



New Mexico Sentencing Commission

**New Mexico Sentencing Commission
DWI Statistics
and
Analysis of
DWI-related bills
introduced during the
2005 Legislative Session**

February 25, 2005

Introduction

Beginning on page six of this report, you will find a table in which the approximately 23 bills which affect DWI and /or Ignition Interlock laws In New Mexico are summarized and compared or contrasted to similar bills. The data immediately below is provided by the New Mexico Sentencing Commission (NMSC) in order to provide context for this analysis as well as a basis for additional comments provided with some bills.

Two sources were used to compile this data. The first is information reported to DFA's Local Government Division by the UNM Institute for Social Research (ISR) in the form of a Fact Sheet and Report in 2004. The second is the annual Driving While Impaired reported compiled by UNM's Division of Government Research (DGR) for NM's Department of Transportation.

At the end of the bill analysis we have included data provided by Dr. Richard Roth on ignition interlock. Initial findings by Dr. Roth indicate that the re-arrest rate for DWI offenders with no interlock is 10.9% as compared to 2.4% for those with an interlock.

Standing on the Facts: DWI in New Mexico (June 2004)

- From 1982 to 2000, the number of alcohol-involved fatalities in New Mexico declined by 45%. During this period the number of alcohol-involved fatalities for Anglos declined 66%, for Hispanics 36%, and 29% for Native Americans.
- In a comparison of selected states, New Mexico had the highest alcohol-involved fatality rate in 1990 and the largest percent decrease over the last decade.
- From 1990 to 2001, the New Mexico population increased 21%, while the rate of alcohol-involved crashes with injuries declined 48%.
- Alcohol-involved fatality rates decreased almost 55% for Native Americans, Hispanics, and Anglos in New Mexico from 1990 to 2000. Despite this decline, a disproportionate percentage of Hispanics and Native Americans (74%) account for all alcohol-involved fatalities in New Mexico.
- The rate of alcohol-involved fatalities for New Mexico Anglos is approximately the same as the overall national rate.
- The overall alcohol-involved fatality rate for Anglos in New Mexico was 6 times lower than the Native American rate and two times lower than the Hispanic rate.
- The strongest variable affecting re-arrest for DWI is the number of prior DWI violations.
- A recent study by ISR of five New Mexico counties, showed that individuals who were unemployed at the time they were treated for alcohol abuse were more likely to be arrested for DWI when compared to individuals who were employed.
- An ISR study of 15 New Mexico counties revealed that from July 1, 1997 to June 30, 2000 the majority of DWI offenders had their jail time suspended or deferred.
- Less than 15% of all DWI offenders sentenced to jail time actually serve their full sentence.
- The decline in alcohol-involved fatalities from 1990 to 2000 supports the belief that DWI programs implemented in the 1990's had a positive effect on the reduction of fatal alcohol-involved accidents.

➤ A complete analysis of the data is needed to address the effects of DWI legislation: population characteristics, law enforcement initiatives, judicial culture; behavioral health care services, media focus, and changes in the New Mexico economy on the rate of alcohol-involved fatalities for this period.

Driving While Impaired: New Mexico 2003 – UNM Division of Government Research

Alcohol-Involved Crashes and DWI Arrests in 2003

There were a total of 3,508 alcohol-involved crashes and 20,325 arrests for DWI in 2003. The Alb. PD accounted for 30.5% of the arrests, followed by state police (21.3%), county sheriff (15.4%), other city PDs (30.9%), and other (6.3%).

Blood Alcohol Content (BAC)

In 2003 the average BAC result was 0.16, double the legal limit for drivers over 21. The average excludes tests with a result of 0.0.

Repeat Offenders

There were 12,123 people convicted of DWI in 2003. The citations that resulted in these convictions could have been issued before 2003. Of these 9,373 (77.3%) had not been convicted since 1998, indicating they were not repeat offenders in the last five years.

Number of Convictions

Conviction Number	Count	Percent
First	9373	77.3
Second	2153	17.8
Third	496	4.1
Fourth	81	0.7
Fifth	17	0.1
Sixth	3	0.0

NMSC Summary

The majority of research has shown that fewer offenders are driving drunk while under suspension for a current offense with an ignition interlock in their vehicle. Effectiveness drops when the device is removed from the vehicle. Failure rates of interlock systems are small.

