

STATE:
General Reference:

NEW MEXICO
New Mexico Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §66-8-102(A)
Illegal Per Se Law (BAC/BrAC):	≥.08 ^{835and836} §§66-8-102(C) and 66-8-110(E)
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of Any Drug §66-8-102(B)
Other:	Aggravated DWI Offense: (1) driving with a BAC/BrAC ≥.16, (2) causing bodily injury (an injury which is not likely to cause death or great bodily harm) while under the influence of alcohol or drugs or (3) refusing to submit to a chemical test <u>and</u> driving while under the influence of intoxicating liquor or drugs. §66-8-102(D)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §66-8-107
Implied Consent Law Applies to Drugs (Yes/No):	Yes §66-8-107
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes ⁸³⁷ (Criminal and Possibly Civil Cases) <i>McKay v. Davis</i> , 653 P.2d 860 (N.M. 1982)
Other Information:	A driver may be required to submit to a chemical test based on a search warrant issued by a court upon probable cause that the driver has killed or greatly injured another person while operating a motor vehicle or where there is probable cause to believe that the driver committed a felony while under the influence of alcohol or a "controlled substance". §66-8-111 (A)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §66-8-107
Urine:	No
Other:	None

⁸³⁴ This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

⁸³⁵ Alcohol concentration is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §66-8-110(E)

⁸³⁶ Refusal to perform field sobriety tests can also be admitted into evidence. *State v. Wright*, 867 P.2d 1214 (N.M. App. 1993), (cert denied 869 P.2d 820 (N.M. 1994)).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ⁸³⁸ Special Note: A driver must be charged with a DWI offense if he/she has an alcohol concentration ≥ 0.08 . §66-8-110(C)
Anti-Plea-Bargaining Statute (Yes/No):	Yes (Limited) §§66-8-102.1 If a guilty plea is entered, it must be to one of the subsections of the DWI statute when alcohol concentration is ≥ 0.08 .
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes DWI- PSI screening is required. §66-8-102(E) and (H)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Revocation 1 year (Mand) §§66-5-35(A)(2) and 66-8-111(B)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI/Aggravated DWI Offenses: first offense – Not more than 90 days ; second and third offenses – Not more than 364 days ; fourth and subsequent offense (fourth degree felony) – 18 months . §§31-18-15 and 66-8-102 Great bodily injury where the driver was under the influence of intoxicating liquor or drugs (third degree felony) – 3 years . ^{839and840} §§31-18-15 and 66-8-101 See Footnote No. ⁸⁴¹ .

⁸³⁷ An offender is not eligible for conditional discharge where the court finds the offender guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs.

⁸³⁸ For any non-capital felony offense, the sentence may be altered by as much as one-third by the court, depending upon the aggravating or mitigating circumstances. §31-18-15.1

⁸³⁹ For each prior DWI offense conviction (within 10 years), the basic imprisonment sanction is increased by an additional 2 years.

⁸⁴⁰ A person who operates a motor vehicle either while under the influence of alcohol/drugs or while violating §66-8-113, and who causes injuries to a pregnant woman, is guilty of a third degree felony. §§66-8-101.1 and 31-18-15. The sentence is increased by 1 or 2 years if there is an intentional injury to a person 60 years old or older or to a handicapped person. §31-18-16.1

