

# PREVENTABLE DEATHS: An Action Plan For New Mexicans To Prevent DWI



ATTORNEY GENERAL  
TOM UDALL'S  
DWI PREVENTION TASK FORCE  
DECEMBER, 1992

**COVER PHOTO:**

Fatal accident in August, 1992  
involving a 22-year old male  
with BAC (Blood Alcohol  
Concentration) level of .11.

*(Courtesy of the Albuquerque  
Police Department)*

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# ATTORNEY GENERAL'S DWI PREVENTION TASK FORCE

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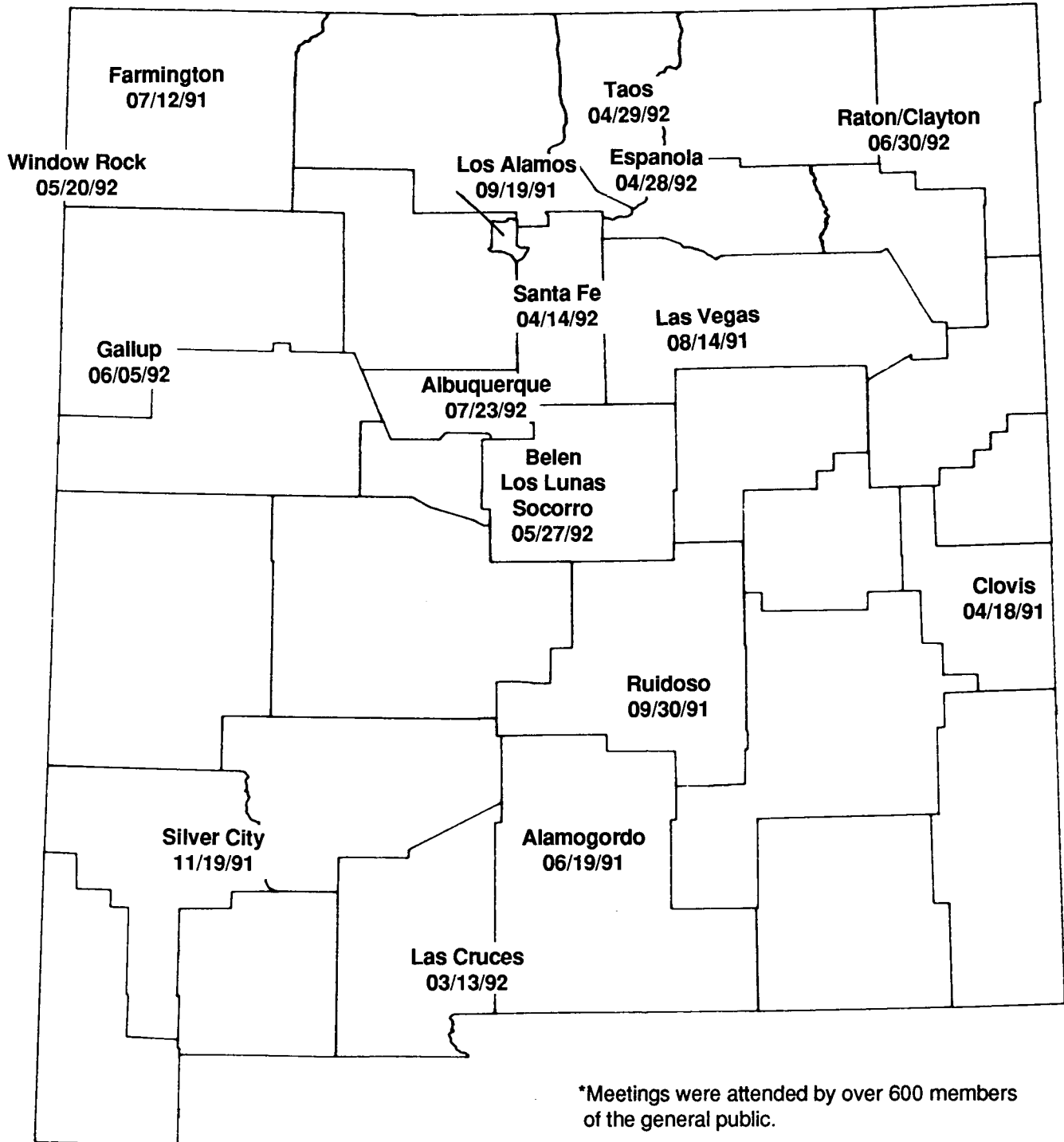
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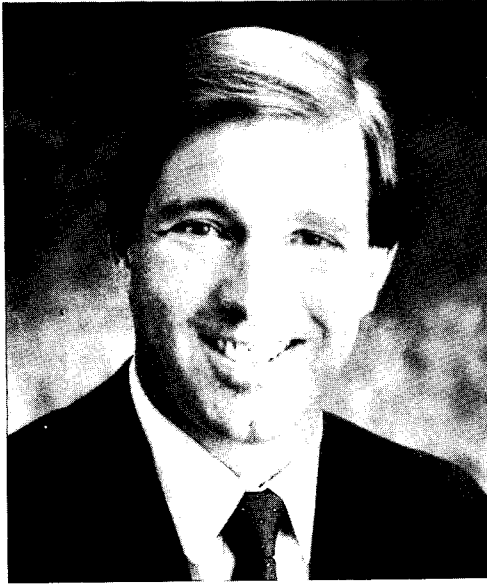
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# Schedule of Town Hall Meetings Held by the Attorney General's DWI Prevention Task Force\*



\*Meetings were attended by over 600 members of the general public.

# INTRODUCTION



**by Tom Udall**  
**New Mexico Attorney General**

In New Mexico it used to be that if you asked how far a drive it was to the next town or city, the reply might be something like, "oh, about two six packs and ninety miles." And a "drinking problem" meant that the keg had run out of alcohol. Thankfully, those attitudes have changed but unfortunately over the past two decades, New Mexico has continued to have the highest rate of per capita DWI-related deaths in the nation.

One of the reasons that I decided to run for Attorney General in 1990 was because I believed that the Attorney General could use the office as a bully pulpit to bring citizens together to combat DWI.

## **THE ATTORNEY GENERAL'S DWI PREVENTION TASK FORCE**

After my election in 1990 I began assembling a task force of 40 experts to help diagnose the causes of this epidemic and to devise some creative solutions which could curtail it. The Attorney General's DWI Prevention Task Force represents a broad ethnic and geographic group of experts from a variety of backgrounds including prevention,

education, criminal justice and treatment. The Task Force is balanced to reflect many different perspectives. Its members range from Mothers Against Drunk Driving to representatives of the liquor industry.

I have held 20 DWI town hall and task force meetings in 16 different New Mexico communities during the past two years. The goal was to solicit ideas from concerned citizens from every part of the state. In fact, nearly 500 New Mexicans provided testimony to the Task Force and suggested recommendations - many of which are incorporated in the pages which follow. The Task Force also received testimony from Jim Hedlund, Director of the National Highway Traffic Safety Administration's Office of Alcohol and State Programs and Dr. Herb Simpson of Canada, an international expert on DWI. We operated by consensus and only endorsed those recommendations upon which the entire Task Force could unanimously agree.

## **WHAT WE LEARNED**

Statistics tell us a lot about the tragic dimensions of DWI in New Mexico.

- In 1990, the last year for which I could obtain statistics from the U.S. Justice Department, there were 139 New Mexicans killed by murder and non-negligent manslaughter. In the same year, 305 New Mexicans were killed in alcohol-related crashes, according to the Traffic Safety Bureau. From a law enforcement standpoint, there is very little that can be done to anticipate or prevent murders and non-negligent manslaughters. Every death caused by DWI, however, is preventable.
- The Federal Centers for Disease Control reports that two out of five Americans may be involved in an alcohol-related traffic crash during their lives. In New Mexico, the chance of being involved in an alcohol-related traffic crash is greater than four in five

(86%), according to the Traffic Safety Bureau. Of course, no one is really safe from DWI crashes which know no geographic, ethnic or income boundaries. DWI crashes are simply random acts of violence against innocent people.

- The financial and social costs of DWI crashes are enormous. The Federal Highway Administration estimates the cost of DWI-related crashes in New Mexico was about \$550 million in 1990. This includes but is not limited to medical expenses, lost income and property damage. This means that every New Mexican is forced to pay, on average, \$363 per year in extra taxes, medical and automobile insurance costs because of DWI, or about \$1,000 per family per year. This, of course, does not include the biggest cost, which cannot be calculated: the pain and agony suffered by DWI crash victims and their families.

There are lots of reasons which explain these stunning statistics. New Mexico is a big state with many rural highways. This means long distances between medical facilities, poorly lit roads and a lack of good public transportation. We are also a poor state with a deadly dependence on alcohol. We have the worst per capita rates in the country for cirrhosis, Fetal Alcohol Syndrome and alcohol-related violence. New Mexico's alcoholism rate is believed to be three times the national rate. Certainly, all of these factors contribute to DWI-caused deaths and injuries.

Yet, as the Task Force discovered, there are changes that we can make in our behavior, in our homes, in our schools, in our laws, and in our criminal justice system that can prevent or reduce DWI.

Presently, there is no comprehensive strategy for preventing DWI, but rather a haphazard and sometimes inconsistent system held together only by the glue of good intentions and hard work. The Task Force believes that we need a comprehensive statewide strategy against DWI that involves increased prevention, more reliable deterrence and better, more widely available treatment. That is what our Action Plan attempts to accomplish.

## IMPLEMENTATION OF OUR RECOMMENDATIONS

Fortunately, New Mexico has a large reservoir of assets which it can draw from to fight DWI. For example, we have a concerned Governor who graciously agreed to allow several key state employees to serve on the Task Force. The Governor's own recommendation to establish a Traffic Safety Commission was immediately endorsed by the Task Force. I am very pleased that the Governor has publicly stated his enthusiastic approval for the Task Force's legislative package, which includes proposals to reduce the presumption of intoxication from .10 to .08 and close drive-up liquor sales windows.

No one in the history of the State has done more for our youth than First Lady Alice King. I know that she will be a strong ally when it comes to implementing the recommendations aimed at curbing underage drinking.

The New Mexico Legislature is another important asset. The last big drop in DWI caused deaths came in 1984, when the Legislature passed a law permitting administrative license revocation. This change reduced the DWI death rate by nine percent. Last year, New Mexico was the first state to become eligible to receive more than \$600,000 of grant money from a new federal anti-DWI program. This was largely due to efforts of the New Mexico Legislature.

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*Of course, no one is really safe from DWI crashes which know no geographic, ethnic or income boundaries. DWI crashes are simply random acts of violence against innocent people.*

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DWI in New Mexico would be much worse if it were not for the professional efforts and the proven effectiveness of a few people in state government who battle enormous odds every day with very few resources. In particular, I want to salute John Turner and the Traffic Safety Bureau who have worked tirelessly to prevent DWI in New Mexico. Mary Ann Hughes and the Alcohol and Gaming Division and Robert Ortiz and the Division of Special Investigations of the Department of Public Safety deserve our thanks for the excellent work they do in enforcing the Liquor Control Act and in dressing underage drinking.

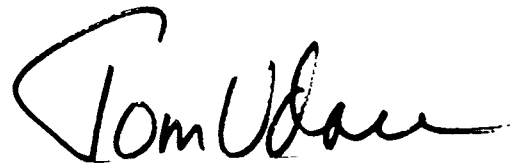
New Mexico's greatest asset, however, in the battle against DWI continues to be local community action. We are a state of small towns and cities that work hard to maintain our high quality of life by straightforwardly addressing problems like DWI. Gallup, for example, has taken a variety of actions, ranging from closing drive-up window sales of alcohol, adopting a .08 ordinance, imposing mandatory jail time on first-time DWI offenders and imposing a local option tax on alcohol to fund alcohol treatment. Gallup's determination has renewed a vibrant community and should make Gallup a model for the rest of the State. Other New Mexico communities like Clovis, Farmington, Los Alamos, Rio Rancho, Silver City and Taos also deserve praise for their innovation and leadership in addressing DWI locally.

Clearly, progress is already being made. Overall, alcohol-related crash deaths declined 17 percent and alcohol-related crash injuries declined 15 percent during the 1980s in New Mexico. This matches national trends, according to MADD. Much of the decline, however, can be traced to passage of the administrative license revocation law in 1984. Since then our progress and the statistics have plateaued as we seemed to have hit a barrier.

## A GOAL FOR THE 1990s

On behalf of the Task Force, I would like to set a goal of further reducing DWI-caused deaths and injuries in New Mexico by at least 20 percent in the 1990s. I believe full implementation of the Attorney General's DWI Prevention Task Force's Action Plan will help us to meet that goal and perhaps even exceed it.

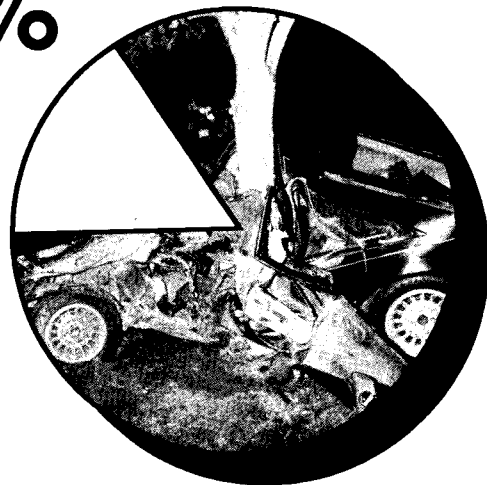
Finally, there are many people I would like to thank for their help. First, I want to thank the members of the Task Force, who served without any compensation and often at considerable sacrifice. Some members traveled hundreds of miles to attend Task Force meetings. Ann Goodman, Jamie Hotsinpillar, Chrisanta Johnson, David Montoya, Matt Ortiz and Mary Woodward contributed their expert research. Bobbi Gallegos, my Administrative Assistant, did a fine job of coordinating the town hall and task force meetings. Mary Hackett and Judy Wils contributed lots of time and energy to help us meet all of our deadlines. Last, I want to