The New Mexico Sentencing Commission generally supports the post-conviction use and extended use of ignition interlock for all levels of DWI offenders, such as that proposed in HB 282. This is one of the limited situations in which the NMSC supports a mandatory sanction.

Notes in the Comments section beneath each bill summary refer to votes by members of the Legislative Committee of the New Mexico Sentencing Commission to either support or not support a bill. Additional comments are included when an issue was raised by the committee. The NMSC is made up of:

- (1) the attorney general;
- (2) a district attorney appointed by the district attorneys association of New Mexico;
- (3) the chief public defender;
- (4) two district court judges, one of whom shall be a children's court judge, appointed by the district court judge's association of New Mexico;
- (5) a judge from the court of appeals appointed by the chief judge of the court of appeals;
- (6) the dean of the university of New Mexico school of law;
- (7) the secretary of corrections;
- (8) the secretary of public safety;
- (9) the secretary of children, youth and families;
- (10) a county sheriff appointed by the executive director of the New Mexico association of counties;
- (11) two public members appointed by the governor,
- (12) three public members appointed by the president pro tempore of the senate;
- (13) three public members appointed by the speaker of the house of representatives;
- (14) two public members appointed by the chief justice of the supreme court;
- (15) one public member who is Native American and a practicing attorney, appointed by the president of the state bar association; and
- (16) one public member appointed by the governor who is a representative of a New Mexico victim organization.

DWI INTERLOCK BILLS	Exiting law and how changed Sanctions	Comparison with other bills	Additional comments
<p>Bill: HB282 Sponsors: Martinez, W. Title: DWI INTERLOCK MANDATED Summary: Mandates ignition interlock devices for all DWI offenders, with time periods based on number of convictions: one year for a first offender; two years for a second conviction; three years for a third conviction; or the remainder of the offender's life if convicted a fourth or subsequent time. For the latter, application for relief could be made to the district court every five years. Comments:Supported 14-0</p>	<p>Existing law only mandates interlock for one year and only for 2nd and later offenses or 1st offense if aggravated. 1st offense= 1 yr interlock 2nd offense = 2 years 3rd offense = 3 years 4th and more = lifetime interlock</p>	<p>This bill applies to ALL convicted DWI offenders. Interlock is not condition of probation but is mandatory</p>	<p>Roth data shows re-arrest rate for DWI offenders with no interlock is 10.9% as compared to 2.4% for those with an interlock. Bill makes sense since research shows effectiveness drops when the device is removed from the vehicle.</p>
<p>Bill: HB506 Sponsors: Cheney Title: DWI: MANDATORY LICENSE REVOCATION Summary: Requires all persons convicted of DWI to have their driver's licenses revoked. The license may be restored pursuant to the Ignition Interlock Licensing Act. Comments:</p>	<p>Existing law (much just enacted or amended last year) has "may" be required to install interlock for first offenders. This law requires interlock for 1st offenders.</p>	<p>Similar to HB 282 but does not specify length of interlock - requires interlock for 1st offenders.</p>	
<p>Bill: SB109 Sponsors: Griego & Cravens Title: IGNITION INTERLOCK FOR JUVENILE DWI/DRUG OFFENDERS Summary: Revokes the driving privileges of a delinquent child 15 years of age or older who is convicted of DWI or offenses related to the use of alcohol or drugs. Revocation is for one year; however, the child may apply for an ignition interlock device. SPAC Committee Report 02/09/2005 — SPAC amendment to SB109 provides that indigent juvenile offenders may receive assistance from the Interlock Device Fund. In addition, removes requirements that the ignition interlock device detect an alcohol concentration of .02 in the delinquent's blood or breath. Comments: Not supported 8-5 Issues raised: Conflicts with use of "may" used throughout NM Children's Code (Removes judicial discretion in juvenile adjudications) Also, committee expressed concern that adjudication for open container not related to driving could result in mandated interlock.</p>	<p>Would mandate license revocation and interlock for DWI and non-DWI offenses for any child fifteen years of age or older is adjudicated delinquent.</p>		<p>Concerns raised: Amends the NM Children's Code, which grants judicial discretion throughout, to mandated sanctions.</p>