Special Note: For the purposes of determining whether a person is a subsequent offender, a first offender includes persons who have had DWI charges dismissed via a deferred sentence. {Deferred sentencing is prohibited for some DWI offenses.} §§31-20-13(C), 66-1-4.6(C), 66-1-4.16(Q) and 66-8-102.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term:	DWI Offenses: first offense – No ⁸⁴² ; second offense – 72 consecutive hours ; third offense – 30 consecutive days ; fourth and subsequent offense – 6 months . Aggravated DWI Offenses: first offense – 48 consecutive hours ; second offense – 96 consecutive hours ; third offense – 60 consecutive days ; fourth and subsequent offense – 6 months (the sentence may not be suspended or deferred). §66-8-102. Great bodily injury where the driver was under influence of intoxicating liquor or drugs-third degree felony – 2 years.
Fine: Amount (\$ Range):	DWI/Aggravated DWI Offenses: first offense – Not more than \$500 ⁸⁴³ ; second and third offenses – Not more than \$1,000 ; fourth and subsequent offense – Not more than \$5,000 . §§31-18-15 and 66-8-102. Great bodily injury where the driver was under influence of intoxicating liquor or drugs-third degree felony – Not more than \$5,000 . §31-18-15
Mandatory Min. Fine (\$):	DWI/DWI Aggravated Offenses: first offense – None ; second offense – \$500 ; third offense – \$750 ; fourth and subsequent offense – None . Great bodily injury where the driver was intoxicated – None .
Other Penalties: Community Service:	DWI/Aggravated DWI Offenses: first offense – 48 hours (or a \$300 fine); second offense – 48 hours (mand)§66-8-102
Restitution (e.g., Victim's Fund)	Yes §31-17-1 Restitution is to be paid by the defendant. ⁸⁴⁴
Other:	BAC Test Fee: A fee of \$65 is assessed against each defendant to defray the costs of chemical tests for DWI. §31-12-7(A) DWI Program Fee: A fee of \$75 is assessed to fund comprehensive DWI community programs. §31-12-7(B) Screening and Treatment Costs: In addition to all other fines and fees the court may order the defendant to pay the costs of any screening and treatment programs. §66-8-102(L).

Double Jeopardy: Based upon the same factual situation, a person who has been subjected to a licensing action under the administrative per se law may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State ex rel. Schwartz v. Kennedy*, 904 P.2d 1044 (N.M. 1995)

⁸⁴¹ The only mandatory sanctions are either a fine or community service.

⁸⁴² As an alternative, an offender may be sentenced either to serve 48 hours of community service or pay a \$300 fine. §66-8-102(E)

⁸⁴³ Restitution appears to be required if a sentence is either suspended or deferred. §§31-17-1(B) and 31-20-6

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

First Admin. Per Se Action-(1) For persons ≥ 21 years old who have a BAC/BrAC $\geq .08$ **Revocation 90 days** (30 days mandatory followed by restricted driving privileges); and (2) For persons < 21 years of age who have a BAC/BrAC $\geq .02$ – **Revocation 6 months** (30 days mandatory, followed by restricted driving privileges⁸⁴⁵); Subsequent Admin Per Se Action (all persons) – **Revocation 1 year** (30 days mand).⁸⁴⁶ §§66-5-35(B), 66-8-110(D), 66-8-111(C)(1), (2) and (3) and (D)

Other:

Under §§66-5-29, 66-5-30(A)(1) and 66-5-32(A), for certain first DWI offenses and all subsequent offenses, a person's license may be suspended for not more than 1 year if convicted of an offense that usually requires license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

DWI/DWI Aggravated Offenses⁸⁴⁷: first offense – **Revocation**; second offense – **Revocation** §§66-5-29 and 66-5-32(B); third offense (within 10 years) – **Revocation**. §66-5-5(D)

Term of License Withdrawal

(Days, Months, Years, etc.):

DWI/DWI Aggravated Offenses: first offense – 1 year; second offense – **2 years**; third offense (within 10 years) – **3 years**; fourth offense – **for life** but subject to five-year reviews by District Court, as provided in §§ 66-5-5 and 66-8-102.

Mandatory Minimum Term of

Withdrawal:

DWI/DWI Aggravated Offenses: first offense – 30 days with restricted license and ignition interlock; Second offense – **30 days** with restricted license and 2 years ignition interlock; third offense – **30 days** with restricted license and 3 years ignition interlock; §§66-5-35(A)(3) and (C), § 66-5-29 C.

