

Traffic Safety Milestones

A Short History of Traffic Safety Legislation and Public Policy in New Mexico Since Statehood

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1913:

- First state legislature (second session) passes anti-DWI law. Penalties: Fines between \$25 and \$100; jail between 30 and 90 days.
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1919:

- DWI penalties raised to \$1000 fine and one year in jail.
 - The legislature also made it a crime for a passenger to knowingly and willfully ride with an intoxicated driver. The passenger was subject to the same penalties as the driver – \$1000 fine and a year in jail. (Note: Prohibition—the 18th Amendment to the US Constitution—was ratified in 1919 and took effect in 1920).
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1929:

- Legislature repeals the statute making it unlawful to ride with an intoxicated driver.
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1933

- Prohibition repealed by the 21st Amendment to the US. Constitution.
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1934

- New Mexico imposes excise tax on liquor.
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1938:

New Mexico Supreme Court defines “under the influence” for the first time in New Mexico:

"A person who has taken a drink of intoxicating liquor is not necessarily under its influence; but if it affects him so that, to the slightest degree, he is 'less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as a modern automobile with safety to himself and the public,' (*Hasten v. State*, supra), he is under the 'influence of intoxicating liquor' within the meaning of the statute." (*State v. Sisneros*, 42 N.M. 500, 82 P.2d 274 (S. Ct. 1938) citing the Arizona Case of *Hasten v. State*, 35 Ariz. 427, 280 P. 670 (1929). Read the case at <http://ipl.unm.edu/traf/cases/38-Sisneros.pdf>)

1967:

- NHTSA issues Federal Motor Vehicle Safety Standard 208, requiring auto manufacturers to install lap and shoulder belts in outboard positions (next to windows) and lap belts in all other positions. This law takes effect in 1968.
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1969:

- Implied Consent Law passed. Contained the following presumptions: under .05 it is presumed that person is not intoxicated; .05 to .09: no presumption is made as to intoxication; .10 and over it is presumed that the person is intoxicated. These presumptions could be overcome by competent evidence as to the intoxication or sobriety of the driver. They did not apply to the criminal portion of

the law, but only to license revocation.

1971:

- Implied Consent Act – with revocation for refusal to take a breath test – is taken out of the courts and made an entirely administrative (non-criminal) proceeding.
 - New Mexico's first DWI school is established in Albuquerque as part of the Alcohol Safety Action Program (ASAP).
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1973:

- Universal motorcycle helmet law enacted: every motorcyclist in New Mexico must wear a helmet, effective June 15, 1973.
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1977:

- Universal motorcycle helmet law repealed for everyone 18 and over: only motorcyclists age 17 and under must wear a helmet, effective June 17, 1977.
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1974

- Congress mandates national 55mph speed limit.
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1980

- MADD founded
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1983:

Legislature amends laws as follows:

- The *per se* standard of .10 is added to the *criminal* portion of the law (66-8-102C). Under this section of the law, a person can be convicted of DWI for driving with a blood alcohol concentration of .10 or more.
 - New Mexico enacts child safety restraint law, which applies only to children under 5, and has only secondary enforcement.* (*See 1985 amendment)
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1984:

Legislature amends laws as follows:

- The *per se* standard of .10 is added to the Implied Consent Act, which now defines driving with a BAC over .10 as both a *criminal* violation and an administrative (noncriminal) violation. The administrative *per se* violation replaces the portion of the law which provided that at .10 BAC or over, the driver was presumed to be intoxicated. Under this new law, (66-8-110C) the driver with a .10 or higher BAC has his license administratively revoked and is charged with the crime of DWI.
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1985:

Legislature amends laws as follows:

- Safety belt use law enacted for adults. This original law has primary enforcement* but applies only to front seat occupants and does not apply to pickup trucks.
- New Mexico's mandatory child restraint law amended to include children under 11 with primary enforcement.

* A primary enforcement safety belt law is one where the officer can stop and ticket the motorist for the sole offense of not wearing a safety belt. A secondary enforcement law means that a police officer has to have some other reason to stop and ticket the driver—illegal turn, failure to signal, speeding, etc.— before writing the ticket for the safety belt violation.

1986:

- New Mexico's mandatory adult safety belt law goes into effect (passed in 1985).

1987:

- New Mexico Court of Appeals holds sobriety checkpoints constitutional in New Mexico (*City of Las Cruces v. Betancourt*) as long as certain guidelines are followed.
- New Mexico raises the speed limit on rural highways to 65mph.
- Section 410 drunk driving prevention program legislation enacted by US Congress.

1988:

Legislature amends laws as follows:

- The cars of second and third time offenders impounded for 30 and 60 days, respectively.
- Fourth or subsequent offenders will receive mandatory six-month jail sentences.
- Mandatory 96 hours in jail for driving with a license revoked for DWI.
- Clarifies that DWI convictions will be recorded against offenders even if their sentence is suspended, deferred or taken under advisement.

