



New Mexico Legislative Council Service

INFORMATION BULLETIN

Number 8

Legislative Research, Policy & Committee Services

November 2004

AN OVERVIEW OF DWI IN NEW MEXICO

SUMMARY

New Mexico has made progress in the effort to curtail DWI. This bulletin simplifies New Mexico's DWI history in a time line and focuses on a single reliable statistic – alcohol-related traffic fatalities – to measure the state's progress.

TIME LINE

1913 – The second session of the first New Mexico legislature enacts an anti-DWI law. The law provides for fines and jail time for violation.

1969 – *Implied Consent Act* becomes law. A person operating a motor vehicle in New Mexico is presumed to have given consent for a chemical test of his blood. The law also presumes a person with a BAC (blood alcohol concentration) of .10 percent or greater to be intoxicated, although this presumption can be overcome by evidence to the contrary.

1982 – In the first state-by-state comparison, New Mexico ranks 9th worst among the 50 states and Washington, D.C. in alcohol-related deaths as a percentage of all traffic deaths (see Chart 2).

1983 – New Mexico enacts a *dram shop* law, making businesses responsible if they serve an intoxicated person who subsequently causes death or severe injury. The *per se* standard of .10 BAC is adopted. With this change, a BAC of .10 is sufficient evidence of DWI and cannot be contested by evidence of sobriety.

1984 – The license of a driver with a BAC of .10 or greater is now subject to *administrative*

license revocation.

1987 – The New Mexico Court of Appeals holds sobriety checkpoints to be constitutional. New Mexico has the worst DWI problem among the 50 states and Washington, D.C.

1988 – A new law imposes a mandatory six-month sentence for a fourth DWI conviction. New Mexico ranks worst in the nation for the second year in a row.

1989 – The state passes an *open container* law, making it illegal to have an open container of alcohol in a vehicle.

1992 – On Christmas Eve 1992, a car occupied by a family of four is struck head-on by a man who admits drinking seven beers before heading the wrong way on I-40 west of Albuquerque. The father is critically injured, and his wife and three daughters die. The tragedy is fresh in the minds of the public and the New Mexico legislature when it convenes for its regular session in January 1993.

1993 – The legislature passes a landmark DWI package. The drunk driving threshold is dropped from a BAC of .10 to .08, second and subsequent DWI convictions now earn jail time and a fourth DWI conviction becomes a felony. The *Local DWI Grant Fund* is created.

1997 – New Mexico shows progress in comparison to the other states, dropping from worst in 1987 to 10th worst in 1997.

1998 – Drive-up liquor windows are outlawed.

1999 – DWI offenders can apply for a limited license if they install an *ignition interlock* device.

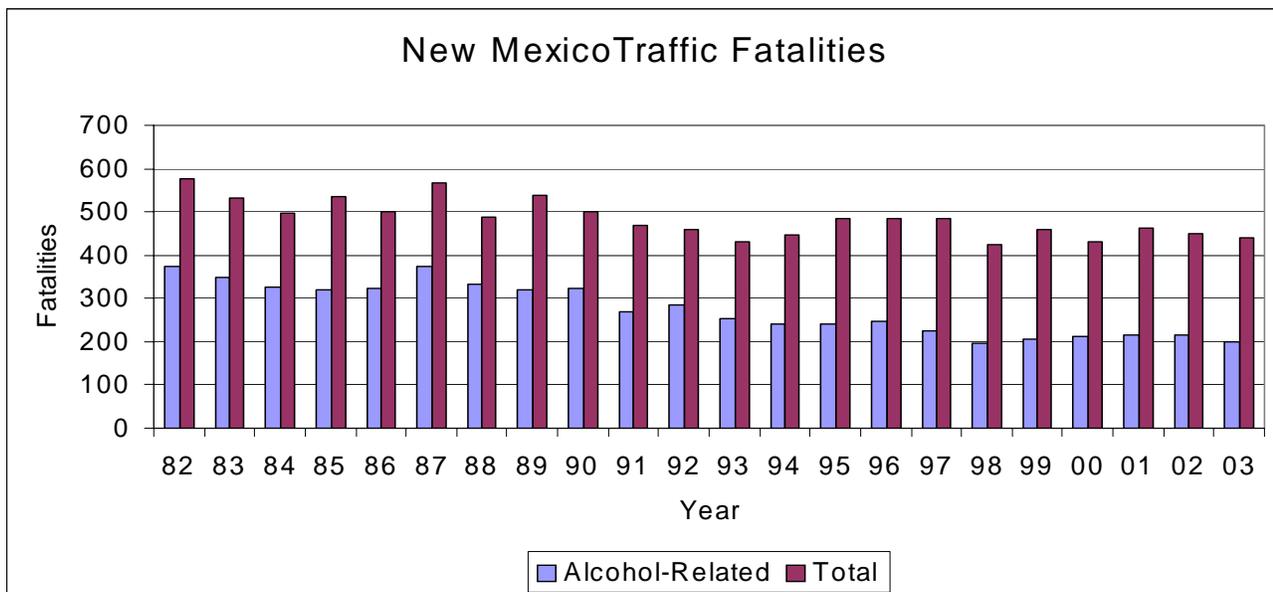
2001 – New Mexico ranks 15th among the states for the severity of its DWI problem. This is the state's best ranking

