed Charge(s)
DO	Motion for Discovery Order	DP	Domestic Pre Trial Conference
DR	Domestic Violence Review	DS	Drivers School Referral
DT	Domestic Violence Trial	DV	DV-Early Intervention Program
EA	Entry of Appearance	EI	Early Intervention Program
ER	Excusal Received	EX	Excusal Filed
FE	Felony	FH	Forfeiture Hearing
FW	Felony Warrant	GC	Guilty Court
GJ	Grand Jury Indictment	JD	Tfr to Judge Jaramillo Div 3
JR	Judge Reassigned	JT	Jury Trial
KE	Competency Evaluation	KH	Competency Evaluation

KR	Competency Review	KS	Competency Screening
LA	Lawyer's Court	LT	Traffic (w/Lawyer)
MA	Motion to Reconsider Sentence	MC	Misdemeanor Court
MD	Motion for Discovery	MF	Motion for Furlough
MH	Motion Hearing	MQ	Motion to Quash Bench Warrant
MR	Motion Reset to Criminal Trial	MW	Motion to Withdraw as Counsel
NA	No Appearance	NC	Not Guilty
NP	Nolle Pros	OC	Order to Show Cause
OR	Order	OS	Other Drvs Sch Refer.
OT	Out of town DI School Referral	P	Pretrial Conference
PC	Probable Cause	PD	Pleadings
PH	Preliminary Hearing-10day Rule	PI	PRIVATE COMPLAINT
PL	Pleas	PR	Probation Revocation
PT	Pre-Trial Conference	RA	Reset Traffic Arraignment
RC	Recusal Filed	RE	Motion for Recusal
RF	Case Refiled	RH	Reconsideration
RO	Trf to Judge Clinton Div 7	RV	XC4 Add-On
R2	Recusal - Second on Same Day	R3	Recusal - Third on Same Day
R4	Recusal - Fourth on Same Day	SA	Reset Arraignments
SC	Reset Criminal Trial	SD	Reset Domestic Violence Trial
SE	Sentencing	SF	Sentencing FTA
SG	Reset Guilty Court	SJ	Reset Jury Trial
SN	Sentencing - Non-Calendared	SP	Reset Pretrial Conference
SR	School Rescheduled	ST	Reset Traffic/Misdemeanor
SV	Reset DV Pre Trial Conference	TA	Traffic Arraignment
TC	Traffic Court	TJ	Transfer Judge
TM	Traffic / Misdemeanor Court	TR	Transfers
TW	Walk-In Traffic Arraignment	VC	Guilty Hearing through Violtns
VD	Voir Dire	WA	Waiver of Arraignment
WC	Withdrawl of Counsel	WI	Walk Ins
WV	Waiver of Counsel	6M	Waiver of 6 Month Rule

New Mexico Victims Rights

Victims Rights 31-26-4

You have the Right:

- To an Interpreter or Translator
- To Medical Assistance.
- To Protection.
- To Separate Waiting Areas in Courtroom
- To Be Present in Court and To Be Heard.
- To Request Restitution.
- To Be Informed of Any Plea Offer.
- To Make a Victim Impact Statement.
- To Be Informed of Services Available to You
- To Have Evidence Returned to You.
- To Be Informed of Probation Hearings.
- To Be Informed of Any Parole Hearings.
- To Be Informed of Any Release of Defendant.
- To Be Treated with Dignity.

Any questions about these rights, contact the DA's office at 841-7495

Note: Nothing in these rights allows a victim to sue any public employer , public employee, public agency or the State. You may have to pursue these rights.

Glossary

Administrative Revocation: The taking of a driver's license by the Motor Vehicle Division, through law enforcement agents, without involvement by the courts, pursuant to the implied consent act.

Advisement: The deliberation or consultation of a court, after the arguments have been heard and before an opinion is delivered. A judge will take a matter under advisement while deliberation his/her decision.

Allegation/Allege: A statement, accusation, or claim that has not yet been proved. Stated; claimed; asserted; charged.

Appeal: To take to a higher court for review.

Appellant: The party who takes an appeal from one court to another, normally, the party who "lost" in the lower court.

Appellee: The party who prevailed (won) in the lower court, against which an appeal is taken.

Arraignment: Accusation, indictment

Arrest: To take a person into custody in a manner authorized by law.