⁸⁴⁴ Restricted driving privileges are allowed for either employment or education purposes provided the driver is enrolled in a drunk driving school and alcohol screening program. §66-5-35(B)

⁸⁴⁵ For subsequent admin actions, a restricted license may be issued after 30 days provided the licensee operates motor vehicles equipped with **ignition interlock** devices. §66-5-35(B)

⁸⁴⁶ I. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who: has an alcohol concentration of sixteen one hundredths or more in the blood or breath while a vehicle within this state; has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or refused to submit to chemical testing, as provided for in the Implied Consent Act {§§ 66-8-105 to 66-8-112 NMSA}, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs. § 66-8-102D

II. For DWI great bodily injury offenses, there appears to be a mandatory 1 year license revocation based on felony offenses committed while operating a motor vehicle. No restricted license is available to persons convicted of this offense. §§66-5-29(A)(4) and (B) and 66-5-35(A)(4)

Ignition Interlock⁸⁴⁸ Persons who have been convicted of a misdemeanor drunk driving offense shall be required, as a condition of probation, to operate only motor vehicles that are equipped with ignition interlock devices, as follows:
 (1) a period of one year, for a first offender;
 (2) a period of two years, for a second conviction;
 (3) a period of three years, for a third conviction;
 (4) for life for a fourth or subsequent conviction, except that five years from the date of conviction and every five years thereafter, the offender may apply to a district court for removal of the Interlock for good cause shown 'Good cause' may include alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device. §66-8-102(N)

Rehabilitation:

Alcohol Education:

For first offenders, the court either may order the defendant to attend a "DWI school" or other "rehabilitative services" or defer the DWI charges and place a defendant on probation, conditioned on attendance at alcohol education or rehabilitation and installation of ignition interlock. After the probation period, the court may dismiss the DWI charges. §§31-20-9 and 66-8-102 (E) and (H).

Alcohol Treatment:

For subsequent DWI offenders, the court may order a defendant to complete an alcohol treatment program. §66-8-102. If an offender fails to complete any program, additional jail time is required. §66-8-102 (F).

Vehicle Impoundment/Confiscation:

None. Except that §66-5-39(B) provides for a 30-day "immobilization" period for the vehicle the offender was driving with a revoked license, unless immobilization poses a danger to the family.

Not Included Elsewhere:

Driving Safety Course: A DWI offender may be required to take a driving safety course. §66-10-11

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Misdemeanor §66-8-7(A) However, if the driver was intoxicated-**third degree felony** §66-8-101(C), (D) and (F)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 mandatory year (not less than 3 years if

⁸⁴⁷ For subsequent offenses, a restricted license may be issued after a mandatory 30-day revocation period provided the offender is enrolled in a DWI school or an alcohol screening program, and operates vehicles that are equipped with **ignition interlock** devices. In addition, the person must present proof indicating the need for a limited license for the purpose of maintaining gainful employment, attending school or traveling to and from a "court-ordered treatment program." §66-5-35(A)(3), (C) and (D)

transporting hazardous materials) if, while driving a CMV, he/she (1) has a BAC \geq .04 but $<$.08 (Standard: Amount of alcohol in the blood), (2) is convicted of a drunk driving offense (§66-8-102) while operating a CMV, or (3) refuses to submit to a chemical test for either alcohol or drug concentrations.

For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 years mand). §§66-5-54, 66-5-68 and 66-5-68.1

Special Note: Municipal ordinances may provide for civil vehicle forfeiture. A city of Albuquerque ordinance provides for forfeiture in cases of driving while revoked for DWI or a third or subsequent DWI. *City of Albuquerque v. One 1984 Chevy*, 46 P. 3d 94 (N.M. 2002).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Misdemeanor – Not more than **90 days**; third degree felony-3 years.⁸⁴⁹ §§31-18-15 and 66-8-7(B).

Mandatory Minimum Term:

Third degree felony – 2 years.

Fine (\$ Range):

Misdemeanor – Not more than **\$100**; third degree felony – Not more than **\$5,000**.

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Misdemeanor– suspension; third degree felony– suspension/**Revocation**. §§66-5-29 and 66-5-30(A)(2)

Length of Term of

Licensing Withdrawal:

Misdemeanor – 1 year; third degree felony – 1 year.

