

## DWI in New Mexico generally and Las Cruces specifically

### **Overview**

The state legislature, cities and towns regulate drunk driving for obvious reasons, to protect drivers from themselves and to protect the public. The statutes passed by the legislature control and a city or town can't pass a municipal ordinance that specifies a different unlawful blood-alcohol content than the state statutes.

Penalties are harsh and include not only large fines but possible revocation of the drunk driver's license and having their car seized.

Here's what the City of Las Cruces says about DWI enforcement on their web site:

The Las Cruces Police Department conducts several sobriety checkpoints within city limits throughout the year.

The department's sobriety checkpoints are intended to reduce and eliminate the number of motorists who drive while intoxicated. Additional enforcement activities conducted regularly include saturation, underage and party patrols.

The Dona Ana County Sheriff's Office also conducts DWI checkpoints from time to time. In reaction to that, one technique people are trying is to put a sign in their car window that says they won't talk to the police. The news has reported that a Florida lawyer is making that popular. New Mexico Attorney General Hector Balderas said in the story that it's not a good idea: "Based on New Mexico case law, an individual who leaves the window up and refuses to sign a citation may be subject to arrest," he said in a recent news story. Additionally, a person may be arrested for resisting or refusing to obey a law enforcement officer in the lawful discharge of his or her duties, he pointed out.

Some cities and towns in New Mexico are still seizing vehicles for DWI, although that is a very controversial practice based on recent court decisions.

### **Implied Consent**

Under the Implied Consent Act, §66-8-105 through §66-8-112 of the state statutes, anyone who operates a motor vehicle in New Mexico is deemed to have given consent to breath and/or blood chemical tests if arrested for DWI. The test results may then be introduced into evidence in any civil or criminal action arising out of the acts allegedly

committed by the person tested. The Implied Consent Act is also the basis for revoking drivers' licenses administratively in an entirely separate non-judicial action. The Act provides a series of revocation penalties for refusing to take the chemical test(s) or for driving with a breath and/or blood alcohol level over the legal limit.

## **DWI Offenses**

### “DWI” Compared to “Aggravated DWI”

There are three “basic” (i.e. non-aggravated) DWI offenses and three aggravated DWI offenses. The aggravated offenses are based on the same elements as the basic DWI offenses, but involve additional behaviors or actions that are considered to be more egregious and hence subject to greater punishment. What specific DWI offense a motorist is charged with is determined by law enforcement and/or the prosecution based on the facts of the case, and the DWI statute or ordinance.

The basic DWI offenses are:

- Driving under the influence of alcohol. §66-8-102(A).
- Driving under the influence of drugs. §66-8-102(B).
- Driving with a blood or breath alcohol level of .08 or higher, or .04 or higher when driving a commercial vehicle. §66-8-102(C).

The aggravated DWI offenses are:

- Driving with a blood or breath alcohol level of .16 or higher. §66-8-102(D)(1).
- Driving under the influence of alcohol or drugs and causing bodily injury to a human being as a result. §66-8-102(D)(2).
- Driving under the influence of alcohol or drugs and refusing to submit to chemical testing (breath and/or blood). §66-8-102(D)(3).

So the standards are different for personal and commercial vehicles. If someone is driving a personal vehicle, here's how the BAC works to set forth presumptions under the Implied Consent Act about whether they were driving while under the influence (In cases where a motorist submits to either breath or blood testing, or both, the term “BAC” is commonly used by the judge, prosecution, defense and law enforcement as shorthand for the specific alcohol concentration either of those testing methods revealed.):

- BAC of less than .04: It shall be presumed that the person was not under the influence of intoxicating liquor.

- BAC of at least .04 but less than .08: No presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's system may be considered with other competent evidence in determining whether the person was impaired or under the influence of intoxicating liquor.

A variety of biological factors, along with how quickly someone is drinking and of course, what they're drinking, determine what their BAC would be, and the presumptions listed above can be overcome with evidence, for example, that may include the signs of intoxication the driver exhibited, the manner in which the driver was observed operating his or her vehicle, any admissions made by the driver to alcohol consumption and performance on Field Sobriety Tests.

## **Penalties**

Enough info-let's look at the penalties. A 1<sup>st</sup> offense can result in up to 90 days in jail and a fine of up to \$500 plus various fees, and there's a mandatory DWI school and community service. Also, as mentioned before, a driver's license revocation can result (the time period varies depending on the driver's age). If that weren't enough, some offenders continue to drink and drive so of course the penalties get harsher with each subsequent offense. A DWI conviction stays on a motorist's driving record for 25 years, unlike other traffic convictions, which drop off after three years.

Conviction of any crime is a public record and easily searchable through the online court records, so there is also an intangible reputation factor there. Also, when someone is arrested, a towing company can tow their vehicle right away if it receives authorization from law enforcement to do so, and of course there are costs associated with that.

## **Another Alcohol Related Offense**

Open Container: State law prohibits consumption or possession of alcoholic beverages in open containers in a motor vehicle. The prohibition applies to all occupants of the vehicle, including the driver and passengers. The 1<sup>st</sup> offense only results in a misdemeanor with a \$25 fine but subsequent violations are very serious.

## **Update: “Alcohol Exclusion”**

If you get sick or injured because you are under the influence of alcohol, some medical insurance plans will refuse to cover the expense. This was recently approved by the appellate courts of New Mexico in 2016-NMCA-037, where the plan for employees of NM Tech excluded coverage in that situation. It may be difficult to find out if your insurance has such an exclusion.

This is general legal information and not a substitute for specific legal advice. If you're charged with DWI or any crime, you should immediately seek an experienced criminal law attorney to represent you. Karl Rysted, the NMSU Student Legal Aid Attorney, is licensed in New Mexico and Oklahoma but refers DWI clients to the Public Defender's Office. Mr. Rysted would like to acknowledge the source for most of this information, the DWI Benchbook, published by the New Mexico Judicial Education Center Institute of Public Law, UNM School of Law.