B.A.C.: Blood Alcohol Content, A measurement by percentage of weight of alcohol in the blood.

Bail: (verb) To obtain release of a person under arrest on condition that s/he will appear at a certain place and time. Example: his father bailed out the defendant.

Conditions of release, including but not requiring the posting of bond. Example: Defendant's bail was set at \$500 and paid by his father. (See *Bond*)

Bench Warrant: arrest warrants issued by the court for violation of court orders. It may be issued upon the personal knowledge of the judge or upon an affidavit. A bench warrant will be issued for a defendant who fails to appear in court when required.

Bond: An instrument with a sum of money fixed as a penalty and with a clause binding the person to pay the penalty, conditioned that payment of the penalty may be avoided by the performance of certain acts, such as appearing for court when required.

Breach: The breaking or violation of a law, right, or duty; either by commission or omission.

Certified Copy: Copy of a document or record, signed and certified as true copy by the officer who has custody of the original.

Citation: A notice to appear and answer a stated charge. A traffic ticket is a type of citation. There is also a DWI Citation form used by all law enforcement officers in New Mexico.

Complaint: In criminal cases, a sworn written statement of probable cause charging a violation of an offense. In civil cases a written statement of the cause of action and claim of relief being sought by one party from another.

Concurrent Sentences: A sentence for multiple offenses whereby the separate sentences is served simultaneously.

Conditions of Release: Conditions upon which an arrested person is released pending. Conditions of release are sometime made a part of bail.

Consecutive Sentences: A sentence for multiple offenses whereby the separate sentences are served one after the other.

Consolidation: Joiner of two or more separately filed complaints, so that the charges may be tried together.

Contempt: An act calculated to embarrass, hinder, or obstruct the court in the administration of justice or to lessen the authority or dignity of the court. There are two kinds of contempt: criminal and civil. Magistrate court has the power to find persons guilty only of criminal contempt.

Conviction: The result of a criminal trial that ends in a judgment or sentence that the defendant is guilty.

Cross-examination: Interrogation of a witness at a trial or hearing by the adverse party upon evidence given during the witness' direct examination to test its truth, to further develop it, etc.

Custody: Any time an offender, adult or juvenile is placed under arrest or taken into the control of law enforcement.

Decorum: Good manners; good behavior

Defendant: The person defending or denying a charge; the accused, the party put on his or her defense or summoned to answer a charge or complaint.

Deferred Sentence: Postponed sentence; imposition of sentence is suspended, postpones, or stayed, for a period and on conditions set by the judge. If a violation of probation occurs, the judge may impose any sentence that could have been imposed at the time sentence was deferred. If the defendant complies with the conditions, the charges are dismissed when the period of deferral expires.

Direct Examination: The first interrogation of a witness at a trial or hearing on the merits, by the party on whose behalf the witness is called.

Directed Verdict: A directed verdict is a request to the judge to dismiss because the state has not produced enough evidence to take the case to the jury.

Discovery: The pre-procedure by which a party obtains facts, documents, or other evidence pertinent to the charge from the other party.

Dismissal: An order or judgment disposing of a case without a trial; with prejudice - charges may not be brought before court again; without prejudice - charges may be brought before court again.

Docket: The order in which cases come before a judge.

Entry of Judgment or Order: The preparing, dating, signing, and filing of the written judgment or order.

Ex Parte: On one side only; by or for one party; done for, in behalf of, or on the application of one party only; as in ex parte motion or ex parte hearing; without notice.

Felony: A crime punishable by imprisonment in excess of one year.

Hearing: A proceeding, generally public, at which an issue of fact or law is presented to the court and each party has the right to be heard.

Hearsay: Second-hand evidence; that, which a witness heard from someone else, presented to prove that the substance of the statement is true.

Example: Jane cannot testify about what John told her happened, in order to prove that what he told her was true. John must testify his own first-hand knowledge.

Implied Consent: By statute of New Mexico, any person who operates a motor vehicle within the state thereby consents to chemical testing of his/her breath or blood if arrested for driving under the influence of alcohol or drugs. The driver's New Mexico license will be revoked if consent is withdrawn (the test refused). See Implied Consent Act, § 66-8-105—112 NMSA 1978.