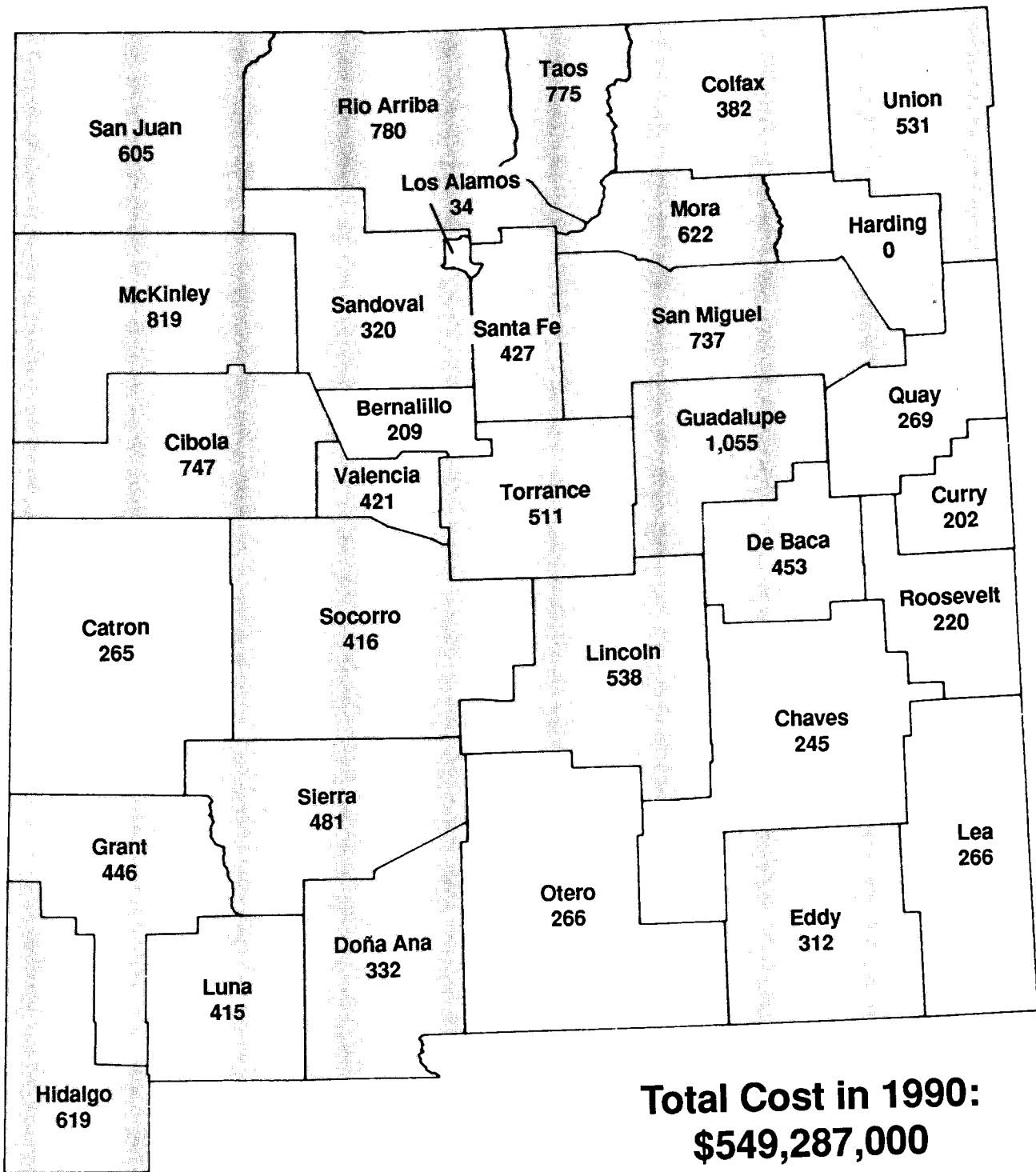
### The Chances of Being Involved in an Alcohol-Related Traffic Crash in New Mexico During Your Life

Source: Traffic Safety Bureau

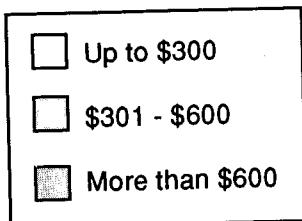
# 86%



# Per Capita Costs of New Mexico Alcohol-Involved Crashes, 1990



**Total Cost in 1990:  
\$549,287,000**



\*Los Alamos - \$34  
 DWI costs based on Federal Highway Economic Loss Formula  
 Population estimates as of July 1990

Sources: Traffic Safety Bureau  
 Department of Government Research, UNM



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# PART ONE: PREVENTION

A 1991 New Mexico Department of Education study found that approximately 80 percent of New Mexico high school seniors frequently drink beer, wine or wine coolers despite the fact that a person must be at least 21 to legally purchase alcohol. The study also found that more than 60 percent of ninth graders also use alcohol frequently. Perhaps most disturbing was the study's finding that nearly half of tenth graders and one third of eighth graders reported riding during the past month with a driver who had used alcohol or other drugs before driving. In 1990, 60 New Mexico teenagers were killed and 770 teenagers were injured in alcohol-related crashes in New Mexico. Three hundred of these injuries were permanently disabling.

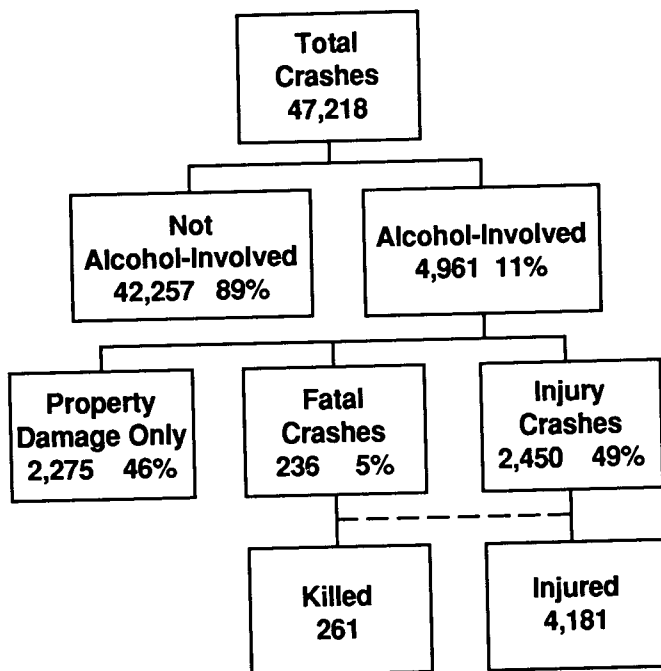
Another study, entitled "Substance Abuse in New Mexico," found that more than 190,000 New Mexicans, or about 17 percent of the adult population, drink and drive sometimes or often. In addition, more than 70,000 New Mexicans, or about 7 percent of the adult population, use drugs and drive sometimes or often.

In order to reduce impaired driving in New Mexico, the Task Force believes that parents, schools, the media, the liquor industry and state government will need to adopt a variety of prevention strategies, outlined in this report. These measures will alter social norms related to drunk driving. In addition, the state has to take steps to limit easy access to alcohol and drugs by minors and intoxicated persons.

The Task Force believes that prevention is the best strategy for providing relief to a criminal justice system suffering under the crushing volume of 22,000 DWI arrests annually.

**New Mexico Crashes By Alcohol Involvement, 1991**

Source: Traffic Safety Bureau



- In 1991, an alcohol-involved crash occurred every 106 minutes. One person was killed in an alcohol-involved crash every 34 hours. One person was injured in an alcohol-involved crash every 2 hours.

# INCREASE DWI PREVENTION THROUGH BETTER PUBLIC AWARENESS

## 1. New Mexico Should Begin a "Report Every Drunk Driver Immediately" (REDDI) Program.

New Mexico is the fifth largest state in land mass. It is also 46th in per capita income. As a consequence, there are not enough resources to adequately police all of the state's roads. According to national statistics from the Advocates for Auto and Highway Safety, fewer than two percent of those who drink and drive are arrested. The Traffic Safety Bureau believes that in New Mexico, the figure is closer to one half of one percent.

REDDI addresses this resource problem by educating private citizens about a special emergency number (e.g., 1-800 BEAT DWI) which they can call to report those who drive drunk. The local dispatcher takes down the time, location of the suspected drunk driver, color of vehicle, license plate number and direction of travel.

REDDI is based on the same concept as the "Neighborhood Watch" program, which actively involves citizens in safeguarding lives and prop-

erty in their communities by calling 911 or notifying law enforcement of crimes in progress. The Task Force believes that most people will be as willing to report a drunk driver as a prowler.

Colorado, Idaho, Kansas, Nebraska, Oregon and Washington all report success with the program. The National Transportation Safety Board has issued a safety recommendation to all 50 states encouraging adoption of REDDI - type programs. Nebraska's REDDI program has been in effect since 1981. Every year Nebraska has reported more calls and fewer alcohol-related crashes. During its first year of implementation, Nebraska led the nation with a 26 percent reduction in traffic fatalities.

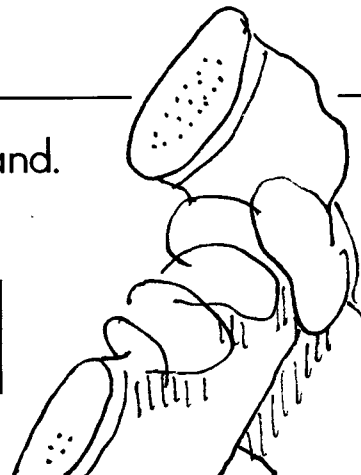
There are three principal advantages of the REDDI program. First, REDDI empowers private citizens who currently feel helpless to combat DWI. Second, REDDI supports law enforcement by giving the police extra sets of eyes trained on suspected drunk drivers. Third, REDDI prevents drinking and driving by enhancing the perceived risk of apprehension. (A 1990 study of Minnesota drivers showed that only about 12 percent think that it is likely they will be arrested if they drive while intoxicated.)

### Rough Billboard Idea

Your Weapon To Fight DWI Is In Your Hand.  
Report All DWI.

# 1-800-BEAT DWI

Office of the Attorney General of the State of New Mexico



## 2. The State Should Establish a Public Awareness Campaign Informing the Public About the Penalties for Drinking and Driving.

The Task Force found that many people convicted of DWI for the first time are genuinely surprised to learn that administrative license revocation can be the penalty.

The Task Force believes that if penalties for drinking and driving were better known among the public, then the penalties would serve as more of a deterrent. The State of Oregon has begun a successful public awareness campaign in which citizens are informed that if you are caught drinking and driving, the least you can expect to lose is your driver's license.

Campaigns in other states have also stressed the social sanctions like the loss of friends, loss of a job or other opportunities (e.g., military and athletic eligibility).

The Task Force believes that New Mexico would benefit from a cross cultural DWI public awareness campaign stressing the penalties and lost opportunities that result from DWI.

## 3. Public Service Announcements About DWI Should be Run Statewide Near Graduation Time, Spring Break, and Certain Holidays.

According to statistics from the Traffic Safety Bureau, certain holidays (i.e., Labor Day, July 4th, Memorial Day, and the period between Thanksgiving and New Year's) and graduation time are when alcohol-related crashes are most likely to occur.

### New Mexico Crashes During Holiday Periods, 1988-1991

Source: Traffic Safety Bureau

Holiday	Crashes			People	
	Total	Fatal	Injury	Killed	Injured
<b>Easter</b>					
1991	287	3	90	3	170
1990	293	7	102	10	178
1989	221	2	78	2	132
1988	293	2	100	2	176
<b>Memorial Day</b>					
1991	366	3	135	3	228
1990	364	10	133	11	227
1989	377	6	123	6	206
1988	373	2	128	2	223
<b>July 4th</b>					
1991	183	3	70	4	114
1990	178	4	64	8	119
1989	136	5	51	7	95
1988	454	6	163	6	277
<b>Labor Day</b>					
1991	341	3	147	4	252
1990	408	4	168	4	272
1989	407	3	134	3	219
1988	424	6	143	7	229
<b>Thanksgiving</b>					
1991	637	6	193	8	317
1990	457	5	141	6	255
1989	476	7	149	8	268
1988	524	3	178	3	311
<b>Christmas</b>					
1991	244	4	79	5	123
1990	856	2	196	2	292
1989	350	4	110	4	199
1988	408	3	110	3	197
<b>New Year's</b>					
1991-1992	307	0	107	0	164
1990-1991	479	3	137	3	286
1989-1990	484	7	143	7	218
1988-1989	294	6	105	6	170

District Attorney Bert Atkins of Alamogordo testified that public service radio announcements which he aired before major holidays have been successful in reducing DWI crashes. One insurance company in another state has found success with this public service announcement at graduation time: "Don't be the kid we dedicate the yearbook to. Drive sober."

Attorney General Udall recently received a grant from the National Highway Traffic Safety Administration which he will devote primarily to a drinking and driving public awareness campaign based on these first three recommendations.

#### **4. Local Television and Radio Stations Should Spend Twenty Percent of the Air Time That They Devote to Public Service Announcements to a DWI Prevention Campaign for a Year.**

Repetition is critical to making commercial advertising campaigns successful. The same is true for public service campaigns. Unfortunately, most DWI prevention campaigns have been fairly small and sporadic, which has diffused the message.

The Task Force recommends that local television stations and radio stations in New Mexico join forces for a year to fight drunk driving. If they devoted as little as twenty percent of their public service announcements to a DWI prevention message, it would help unite the state's resolve to fight DWI, change attitudes about the seriousness of the problem and ultimately lead to less drunk driving. New Mexico radio and television stations that choose to join this campaign will receive an Attorney General's DWI Prevention Campaign Member plaque.

#### **5. Local Newspapers Should Publish the Names of Those Convicted of DWI in Their Communities and the Penalties the Offenders Receive.**

The Task Force found that several New Mexico newspapers, including the Taos News, Raton Daily Range and the Rio Grande Sun, publish the names of those convicted of DWI in their particular community. The Albuquerque Tribune even organizes the names of the offenders according to the number of repeat offenses.

The Task Force believes that this is an effective public awareness strategy and brings attention to the tragic proportions of DWI. The Task Force suggests that newspapers also publish the penalty received by the DWI offender next to his or her name, including administrative license revocations. This should have an even greater preventive effect. New Mexico newspapers that adopt this recommendation will receive an Attorney General's DWI Prevention Campaign Member plaque.

#### **6. The Sale of Refrigerated Alcoholic Beverages Should be Accompanied by a Strong Anti-DWI Message.**

At almost every town hall meeting, the Task Force heard testimony from community members concerned about gas stations and convenience stores which sell refrigerated beer to motorists.

The Task Force believes that this sends the wrong message for a state struggling to combat its DWI problem. Therefore, the Task Force recommends that those establishments which sell refrigerated beer post in a prominent place - for example, near the cash register an anti-DWI message.

## **7. The Task Force Supports Legislation Which Would Require Holding Drunk Driving Suspects In Custody Until Their Blood-Alcohol Level Falls Below .05.**

On several occasions the Task Force heard of instances in which a DWI offender was arrested twice in one evening or was arrested, released and crashed into another vehicle. Recently, a New Mexico resident was killed by a drunk driver who had been picked up earlier the same evening for DWI and released.

In other states, such as Florida, police must hold drunken driving suspects until their blood-alcohol content level falls to .05 percent. The Task Force urges the legislature to adopt the same legislation for New Mexico.

### **RECOMMENDATIONS FOR PARENTS AND SCHOOLS**

## **8. The Task Force Recommends Integration of a Comprehensive Alcohol Abuse Prevention Component in the Health Education Program Offered by the State Department of Education in All New Mexico Schools.**

Parents and teachers across the state told the Task Force of the need to counteract television commercials and other marketing efforts which glamorize drinking as athletic and sexy and which target youth. They expressed concern that the dangers of alcohol are seldom addressed and irresponsible drinking is sometimes encouraged.

