THE HIGH COST OF DWI IN NEW MEXICO

ENDWI

DWI Offense	Jail[1]	Fines & Fees[2]	License Revocation	Other
1st MISDEMEANOR	**Maximum:** 90 days, 66-8-102E **Aggravated DWI[5], Mandatory:** Additional 48 hours if convicted of aggravated DWI, 66-8-102D & E **Probation Violations:** 48 hours (mandatory) if offender fails to comply with any condition of probation. 66-8-102E	**Maximum Fine:** $500, 66-8-102E **Mandatory Fees:** Crime Lab Fee: $85, 31-12-7A Community Fee: $75, 31-12-7B Corrections Fee: $10-20, 35-6-1D(1) Court Automation Fee: $10, 35-6-1D(2) Traffic Safety Fee: $3, 35-6-1D(3) Judicial Ed. Fee: $3, 35-6-1D(4) Jury/Witness Fee: $5, 35-6-1D(5) Brain Injury Fee: $5, 35-6-1D(6) Court Facilities Fee: $10-24, 35-6- 1D(7) Juvenile Adjudication Fee: $1, 66-8-116.3F	**Administrative Revocation[3]:** **Under 21:** 1 year .02+ BAC, 66-8-111C(2) **Age 21+:** 6 months .08+ BAC OR .04+ BAC for a CDL, 66-8-111C **Any Refusal:** 1 year (66-8-111B) Ignition interlock license available 66-5-503[7] **Revocation After Criminal Conviction[4]:** Upon Conviction: 1 year 66-5-29A(2) and 66-5-29C(1) Ignition interlock license required, 1 year. 66-8-102N(1)[6]	**Mandatory:** Alcohol Screening, 66-8-102E & K, DWI School, 66-8-102E, Community Service, minimum 24 hours, 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, 66-8-102(E) **Other Costs [2]:** **Mandatory Alcohol Screening:** $100-200 **License Reinstatement Fee:** $25 Driving on revoked/suspended, $100 revoked for DWI, 66-5-33.1(A) (B); **Interlock License Fees:** $63, 66-5-35, 66-5-44; **DWI School:** up to $150 **Cost of Interlock:** $960/year or more; **Santa Fe (City):** Possible forfeiture of vehicle in civil action
2nd MISDEMEANOR	**Maximum:** 364 days, 66-8-102F **Mandatory:** 96 hours, 66-8-102F (1) **Failure to Comply**: mandatory extra 7 days for failure to comply with sentence, 66-8-102 F(1) **Aggravated DWI[5], Mandatory:** Additional 96 hours jail if convicted of aggravated DWI, 66-8-102D & F(1)	**Maximum Fine:** $1,000 66-8-102F **Mandatory Fine:** $500 66-8-102 F(1) All other fines and fees same as first offense	**Administrative Revocation[3]:** .02+ BAC (under 21) **OR** .04+ BAC (Commercial DL) **OR** .08+ BAC OR any refusal: **All 1 year revocation due to prior offense or prior revocation** 66-8-111B and 66-8-111C, Ignition interlock license available 66-5-503[7] **Revocation After Criminal Conviction[6]:** 2 years, 66-5-29A(3), and 66-5-29C(2)(a), Ignition interlock license required, 2 years, 66-8-102N(2)[6]	**Mandatory:** Treatment: 66-8-102L[8] Screening: 66-8-102K, Community Service, minimum 48 hrs, 66-8-102F(1), Ignition Interlock installed for 2 years, 66-8-102N(2)[6] **Palm Print[10]:** required 29-3-8 **Court Discretion:** Probation, up to 5 years, 66-8-102F[9] **All other costs same as first offense. Albuquerque, Doña Ana County, Las Cruces, Santa Fe (City and County), and Torrance County:** Forfeiture of vehicle in civil action