Indictment: An accusation, in writing, presented by a grand jury charging the person named in the indictment with the violation of a law after a determination is made by the grand jury that the accused has committed a crime. Indictments are used for felony charges, not misdemeanors.

Indigence: Financial inability to hire a lawyer.

Information: An accusation against a person for a criminal offense, without an indictment, presented by the prosecution instead of a grand jury. Information is used for felony charges, not misdemeanors.

Joinder: Union of charges or defendants in the same petition. If two people, in concert, committed a crime, they usually will be tried together.

Jurisdiction: The power of the court to hear and decide the matters rose in the complaint.

Jury: A body of persons temporarily selected from the citizens of a particular district and invested with the power to decide questions of fact at a trial.

Jury Array: The whole body of prospective jurors summoned to the court from which the jury will be selected.

Jury List: A list containing the names of jurors empanelled to try a cause or containing the names of all jurors summoned to attend court.

Lesser Included Offense: See *Necessarily Included Offense*.

Merits: The substantive claims and defenses raised by the parties to an action.

Miranda Warning: Rights which must be told to suspects before custodial interrogation may take place – required by the U.S. Supreme Court decision in *Miranda v. Arizona*, and included the following: 1. You have the right to remain silent. 2. You have the right to an attorney during questioning. 3. Anything you say can and will be held against you in a court of law. 4. If you cannot afford an attorney, one will be appointed for you.

Minor: Person under eighteen years of age.

Motion: Request made to the Court. Application by a party for a rule or order of the court; motions are either written or oral.

Necessarily Included Offense: Where an offense cannot be committed without necessarily committing another offense, the latter is necessarily included offense, sometimes referred to as lesser-included offense. Example: Trespass is a necessarily included offense of breaking and entering. (Also called a *lesser-included offense*.)

Nolle Prosequi: A dismissal of charges by the prosecutor.

Nolo Contendere (no contest): A plea having the same legal effect as a plea of guilty, but which cannot be used as an admission in a civil action.

Offense: A violation of a criminal law; a crime.

Order: A mandate, command, or directive given by the court for specific purposes. A direction of a judge made or entered in writing and not included in the judgment.

Ordinance: A law enacted by municipalities.

Parties: The plaintiff and the defendant in a civil action; the prosecution (state) and the defendant in a criminal action.

Penalty Assessment: Procedure in which traffic offender is allowed to mail in a fine (plead guilty by mail). Points are assessed against the person's driving record.

Peremptory Challenges: Rejecting a potential juror for no stated reasons.

Per Se Law: In the Motor Vehicle Code, the per se crime is driving with a blood alcohol level of .10 or greater. There is no need to prove any additional facts to show that a defendant was under the influence since the law defines *under the influence* as a BAC of .10 or greater. (Under the influence can still be *proven* at a BAC under .10.) See § 66-8-102(C) and § 66-8-110(C) NMSA 1978.

Plea: The defendant's answer to the prosecution's charges. Example: Guilty, not guilty, nolo contendere, no contest.

Plea Agreement: An agreement between the prosecutor and the defendant, presented for the court's approval, stating the disposition of charges and the sentence the defendant should serve upon plea of guilty.

Probable Cause: Reasonable cause or grounds.

Probation: A procedure under which a defendant convicted of a crime is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions. Release during good behavior and generally under the supervision of a probation officer.

Quash: To make void or set aside.

Rebuttal: Denial, negation; proof (a charge, piece of evidence) to be false.

Recross-Examination: Interrogation of a witness by the party who cross-examined the witness, following redirect examination and limited to new matters brought out on redirect examination.

Recusal: The act by which a judge disqualifies him/herself from a particular case by reason of personal interest or prejudice, or the appearance thereof.

Redirect Examination: Interrogation of a witness by the party who first examined the witness, following the cross-examination by the adverse party.

Release: Discharge from confinement or custody.

Restitution: Financial reimbursement to the victim or community service imposed by the court for a crime committed.

Revocation (of driver's license): The driver's license and privilege to drive are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of a least one (1) year after date

of revocation. This kind of revocation is done in response to a conviction for DWI in court, as distinguished from *administrative revocation*, which is done by the Motor Vehicle Division for 90 days, and is a separate process.