Mandatory Action--Minimum

Length of License

Withdrawal:

Third degree felony – 1 year. No restricted driving privileges may be granted. §66-5-35(A)(4)

Other:

Misdemeanor-Restitution; third degree Felony-Restitution. Victim restitution is either via the offender or via a State reparations fund. §§31-17-1 and 31-22-1 et seq. (Repealed effective July 1, 2006.)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote Nos. ⁸⁵⁰, ⁸⁵¹, ⁸⁵² and ⁸⁵³.

⁸⁴⁸ For each prior DWI offense conviction (within 10 years), the basic imprisonment sanction is increased by an additional 2 years.

⁸⁴⁹ Plea bargaining is not allowed to another offense. §66-5-39(A)

⁸⁵⁰ The motor vehicle used in the offense shall be immobilized for 30 days. However, such action is not taken if it would impose imminent danger to the health, safety or employment of the vehicle owner's or offender's family. §66-5-39(B)

⁸⁵¹ It is a misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term for not more than 90 days and/or a fine of not more than \$300. §§66-5-59(B) and 66-8-7

⁸⁵² A person who operates a CMV in violation of an out-of-service order, is subject to the following sanctions: (1) a civil penalty of not less than \$1,000 nor more than \$2,500 and (2) disqualification from operating a CMV as follows: first violation-a disqualification for not less than 90 days (mand) not more than 1 year; second violation (within 10 years) – not less than 1 year (mand) nor more than 5 years; and, third or subsequent violation (within 10 years) – not less than 3 years (mand) nor more than 5 years. If the person was operating a motor vehicle either carrying hazardous materials or designed to carry more than 15 persons including the driver, the disqualification periods are as follows: first violation-180 days (mand) to 2 years; and, subsequent violation (within 10 years) – 3 years (mand) to 5 years. §§66-5-68(F) and 66-5-71

Other Criminal Actions Related to DWI: (continued)

Sanction: Criminal:	
Imprisonment (Term):	Misdemeanor. Less than 1 year §§31-19-1(A) and 66-5-39(A)
Mandatory Minimum Term of Imprisonment:	7 consecutive days §66-5-39(A)
Fine (\$ Range):	\$300 to \$1,000 §66-5-39(A)
Mandatory Minimum Fine:	\$300 §66-5-39(A)
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	Suspension/Revocation §66-5-39(C)
Length of Term of License Withdrawal Action:	For driving while suspended – an additional suspension period equal to the original period. For driving while revoked – an additional revocation period of one (1) year. §66-5-39(C)
Mandatory Term of License Withdrawal Action:	The above suspension/revocation periods appear to be mandatory.
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender: Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

Special Note: I. The licensing agency has the authority to suspend a person's license for not more than 1 year, if he/she has been convicted of an offense related to a motor vehicle accident in which there was a death or a personal injury. §§66-5-30(A)(2) and 66-5-32(A) II. In addition, such agency must revoke a person's license for 1 year if he/she is convicted of either "manslaughter" or "negligent homicide" while operating a motor vehicle. §66-5-29(A)(1) and (B) III. Unless a death is related to a drunk driving offense per §66-8-101, it may be possible for persons who have been convicted of these offenses to obtain restricted driving privileges. §66-5-35(A)

State Has Such a Law (Yes/No):	Yes ⁸⁵⁴ §24-11-6(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes ⁸⁵⁵
Vehicle Passengers:	Yes
Pedestrian:	Yes
 <u>Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:</u>	
Minimum Age (Years) Sale/Purchase:	21 §§60-3A-3(P) and 60-7B-1
Minimum Age (Years) Possession:	21 There is an exemption when the minor is on real property (not a licensed premises) under the control of a parent or guardian. §60-7B-1(B).
Minimum Age (Years) Consumption:	None. Note: A licensee cannot allow a person under 21 years old to consume alcoholic beverages on the licensed premises. §60-7B-1(A)(1)
 <u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	Yes §41-11-1 ^{856,857}
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes but abrogated via §41-11-1(H)
Dram Shop Actions-Social Hosts:	Yes §41-11-1(E) ⁸⁵⁸ Liability is based upon the host providing alcoholic beverages to the guest in reckless disregard of the rights of others including the
Other:	None
 <u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	Petty Misdemeanor-for persons; Misdemeanor-for corporations §§31-19-1(A) and (B), 31-20-1(A), 60-7A-16 and 60-7A-25
Term of Imprisonment:	Not more than 6 months.) For corporations, not more than 1 year)