3rd MISDEMEANOR	**Maximum:** 364 days, 66-8-102F **Mandatory:** 30 days, 66-8-102F(2) **Failure to Comply:** Mandatory 60 days for failure to comply with sentence, 66-8-102F(2) **Aggravated DWI[5], Mandatory:** Additional 60 consecutive days if convicted of aggravated DWI, 66-8-102D & F(2)	**Maximum Fine:** $1,000 66-8-102F **Mandatory Fine:** $750 66-8-102F(2) All other fines and fees same as first offense	**Administrative Revocation[3]:** Same as second offense **Revocation After Criminal Conviction[6]:** 3 years, 66-5-29A(3) and 66-5-29(C)(2)(b) Ignition interlock	**Mandatory:** Treatment: 66-8-102L[8] Screening, 66-8-102K, Ignition Interlock installed for 3 years, 66-8-102N(3)[6] Community Service, minimum 96 hours, 66-8-102F(2) **Palm Print[10]:** required 29-3-8 **Court Discretion:** Probation, up to 5 years, 66-8-102F[9] **All other costs same as first offense. Albuquerque, Doña Ana County, Las Cruces, Santa Fe (City and County) and Torrance County:** Forfeiture of vehicle in civil action
4th 4TH DEGREE FELONY	**Maximum:** 18 months, 66-8-102G **Mandatory:** 6 months, 66-8-102G	**Maximum Fine:** $5,000 31-18-15E(9)	**Administrative Revocation[3]:** Same as second offense **Revocation After Criminal Conviction[6]:** The remainder of the offender's life, Ignition interlock license required, 66-5-29A(3) & 66-5-29C(2)(c); 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, Ignition Interlock for life 66-8-102N(4)[6]; may apply to district court for restoration of license after 5 years if not subsequently convicted of DWI. 66-5-5D, 66-8-102O, **Palm Print** and **DNA[10]:** collection required 29-3-8, 29-3-10. **All other costs same as first offense. Albuquerque, Doña Ana County, Las Cruces, Santa Fe (City and County) and Torrance County:** Forfeiture of vehicle in civil action
5th 4TH DEGREE FELONY	**Maximum:** 2 years, 66-8-102H **Mandatory:** 1 year, 66-8-102H	**Maximum Fine:** $5,000 31-18-15E(9)	**Administrative Revocation[3]:** Same as second offense **Revocation After Criminal Conviction[6]:** Same as fourth offense	Same as fourth offense
6th 3RD DEGREE FELONY	**Maximum:** 30 months, 66-8-102I **Mandatory:** 18 months, 66-8-102 1	**Maximum Fine:** $5,000 31-18-15E(9)	**Administrative Revocation[3]:** Same as second offense **Revocation After Criminal Conviction[6]:** Same as fourth offense	Same as fourth offense
7th OR SUBSEQUENT 3RD DEGREE FELONY	**Maximum:** 3 years 66-8-102J **Mandatory:** 2 years 66-8-102J	**Maximum Fine:** $5,000 31-18-15E(9)	**Administrative Revocation[3]:** Same as second offense **Revocation After Criminal Conviction[6]:** Same as fourth offense	Same as fourth offense
DRIVING WHILE REVOKED MISDEMEANOR	**Maximum:** 364 days, 66-5-39.1A **Mandatory:** 7 days, 66-5-39.1B	**Maximum Fine:** $1,000 66-5-39.1B **Mandatory Fine:** $300 66-5-39.1B	**Administrative Revocation[3]:** There is no administrative license sanction for driving while revoked for DWI. **Revocation After Criminal Conviction[6]** 1 year added to current revocation period, 66-5-39.1D	**Mandatory:** 30 days immobilization of vehicle driven by offender, 66-5-39.1C **Albuquerque, Doña Ana County, Las Cruces, Santa Fe (City and County) and Torrance County:** Forfeiture of vehicle in civil action
DWI VEHICULAR* HOMICIDE 3RD DEGREE FELONY *Vehicular Homicide can also be tried as reckless driving.	**Maximum:** 6 years, 31-18-15A(7)	**Maximum Fine:** $ 5,000 31-18-15E(7)	**Administrative Revocation[3]:** Up to 1 year, no limited license or interlock license permitted, 66-5-35A(5) and 66-5-503C **Revocation After Criminal Conviction[6]:** 1 year, no limited license or ignition interlock license permitted, 66-5-29A(4) and B.	**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) **Palm Print** and **DNA[10]:** collection required 29-3-8, 29-3-10.