Search Warrant: An order in writing issued by a judge directing a law enforcement officer to search specified premises for personal property alleged to have been stolen, or for unlawful goods, and to bring the property, when found, before the court, usually along with the person occupying the premises, to be dealt with according to law.

Severance: The separation of offenses or defendants for purposes of trial.

Statement: A written statement made by a person and signed or otherwise adopted or approved by such a person; any mechanical, electrical, or other recording or a transcription thereof, which is a recital of an oral statement; and stenographic or written statements or notes that are in substance recitals of an oral statement.

Statute: A law enacted by the legislature.

Stay: The stopping of a judicial proceeding by order of the court, (verb) To refrain from enforcing order; (noun) The stopping of a judicial proceeding by order of the court.

Stipulation: An agreement between two adverse parties, whereby evidence is admitted without contest by either side. Example: The parties stipulate to the admission of the results of the breath test.

Subpoena: An order of the court directing a witness to appear and give testimony. A process directing a witness to appear and give testimony.

Summons: A process notifying a defendant of charges and requiring the defendant to appear before the court and answer.

Suspended Sentence: Postponed execution of sentence; sentence is imposed and execution of sentence is suspended; postpones, or stayed for a period and on conditions set by the judge.

Suspension (of driver's license): The driver's license and privilege to drive are temporarily withdrawn, but only during the period of suspension. No reapplication is necessary to obtain license.

Testimony: Evidence given by a competent witness under oath, as distinguished from evidence derived from writings and other sources.

Transcript: writing made from or after the original; a copy, particularly of a record.

Trial: The judicial investigation and determination of a cause; the determination of a person's guilt or innocence by due process of law.

Trial by Jury: Body of persons selected from the citizens of a particular district and brought before the court where they are sworn to try a question of fact and determine it by verdict.

Trial De Novo: A re-trial in district court that is conducted as if no trial had occurred in a lower court. If a defendant appeals the decision of the municipal, or magistrate court, the appeal is a trial de novo in the district court.

Venue: The place in which prosecution is brought; venue may be in the county of the defendant's residence or in the county in which the offense is alleged to have been committed.

Verdict: Decision or finding of a judge or jury (whoever is the fact finder).

Waive: To give up a known right voluntarily.

Warrant: An order issued by a judge, addressed to a law enforcement officer, requiring some action, such as an arrest or a search.

Warrantless Search: Examination of a person or premises without first obtaining a warrant, which may be lawful under limited circumstances, such as emergency, hot pursuit, or threat of immediate removal of contraband.

Resource Directory

Administrative Office of the Courts

Supervises administrative matters of state court, examines fiscal matters of the court, and assists with other court matters as directed by the Supreme Court.

Supreme Court Building

Santa Fe, NM 87501

505-827-4800

www.nmcourts.com

Bernalillo County Metropolitan Court

A joint city-county court in Albuquerque, considered a State Court.

Court administrator's office

505-841-8100

www.metrocourt.state.nm.us

Disciplinary Board

Investigates written complaints against attorneys.

400 Gold SW, Suite 712

Albuquerque, NM 87102

505-842-5781

www.nm.disboard.org

District Courts

There are thirteen Judicial District courts. Phone numbers for these state courts are found with state listings. District attorneys are found in the same judicial districts.

DWI Resource Center

The mission of the DWI Resource Center is to reduce the impact of DWI in New Mexico through public awareness, education, and prevention programs and to provide survivor support services.

2527 Wyoming Blvd. NE

Albuquerque, NM 87112

505-881-1084

www.dwiresourcecenter.org

Institute of Public Law

Researches law and public policy issues

University of New Mexico

1117 Stanford NE

Albuquerque, NM 87131

505-277-5006

www.ipl.unm.edu

Judicial Standards Commission

Investigates written complaints against judges for willful misconduct or failure to perform their duties.

Albuquerque (8 am to 12 noon, M-F)

505-841-9438

<http://fsccl.org/JSC/Main.htm>

Magistrate Courts

State courts administered at the county level. Phone numbers found with county listings.

Municipal Courts

City courts whose phone numbers are found with city listings.

The DWI Resource Center Phone Contacts:

Office: 881-1084 or 294-2906

Linda Atkinson

Valerie Arbogast

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And in memory of:

Howard Graff, Former chief Traffic Safety Bureau
The many victims of DWI crashes in New Mexico and across the country.

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