1989:

Legislature amends laws as follows:

- Passes open container law,
- Modifies mandatory safety belt law to apply to pickup trucks as well as passenger cars,
- Passes new law, the Local Liquor Excise Tax Act, which applies only to McKinley County and allows voters in that county to enact a local tax on alcohol of 5%, to fund drug abuse education, prevention and treatment programs. Later that year, McKinley votes to pass the tax.

1990:

- Farmington enacts ordinance providing for mandatory three days in jail for ALL DWI offenders.
- US Supreme Court approves sobriety checkpoints, provided that police agencies comply with outlined procedures, *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990).

1992:

- Albuquerque passes state's first DWI vehicle forfeiture ordinance for driving while revoked for DWI. The penalty is entirely civil and will eventually encompass both driving while revoked and DWI.

1993:

Legislature amends laws as follows:

- Creates new crimes of felony DWI for a fourth or subsequent offense and aggravated DWI for any one of the following: .16+ BAC, a refusal or causing bodily injury while DWI.
- Mandatory fines for second or third offenses: \$500 on a second offense and \$750 for a third offense
- Mandatory incarceration: 72 hours for a second offense, 30 days for a third offense, and 6 months for a fourth or subsequent offense, now a felony offense; seven days for driving while revoked for DWI.
- BAC per se standard is lowered from .10 to .08.
- DWI Local Grant Fund is created for communities to apply for grants to fight DWI at local level (funded from alcohol taxes)
- Mandatory alcohol evaluation for all DWI offenders
- Server training now required for all alcohol licensees and their employees.
- The Implied Consent Act is amended to clarify that a law enforcement officer may now ask for both a blood and breath test (Section 66-8-107A) and the law enforcement officer must advise the suspect that after that test, the suspect is entitled to arrange for a test of his or her own choosing (Section 66-8-109).
- Albuquerque's Metropolitan Court is made a court of record for DWI and domestic violence cases.
- First time applicants for NM drivers' licenses must attend an approved 3-4 hour DWI prevention and education class in order to obtain a license. New drivers under 18 will be required to attend 56 hours of classroom instruction in public schools or 33 hours in private commercial driver schools.

Most of these new laws went into effect in 1994.

1997:

- Legislature requires fingerprinting of all convicted DWI offenders.
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1998:

- Legislature outlaws service to drive-up alcohol windows effective August, 1998.
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1999:

Legislature amends laws as follows:

- Limited licenses for convicted offenders become available to offenders who install ignition interlocks on their cars (among other requirements)— vehicles may be driven only to work or school.
 - Graduated driver's license legislation passed, pertaining to youth under age 18.
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2001:

- Law passed requiring all adults to be in a safety belt in all positions of a vehicle, closing the loophole which allowed persons over age 11 to be unbelted in the back seat.)
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2002:

Legislature amends laws as follows:

- Requires ignition interlocks to be installed on the vehicles of all convicted repeat DWI offenders and aggravated DWI offenders.
- Imposes a fee equal to 10% of the cost of an interlock, to be paid by interlock users into a new fund called the Interlock Device Fund, to assist indigent persons in getting interlocks installed on their vehicles.

Other 2002 developments:

- New Mexico Supreme Court holds that Albuquerque's DWI vehicle forfeiture ordinance does not constitute double jeopardy (*City of Albuquerque v. One 1984 White Chevy*).
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2003:

Legislature amends laws as follows:

- Ignition Interlock License Act passed, providing for DWI offenders to obtain an ignition interlock license, allowing them to drive anywhere at any time with an interlock device installed in their car. This option is available to all DWI offenders, except those convicted of vehicular homicide or great bodily injury by vehicle while DWI.
- Law now allows tribal convictions to be counted as prior offenses in New Mexico, and allows tribes to submit records to statewide MVD/DWI database, at tribes' option.
- Boating While Intoxicated Act passed, effective July 1, 2003 (Section 66-13-1). Makes it illegal to operate a boat under the influence of intoxicating liquor or drugs or with a BAC of .08 or greater. Refusal, causing great bodily injury while DWI or boating with a BAC of .16 or greater is an aggravated offense.

Other 2003 Developments

- Doña Aña County's vehicle forfeiture ordinance goes into effect.
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2004:

Legislature amends laws as follows:

- DWI is raised from a fourth degree felony to a third degree felony on a sixth or subsequent offense.
- Makes substance abuse counseling and treatment mandatory on every subsequent offense and for all persons incarcerated for DWI.
- Tribal convictions are now included as priors for purposes of sentence enhancement.
- Each prior DWI conviction within the last 10 years now adds four years to a prison sentence for

vehicular homicide, (mandatory). This doubled the previous enhancement of two years.

- It's now a felony (fourth degree) for a person to sell, serve, give, buy, or deliver alcohol to a minor, or assist a minor to buy, procure or be served alcohol. This includes getting someone else to give alcohol to minors by deceptive practices.