New Mexico Department of Transportation Traffic Safety Division

New Mexico Department of TRANSPORTATION

1. Mandatory jail time must be consecutively served. 2. **Fines and fees** do not include increased insurance costs, treatment, lost wages, towing and storage, victim impact panels and attorney fees. 3. **Administrative 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. Note that a violation of the Implied Consent Act is not part of the criminal sentence. 4. **Chemical test must be given within 3 hours of driving and must measure alcohol consumed before or while driving.** The results of a chemical test **given more than 3 hours after driving** may be introduced as evidence of the BAC in the driver's blood or breath at the time of the test (not the time of driving) and the judge or jury will determine how much weight to give the evidence. 66-8-110E. 5. **Aggravated DWI consists of:** (1) Refusal to take a BAC test at time of arrest for DWI; **OR** (2) Testing at a BAC of .16 or higher within 3 hours of driving when the BAC is from alcohol consumed before or while driving ; **OR** (3) Causing bodily injury to someone while driving under the influence of alcohol or other drugs. 66-8-102D. See 66-8-102U(1) for "bodily injury." 6. **Criminal ignition interlock provisions:** Interlock **must** be installed on all vehicles driven by the offender AND the 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. **Reinstatement of unrestricted license:** The Motor Vehicle Division will not reinstate an unrestricted driver's license after a DWI conviction or administrative revocation unless a driver has had a minimum of six months of driving with an ignition interlock license with no attempts to circumvent or tamper with the device. 66-5-33.1B(4). An interlock is defined as "a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person." 66-5-502B .Out of state drivers convicted of DWI on or after June 17, 2005 who apply for a NM license are eligible ONLY for an interlock license, according to the same schedule as NM offenders. 66-5-5E. The penalty for driving without an interlock when it's required by license is the same as driving while revoked for DWI. 66-5-504, 66-5-39.1B. The penalty for tampering or interfering or causing someone else to tamper or interfere with an ignition interlock device, when it is required under an ignition interlock license, **is the same as driving while revoked for DWI**, 66-5-503 and 504. Licenses remain revoked until offenders apply to reinstate them. For NM MVD form Affidavit for Ignition Interlock License go to http://www.tax.state.nm.us/forms/mvd/mvd10456.pdf 8. **Treatment is mandatory**, as follows, for a second or third conviction: not less than a 28-day inpatient residential or in-custody substance abuse treatment program approved by the court; not less than a 90 day outpatient treatment program approved by the court; a drug court program approved by the court; OR any other substance abuse treatment program approved by the court. **For any felony conviction**, the Corrections Department is required to provide substance abuse counseling and treatment to the offender, while the offender is in custody and on probation or parole. 9. **Probation violations:** On any offense, if the offender violates probation under a suspended or deferred sentence, the judge may impose any sentence originally available and credit shall not be given for time served by the offender on probation. 66-8-102T. 10. **Palm Prints** are required from anyone committing a felony, facing 6 months in jail or arrested for violating Section 66-8-102 NMSA 1978, NM 17 § 1 29-3-8 A,B,C (2011); **DNA** is required from anyone arrested for a felony, 84 § 1 29-3-10 (2011).

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PENALTIES FOR UNDER-21 ALCOHOL OFFENSES

ENDWI

Under Age 18: Delinquent Acts	Adult Crimes

POSSESSION OF ALCOHOL

Law: **Delinquent Act:** "buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse." 32A-2-3A(2).*

Fine: Not to exceed fine for adults 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1)(a) and (b).

License: 1st offense, 90 days revocation; 2nd or subsequent, one year, 32A-2-19H.

Other: Place child on probation and give custody to CYFD for up to 6 months, 32A-2-19B(4). Probation under conditions and limits as court may prescribe, 32A-2-19B(2).

Law: **Misdemeanor** (applies to age 18-20): It is a violation of the Liquor Control Act for a minor to buy, attempt to buy, receive, possess or permit himself to be served with alcoholic beverages, 60-7B-1C. As used in the Liquor Control Act, "minor" means a person under 21 years of age, 60-7B-1E.

Fine: Maximum $1,000 60-7B-1G and 31-19-1.

Jail: None specified; however, under the general misdemeanor statute, less than one year in county jail, 31-19-1A.

License: 90 day suspension on 2nd offense. On a 3rd or subsequent offense, two years suspension, or suspension until the offender reaches twenty one years of age, whichever period of time is greater, 60-7B-1G(3).

Other: Up to 60 hours of community service related to reducing the incidence of DWI, depending on number of priors, 60-7B-1G.