2002 – Ignition interlock devices are required on vehicles of all second and subsequent DWI offenders, as well as first-time offenders with

BAC readings of .16 or greater, as a condition of probation.

2003 – Tribal convictions may now be counted as prior offenses. Penalties for fifth and subsequent offenses are increased. Substance abuse treatment and counseling are now mandatory for second and third offenses and for all incarcerated DWI offenders. New Mexico ranks 12th among the states in the severity of its DWI problem.

CHART 1



Many experts believe that the relationship between alcohol-related deaths and total traffic deaths provides the most useful measure of drunk driving. Chart 1 measures New Mexico's alcohol-related and total traffic fatalities.

Other statistics can be affected by unrelated factors. For example, arrests and convictions for DWI are contingent on the effectiveness of law enforcement and the judiciary—a greater number of convictions in one year could indicate more drunk drivers, or it could simply mean that the authorities devoted more attention to arresting and prosecuting offenders in that year.

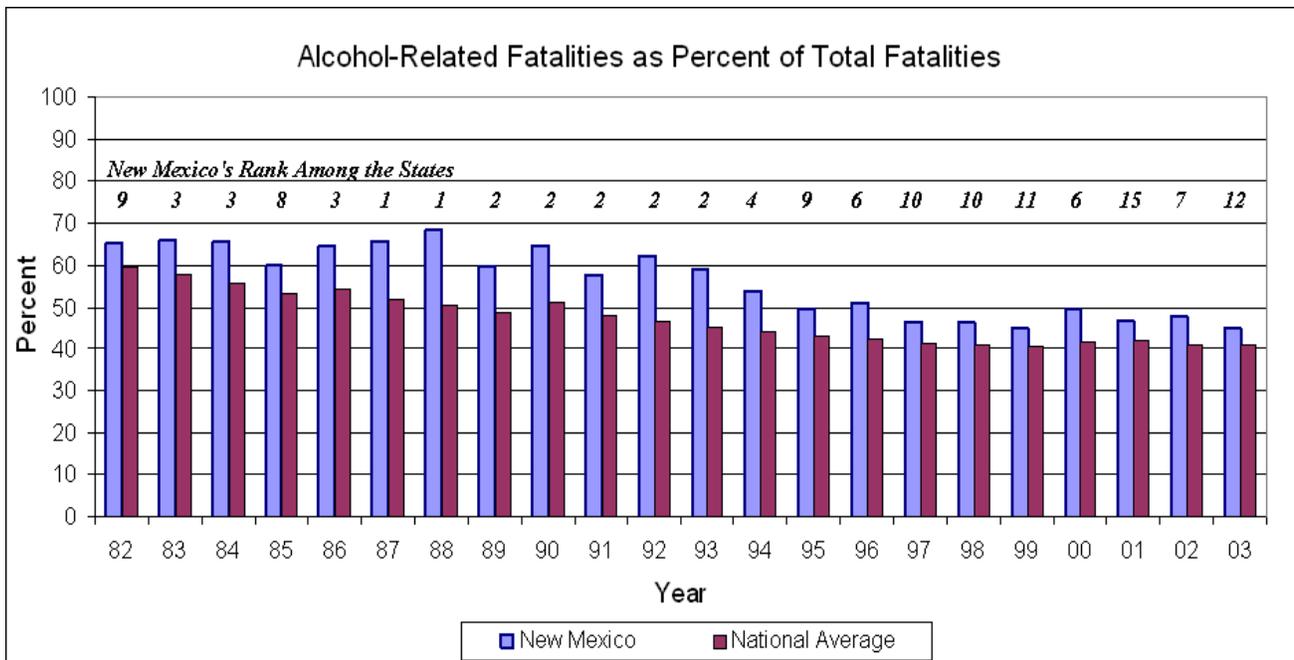
The alcohol-related figures in this bulletin are from the National Highway Traffic Safety Administration (NHTSA). They represent NHTSA's estimate of fatal crashes involving either a driver or a non-occupant (pedestrian or bicyclist) with a BAC of .01 or greater. These statistics are not perfect indicators of drunk driving — they count intoxicated pedestrians and bicyclists who die in traffic accidents (even though the driver of the car that killed them may have been sober) and they include even minimal alcohol involvement (.01 BAC). NHTSA's methodology has, however, been consistent over the years and between the states, so its statistics are useful for purposes of comparison.