School curricula appear to the Task Force to be the best avenue for educating our children about alcohol abuse prevention and promoting self-esteem. Experts told the Task Force that prevention should start as early as the kindergarten level and continue through 12th grade. Informa-

tion on substance abuse should be presented progressively to students in each grade. In order to succeed, such programs need to involve teacher training and integrate parents. These educational programs should also take advantage of police, emergency room doctors and nurses, emergency medical technicians and DWI offenders, all of whom can speak from firsthand experience about the dangers of drinking and driving.

The Task Force wishes to commend the State Department of Education for its substantial efforts in substance abuse prevention through its Drug Free Schools and Communities Program.

## **9. School Discipline Policies Should Include Counseling of Both the Parent and the Student When a Student Violates a School Substance Abuse Policy.**

The Belen Public Schools have found that where students abuse alcohol their parents are also likely to have an alcohol problem. Similarly, a 1992 five-year study of DWI offenders sentenced in Santa Fe Municipal Court revealed that nearly half of the offenders said that a family member, most likely a parent, also had an alcohol abuse problem.

The Belen Public Schools have addressed this issue by requiring parents to attend joint counseling sessions with their child when that child has been found to have violated school rules related to alcohol. The Albuquerque Public Schools also have awareness programs which target families to elevate concern about the effects on young children of parents who model alcohol abuse behavior.

The Task Force urges every school in New Mexico to adopt substance abuse policies which involve parents in the counseling.

## **10. The Task Force Urges Every New Mexico Community to Develop Alcohol-Free Activities on Weekends for Teenagers.**

The Task Force repeatedly heard from teenagers in many communities that there was no place for teenagers in their community to go on Friday and Saturday nights. Health experts agree that this is a leading contributor to alcohol and drug use among teenagers.

Many New Mexico communities are working to address this need. Santa Fe, for example, has begun the Teen Project, which is involving 150 teenagers from nine local high schools in the planning of a major community arts facility for teenagers. Parents, schools, local government, the business community and national foundations are also helping. The Teen Project will eventually include a cafe and work, rehearsal and studio space. There will be disc jockey nights, live concerts, visual arts exhibitions, public art projects, theatre productions—all featuring teen artists.

In smaller communities, the Health Department is pitching in with community incentive grants, which helped to bring a community night program to Estancia that ranges from movies to sock hops.

The private sector can help too. In Albuquerque, for example, there is an alcohol-free teenage country and western dance club. Entertainment outlets like this make good business sense because there are thousands of teenagers in New Mexico who are searching for alcohol and drug free fun.

## **11. Parents Should Be Encouraged to Work With Schools to Organize Alcohol and Drug Free Proms and Graduation Parties.**

The week of graduation can turn suddenly

from a happy event into tragedy when a new graduate is killed in an alcohol-related crash.

Parents in several communities, including Albuquerque, Clovis, Las Vegas, Lovington and Roswell, have taken the lead in organizing alcohol and drug-free proms and parties that go late into the night. Parents involve the students in planning the event but the parents are responsible for the fundraising, such as persuading local businesses to donate door prizes. Creative concoctions of fruit juice are served.

This is an effective way for parents to demonstrate that they care about their children and at the same time prevent alcohol-related crashes.

## **12. There Should Be Student-to-Student Alcohol Awareness Programs in Every New Mexico College and Vocational School.**

The Task Force heard testimony that too little attention is being paid to alcohol abuse in New Mexico universities, colleges and vocational schools.

A few New Mexico institutions of higher education have had success with organizations that work with fraternity and sorority houses and others to promote student-to-student alcohol awareness education, positive peer pressure and action programs supporting a safe campus environment. The Task Force urges that these programs be expanded to every college, university and vocational school in New Mexico.

## **RECOMMENDATIONS FOR DRIVER EDUCATION AND DWI SCHOOLS**

### **13. MVD Should Change the Licensing Exam to Increase Coverage of DWI Issues.**

The state's licensing exam is the single most

***The state's licensing exam is the single most effective way to reach new drivers with a DWI prevention message.***

effective way to reach new drivers with a DWI prevention message. Yet, according to a 1991 survey, New Mexico is one of only three states that does not have at least two or more DWI questions specifically designed to determine the applicant's knowledge of the relationship of alcohol and other drugs to highway safety on its licensing exam. (The other states are Missouri and Ohio.)

The Task Force encourages driving schools, whether public or private, to address DWI issues in their curricula. The Task Force, however, believes that this is most likely to occur if DWI issues are included by the Motor Vehicle Division (MVD) in the licensing exam. Thus, license applicants, whether they attend a driving school or not, will have to be knowledgeable on DWI issues in order to pass.

The Task Force also views the licensing exam as an opportunity to educate the public about DWI penalties and in the process increase prevention of drunk driving.

#### 14. The Traffic Safety Bureau Should Conduct A Study of the Recidivism Rates of Students in Each of New Mexico's DWI Schools.

The Task Force heard some testimony about the need to improve quality control of DWI schools, which handled 6,822 DWI offenders in 1990.

The Task Force suggests that the Traffic Safety Bureau conduct a study of recidivism rates among students in each DWI school and publish its findings. This study should be distributed to all municipal, magistrate, metro court and district court judges who sentence DWI offenders to DWI school. DWI schools which fall below a standard established by the Traffic Safety Bureau should not be recertified without additional training of instructors.

## RECOMMENDATIONS FOR THE LIQUOR INDUSTRY

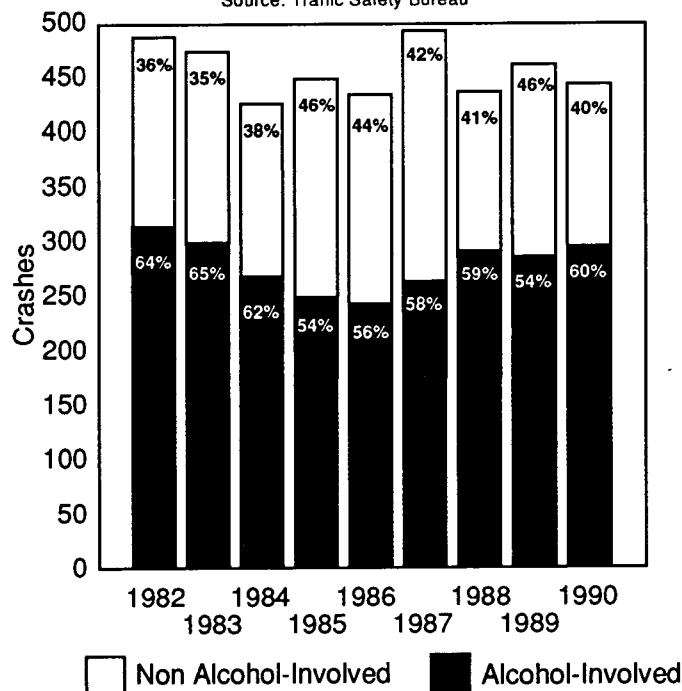
### 15. The State Should Require Server Intervention Training as a Condition of Licensing.

Some liquor retailers in New Mexico already require training of staff in how to recognize the signs of intoxication, how to intervene before the patron gets behind the wheel and how to detect underage drinkers. Many others, however, do not require such staff training. According to Alcohol and Gaming Division Director Hughes, an effort over the past year to have liquor retailers provide this training on a voluntary basis has not succeeded.

The Task Force, while recognizing that there is a high turnover of employees in the liquor retail business, believes that these training programs should be required by regulation for all alcohol servers. An increasing number of states already require such training. Insurance companies generally offer a substantial savings in liquor liability premiums for retailers who require their

**New Mexico Fatal Alcohol-Involved Crashes By Year**

Source: Traffic Safety Bureau





employees to receive server training. Other insurers require server intervention training as a precondition to obtaining a policy.

In the view of the Task Force, liquor retailers who do not require such training may be jeopardizing the health and safety of their communities as well as their liquor licenses and their own financial security. There is clear statutory authority for a regulation requiring server training. It is the policy of the Liquor Control Act that the sale, service and public consumption of alcoholic beverages in the state shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state. In addition, the Alcohol and Gaming Division Director has statutory authority to issue regulations and orders to implement and enforce the provisions of the Liquor Control Act and "Any regulation or order issued by the director is presumed to be a proper implementation of the provisions of the Liquor Control Act, according to the statute." The Director of Alcohol and Gaming currently certifies those server training programs which are voluntarily submitted to the division for review.

Other steps that retailers can take to prevent drunk driving include instituting a Designated Driver program in which the retailer provides the "driver" with free non-alcoholic drinks, holding "last call" at least one hour before closing time and serving high protein snacks and other foods which speed the rate of alcohol metabolism.

#### **16. The Task Force Urges All New Mexico Wholesale Distributors of Alcoholic Beverages to Help Increase Industry Funding of Alcohol Abuse Awareness Programs in New Mexico.**

Among the programs which have been effective are:

##### **Designated Driver Programs**

Through this program, a consumer typically receives free soft drinks or discounts on food from a liquor retailer in exchange for being

named the designated driver of a group and refraining from drinking alcoholic beverages on that occasion.

##### **Taxi Ride Programs**

Some wholesalers, cab companies, restaurants and bars provide free cab rides home to those who may have had too much to drink.

#### **17. The Task Force Endorses Federal Legislation Which Would Require Health and Safety Warnings to be Included in All Advertising Related to the Sale of Liquor.**

The New Mexico Legislature passed a law in 1991 which requires liquor retailers to post a warning in a conspicuous place in their establishments in both English and Spanish which states: "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

The Task Force urges Congress to follow suit by requiring health and safety warnings to be included in all advertising related to the sale of liquor.

#### **18. The Task Force Urges New Mexicans Not to Sell or Buy Products of Liquor Companies Who Target Minorities or Youth with Certain Alcohol Products.**

The Native American community and U.S. Surgeon General Antonia Novello have expressed outrage at the Hornell Brewing Company for using the name and image of Crazy Horse, a revered Sioux leader, to market their 40-ounce malt liquor brand. Ironically, according to tribal legend, Crazy Horse called alcohol a scourge that might destroy his people. Additional alcoholic beverages which appear to have been designed to appeal to young people include Power Master malt liquor and Black Death vodka.

The Bureau of Alcohol, Tobacco and Firearms (ATF) ordered Hornell to change several aspects

of the label but ATF officials are powerless to change the name or to ban the product without further federal legislation. Alcohol and Gaming Division Director Mary Ann Hughes has requested, and received, a voluntary agreement from New Mexico wholesale liquor distributors to cease purchasing and distributing these products.

The Task Force joins the Native American community, Alcohol and Gaming Division Director Hughes and Surgeon General Novello in registering its strong disapproval of these products and urges New Mexicans not to sell or purchase them.

### **19. The Task Force Encourages the Liquor Industry to Refrain From Disproportionately Placing its Billboard Advertising in Minority and Low Income Communities.**

The Task Force received testimony in Albuquerque and Belen, in particular, that a dispro-

portionately high number of billboards promoting alcohol are placed in minority and low income areas of the community. The New Mexico Alcohol Issues Consortium conducted a survey of billboard advertising in Albuquerque in May of 1990. Health professionals and concerned citizens divided the city into quadrants (i.e., northeast, northwest, southeast and southwest) and counted the number of alcohol and tobacco billboards. Unfortunately, this appears to be part of a national pattern. See Maxwell and Jacobson, Marketing Disease to Hispanics: The Selling of Alcohol, Tobacco and Junk Foods (1989).

The Task Force encourages the liquor industry to refrain from targeting minorities and low income communities. At the same time, the Task Force urges citizen advocacy groups to take the lead in opposing the disproportionate placement of these billboards by conducting spot checks in different parts of the state in conjunction with the Alcohol Issues Consortium and publishing their findings.

# REDUCE ACCESS TO LIQUOR BY MINORS AND INTOXICATED PERSONS

## 20. The Task Force Supports Legislation Which Would Close All Drive-Up Windows for Liquor Sales.

Many citizens testified to the Task Force that sales of liquor at drive-up windows sends the wrong message in the state with the worst alcohol-related crash rate in the nation—namely, that drinking and driving go hand in hand. Although new licenses for drive-up windows are now prohibited in New Mexico, there are still approximately 325 drive-up windows operating in 30 of New Mexico's 33 counties, according to the Alcohol and Gaming Division.

The Task Force heard extensive testimony regarding alcohol abuse by minors, who apparently can more easily buy alcohol at drive-up windows, where it is difficult to determine a driver's age. This testimony was reinforced by the experience of "Operation Booze and Cruise" in which undercover minors, working with Albuquerque Police, bought liquor at 31 percent of the drive-up windows in Albuquerque.

Likewise, a 1992 five-year study of DWI offenders sentenced in Santa Fe Municipal Court shows that of those DWI offenders who purchased their liquor at stores prior to their arrest, 33 percent did so at drive-up windows. It was their number one choice, according to the study. Some members of Alcoholics Anonymous say they now realize they could have known each other years earlier if they only looked in the rear view mirror while they waited in line at the drive-up.

Some owners of drive-up windows told the Task Force that those who are too young or too drunk to purchase liquor can always purchase

liquor elsewhere. The Task Force, however, concluded that those who are too young or too drunk are more likely to be stopped if they are forced to walk into a well-lit establishment to make their purchase. Other owners of drive-up windows expressed a desire to close their windows but said that they worried that closing their window would place them at a competitive disadvantage to their rivals who maintain drive-up windows. These owners expressed support for closing all drive-up windows because it would level the playing field.

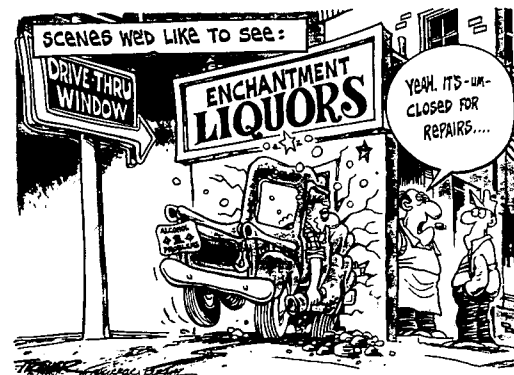
The majority of states ban drive-up windows by a licensing agency regulation or a specific law. California law, for example, calls drive-up windows "against public policy and morals." There is overwhelming public support for closing all drive-up windows in New Mexico, as evidenced by Gallup and McKinley county citizens who voted to end drive-up liquor sales by a margin of greater than four to one. (Under

a 1989 state law, McKinley County and San Juan County are the only counties that qualify as special "local option" districts, where local citizens can vote in liquor restrictions if 25 people per 1,000 of the local population have been convicted of drunken driving between 1984 and 1986. However, a 1991 amendment made San Juan County ineligible.)