***Note:** Children's Code Section 32A-2-3A(2) provides an exception, allowing minors to be served alcohol "in the presence of the child's parent, guardian, custodian or adult spouse." **Note however,** that the Liquor Control Act declares it illegal to serve minors in a *licensed establishment* and for minors to allow themselves to be served alcohol in a licensed establishment. The Liquor Control Act also states that it is not a violation for a parent, legal guardian, or adult spouse of a minor to serve alcohol to the minor on "real property, other than licensed premises, under the control of the parent, legal guardian or adult spouse." 60-7B-1B(1). It is not a violation to provide alcohol to minors when used in the practice of religious beliefs, 60-7B-1B(2).

SELLING OR SERVING ALCOHOL TO A MINOR

Law: The Children's Code does not define the selling of alcohol by children to minors to be a delinquent act.

Fine: NA

Detention: NA

License: NA

Other: NA

Law: **Felony (4th degree): (Liquor Control Act, applies to age 18 or over)** To knowingly A(1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises; (2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor; (3) deliver alcoholic beverages to a minor; or (4) aid or assist a minor to buy, procure or be served with alcoholic beverages," 60-7B-1A. Minor here means someone under 21 years of age, 60-7B-1E.

Felony (4th degree): Contributing to the Delinquency of a Minor: any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of 18 years, 30-6-3. (See State v. Perea, 130 N.M. 732, 31 P.3d 1006 (NM SCt 2001) for further information on this crime.)

Fine: Felony: (4th Degree) Up to $5,000, 60-7B-1F, or 30-6-3, and 31-18-15E(9)

Jail: Felony (4th Degree): 18 months prison, 60-7B-1F, or 30-6--3 and 31-18 -15A(10)

PRESENTING OR MAKING A FALSE ID

Law: **Delinquent Act:** "altering or forging of a driver's license or permit or any making of a fictitious license or permit," 32A -2-3A(1)(h).

Fine: Not to exceed fine for adults, 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1)(a) and (b).

License: Suspension of license for unlawful or fraudulent use, 66- 5-30A(6).

Other: Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Petty Misdemeanor** (Liquor Control Act, applies to age 18-20): "A minor who presents to any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor." 60-7B-7.

Fine: Liquor Control Act: up to $500, 31-19-1B.

Jail: Liquor Control Act: up to 6 months, 31-19-1B.

Law: **Misdemeanor** (Motor Vehicle Code, applies to age 18 and over): A person who uses or possesses an altered, forged or fictitious driver's license, permit, or ID card is guilty of a misdemeanor, 66-5-18A.

Fine: Motor Vehicle Code: up to $300, 66-8-7B.

Jail: Motor Vehicle Code: Up to 90 days, 66-8-7B.

Law: **Fourth Degree Felony** (Motor Vehicle Code, applies to age 18 and over): A person who alters or forges a driver's license, permit or identification card, or who makes a fictitious driver's license, permit or identification card is guilty of a fourth degree felony, 66-5-18B. OR, A person who possesses or uses a fraudulent, counterfeit or forged document to apply for or renew a driver's license, permit or identification card is guilty of a fourth degree felony, 66-5-18C.

Fine: Motor Vehicle Code: up to $5,000, 66-8-9 and 31-18-15 E(9).

Jail: Motor Vehicle Code: up to 18 months in prison, 66-5-18, 31-18-15A(10).

License: Suspension of license for unlawful or fraudulent use, 66-5-30A(6).

Other: Probation required when sentence is suspended or deferred, 31-19-1C, 31-20-5.

DWI

Law: **Delinquent Act:** "driving while under the influence of intoxicating liquor or drugs," 32A-2-3A(1)(a).

Fine: Not to exceed fine for adults, 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1) (a) and (b).

License: Revocation from 1 year to permanent revocation, depending on number of prior offenses, 66-5-29C; setback of graduated driving privileges for at least 90 days, 66-5-8A, 66-5-1.1I.

Other: Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Misdemeanor** (Motor Vehicle Code, applies to age 18 or over): Drive a vehicle within the state while under the influence of intoxicating liquor, or while under the influence of any drug, to a degree which renders the person incapable of driving safely; or drive with an alcohol concentration of .08 or more in the breath or blood, (.04 for commercial licenses), tested within 3 hours of driving when the BAC is from alcohol consumed before or while driving, 66-8-102.
Felony: 4th degree, or 3rd degree, depends on number of prior offenses, 66-8-102 G,H,I, J.

Fine: Up to $5,000, depending on the number of prior offenses, 66-8-102E and F (misdemeanors), and 31-18-15E(9), (felonies).