<p>Bill: SB154 Sponsors: Cravens Title: PLEA AGREEMENTS REQUIRE IGNITION INTERLOCK DEVICES Summary: Provides that plea agreements for any offender being convicted of a second DWI require the offender to install and operate an ignition interlock device for at least one year in all vehicles they drive.</p> <p>SPAC Committee Report 02/09/2005 — SPAC amendment to SB154 removes reference to subsequent offenses and provides that a first-time offender who enters a plea agreement is required to have an ignition interlock device installed and operating for at least one year in each vehicle driven by the offender.</p> <p>Comments:Not supported 9-4 Issue raised: removes judicial discretion</p>	<p>Interlock essentially required for one year for all offenders (including first) as condition of plea. Existing law already required interlock for subsequent offenders upon conviction.</p>		
<p>Bill: SB714 Sponsors: Griego Title: DWI: INTERLOCK AS CONDITION OF RELEASE Summary: Requires all persons arrested on DWI charges to install an ignition interlock device as a condition of release pending trial. Expands the interlock device fee to include persons arrested for DWI and allows assistance from the Interlock Device Fund to indigents.</p> <p>Comments:Not supported - Arrestee may have to install interlock prior to an adjudication which could ultimately be dismissed.</p>	<p>This bill requires interlock as condition of release It applies to a person arrested for driving under the influence of intoxicating liquor or drugs.</p>		<p>Dr. Roth has tracked numbers of unadjudicated DWIs (including warrants for failure to appear).</p> <p>This bill would attempt to reduce number of unadjudicated DWI offenders who could repeat while awaiting (or avoiding) adjudication.</p> <p>The bill could also increase jail time for those awaiting conditional ROR based on interlock.</p>

<p>Bill: SB603 Sponsors: Griego Title: DWI: INCREASED FIRST OFFENDER PENALTY AND IGNITION INTERLOCK REQUIREMENTS Summary: Extends revocation of driver's license for a first-time DWI offender from 90 days to six months and requires an ignition interlock license for various time periods based on the offender's age and other circumstances of the offense. Comments: conflict with existing law?</p>	<p>Extends revocation period and requires interlock for reinstatement of license for DWI, Agg. DWI or Implied Consent (refusal to submit to test) Amends the Motor Vehicle Code as to driver's license; not criminal sanctions</p>	<p>Amends the Motor Vehicle Code as to driver's license; not criminal sanctions.</p>	
<p>Bill: SB268 Sponsors: Cravens Title: DWI INTERLOCK DEVICE USER FEE Summary: Provides for funding the Interlock Device Fund by charging an additional \$20 to users, collected by the private vendor for the state. DWI grant fund no longer supports the Interlock Device Fund. Comments: Supported 14-0</p>	<p>Simply Provides for funding the Interlock Device Fund by charging an additional \$20 to users. No criminal sanctions</p>		<p>Would cost the users more.</p>
<p>Bill: HB956 Sponsors: Swisstack (D60) Title: DWI: REDISTRIBUTES LOCAL DWI GRANT FUNDS Summary: Eliminates Local DWI Grant Fund money that was used to provide ignition interlock devices to indigents and distributes the funds to Class A counties for alcohol detoxification and treatment facilities.</p>			
<p>Bill: SB187 Sponsors: Cravens Title: CHANGES IN DWI LICENSE REVOCATION Summary: A person whose license has been revoked under the mandatory provisions of Sec. 66-5-29 may not receive a new license until one year from the date the revocation is final and rights to an appeal have been exhausted. Exceptions to this provision are eliminated.</p>	<p>Amends the Motor Vehicle Code – eliminates limited licenses for one year after refusal to submit. Although a limited license is not available under the Ignition Interlock Licensing Act for a person whose license was revoked for the first time for refusal to submit to a chemical test under Sec. 66-8-111(C)(1) or (2). It is for other DWI revocations not under Implied Consent.</p>	<p>Amends the Motor Vehicle Code as to driver's license; not criminal sanctions.</p>	