Alcohol-related deaths within a given state will increase or decrease based on a few factors unrelated to drunk driving, such as a new seat belt law or improved emergency medical care. But these factors affect *all* traffic fatalities equally, and so do not change the relationship between alcohol-related and total fatalities. If no progress were being made in the fight against DWI, alcohol-related fatalities would rise or fall at the same rate as total fatalities.

Chart 1 tracks the number of alcohol-related traffic deaths in New Mexico since 1982, the first year for which NHTSA publishes data. The number of alcohol-related fatalities in New Mexico dropped from a high of 375 in 1982 to 198 in 2003, a reduction of 47.2 percent.

During the same period, the total number of traffic deaths dropped from 577 to 439, a decrease of 23.9 percent. New Mexico has reduced its alcohol-related fatalities at almost twice the rate of its total traffic fatalities.

CHART 2



Converting the relationship between alcohol-related and total traffic fatalities to a percentage allows for comparison between states. Chart 2 tracks New Mexico's percentage of alcohol-related fatalities and compares it to the national average.

New Mexico's rank among the states and Washington, D.C. is noted above the columns for each year. A ranking of one equals worst; a ranking of fifty-one equals best.

Comparisons are sometimes made based on the number of alcohol-related fatalities per capita or per vehicle miles driven, but these figures can be misleading. The percentage of alcohol-related fatalities per capita favors high-density urban states where people drive fewer miles than they do in a rural state like New Mexico. And the percentage of alcohol-related fatalities per mile can be affected by other factors, such as whether a state has a seat belt law and the speed at which people drive (rural people drive faster).

New Mexico's record was abysmal for most of the 1980s and early 1990s, when 60 percent or more of the state's fatal accidents involved alcohol. In 1994 alcohol-related traffic deaths in New Mexico fell below 55 percent for the first time. The positive trend continued for the next five years, culminating in a low of 44.8 percent in 1999.

For reasons still not clear to those who study the problem, progress then slowed for both New Mexico and the nation as a whole. New Mexico's alcohol-related fatalities crept back up to 49 percent in 2000. In 2001 the figure was 47 percent, and in 2002 it was 48 percent. When the figures showed no improvement for the third year in a row, experts began to wonder what could be done to reinvigorate the campaign. However, according to the 2003 statistics recently released by NHTSA, the percentage of traffic fatalities in which alcohol was a factor has dropped to its lowest level since 1999, in both New Mexico and the nation. The 2003 figure for New Mexico is 45.1 percent, three-tenths of a percent higher than the 1999 low of 44.8.

SOURCES

TIME LINE

DWI Milestones in New Mexico: A Short History of DWI Legislation and Public Policy in New Mexico, Carolyn Johnson, Training and Development Specialist, Institute of Public Law, University of New Mexico School of Law.

DWI: The Long Road to Reform, supplement to *The Santa Fe New Mexican*, January 25, 2004.

Highlights, an annual publication produced after each regular session by the Legislative Council Service.

CHARTS

Charts 1 and 2 – The data for the charts is from NHTSA's State Traffic Safety Information (STSI) web site (<http://www.nhtsa.dot.gov/STSI>), where alcohol-related and total traffic fatality numbers are listed for each state. (The 2002 link accesses these numbers for 1982 through 2002; the 2003 link contains 2003 figures only.) The 2003 figures are also found on NHTSA's homepage (<http://www.nhtsa.dot.gov/>) in a press release titled "States' Progress Drops Drunk Driving Deaths to Lowest Level Since 1999" (August 25, 2004).

Alcohol-related and total deaths for each state and Washington, D.C. for years 1982 through 2003 are from the sources cited above. The New Mexico numbers are used in Chart 1. The same numbers are then used in Chart 2 to calculate the New Mexico percentage of alcohol-related fatalities for each year. The national average in Chart 2 is the average of the percentages for all states and Washington, D.C. New Mexico's ranking derives from a numerical ordering of the states' percentages of alcohol-related fatalities.

Thanks to Jeanne Mejeur, the National Conference of State Legislatures' (<http://www.ncsl.org/>) expert on drunk driving, and Jim Davis, director of the Division of Government Research at the University of New Mexico (<http://www.unm.edu/~dgrint/dgr.html>).

This Information Bulletin does not represent a policy statement of the Legislative Council Service or its staff. This Information Bulletin was written by Mark Cross. For more information, contact the Legislative Council Service at (505) 986-4600.

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