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*In Operation Booze and Cruise undercover minors bought liquor at 31 percent of the drive-up windows in Albuquerque.*

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**Drive-up licenses by County:**

Bernalillo 52	San Miguel 10	Colfax 4
Rio Arriba 29	Taos 10	Luna 4
Lea 23	Quay 9	Roosevelt 4
Valencia 19	Curry 9	DeBaca 3
Dona Ana 17	Eddy 8	Hidalgo 2
Sandoval 16	Lincoln 8	Los Alamos 2
Santa Fe 15	Grant 6	Mora 2
Cibola 14	Guadalupe 6	Union 1
Chaves 12	Sierra 6	Catron 0
San Juan 12	Socorro 6	Harding 0
Otero 10	Torrance 6	McKinley 0

Source: NM Alcohol & Gaming Division

**21. The Liquor Control Act Regulation Pertaining to Special Dispenser Permits Should be Substantially Tightened.**

The Task Force heard testimony about widespread abuse of special dispenser permits, better known as "picnic licenses." These licenses were originally intended for small celebrations limited to three days or less. However, these permits are being abused, resulting in the unsupervised sale of alcoholic beverages to minors and persons known to be intoxicated.

The Task Force recommends that the Alcohol and Gaming Division enact guidelines to cut down on the abuse. Local government officials should also be involved in the approval process so that these officials can notify local law enforcement about any potential problems.

**22. The Practice of Bootlegging Alcoholic Beverages Needs to be Studied In-Depth and Stopped.**

Bootlegging of alcoholic beverages is out of control, according to testimony presented to the Task Force. Bootleggers are selling liquor without a license on Sundays and on the reservations in violation of numerous state and tribal laws. Bootlegging also leads to the unsupervised sale of alcoholic beverages to minors and persons known to be intoxicated. Finally, bootlegging reduces the amount of tax revenues received by the state.

The Task Force recommends that the New Mexico Alcohol Issues Consortium, religious leaders, legislative leaders, tribal leaders, the state police, the Attorney General, the FBI and the Bureau of Alcohol, Tobacco and Firearms form a joint committee to study new approaches to control bootlegging, such as stiffer penalties, resource issues, legislation and other proposals.

**23. The Task Force Supports Legislation Which Would Close Loopholes in State Laws Intended to Prevent Minors from Drinking.**

It is the public policy of New Mexico, like the other 49 states, to prohibit the sale of liquor to minors. Minors in New Mexico, however, according to current law, are permitted to purchase and consume alcoholic beverages in bars, or to have alcoholic beverages served or delivered to them, if accompanied by a parent, adult spouse or legal guardian. This law applies to five-year-olds the same as to seventeen-year-olds. The Task Force and the liquor retailers believe the legislature should repeal this section of the law immediately.

Another "mixed signal" that New Mexico children receive is contained in the state's administrative license revocation statute, which requires the revocation of licenses of those under 18 with a Blood Alcohol Concentration of .05 or greater, although state law prohibits drinking under the age of 21. In other words, it is illegal for a minor to buy, possess, or permit himself to be served with any alcoholic beverage, but it is not illegal for a minor to drink and drive so long as his BAC is below .05. The Task Force recommends that state law be made consistent by establishing "any measurable BAC" as grounds for revoking licenses of drivers under age 21. Because younger drivers place a high value on their driver's licenses, the threat of license revocation should effectively curtail underage drinking and driving.

A September, 1992 study of Maryland's new .02 BAC law for drivers under 21 by the National Highway Traffic Safety Administration (NHTSA) concluded that the new law is "a highly effective highway safety countermeasure." Specifically, the study showed an approximate 25 percent reduction in alcohol-related crashes involving drivers under 21. The reduction was attributed to the attendant publicity surrounding the passage and implementation of the law and the imprinting of new licenses with the words, "Under 21 - Alcohol Restricted." In six experimental counties where there was a public information and education campaign accompanying the law's passage, the study showed an approximate 50 percent reduction in alcohol-related crashes involving drivers under 21. NHTSA concluded that "a lower BAC restriction for youth is a countermeasure which should be widely implemented."

## 24. MVD Should Take Further Steps to Make Obtaining a False Driver's License by Minors More Difficult.

A growing number of minors claim that their driver's license has been stolen and then obtain a new license from MVD based on false birth certificates indicating that they are over the legal drinking age. (In order to obtain a duplicate driver's license, if a license has been lost or stolen, an applicant needs only to provide MVD with a birth certificate as a form of identification.) These minors then use their new drivers license to illegally gain admittance into drinking establishments.

The Task Force urges MVD to take steps to combat this practice. For example, require applicants for new drivers licenses to obtain them from the MVD branch office closest to their hometown. Many minors from outside of Albuquerque obtain their new license from the Albuquerque office, where they are less likely to be recognized by local personnel.

**New Mexico Alcohol-Involved Drivers in Crashes by Age and Sex, 1991**

Source: Traffic Safety Bureau

AGE	Total	Male	Female	Total
Under 15	81	69	12	
15-19	619	530	89	
20-24	972	827	145	
25-29	928	760	168	
30-34	810	644	166	
35-39	577	466	111	
40-44	371	310	61	
45-49	203	164	39	
50-54	127	105	22	
55-59	96	80	16	
60-64	67	62	5	
Over 64	120	110	10	
<b>TOTAL</b>	<b>4,971</b>	<b>4,127</b>	<b>844</b>	
<b>Under 21</b>	<b>893</b>	<b>769</b>	<b>124</b>	

# REORGANIZE THE WAY STATE GOVERNMENT ADDRESSES DWI

## **25. The Task Force Endorses the Creation of a Traffic Safety Commission.**

The Task Force urges the Legislature to adopt a proposal by Governor Bruce King and the New Mexico Coalition Against DWI and Alcohol Abuse to create a Traffic Safety Commission consisting of cabinet secretaries, legislators, the Attorney General, the Office of Indian Affairs, members of the judiciary, representatives from the treatment, prevention and victim communities and the general public.

The purpose of the Commission would be to coordinate all traffic safety activities at the state level. For example, several state agencies spend money on alcohol abuse and DWI prevention campaigns which could be more effective if the agencies adopted a unified strategy. The Commission would also give traffic safety issues, particularly DWI, higher visibility and priority within state government.

## **26. Responsibility for the Motor Vehicle Division's DWI Functions Should be Removed from the Taxation and Revenue Department and Assigned to the Traffic Safety Bureau.**

MVD's primary responsibility concerns registering hundreds of thousands of vehicles and licensing hundreds of thousands of drivers each year. The Traffic Safety Bureau's primary responsibility is improving traffic safety by lowering New Mexico's DWI rate.

Therefore, the shifting of the DWI functions (e.g., DWI record keeping) from Taxation and Revenue to the Traffic Safety Bureau makes good sense to the Task Force.

## PART TWO: DETERRENCE

Many of those who testified before the Task Force expressed skepticism that they would ever be arrested for driving drunk or that they would serve any jail time if apprehended. In fact, statistics, as discussed below, show that this skepticism is well founded. The Task Force recommends a variety of deterrence measures designed to increase the risk of apprehension as well as to increase the certainty of swift and progressively severe penalties. These measures, in combination with better record-keeping and coordination between police, prosecutors, judges and MVD, will deter those tempted to drive under the influence of alcohol or drugs.

### Mandatory Minimum Sentences

Present Mandatory Minimum Sentence	AG Proposed Mandatory Minimum Sentence
1st Offense <i>None</i>	1st Offense <i>24 Hours</i>
2nd Offense <i>48 Hours</i>	2nd Offense <i>48 Hours</i>
3rd Offense <i>48 Hours</i>	3rd Offense <i>1 Week</i>
4th Offense <i>6 Months</i>	4th Offense <i>6 Months</i>
5th & Subsequent Offense <i>6 Months</i>	5th & Subsequent Offense <i>4th Degree Felony</i>

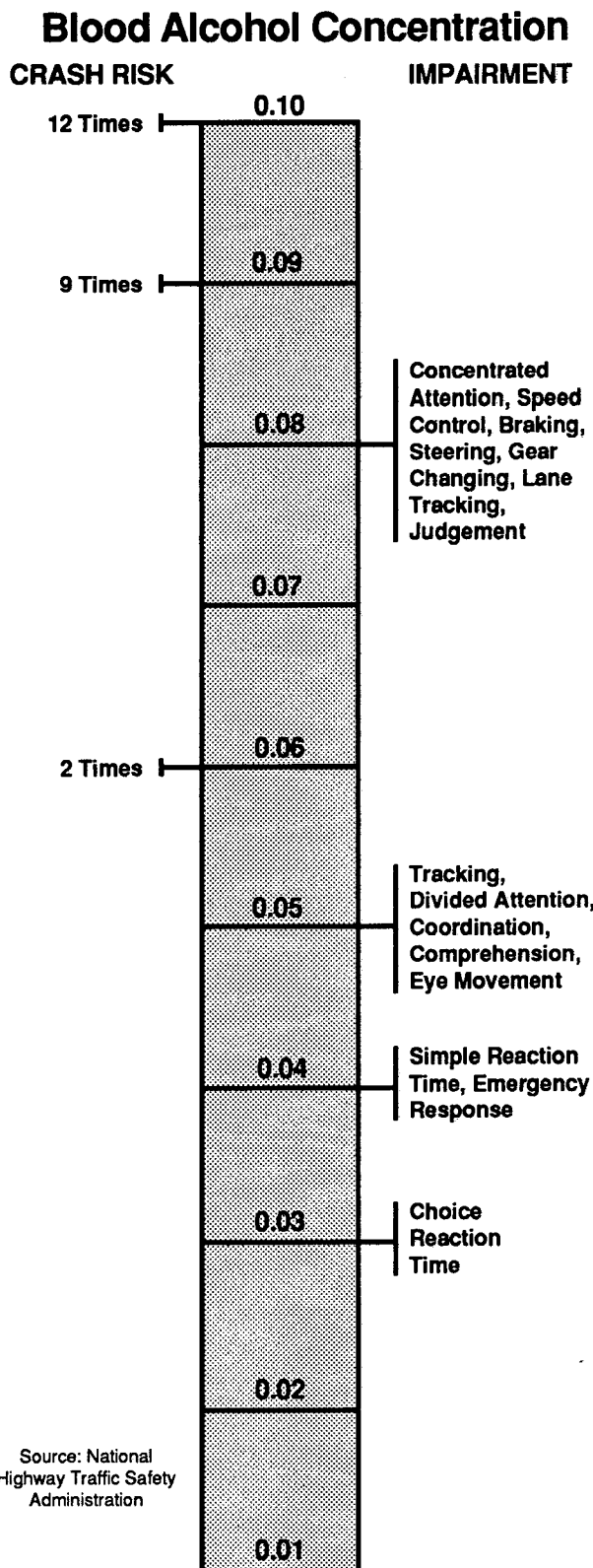
# INCREASE THE RISK OF APPREHENSION

## 27. The Task Force Recommends That the Legislature and Local Governments Reduce the Presumption of Intoxication from .10 to .08 Breath Alcohol Concentration.

Recently the Attorney General was speaking to a group about New Mexico's tragic DWI statistics. When he asked if they supported lowering New Mexico's presumed level of intoxication from .10 to .08, nearly half the group said no. When he asked whether it should be illegal for a 160 pound man to drink five beers within an hour and drive, everyone in the group said yes. It is the same question. Studies show that a 160 pound man who drinks five beers on an empty stomach within an hour will reach a .08 blood alcohol content (BAC) level.

This anecdote illustrates one of the misconceptions about lowering the presumed intoxication level to .08. In fact, the American Medical Association (AMA) advocates an even lower presumed intoxication level of .05. This position is based on epidemiological studies which have shown that the risk of alcohol-related crashes begins to rise significantly after an alcohol concentration of .05, when most people begin to be impaired. The scientific literature shows that the fatality risk for drivers at .05 is twice as great as that for a driver who has not been drinking. At .08 it is at least five times greater.

In 1988, then Surgeon General C. Everett Koop recommended that the presumed intoxication level should be reduced to .04 by the year 2000. Last year, the New Mexico Legislature passed legislation, signed by Governor Bruce King, which reduced the level for truck drivers to .04. A tiny sports car with an alcohol-impaired driver, however, can be just as deadly as an 18-wheeler.





Most western industrialized countries, including Austria, Canada, Denmark, France, Italy, New Zealand, Spain, Switzerland and the United Kingdom, have presumed intoxication levels of .08. Japan, Iceland, the Netherlands, Norway and Finland have a level of .05; in Sweden it is .02.

California, Oregon, Utah, Vermont and Maine have already lowered their presumed intoxication levels to .08. In addition, eighteen states have bills pending to do the same. Although the State of New Mexico does not yet have a .08 law, six New Mexico cities (Clovis, Farmington, Gallup, Los Alamos, Rio Rancho, and Silver City) have passed local ordinances reducing the presumed intoxication level in their communities to .08.

The National Highway Traffic Safety Administration (NHTSA) has just released an extensive study of California's .08 law, which went into effect on January 1, 1990. NHTSA's chief finding was that the .08 law, and the publicity surrounding its enactment, had been a major factor in reducing alcohol-related traffic fatalities by 12 percent in California in 1990. A 12 percent reduction in New Mexico would save more than thirty lives a year!

Some people have argued that lowering the presumed intoxication level to .08 would further burden an already over-burdened court system. However, California's experience has been that a .08 law does not increase the number of DWI defendants pleading guilty, requesting jury trials or appealing convictions. The reduced fatality levels and the absence of an increase in the volume of cases may be explained by the success of the .08 law in deterring drinking and driving behavior by increasing the perceived risk of apprehension for lower intoxication levels. In fact, a survey of 1,600 California drivers in May 1991 disclosed that eight out of ten drivers were aware that the BAC limit had become stricter.

Some in the liquor industry who oppose .08 legislation argue that we should focus most of our attention and resources on drivers with BACs of .15 and greater since those offenders are the biggest danger to society. However, .15 drunk drivers were once .08 drunk drivers. If we can get DWI offenders into the criminal justice system and into treatment at lower BAC levels, then we are more likely to prevent them from driving drunk in the future. Clearly, the current system is not working very effectively to reduce the number of high BAC offenders. A .08 law would target DWI offenders at a point when treatment is more likely to be effective.