DWI Increased Criminal Sanctions			
Bill: HB502 Sponsors: Foley Title: LOSS OF LICENSE AND VEHICLE FOR ANY DWI Summary: Significantly increases criminal penalties for all DWI convictions, including aggravated DWI. Requires revocation of all driver's licenses for anyone convicted of DWI (except as provided under the Ignition Interlock Licensing Act). Requires impounding or immobilization of any vehicle used by a DWI offender after conviction. Comments: Not supported 16-0 NMSC generally opposed to mandatory sentencing structure	Increases <u>mandatory</u> jail time for all DWI offenders (e.g. 1 st offense = 30 days; 2 nd = 90 days; 3 rd conv is 3 rd degree felony Cars impounded -60 days 1 st or 2 nd offense . . .	Interlock provisions are similar to HB 282	Impact on system (trials, courts, DA, PD) and jails would be significant. Would require approximately 1,500 more jail beds state wide. Research has not shown correlation between jail sentence length and reduction in DWI or repeat offending.
Bill: HB652 Sponsors: Park Title: DWI: INCREASED PENALTY FOR HOMICIDE OR GREAT BODILY HARM Summary: Increases the penalty for homicide or great bodily harm by vehicle to a second- degree felony in DWI convictions. Comments: Brings the DWI homicide to 15 years. Was just increased 2004 - aggravating increased Not supported 11-5	Vehicular homicide goes from 3 rd degree felony to 2 nd degree – 9 years sentence when great bodily harm and possibly 15 years when death results (vehicular homicide by reckless driving remains 3 rd degree felony). Drivers with prior DWI add 4 years to sentence (existing law)		
Bill: SB388 Sponsors: Carraro Title: FELONY DWI INCLUDED IN HABITUAL OFFENDER SENTENCES Summary: Introduced 01/25/2005 — Requires that a prior felony conviction for DWI be used as a prior conviction when sentencing a habitual offender. Comments: Not supported 12-2	Currently the Habitual Offender Act excludes felony DWI as "prior conviction" for purposes of sentence enhancements. Sentencing enhancements for DWI are currently set forth in Section 66-8-102 NMSC 1978	This bill removes the phrase "but not" preceding the words "including a conviction for a felony pursuant to the provisions of Section 66-8-102 [DWI]"	
Bill: HB493 Sponsors: Cervantes Title: AGGRAVATED DWI EXPANDED Summary: Expands aggravated DWI to include DWI with one or more passengers who are under 18 years of age. Comments: Not supported 14-0 Comments: This bill is more specific than existing child abuse law and could result in reduction of sanctions already provided in general statutes.	Adds DWI with one or more passengers who are under 18 years of age as an aggravating circumstance.		

<p>.....</p> <p>Bill: HB492</p> <p>Sponsors: Cervantes</p> <p>Title: DWI; MANDATORY COMMUNITY SERVICE</p> <p>Summary: Requires that a person convicted of a first DWI be sentenced to 24 hours of community service and a person convicted of a third DWI be sentenced to 96 hours of community service.</p> <p>Comments:Supported 9-5</p>	<p>Existing law says offenders "may" be required to serve community service. This bill changes to "shall"</p> <p>Only sanction in this bill is community service.</p>		<p>Could result in increased court appearances if offenders do not complete community service.</p>
<p>.....</p> <p>Bill: HB494</p> <p>Sponsors: Cervantes</p> <p>Title: DWI JAIL TIME BEFORE CONVICTION NOT CREDITED</p> <p>Summary: Requires that jail time spent prior to a first DWI conviction not be credited to an offender's imprisonment term, changing the previous language requiring such credit.</p> <p>Comments:Not supported 14-0 Fairness issue: Those who could not afford to bond out would serve longer times</p>	<p>Does not allow credit for jail time served on first offense DWI. Result would mean defendants who spent the night or weekend in jail would have to return to jail upon conviction.</p>		<p>This bill would increase county jail populations.</p>
<p>.....</p> <p>Bill: HB472</p> <p>Sponsors: Park</p> <p>Title: DWI: LOWERING BLOOD ALCOHOL LEVEL</p> <p>Summary: Lowers the threshold for unlawful alcohol concentration while driving from .08 to .06 if the driver has a prior DWI conviction.</p> <p>Comments:Supported 12-4 with funding for PD and DA (DA indicates doubling of cases when .10 was lowered to .08%) Data shows Maine, which has had this law since 1988, lowered crash rate by 15%</p>	<p>Lowers BAC from .08 to .06 for those with prior convictions.</p>	<p>Lower BAC is not increase in sanctions per se but could result in more convictions of those with prior DWI and low BAC</p>	<p>Data shows NM has average BAC of .16%</p>