Jail: Up to 3 years in prison, depending on the number of prior offenses: see 66-8-102E and F (misdemeanors) and 66-8-102 G and H for felonies.

License: Revocation from 1 year to permanent, depending on priors, 66-5-5D, 66-5-29C, and 66-8-102N and O, with interlock license required and a minimum of 6 months of interlock usage with no attempts to circumvent or tamper, 66-5-33.1B(4).

Other: Mandatory screening and ignition interlock, mandatory treatment for a subsequent offense, community service, up to 5 years probation, 66-8-102.

VEHICULAR HOMICIDE

Law: **Delinquent Act:**"homicide by vehicle;" 32A-2-3A(1)(e).

Fine: Not to exceed fine for adults, 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1) (a) and (b).

License: Revocation from 1 year to permanent revocation, ignition interlock license not allowed, 66-5-29A(4) & B.

Other: Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Third Degree Felony** (Motor Vehicle Code, applies to **age 18 or over**): Killing a human being in the unlawful operation of a motor vehicle, including while under the influence of intoxicating liquor or any drug, 66-8-101.

Fine: Not to exceed $5,000, 31-18-15E(7).

Jail: Up to 6 years, with mandatory 4 years extra for each prior DWI conviction within the last 10 years, 66-8-101D and 31-18-15A(7).

License: Revocation from 1 year to permanent, ignition interlock license not allowed, 66-5-29A(4) & B.

Other: Probation, 31-20-5. *Vehicular Homicide can also be tried as reckless driving.

OPEN CONTAINER

Law: **Misdemeanor:** A person under age 18 who is charged with a traffic violation will be prosecuted as an adult (in a municipal, magistrate or metro court), if no delinquent act is charged, 32A-2-29A,B.
Delinquent Act: may be charged with possession under the Children's Code, 32A-2-3A(2) (for penalties, see "Possession" above.)

Fine: Same as adults, 66-8-138.

Detention: Same as adults. Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations. 32A-2-29D

License: Same as adults, 32A-2-29.

Law: **Misdemeanor** (Motor Vehicle Code): Knowingly drink any alcoholic beverage or have in one's possession any receptacle containing alcohol which has been opened, had its seal broken or the contents of which have been partially removed, while in a motor vehicle upon any public highway within the state, 66-8-138.

Fine: Not more than $300, 66-8-7B.

Jail: Not more than 90 days, 66-8-7B.

License: 3 months revocation for 2nd offense, 1 year for subsequent offenses, 66-8-139B.

Other: Probation when sentence is suspended or deferred, 31-19-1C.

ADMINISTRATIVE LICENSE REVOCATION FOR DWI

Law: This is a non-criminal sanction which applies to all drivers: Driving privileges will be revoked administratively through the MVD for driving in New Mexico with a blood or breath alcohol concentration of .02 or higher (if under age 21), or .08 or higher (if 21 or over), or .04 or higher (driving a commercial vehicle) or for refusing to take a chemical test. 66-8-111B and C. **Fine:** None, **Jail:** None, **License:** Under 21: 1 year revocation, 66-8-111C(2); Under 18: DWI is a traffic violation that will set back graduated driving privileges for drivers under 18 for at least 90 days, 66-5-8A; see 66-5-1.1 for definition of a "traffic violation." **21 and Over:** 1st offense: 6 months revocation, 66-8-111C(1); subsequent offense or any refusal: 1 year revocation; 66-8-111C(3) and 66-8-111B.

EXTENSIONS OF INSTRUCTIONAL AND PROVISIONAL LICENSE TIME PERIODS

Law: This is a non-criminal sanction which applies to drivers with instructional permits or provisional licenses. The period before obtaining a provisional (for drivers with instructional permits), or regular license (for drivers with provisional licenses), is **extended 30 days for each adjudication or conviction of a traffic violation** committed during the time the person held the instructional or provisional license. 66-5-8A and 66-5-9D NMSA 1978. "Traffic violation" includes: failure to yield; child not in restraint device or seat belt; failure to properly fasten safety belt; using a mobile communication device while driving a motor vehicle; and buying, attempting to buy, receiving, possessing or permitting oneself to be served alcoholic beverages. 66-5-1.1 NMSA 1978. **Fine:** None: **Jail:** None **License:** Delayed 30 days by MVD for each adjudication or conviction of a traffic violation.

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