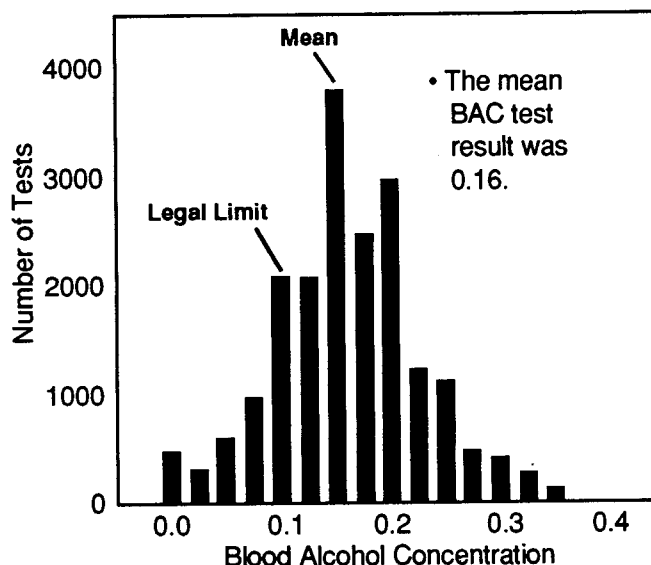
***If we can get DWI offenders into the criminal justice system and into treatment at lower BAC levels, then we are more likely to prevent them from driving drunk in the future.***

Who else supports .08 legislation? In addition to NHTSA and the AMA, Governor King, the New Mexico Department of Health, the National Transportation Safety Board, the International Association of Chiefs of Police, the U.S. Surgeon General, the National Commission Against Drunk Driving and Mothers Against Drunk Driving all support .08 legislation.

Given its proven success in California and elsewhere, the Task Force urges the Legislature to pass .08 legislation.

**New Mexico Alcohol Test Results, 1990**

Source: State of New Mexico Scientific Lab Division



In the meantime, the Task Force urges local New Mexico city councils and county commissions to continue to lead the way by enacting .08 ordinances.

## **28. Police Departments Should Use Sobriety Checkpoints.**

Sobriety checkpoints are used by police as a visible deterrent to drunk driving. Stopping a predetermined sequence of cars, at a selected location, generally on a weekend night, officers conduct a brief interview to determine if the driver is impaired by alcohol. Sobriety checkpoints have been shown to be effective in deterring drinking and driving because they create at least the perception that detection and arrest are likely to occur. Police officers around the state testified to the Task Force that sobriety checkpoints have, in fact, been very successful in their communities. Police credit two key ingredients for the success of sobriety checkpoints. First, roadblocks depend on public visibility for their deterrent effect. Therefore, media coverage and advance publicity are as necessary to the success of the roadblock program as the roadblocks themselves. Second, roadblocks are most effective when they are conducted consistently over a long period of time. The absence of either public visibility or consistency will tend to reduce the effectiveness of roadblocks as a DWI deterrent.

The Task Force recommends that sobriety checkpoints be conducted on Friday and Saturday nights around graduation time and on major holidays.

Strong efforts should be made to minimize the intrusion upon the non-drinking driver and to follow the constitutional guidelines laid out in Las Cruces v. Betancourt (1987). In that case, the New Mexico Court of Appeals set up eight guidelines for conducting reasonable roadblocks:

1. Supervisory personnel, rather than field officers, must establish the site and procedures.
2. The discretion of the field officers should be restricted, and stops made according to some formula so that each motorist is treated equally to the extent possible.
3. Safety measures must be taken for the benefit of the motoring public and the police.
4. The location must be reasonable, and must not be set in a location with the intent of stopping any particular group of people.
5. The hours must be reasonable for the purpose; for example, the roadblock established during the late evening hours on a weekend may be reasonable, whereas, one set up during the Monday morning rush hour might not.
6. There should be immediate indications of the official nature of the roadblock, such as marked police cars, uniformed officers, warning or stop signs, flares and pylons.
7. Delays should be minimized; suspects should be pulled out of the line of traffic into a separate testing area.
8. Advance publicity should be given to enhance the deterrence value of the roadblock.

In Michigan Department of State Police v. Sitz (1990), the United States Supreme Court upheld the constitutionality of roadside sobriety checkpoints.

The Task Force also recommends the use of Breath Alcohol Passive Sensors (BAPS) in conducting sobriety checkpoints. BAPS are noninvasive devices for detecting alcohol in a motorist's breath. It analyzes the air expelled from the lungs when held a few inches away from the subject and indicates the alcohol level on a digital display within seconds. BAPS can be

incorporated into a flashlight to allow a police officer to carry out night time checks quickly and easily, without causing inconvenience or embarrassment to sober motorists. Only minimum operator training is required.

The Task Force commends San Juan County, New Mexico, where the local police and the tribal police pool their resources and conduct joint sobriety checkpoints with cross-deputized peace officers.

**New Mexico Alcohol-Involved Crashes and DWI Arrests by Day of the Week**

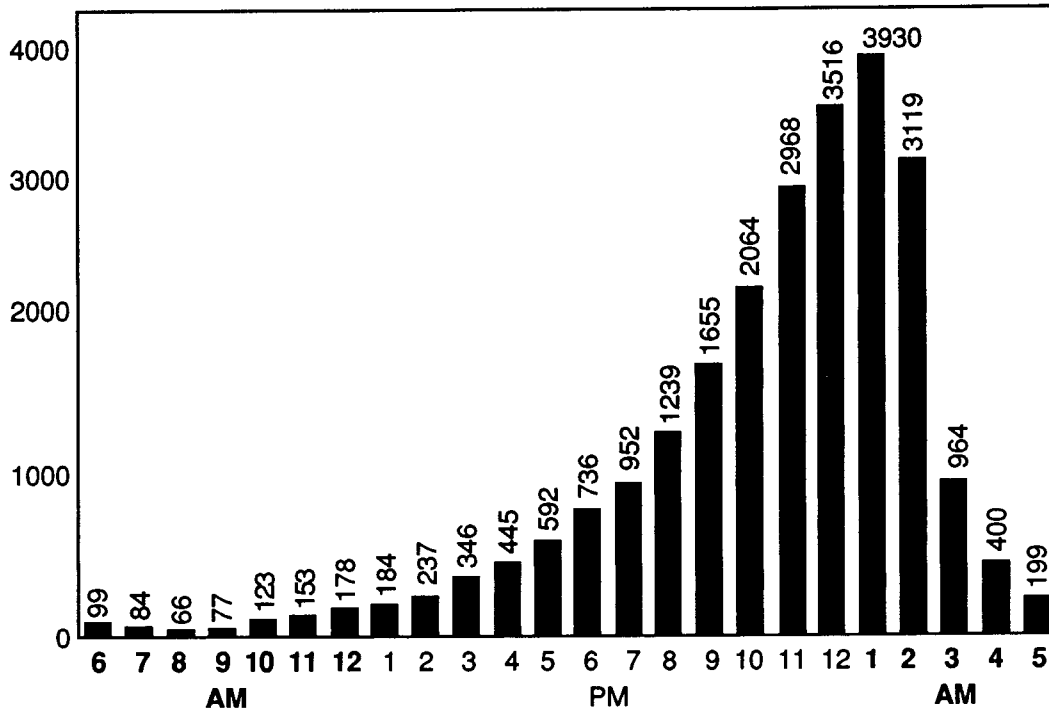
Source: Crash Files and DWI Citation Tracking file

DAY	CRASHES		ARRESTS		ARRESTS
	Total	%	Total	%	
Sunday	549	11.1	2,094	8.6	[Bar]
Monday	483	9.7	1,924	7.9	[Bar]
Tuesday	449	9.1	1,938	7.9	[Bar]
Wednesday	594	12.0	3,214	13.2	[Bar]
Thursday	573	11.6	3,477	14.3	[Bar]
Friday	1,177	23.8	6,055	24.8	[Bar]
Saturday	1,129	22.8	5,684	23.3	[Bar]
<b>Total</b>	<b>4,954</b>	<b>100.0</b>	<b>24,386</b>	<b>100.0</b>	2,000 4,000 6,000

• For this table, each day was considered to run from 6 a.m. to 5:59 the following morning

**New Mexico DWI Arrests by Hour of the Day**

Source: DWI Citation Tracking file



# ESTABLISH PROGRESSIVELY TOUGHER PENALTIES

## 29. The Task Force Supports Legislation Requiring a Minimum Jail Sentence of 24 Consecutive Hours for All First-Time DWI Offenders.

Currently, state law does not require jail time for first-time DWI offenders. Although the law does permit up to 90 days in jail, the vast majority of first offenders do not serve any time. Of the 33,299 DWI convictions in Bernalillo County since 1984, including repeat offenses, only 44 percent received jail time.












At virtually every town hall meeting there was strong support expressed for at least a consecutive 24-hour jail sentence for first-time offenders. Interestingly, support for a minimum jail sentence of 24 hours for first-time DWI offenders was strongest among those who had family members convicted of DWI. They told the Task Force that jail time is helpful in making the offending family member focus attention on his or her alcohol problem as a serious issue with very serious consequences, which can only grow more serious if left untreated.

Gallup, Farmington and Los Alamos all have local ordinances which require 72-hour minimum jail terms for first offenders. None of those communities currently report a backlog of cases in their jails or courts, although Farmington had an initial backlog. They believe that their ordinances have had a deterrent effect which accounts for the absence of an increase in volume of cases. Studies in other states have shown that when the perceived risk of apprehension and certainty of punishment is increased, DWI offenses and the injuries and deaths they cause are reduced. Seventeen states, including neighboring Colorado, now mandate jail time or community service after a first conviction for alcohol-impaired driving, according to a 1992 survey by the National Highway Traffic Safety Administration.

The Task Force supports a 24-hour mandatory jail term because of its deterrent effect rather than for punishment's sake. Studies, in fact, show that where there is a high perceived risk of arrest and jail sentences, drunk driving is reduced.

**Total Number of DWI Convictions for Drivers Convicted of DWI in 1990**

Source: Driver History File, Traffic Safety Bureau

Convictions	Since '85	Since '70	Percent of Drivers by Number of DWI Convictions Since 1970				
1ST	9,924	8,547					
2ND	3,516	3,408					
3RD	1,490	1,850					
4TH	676	1,077					
5TH	296	548					
6TH	138	302					
7TH	67	173					
8TH	30	101					
9TH	24	65					
10TH	7	37					
11TH+	16	76					
<b>TOTAL</b>	<b>16,184</b>	<b>16,184</b>	<b>10%</b>	<b>20%</b>	<b>30%</b>	<b>40%</b>	<b>50%</b>

### **30. The Task Force Supports Legislation Increasing the Minimum Jail Sentence for a Third DWI Offense from Two Days to at Least One Week.**

Under current New Mexico law, the minimum penalty for a third DWI offense is identical to that for a second DWI offense: two days in jail. Forty-four states now mandate jail time for a third conviction for DWI, according to a 1992 survey by the National Highway Traffic Safety Administration. The minimum jail sentences for a third DWI offense ranged from two days to a year. Seventeen states require minimum sentences of two days to fifteen days for third DWI offenses. Twenty states require minimum sentences between 30 and 120 days for third DWI offenses. Seven states require minimum sentences of 6 months or a year for third DWI offenses. Among our neighboring states, Arizona requires a minimum sentence of six months, Colorado requires a minimum sentence of seven days and Texas requires a minimum sentence of ten days for a third DWI.

The Task Force believes that a criminal justice system which incrementally increases the penalty for each prior conviction will curtail the contaminant, if not the disease. Therefore, the Task Force recommends that the minimum sentence for a third time DWI offender be increased from two days to at least one week.

### **31. The Legislature Should Close the Loophole Which Does not Count Prior Municipal Court Convictions for Imposition of the Mandatory Six Month Jail Penalty for a Fourth DWI Offense.**

In State v. Russel, (1991), the New Mexico Court of Appeals held that three prior municipal court convictions could not be counted in state district court for purposes of the six month man-

datory penalty for a fourth offense. (The court did, however, find that the defendant was a second offender as a result of the municipal court convictions and could be sentenced accordingly.)

The Task Force believes that the mere fortuity that one is convicted in municipal court rather than magistrate or district court should not affect sentencing for subsequent repeat offenses and recommends that the Legislature close this loophole.

### **32. The Task Force Supports Legislation Which Would Require That Some Repeat DWI Offenses be Treated as Fourth Degree Felonies.**

The Task Force finds inequity in the fact that some forms of unauthorized graffiti are treated as fourth degree felonies in New Mexico, yet a repeat drunk driving offense, a potentially violent crime rather than a property crime, is only a misdemeanor.

William Daumueller, Executive Director, and Raymundo Cruz, DWI Program Coordinator of Southwest Counseling Centers, Inc., which serves people with substance abuse problems in Dona

Ana and Sierra Counties, gave compelling testimony in favor of a felony offense for some multiple DWI offenders. They testified that in too many cases it takes the threat of significant jail time to make substance abusers admit that they have a problem and accept treatment. A felony offense can be the instrument to save lives by exhibiting societal "tough love," they said. In 1990, the New Mexico Coalition Against DWI and Alcohol Abuse proposed that some DWI convictions be treated as fourth degree felonies. The Task Force urges the Legislature to adopt this proposal. Several states, including neighboring Arizona, already treat certain repeat DWI offenses as felonies.

*The Task Force believes that a criminal justice system which incrementally increases the penalty for each prior conviction will curtail the contaminant, if not the disease.*

### **33. Sentences For DWI Crashes Which Result in Injury to Someone Other than the Drunk Driver Should be Enhanced by at Least 30 days in Jail.**

The Legislature recently passed a law which makes vehicular homicide or "great bodily harm" resulting from a DWI crash a third degree felony. However, if there are no deaths and the injury does not constitute "great bodily harm," the offender may receive no jail time.

The Task Force recommends that this gap be addressed with at least a 30-day enhancement where the injury meets the aggravated battery minimal standard of "painful temporary disfigurement."

### **34. The Task Force Supports Child Endangerment Legislation Which Would Give the Courts Additional Authority to Impose Stricter Penalties When a Person is Convicted of Drunk Driving with a Child in the Vehicle.**

Alcohol-related crashes outrank all other injury and disease as the leading cause of death among

teenagers in New Mexico, according to statistics from the New Mexico Department of Health.

Of course no one should choose to drive with an intoxicated driver. However, because children 16 and under cannot legally drive in New Mexico, they have no choice and are, in effect, hostages of parents who drive drunk.

Although some prosecutors are able to effectively use child abuse laws in DWI cases with minors in the vehicle, the Task Force supports specific legislation to address the crime of DWI with a minor in the vehicle.

The Task Force also heard testimony from divorced mothers who have been ordered to relinquish their children to the non-custodial parent for visitation, knowing that the non-custodial parent drives intoxicated with the child. With this in mind, the Task Force also supports legislation requiring that DWI convictions with a child in the vehicle be considered in determining "the best interest of the child" in suits affecting the parent-child relationship.

# INCREASE THE SWIFTNESS AND CERTAINTY OF PUNISHMENT

## MAKE THE LICENSE REVOCATION PROCESS SWIFT AND CERTAIN

**35. The Task Force Supports Legislation Which Would Impound for 30 Days the Vehicle of Anyone Driving While His or Her Driver's License is Revoked for a DWI Conviction or Implied Consent Act Violation, and Forfeiture of the Vehicle if the Offender is Caught Driving on a Revoked License for a Second Time.**

Driving on Revoked License	
Present System	AG Proposed System
Driving on Revoked License 1st Time <b>4 days in jail + \$300 fine</b>	Driving on Revoked License 1st Time <b>4 days in jail + \$300 fine and vehicle impoundment</b>
Driving on Revoked License 2nd or Subsequent Time <b>4 days in jail + \$300 fine</b>	Driving on Revoked License 2nd or Subsequent Time <b>4 days in jail + \$300 fine and vehicle forfeiture</b>

Between 10 and 15 persons in each of the last four years have been killed by drunk drivers driving on a revoked license, according to figures from the Traffic Safety Bureau. Local police officers across the state repeatedly told the Task Force about widespread disregard of the license revocation process and the need for stricter penalties and enforcement mechanisms. The current penalty for driving on a revoked license is four days in jail and a \$300 fine. Clearly, that is not a strong enough deterrent.