<p>.....</p> <p>DWI New Law</p>			
<p>.....</p> <p>Bill: SB390 Sponsors: Carraro Title: DWI CHILD ENDANGERMENT Summary: Creates a new crime of "child endangerment," consisting of transporting a child while driving while intoxicated. Degree of harm to the child determines level of felony conviction. Comments:Not supported 14-0, because this proposed law may conflict with existing vehicular homicide while DWI and abuse of a child</p>	<p>DWI with child in car= 3rd degree felony when no injury, 2nd deg. Felony when injury, 1st degree felony when death</p>		<p>This bill is more specific than existing child abuse law and could result in reduction of sanctions already provided in general statutes.</p>
<p>.....</p> <p>Bill: SB391 Sponsors: Carraro Title: DWI OFFENDER FLEEING IS FELONY Summary: Creates the felony crime of "aggravated fleeing a law enforcement officer," consisting of DWI and refusal to stop after an appropriate signal is given. Violation is a fourth-degree felony. Comments:see 30-22-1.2 - already in law not supported 16-0</p>	<p>Creates the felony crime of "aggravated fleeing a law enforcement officer" when driver is DWI 4th degree felony</p>		

DWI Miscellaneous			
<p>Bill: SB581</p> <p>Sponsors: Harden</p> <p>Title: ALCOHOLIC BEVERAGES: PROHIBITED SALES—DWI</p> <p>Summary: Amends the Liquor Control Act to make unlawful the purchase of alcoholic beverages from a retailer by anyone convicted of DWI for a period of five years. Also makes unlawful such a sale by the retailer. Requires MVD to issue drivers licenses with a magnetic code or other marking to a person convicted of DWI so as to allow a liquor retailer to determine if he is not authorized to purchase alcoholic beverages. Giving, selling or loaning ID or purchasing alcohol for those convicted of DWI would be a petty misdemeanor. Effective July 1, 2005.</p> <p>Comments:Not supported 16-0 (not a true DWI or criminal bill)</p>			
<p>Bill: SB738</p> <p>Sponsors: Cravens</p> <p>Title: DWI: STANDARD ARREST REPORT</p> <p>Summary: Requires the Department of Public Safety and the state Motor Vehicle Division to develop and periodically update a standard arrest report form for law enforcement officers making a DWI arrest.</p> <p>Comments:Supported 13-0 Could result in better DWI data over time.</p>			
<p>Bill: HB104</p> <p>Sponsors:Park (D26)</p> <p>Title: DWI OFFENDERS LOSE USE OF STATE VEHICLES</p> <p>Summary: Prohibits state employees from operating a state vehicle if the employee is convicted two or more times for driving under the influence of intoxicating liquor or drugs or is convicted once for aggravated DWI. Applies only to convictions after July 1, 2005.</p> <p>Comments: Not supported 9-0 Issues raised: Does bill create a lifetime ban? Relation to Criminal Offender Reemployment Act? Would a juvenile DWI result in effect of this bill?</p>			

<p>.....</p> <p>Bill: HB 565 – W. Ken Martinez SB516 - Martinez, R</p> <p>Title: NEW DEFINITION OF IGNITION INTERLOCK DEVICE</p> <p>Summary: The definition of "Ignition interlock device" as used in the Ignition Interlock Licensing Act, Sec. 66-5-502, is changed. The new definition anticipates emerging technologies by stating that the device, which must be approved by the Traffic Safety Bureau, "prevents the operation of a motor vehicle by an intoxicated or impaired person."</p> <p>Related: 2005: HB565</p> <p>Comments: Supported 16-0 This bill takes emerging technologies into account</p>			

Date	Installs
Jan-03	48
Feb-03	57
Mar-03	95
Apr-03	83
May-03	88
Jun-03	162
Jul-03	251
Aug-03	294
Sep-03	218
Oct-03	210
Nov-03	165
Dec-03	196
Jan-04	182
Feb-04	211
Mar-04	240
Apr-04	225
May-04	211
Jun-04	222
Jul-04	200
Aug-04	212
Sep-04	171
Oct-04	271
Nov-04	196
Dec-04	201
Total	4409