Other 2004 developments:

- Las Cruces and Torrance County vehicle forfeiture ordinances go into effect.
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2005:

Legislature amends laws as follows:

- Increases period of license revocation for a conviction for DWI, as follows: 1 year revocation on a first, 2 years on a second, 3 years on a third and lifetime for a 4th— subject to a five-year review in the district court.
 - Requires any convicted offender to obtain an ignition interlock license and have interlock installed and operating on all cars driven by offender, according to the same timetable as the license revocation.
 - Makes juveniles subject to benefits and responsibilities of the Interlock Device Fund (for indigent offenders).
 - Adds mandatory community service for first and third time offenders.
 - Requires standardization of law enforcement arrest records and procedures.
 - Expands definition of ignition interlock device as one that “prevents the operation of a motor vehicle by an intoxicated or impaired person.”
 - Off-Highway Motor Vehicle Act overhauled with provisions added for rider education, helmets, goggles, certification of educators and an Off Highway Vehicle Safety Board.
 - Booster seat law passed, requiring children 5-6 regardless of weight, or children weighing less than 60 pounds, regardless of age, be properly secured in either a child booster seat or an appropriate child passenger restraint device, and children 7-12 be properly secured in a child passenger restraint device or by a seat belt.
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2006:

Legislature amends laws as follows:

- The administration of the Ignition Interlock Device Fund (for indigent offenders) is changed from the Local Government Division of the Department of Finance and Administration to the Traffic Safety Bureau of the Department of Transportation. The TSB will determine by rule the amount of the fee imposed on those convicted of DWI and will distribute the fees imposed to the Interlock Device Fund.

Other 2006 developments:

- As of July 2nd, Santa Fe County's seizure/forfeiture ordinance goes into effect. New Mexico now has 5 forfeiture ordinances: Albuquerque, Las Cruces, Doña Ana County, Torrance County and Santa Fe County.
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2007:

Legislature amends laws as follows:

- Passes the *Child Helmet Safety Act*, requiring minors (under 18) to wear protective helmets while operating or riding as a passenger on a bicycle, tricycle, skates, scooter or skateboard. Parents who knowingly allow their children to use these devices without helmets are subject to a maximum \$10 civil (not criminal) fine. New Mexico is now the only state in the US that requires every minor under the age of 18 to wear a helmet on every motorized or non-motorized recreational vehicle.
- Requires drivers from other states who apply for a New Mexico driver's license to have an ignition interlock license, if they were convicted of a DWI in any state or the District of Columbia, or any government subdivision thereof, according to the same schedule required of drivers convicted in New Mexico. The legislature also makes a \$1.1 million startup appropriation to MVD for verification

and background checks of out of state drivers and allows the Division to charge applicants \$15 in the future for such verification.

- Clarifies that the *per se* DWI crime is now to have a BAC of .08 or higher *within three hours of driving*, when the BAC is from alcohol consumed before or while driving. This allows a three hour window for the administration of breath or blood tests, without the need for an expert to calculate the BAC at the time of driving.
- Adds *probation and parole officers* to the list of agencies that can make determinations of eligibility for the Interlock Device Fund (for indigent offenders).

Other 2007 Developments:

- City of Santa Fe passes seizure/forfeiture ordinance. New Mexico now has 6 forfeiture ordinances: Albuquerque, Las Cruces, Doña Ana County, Torrance County, Santa Fe County and City of Santa Fe.

2008:

Legislature amends laws as follows:

- Ignition interlock tampering penalties: A vehicle operator who disconnects or otherwise tampers with an interlock when it's required by law is now subject to the same penalties as those for driving while revoked for DWI.
- Eliminates the Motor Vehicle Division's (MVD) authority to waive the commercial driver's license test even when the applicant complies with other provisions of the Commercial Driver's License Act.
- Outlines a formula that will provide a monthly distribution of \$20,750 to the City of Farmington to be used for alcohol treatment and rehabilitation services for street inebriates. The formula only applies to Farmington.
- Limits to \$75 the amount a municipality can collect for violations of traffic signs or signals (including a red light violation) or speeding offenses. After the costs of the program have been subtracted out by the municipality, the balance of the funds are distributed to various state agencies and programs.

2009

Legislature amends laws as follows:

- In order to reinstate a full (non-interlock) driver's license under 66-5-33.1, the law now requires a minimum of six months of driving with an ignition interlock license with no attempts to circumvent or tamper with the ignition interlock device. Effective July 1, 2009.
- Senate Joint Memorial 61 convenes a task force to study the current effectiveness of ignition interlock requirements, identify any ambiguity in the law and make recommendations to strengthen the requirements and induce positive behavior change in offenders.
- Raises the amount a municipality can charge for violations of traffic signs or signals (including a red light violation) or speeding offenses from \$75 to \$100.

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