The Task Force believes that vehicles driven by someone whose license is revoked because of DWI constitute a public nuisance and impoundment and forfeiture of these vehicles are justified to protect New Mexico families. State law permits impoundment and forfeiture of other crimes. Present state law permits judges to impound cars of second-time offenders for 30 days, while a third-time offender faces a 60-day impoundment. Current state law also provides for the seizure and forfeiture of vehicles involved in hunting by spotlighting.

Proceeds from the DWI forfeitures, like those received pursuant to the spotlighting statute, would first go to any lienholders or others, such as a family member, with a financial interest. Any surplus would be deposited into the General Fund. A vehicle would not be forfeited if an owner unknowingly loaned it to a driver with a revoked license, or did not consent to the vehicle's use. The burden would be on the State to prove knowledge or consent of the owner. Seven states already provide for impoundment of a vehicle for driving on a license revoked for a DWI conviction; four states provide for vehicle confiscation under those circumstances.

While some citizens who testified before the Task Force expressed the sentiment that the sins of one family member should not be visited upon another, others argued that a strong deterrent must be in effect so that the family will take responsibility for keeping the DWI offender from drinking and driving again. Temporary impoundment or forfeiture of a vehicle is also likely to increase the extended family's authority over the offender.

The purpose of this law would not be to impound or forfeit vehicles but to deter criminal behavior. According to Bill Montoya, Director of the Game and Fish Department, the spotlighting statute has had a "tremendous deterrent effect"

and has basically eliminated the practice of spotlighting.

The City Council of Albuquerque recently unanimously passed an even tougher law patterned after a Portland, Oregon ordinance, which requires forfeiture of the vehicle of any driver who is driving with a revoked or suspended license regardless of whether it is the first time. Portland Police Sgt. Roger Hediger calls the Portland forfeiture program "very effective...we feel we're getting the more serious offenders to stop drinking and driving." Under the Albuquerque ordinance, police can seize the vehicle at the time they arrest someone for driving with a revoked or suspended license. The city, however, must obtain a District Court order for forfeiture within 30 days.

To mitigate against the harshness of temporary impoundment and forfeiture, the Legislature should also provide in the administrative license revocation process for a limited license for employment purposes for first offenders, as proposed by the Traffic Safety Bureau. Almost every state with an administrative license revocation process allows for a limited license after 30 days for first offenders. Currently DWI offenders receive a 90-day administrative license revocation on their first offense and a one-year revocation on their second and subsequent offenses. They are not eligible for a limited license for any purpose, including employment.

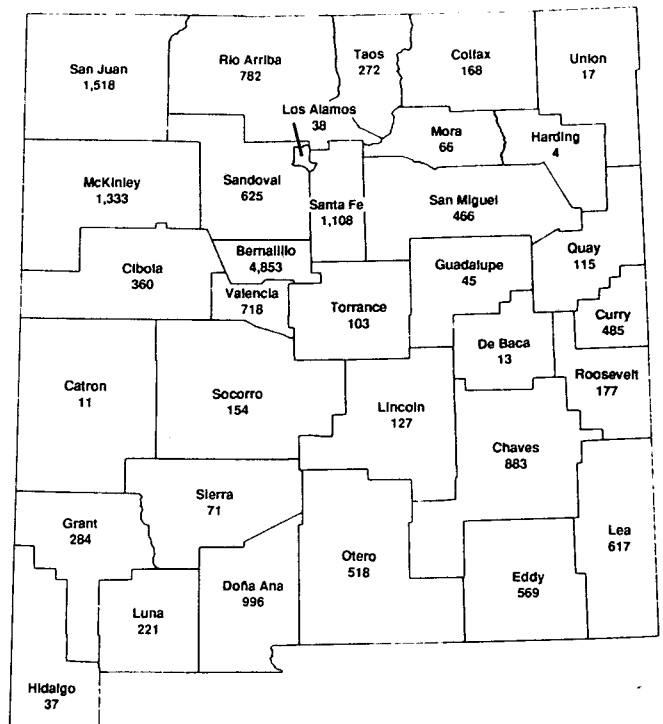
A Traffic Safety Bureau proposal would allow first and second time offenders to obtain limited licenses for work and attendance at alcohol treatment sessions but only after an initial 30 or 90 day period of revocation and only if the offender is either attending or has completed certain alcohol related programs. Failure to continue to be in compliance with the requirements would result in revocation of the limited license, plus an additional revocation period.

Linking DWI school, assessments and treatment to license revocation would likely increase compliance by the offender with DWI education and treatment, as needed. Increased compliance will result in a decrease of repeat DWI offenses.

### 36. MVD Should Permit the Use of Telephonic License Revocation Hearings.

The DWI Legal Section of MVD estimates that approximately 60 percent of license revocation appeals which are lost are due to the arresting officer's inability to attend the hearing and the case being dismissed. In addition, the Task Force learned that the travel expense of sending license revocation hearing officers around the state amounts to approximately \$80,000 per year.

**Revoked Driver's Licenses by County as of September 3, 1992**





The Task Force believes that fewer revocation cases would be dismissed and the cost of the hearings would be reduced, if MVD was to permit, by regulation, telephonic hearings and, eventually, hearings by video conferencing. In 1985, administrative law judges in Iowa were given the discretion to determine whether a hearing would be in person or telephonic. According to Larry Bryant, chief administrative law judge in Iowa, that change has saved taxpayers between \$150,000 - \$200,000 annually in travel, per diem expenses, police overtime and court costs. In addition, Iowa is now able to hold hearings more quickly. Some successful telephonic license revocation hearings have already taken place in New Mexico, by agreement of the parties, when the defendant or the defendant's lawyer was out of town on the scheduled hearing date. Other state agencies already use telephonic hearings (e.g., unemployment compensation appeals at the Department of Labor).

### **37. The State Should Charge Court Costs for MVD License Revocation Hearings.**

If a citizen contests a speeding ticket, he or she pays the court costs. However, citizens charged with DWI offenses do not pay the costs for their license revocation hearings. The taxpayer picks up the tab for the court costs and overtime paid to police officers who testify.

The Task Force proposes that a new \$50 license revocation hearing fee be imposed on those who lose their license revocation hearings. Adoption of this recommendation would also reduce the number of frivolous appeals.

*If a citizen contests a speeding ticket, he or she pays the court costs. However, citizens charged with DWI offenses do not pay the costs for their license revocation hearings.*

### **38. After Conviction for DWI or Pleading Guilty to DWI, the Judge Should Give the Offender Notice that the Offender's License Will Be Revoked.**

Currently, when one is convicted of DWI or pleads guilty to DWI in New Mexico, MVD sends notice to the offender that his license will be revoked. The New Mexico Court of Appeals, however, has held that in the instance where the offender is subsequently arrested for driving on a revoked license, the MVD notice is not proof of knowledge by the licensee that his driving privileges were revoked for purposes of proving that the offender knowingly was driving on a revoked license.

The Task Force recommends that, upon conviction of or pleading guilty to DWI, that the offender receive formal notice of license revocation by the judge. Further, the offender should be provided a form to sign indicating that he understands that his license will be revoked (DWI offenders who waive counsel must sign a similar form). Such a form should constitute proof of sufficient notice and result in a higher conviction rate for those guilty of driving on a revoked license.

### **IMPROVE RECORD KEEPING OF DWI CONVICTIONS**

### **39. All Courts with Jurisdiction Over DWI Should be Computer Automated in Order to Properly Track and Report DWI Offenses.**

Recently, the Albuquerque Tribune reported that a 32-year-old Albuquerque man had been arrested for the 25th time in the last 14 years. In fact, the number could be as high as 41 arrests, but the records are contradictory. "Police reports contradict Motor Vehicle Division records which

# One Repeat DWI Offender's History

**Aug. 14, 1978:** First DWI arrest. Sent to DWI school and fined \$20.

**Oct. 25, 1978:** DWI arrest. Fined \$250.

**Oct. 2, 1980:** DWI arrest. Fails to show up for numerous court appearances. Finally sentenced March 12, 1981, to 215 days in jail; all but 15 days are suspended on condition of two years' supervised probation. Violates that probation. Warrant issued for arrest.

**March 5, 1981:** DWI arrest. Disposition of case unavailable.

**March 14, 1981:** DWI arrest. Fined \$1000 and sentenced to 364 days in jail. Serves only 8 days; remainder of sentence suspended. Fails to pay fine. Warrant issued because of unpaid fine.

**June 5, 1982:** DWI arrest. Jury trial set. Fails to appear. Warrant issued.

**Aug. 11, 1982:** Court lumps together Oct. 25, March 14 and June 5 cases. Receives two years' supervised probation.

**Oct. 24, 1982:** DWI arrest. Pleads guilty. Fails to appear for series of court dates for sentencing. Case eventually dismissed because arresting officer no longer worked for APD.

**June 12, 1983:** DWI arrest. Disposition unavailable.

**Nov. 7, 1983:** DWI arrest. Has 0.26 blood-alcohol level. Legal limit is 0.10. Fails to appear in court. Warrant issued.

**Dec. 17, 1983:** DWI arrest.

**Dec. 23, 1983:** DWI arrest.

**March 1, 1984:** Based on previous arrests, sentenced to 364 days in City-County Jail.

**Nov. 11, 1984:** Granted early release after serving eight months, on condition he enter alcohol-treatment facility.

**Jan. 1, 1985:** DWI arrest after causing accident in which others are injured. Fails to appear for numerous hearings. Warrant issued. Case is not resolved until 1987, when his father pays the victims \$1000 and he serves 99 days in jail.

**March 8, 1985:** DWI arrest. Has 0.22 blood-alcohol level.

**May 24, 1985:** Picked up by bail bonding company for failure to appear on the Jan. 1 charges. Released into the custody of his father.

**June 4, 1985:** Indicted on charges of armed robbery.

**Oct. 24, 1985:** DWI arrest. Has 0.19 blood-alcohol level.

**Jan. 7, 1986:** Pleads guilty to armed robbery. Sentenced to 3 years: 2 years suspended, 364 days in jail instead of prison, two years probation and alcohol treatment.

**April 15, 1986:** While in jail pleads no contest to Oct. 24 DWI arrest. Given 364 days to be served concurrently with robbery sentence; in effect no time served for DWI.

**Dec. 10, 1986:** Transferred to Torrance County Jail after causing disturbance in Albuquerque jail. Within a month, is released and begins two-year probation, which includes alcohol treatment.

**Jan. 17, 1987:** DWI arrest. Has 0.23 blood-alcohol level.

**Sept. 5, 1987:** DWI arrest. Has 0.26 blood-alcohol level.

**Nov. 14, 1987:** DWI arrest. Has 0.25 blood-alcohol level.

**Nov. 17, 1987:** DWI arrest.

**Nov. 29, 1987:** DWI arrest.

**Dec. 3, 1987:** Probation revoked because of DWI arrests. Pleads guilty to the DWI charges. Ordered to state prison to serve remainder of armed robbery sentence. DWI sentences run concurrently with prison term.

**Jan. 14, 1988:** Enters prison.

**Sept. 6, 1988:** Paroled nine months later.

**Aug. 27, 1988:** DWI arrest. Parole revoked because of Aug. 27 DWI arrest. Pleads guilty to DWI. Sentence runs concurrently with prison term.

**Dec. 12, 1989:** Released from prison.

**May 7, 1990:** DWI arrest after borrowing car from neighbor.

**May 10, 1990:** Pleads guilty. Receives 364-day sentence in jail.

**July 5, 1990:** Allowed work-release status.

**July 20, 1990:** Fails to return to jail.

**Feb. 13, 1991:** Arrested in Fresno, California, on escape charges. Returned to Albuquerque, where he pays bail and is released.

**May 9, 1992:** DWI arrest. Has 0.21 blood-alcohol level. Taken to hospital for treatment of festering hand injury. Escapes. Captured and returned to hospital.

**May 11, 1992:** Escapes from hospital.

**May 13, 1992:** DWI arrest.

**Aug. 8, 1992:** DWI arrest after car crashes into a wall. Has 0.24 blood-alcohol level. Not seen since.

contradict Metro Court records which contradict probation records," the Tribune article stated.

The Albuquerque Journal reported even more recently that the State "has no idea what's happened to more than 20,000 drunken driving cases filed in the past six years." In addition, prosecutors told the Task Force that they are often unaware of previous DWI convictions because of inadequate access to DWI records. Inaccessible and missing DWI records lead to lighter sentences and sometimes even dismissal of DWI cases.

In addition to improving accuracy and accessibility, a central computer link could result in greater efficiencies and significant savings by the agencies involved. A 1988 study of the paper flow related to DWI by the Division of Government Research at the University of New Mexico found that MVD handles nearly 500,000 sheets of paper in processing the 22,000 DWI citation/affidavits each year. A central computer link would reduce the paper flow and the error rate in data entry and would save personnel resources.

The Task Force believes that state government, law enforcement and the courts need to work more closely together especially in the areas of drivers' licenses, vehicle registration and DWI record keeping. A central computer link would help achieve that objective by exchanging DWI records and information between the courts, MVD, the Traffic Safety Bureau, state and local police, prosecutors, the Public Defender's Office and probation officers.

#### 40. The Judiciary and MVD Should Work Together to Improve the Accurate Reporting of DWI Convictions.

It was recently revealed that a Questa municipal judge did not report the outcome of drunken driving cases to MVD for eight years. State law requires that convictions under the Motor Vehicle Code be reported to MVD by judges "ten days after disposition of every charge." According to the same statute, "failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal." Although records of prior convictions are needed by prosecutors to properly charge and prosecute repeat offenses, approximately 15 percent of all DWI convictions in New Mexico are never reported to MVD, according to statistics from the Traffic Safety Bureau. MVD's license revocation system also is predicated on receiving DWI convictions from judges.

Part of this is attributable to ambiguity in the statute. Some judges interpret "ten days after disposition" to mean ten days after the sentencing or ten days after the offender completes treatment, pays the fine or finishes the rest of the sentence. This accounts for some of the convictions which are not reported. Some judges are waiting to determine if the DWI offender successfully completes sentencing before reporting the conviction. This often takes months. A more accurate interpretation, in the view of the Task Force and the interpretation followed by most judges, is that "ten days after disposition" means ten days after the defendant enters a plea or is found guilty.

The law should be clarified to eliminate this ambiguity by requiring a report of the outcome to be submitted when the defendant enters a plea or is found guilty and a second report at the completion of the sentence.