⁸⁵³ But the information obtained from these test results can only be used for statistical purposes; i.e., the information cannot contain any identification about deceased persons. §24-11-6(B)

⁸⁵⁵ The law (1) limits liability for social hosts to cases involving serving alcoholic beverages in reckless disregard of the rights of others and (2) increases the burden of evidence needed to hold liquor license establishments liable for serving alcoholic beverages to intoxicated persons to that of gross negligence and reckless disregard

⁸⁵⁵ The New Mexico Supreme Court has held that §41-11-1(I), which limits damage awards in dram shop cases, violates the equal protection clause of the New Mexico Constitution, *Richardson v. Carnegie Library Restaurant, Inc.*, 763 P.2d 1153 (N.M. 1988), although the legal basis on which *Richardson* was decided was overruled by the same court in *Trujillo v. City of Albuquerque*, 965 P.2d 305 (N.M.1998). Under this law, for each transaction or occurrence, damage awards are limited to either (1) \$50,000 for injuries/death and \$20,000 for property damage for one individual or (2) \$100,000 for injuries/death and \$20,000 for property damage for two or more persons

⁸⁵⁶ The dram shop law is the exclusive remedy for damages against either alcoholic beverage licensees or social hosts. §41-11-1(H). This provision, therefore, abrogated court decisions that had established liability via common law negligence. See, e.g., *Lopez v. Maze*, 651 P.2d 1269 (N.M. 1982), which concerned alcoholic beverage licensees, and *MRC Prop. v. Gries*, 652 P.2d 732 (N.M. 1982), which concerned social hosts.

⁸⁵⁷ **Community Service:** A person who is convicted of selling alcoholic beverages to a minor must perform the community service related to reducing drunk driving as follows: first offense – 30 hours; second offense –40 hours; and, third or subsequent offense – 60 hours. §60-7B-1(F)

Fine (\$ Range):

Not more than \$500. (For corporations, not more than \$1,000)Other State Laws Related To Alcohol Use:Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes. §60-6C-1

Length of Term of License Withdrawal:

2 years §60-6C-8

An administrative fine of not more than \$10,000 can also be imposed. §60-6C-1(A) See the Special Note and Licensed Servers below.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misdemeanor §60-7B-1

Term of Imprisonment:

None Fine

(\$ Range):

Not more than \$1,000Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes⁸⁵⁹ §60-6C-1

Length of Term License Withdrawal:

2 years §60-6C-8

An administrative fine of not more than \$10,000 can also be imposed. §60-6C-1(A). See the Special Note and Licensed Servers above.

Anti-Happy Hour Laws/Regulations:**No**Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

⁸⁵⁸ In addition, a person's license to sell alcoholic beverages under the Alcohol Server Education Act is suspended as follows: first violation – No suspension; second violation – 60-day suspension; and, third or subsequent violation – 1 year suspension. §60-7B-1(F) A license suspension/revocation is mandatory, with or without an administrative fine, if the licensee's employees or agents, "knowingly" serve alcoholic beverages in violation of the law and such violation was the second in 12 months. §60-6C-1(B)

Licensed Servers: Persons who serve alcoholic beverages at a business licensed to sell such beverages must be individually licensed to serve these beverages. If such a person serves alcoholic beverages to either an intoxicated person or to one under the legal drinking age, the licensed individual is subject to the following administrative sanctions which are in addition to any criminal liability that may be imposed: first offense – an administrative fine of not more than \$500 and/or server permit suspended for 30 days; second offense – server permit suspended for 1 year; and, third offense – server permit permanently revoked. §60-6E-8

Open Container Law (Yes/No):

Yes §66-8-138(B) and (C)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §66-8-138(A)