Court automation is also essential to improving tracking and reporting of DWI convictions. The cumbersome manual reporting method used by most New Mexico courts for reporting DWI



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convictions and the antiquated inventory system used by MVD appear to be the single largest contributors to the problems in reporting and tracking of DWI convictions.

The Task Force was disturbed by testimony that several New Mexico judges, as part of plea bargain agreements, have specifically agreed not to report the defendant's guilt. In addition to violating state law, this practice stifles MVD's ability to revoke licenses of those convicted of DWI and misleads prosecutors who rely on MVD records to determine if an offender is a multiple offender who should be charged as such. Court automation will improve tracking of DWI convictions and consequently make this practice more difficult.

#### **41. MVD Should Create a New, Comprehensive Standardized DWI Abstract of Record Form and Include All the Information in Its Computerized Data Base.**

Judges report DWI convictions to MVD through what are called "abstracts," which are essentially abbreviated reports of the conviction. Several prosecutors testifying at DWI prevention town hall meetings suggested that MVD adopt a more comprehensive abstract of record form for courts to report DWI convictions to MVD. The abstract should be made easily accessible to police, prosecutors, judges and state government officials through a central computer link, as described in the prior recommendation.

The form and database should include, in addition to the other information presently on the form, the following:

- Whether the driver's license has been revoked and the dates of such revocation
- Probation information, such as whether the defendant attended DWI school and whether the defendant received alcohol/drug screening and treatment

- Data from the National Driver Register concerning the defendant's DWI record in other states
- Related offenses for which the defendant was convicted
- Whether the \$35 crime lab testing fee was assessed
- Whether the \$75 Community DWI Prevention Fund fee was assessed

Some information, such as whether the defendant was represented by counsel or waived his counsel, is on the current abstract of record form but is not now routinely entered into MVD's computer data base. The Task Force recommends that such information be entered into the computer data base. Whether the defendant was represented by counsel or waived his right to counsel, for example, is necessary for prosecutors to prove that prior DWI convictions were legally sound and can be counted for sentencing purposes.

#### **42. The MVD Records of Prior DWI Convictions Should be Made Admissible as Evidence in Court Proceedings.**

Presently, MVD DWI records are not considered admissible evidence as proof of prior convictions by some New Mexico judges. As a consequence, many multiple DWI offenders are sentenced by the courts as if they were first-time offenders and, therefore, face fewer penalties than a repeat offender. Obtaining the actual court documents which demonstrate prior convictions would require hours of searching through warehouse files, which is impractical given the limited resources in prosecutor offices and the volume of DWI cases. Moreover, some Magistrate Courts inexplicably destroy DWI records after five years.

It appears to the Task Force, however, that certified MVD DWI records, which are based upon information provided by judges, are "public records" within the meaning of New Mexico Rule of Evidence 11-1005 and are, therefore, admissible as evidence of prior convictions. See also Fitzgerald v. Blueher Lumber Company, (1971), certified photostatic copy of original mechanics' lien held admissible. According to statute, MVD may copy or abstract records of the division and certified copies of official division records are deemed valid and given the same weight and consideration as original records.

### **43. The State and the Tribes Should Exchange Information About DWI Convictions in Their Respective Courts.**

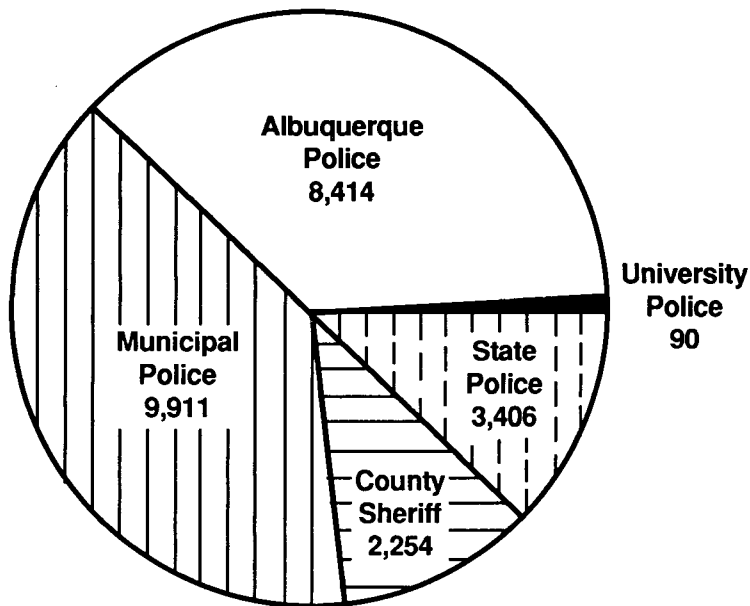
Tribal courts do not currently send records of convictions to MVD. Likewise, MVD does not send records of DWI convictions in state courts to the tribes.

The Task Force believes that the tribes and the state could mutually benefit from sharing such information and recommends that the Attorney General, MVD, Traffic Safety Bureau and representatives of the New Mexico Legislature explore with the tribes a joint powers agreement or legislation to accomplish this objective. Parameters should include respect for tribal sovereignty and the necessity to abide by constitutional protections (e.g., uncounseled tribal court convictions may not be used to enhance penalties. State v. Watchman (1991)).

## RECOMMENDATIONS FOR POLICE

### New Mexico DWI Arrests by Police Agency, 1990

Source: DWI Citation Tracking File



#### 44. The Task Force Supports Legislation Which Would Repeal the Notary Requirement by the Arresting Officer.

Currently, the affidavit portion of the DWI traffic citation must be sworn to by the arresting officer in front of a notary public. The majority of DWI arrests, however, are made on weekends or during evening or early morning hours when there may not be a notary available. This is especially true of police officers in rural areas, as the Task Force learned in Raton and elsewhere. The notary provision is part of the reason that police officers explained to the Task Force that the paperwork on a DWI offense generally takes twice as long to complete as the paper work on a homicide. Even criminal complaints no longer require the signature of a notary. Moreover, all officers take an oath to tell the truth when they are sworn in as officers.

The Task Force believes that a statement signed by the arresting officer, under penalty of perjury, is sufficient and recommends such legislation be enacted.

#### 45. City, Sheriff, Tribal and State Police Vehicles Used for Apprehending DWI Offenders Should, Whenever Possible, be Equipped with Video Cameras Mounted on Their Dashboards.

With video cameras, if an officer suspects a driver may be impaired, the officer uses the camera to record the suspect's driving. The camera also records the suspect as the suspect is put through a series of field sobriety tests.

Video cameras, in effect, put the judge and jury in the passenger side of the police vehicle and permit them to see what the officer witnesses. As a consequence, defendants are more likely to plead guilty. This means higher conviction rates, less time in court and more time out on the streets for the police.

An insurance company and MADD recently launched a program, entitled "Eye on DWI" in 1989. Over the course of the program they have donated 1,361 cameras to 231 law enforcement agencies across the nation, who report 95 percent to 100 percent conviction rates.

#### 46. The Attorney General Should Host an Annual Training Seminar for Police Presenting New Techniques in Prosecution of DWI Cases.

The training that police need to prepare DWI cases for prosecution and, in some instances, to prosecute cases themselves is growing rapidly.

District attorneys, for example, have placed greater emphasis on the use of tests for defendants suspected of driving under the influence of drugs. Most police officers, however, are unaware of the procedures to insure the proper method of obtaining this evidence. Another potential subject is the proper use of video cameras to obtain evidence in the most effective way. A new handbook for police on how to prosecute

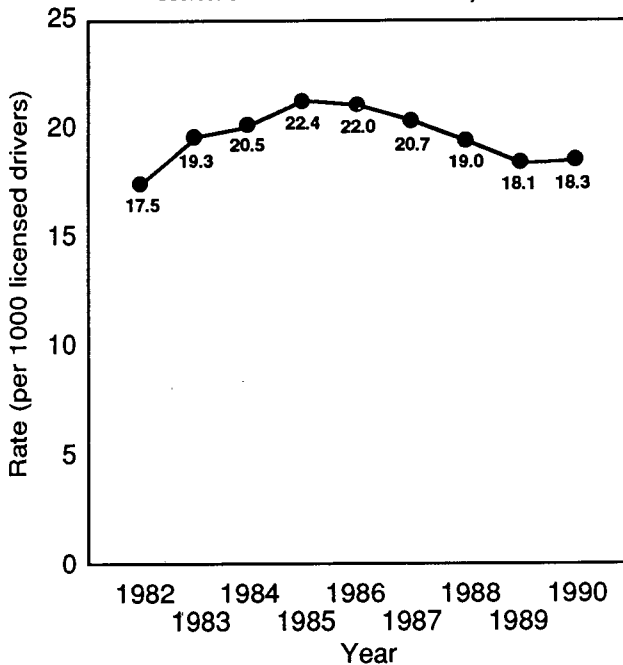
DWI crimes, "Translating DWI Arrests Into Courtroom Convictions," published by the Institute of Public Law, is now available from the Traffic Safety Bureau.

The Task Force recommends an annual training seminar for police officers on the prosecution of DWI cases, which the Task Force believes would result in higher DWI conviction rates.

## RECOMMENDATIONS FOR PROSECUTORS

### New Mexico Alcohol-Involved DWI Conviction Rates

Source: Crash Files and Driver History File



#### 47. Prosecutors Should Consider Taking Hard Core DWI Offenders to District Court.

The maximum jail time a municipal judge can sentence is 179 days while those convicted by a magistrate judge can be sentenced up to 364 days. A district judge, however, can run consecutive sentences for misdemeanor charges resulting in sentences exceeding a year. In district court, judges can also impose prison rather than jail sentences.

The DWI task force recommends that district attorneys, where caseload dockets permit, take DWI offenders to district court when it is a fourth or subsequent offense. The Task Force understands that the Bernalillo County and Santa Fe County district attorney's offices, among others, have already adopted similar strategies.

#### 48. Assistant District Attorneys and Assistant City Attorneys Should Represent the State or the City on First Offenses Where the Defendant is Represented by a Lawyer and on All Second and Subsequent Offenses for DWI.

The Task Force learned that in some small municipalities and rural areas, police prosecute DWI defendants who are represented by defense lawyers, too often resulting in loss of the case. Most district attorneys already have a policy to assign prosecutors to DWI cases in which defendants are represented by lawyers. The city attorneys should adopt a similar policy, as resources permit.

The Task Force also believes that, in trials involving repeat offenders who pose the greatest threat to society, the State should always be represented by prosecutors, rather than police officers.

#### 49. The Attorney General, and the District Attorneys Association Should Host An Annual Continuing Legal Education Seminar for DWI Prosecutors and City Attorneys Which Provides an Update of DWI Law and Addresses Various DWI Defenses Raised in Court.

DWI is the most commonly tried case in the metropolitan, municipal and magistrate courts of New Mexico. DWI cases are often prosecuted by prosecutors with little or no experience. These cases, however, sometimes involve complex scientific, legal and procedural questions.

The Task Force recommends that the Attorney General and the District Attorneys Association begin hosting an annual legal education seminar for DWI prosecutors and city attorneys which provides an update of DWI law and addresses various DWI defenses.

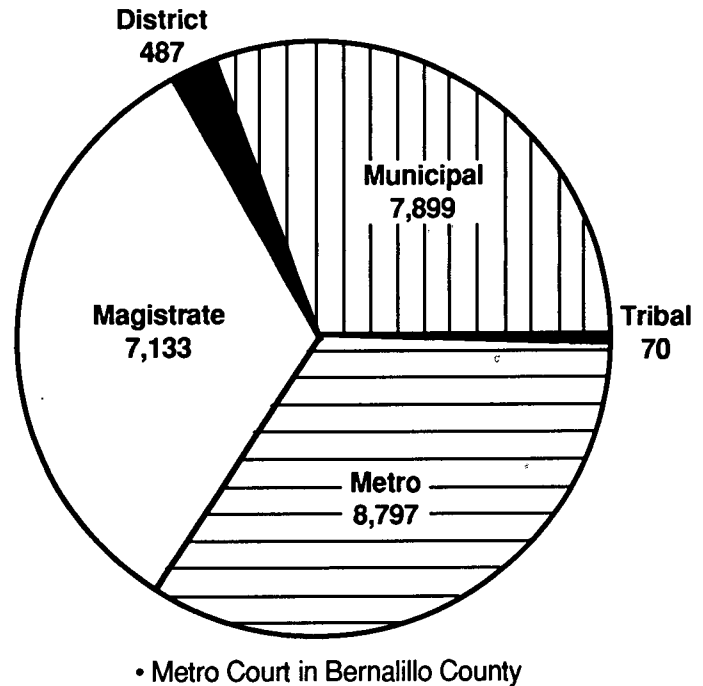
**50. Federal Grant Resources Should be Made Available to the Institute of Public Law to Update its Prosecutor Manual for DWI Cases.**

The Prosecutors Manual for DWI Cases, published by the Public Law Institute in 1984, provides excellent guidance for prosecutors on the complicated legal issues which arise in DWI cases. Unfortunately, this manual has not been updated since 1984 and the law has changed considerably since then.

The Task Force is working through the Attorney General's Office and with the District Attorneys Association and the Traffic Safety Bureau to make available federal grant resources to the Institute of Public Law to revise the manual and distribute it to every district attorney and city attorney's office in the state. The manual should be supplemented with new case law and statutes every two years with the expense shared by the Traffic Safety Bureau and subscribers.

**RECOMMENDATIONS FOR JUDGES AND SENTENCING**

**New Mexico DWI Arrests by Court Type, 1990**  
Source: DWI Citation Tracking File



**51. The Task Force Supports Making Metro Court a Court of Record.**

Under current law, there is no record of proceedings in Bernalillo County's Metro Court. As a consequence, those who appeal from Metro Court receive a new trial at the district court level whether or not there are grounds to support an appeal. Thus, the appeals process merely becomes a free second chance at a not-guilty verdict. Approximately 90 percent of new trials from metro court heard by district court judges involve DWI crimes. Normally, appellate judges receive a transcript of the trial and the opposing attorneys' briefs with appeals from a court of record. With tape recorded records from metro court, the district court judge could consider more narrow legal issues, such as the admissibility of evidence, in determining whether to overturn or uphold a metro court verdict. It would also discourage frivolous appeals.



According to the testimony of Second Judicial District Court Chief Judge John Brennan, the cost to tape record metro court's DWI trials would amount to less than \$80,000 a year. This sum, however, would be more than outweighed by the time and money saved in terms of court personnel, witnesses, prosecutors and public defenders. Such a reform would also lessen the backlog of cases in district court.

The Task Force also recommends that full-time municipal courts which are staffed by judges required by ordinance to be members of the New Mexico bar in good standing (*i.e.*, at present, Las Cruces) should become courts of record.

## **52. Judges in New Mexico Should Consider Breath Alcohol Ignition Interlock Devices as a Condition of Probation.**

Breath alcohol ignition interlock devices make it impossible to start your car with alcohol on your breath. It has been likened to a mechanical probation officer.

Nationally, these devices have been used in sentencing on approximately 10,000 drunk drivers. According to an AAA Foundation for Traffic Safety study, entitled "An Assessment of the Application of Interlock Systems to Problems of the DWI Driver," recidivism rates are reported to be significantly lower for those who are ordered to use the device than for those who have only had their licenses suspended. According to the Traffic Safety Bureau, California reports an approximate 25 percent decline of recidivism with it. The only drawback is the cost, which is approximately \$600 per unit.

## **53. Judges Should Make Wider Use of Victim Impact Panels Like Those Developed by MADD.**

Victim Impact Panels, pioneered by Mothers Against Drunk Driving, involve introducing DWI offenders to victims of DWI crashes who tell the offenders how their lives have been affected by drunk drivers.

The Probation and Parole Office in Española allows youthful DWI offenders sentenced to community service to complete their service under the supervision of a registered Emergency Medical Technician. The EMT educates them on drug abuse, DWI and seat belt usage. Similarly, on weekend evenings, emergency room doctors and nurses in some Albuquerque hospitals permit youth to observe as they tend to victims of DWI crashes.

The Task Force also recommends that judges attend at least one panel themselves in order to more fully understand the victim's perspective. Bernalillo County District Attorney Bob Schwartz requires new DWI prosecutors to attend victim impact panels at least once for this reason.

The Task Force believes that the most successful panels are those which are culturally sensitive.

## **54. The Task Force Urges the New Judicial Training Center at UNM Law School to Devote Part of Its Curriculum to DWI Laws.**

Until the recent establishment of the Judicial Training Center at UNM Law School, new municipal, magistrate and district court judges received very little training about DWI cases. This type of training is particularly critical for municipal and magistrate court judges who handle the bulk of DWI cases but are not required to be lawyers, except in Albuquerque and Las Cruces. Sitting judges could also benefit from an annual continuing legal education course on DWI law developments.

The Task Force recommends the development of courses in effective DWI case management, adjudication and sentencing options as part of the long term curriculum currently being prepared by the new Judicial Training Center.

## New Mexico Judges Study: Sentencing

How did judges handle the nearly 25,000 arrests for DWI in New Mexico in 1990? A recent study by the Division of Government Research at the University of New Mexico analyzed almost 20,000 citations issued in 1990 to determine how convicted offenders are being treated by New Mexico judges.

### How DWI Offenders Were Treated In 1990

COURT	CONV. RATES <sup>1</sup>	DISMISSED <sup>2</sup>	FINES <sup>3</sup>	JAIL <sup>4</sup>	SUSP. SENT. <sup>5</sup>
Magistrate	82%	17%	70%	61%	38%
Metro	67%	32%	22%	34%	17%
Municipal	90%	10%	81%	51%	31%

1. These rates include drivers sentenced to DWI school.
2. One metro judge dismissed 53%, one magistrate dismissed 52%.
3. Percentage of cases where some fine was imposed.
4. One magistrate ordered incarceration in 98% of cases.
5. Includes suspension of any portion of either jail or fines.

**FOOTNOTE:**

1. The study figures were sorted by individual judge, from data entered in the Citation Tracking system as of October, 1991. The report provides disposition information for all judges responsible for at least one hundred 1990 citations: 14 Metropolitan court judges, 17 magistrates, and 19 municipal judges. Only records which reported a disposition to Citation Tracking were included in the data.

## 55. Magistrate Court Rules Should be Amended to Permit Extensions of the Six-Month Rule When DWI Trials are Delayed Because of Factors Outside the Control of the Prosecution.

Misdemeanor cases, such as DWI, are dismissed if they do not go to trial within six months in the state's magistrate courts and metro court in Albuquerque. The purpose of the rule is to safeguard the defendant's rights to a speedy trial and due process.

In metro court hundreds of DWI cases are dismissed because of the expiration of the Six-Month Rule. Because of the large volume of cases, trials generally are scheduled late in the six-month period and cannot be rescheduled

within the six month period if the prosecution is not ready—for example, because a critical state witness is missing. (The Six-Month Rule is tolled if the case is delayed by the defendant.) However, on many occasions, the prosecution is ready and able to put on its case but a factor outside of the prosecution's control makes it impossible to proceed (e.g., the judge is ill) and the case is dismissed because it cannot be rescheduled within the six-month period.

The Task Force favors amending the Six-Month Rule to permit extensions under the very narrow circumstances where the prosecutor is ready for trial but it cannot be held because of factors outside the control of the prosecution.

## INCREASE INTENSIVE SUPERVISION PROBATION

### 56. Judges Should Use Intensive Supervision Probation with Repeat DWI Offenders Whenever Possible.

Judges told the Task Force that they find that normal probation generally is ineffective with repeat DWI offenders who need structured supervision combined with treatment.

The Task Force recommends Intensive Supervision Probation ("ISP") for repeat DWI offenders. The theory behind ISP is that drug and alcohol abuse requires a special type of probationary treatment as insurance against recidivism. Those who are eligible for ISP could receive deferred or suspended sentences or probation after serving the mandatory minimum sentences, as recommended earlier. Violations of ISP would result in additional incarceration.

ISP participants would attend weekly group therapy sessions, pay restitution to their victims or perform community service and either work full-time or attend schools for vocational programs. Participants would receive frequent home and employment contacts by their probation

officer. Participants would also agree to submit to drug and alcohol urinalysis testing by their probation officers, upon demand.

ISP has been used recently on an experimental basis with DWI offenders in Taos and other communities. According to judges familiar with it, the program saves taxpayer money, not just in decreased jail costs and lower recidivism, but also in the longer-term costs of drug and alcohol addiction. ISP's greatest drawback, however, is its salary costs. Generally, probation officers

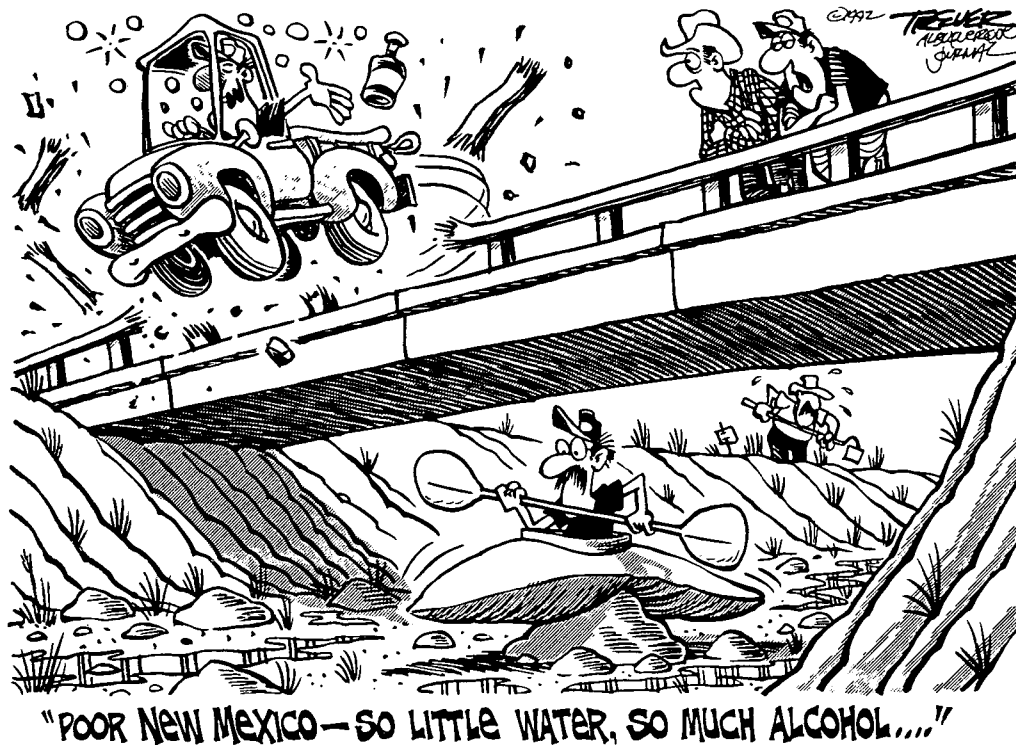
handle more than 60 clients. In the ISP program, probation officers can only handle approximately fifteen to twenty clients. However, with electronic monitoring devices, intensive supervision probation officers can handle thirty clients.

Because of its cost-effectiveness and low recidivism rates, the Task Force recommends that New Mexico counties consider establishing ISP programs for repeat DWI offenders - that is, hiring ISP probation officers. This approach may sometimes be more cost effective than adding jail cells.

## PART THREE: TREATMENT

Those people who can neither be prevented nor deterred from impaired driving tend to have serious substance abuse problems. They are also the most likely candidates to become repeat offenders, if they are not already. Screening and treatment for those offenders, however, is sporadic throughout much of New Mexico. The Task Force believes that a comprehensive substance abuse screening and treatment program, as recommended below, needs to be an essential component, along with prevention and deterrence, of any comprehensive effort to fight DWI.

The Task Force believes that better and more widely available screening and treatment will not only reduce the incidence of DWI in New Mexico but will also reduce the incidence of Fetal Alcohol Syndrome, which is the leading cause of birth defects in the state, as well as reduce the incidence of other crimes related to substance abuse. For example, alcohol abuse is estimated to be involved in 80 percent of homicides and domestic violence, 70 percent of serious assaults and 50 percent of forcible rapes and other crimes, according to Jill Anne Yeagley, Executive Director of the National Council on Alcoholism and Drug Abuse in Albuquerque.



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# ESTABLISH MANDATORY SUBSTANCE ABUSE SCREENING AND TREATMENT

## **57. There Should be Mandatory Alcohol and Drug Screening for Everyone Convicted of DWI and Treatment, Where Appropriate.**

Under current law, alcohol abuse screening and treatment are purely discretionary. Only a few of New Mexico's 33 counties operate a formal, organized systematic screening program. Consequently, whether or not a DWI offender receives screening and treatment in New Mexico, is too often a matter of chance rather than part of a comprehensive statewide strategy.

The Task Force believes that one of the most effective ways to prevent repeat DWI offenses is by detecting drinking and drug problems earlier and treating them immediately. At least 24 states now mandate that all convicted drunk drivers participate in alcohol and drug screening and, where appropriate, be referred to community-based treatment programs as a condition of probation. The Task Force believes that it is time that New Mexico adopt the same approach.

## **58. Within the Mandatory Screening Process, Assessment Criteria Should be Developed to Identify Persons with Drug Problems Other Than Alcohol.**

Currently, the few existing screening programs operating in the State do not necessarily include drug problems in their process.

The Task Force endorses the recommendation of NHTSA, made in its 1991 Impaired Driving Assessment of New Mexico, to develop drug screening for DWI offenders. New assessment

tests have been developed recently which can accurately, efficiently and inexpensively measure drug problems.

## **59. The State Should Construct and Operate Regional Alcohol Incarceration/Treatment Facilities for Noncompliant First Offenders and Subsequent DWI Offenders in Need of Intensive In-Patient Treatment and Rehabilitation.**

There is only one public in-patient treatment facility in New Mexico available to DWI offenders in need of intensive in-patient alcohol treatment. It is licensed for only 34 beds. Several treatment counselors expressed frustration to the Task Force that they are often forced to send DWI offenders in need of in-patient treatment to local facilities that only provide out-patient treatment. Almost all second and subsequent DWI offenders need intensive in-patient treatment.

The Task Force recommends that the State use revenues from the Liquor Excise Tax to attract local and federal matching funds to build and operate regional in-patient incarceration/treatment facilities in Albuquerque, Farmington, Las Cruces and Santa Fe for DWI offenders who do not comply with court ordered screening and treatment. Treatment would be provided in each facility by a qualified provider in the community after a bid process. A sliding scale fee would be paid by each of the patients so that the facilities would be as financially self-sufficient as possible.

A program in Prince Georges County, Maryland reports a 90 percent success rate with a dormitory style, minimum security facility which

***Whether or not a DWI offender receives screening and treatment in New Mexico, is too often a matter of chance rather than part of a comprehensive statewide strategy***

combines treatment with incarceration for DWI offenders. The Maryland program incorporates a work release program so that offenders do not lose their jobs. Those who are not employed are required to work on community service projects. Thus, part of the costs of operating the facility can be paid by the offenders who continue to work.

The Task Force applauds the work of a local task force in Farmington, led by District Court Judge Paul Onuska, that has been diligently working to construct and operate a 100 bed facility. The Task Force pledges its support to this project which could become a model pilot project for the rest of the state.

**Contributing Factors in New Mexico Fatal Crashes, 1990**

Source: Crash File

Contributing Factor	Count	%	Percent of Involvements		
Alcohol Involved	278	39.9			
Excessive Speed	171	24.6			
Other	82	11.8			
Driver Inattention	72	10.8			
Drove Left of Center	68	9.8			
Other Improper Driving	58	8.3			
Failure to Yield	33	4.7			
Disregard Traffic Control	21	3.0			
Improper Overtaking	12	1.7			
Improper Turn	10	1.4			
Follow Too Close	7	1.0			
Mechanical Defects	4	0.6			
<b>TOTAL</b>	<b>696</b>		<b>10%</b>	<b>20%</b>	<b>30%</b>

• Percentages do not sum to 100% because a given vehicle may be affected by more than one factor.

# INSURE QUALITY SCREENING AND TREATMENT

## **60. The Department of Health Should Annually Evaluate Alcohol and Drug Screening Treatment Providers in order to Improve Quality and Consistency.**

Currently, there are no annual evaluations of state supported screening and treatment services. As a consequence, judges are without the information they need to decide which screening programs to use for DWI offenders who may have substance abuse problems. Similarly, screening programs do not have the information they need to determine the treatment providers to whom they should refer DWI offenders who test positively for substance abuse problems.

The purpose of conducting annual evaluations would be to improve program quality and consistency. It would also provide judges and professionals the information they need to make proper referrals. Finally, it would make certain that the state is obtaining maximum benefit from those resources devoted to substance abuse screening and treatment.

The Task Force understands that most other states require such evaluation and urges that culturally sensitive evaluations of screening and treatment programs be conducted.

## **61. The Task Force Endorses Federal Legislation to Include Alcoholism as One of the Diseases Covered Under the Various Universal Health Coverage Proposals Under Consideration by Congress.**

Because New Mexico has one of the highest rates for untreated and undiagnosed alcoholism, the Task Force urges New Mexico's congressional delegation to include alcoholism as one of the diseases covered under the various universal health care proposals that the new Congress will be considering.

## **62. The Distribution of the Proceeds of the Liquor Excise Tax Should be Increased from 52 Percent of Receipts to the Community Alcoholism Treatment and Detoxification Fund to 100 Percent of Receipts.**

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*The Task Force recommends that 100 percent of the receipts from the Liquor Excise Tax be channeled back into prevention and treatment*

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The Liquor Excise Tax imposes a \$1.04 per liter tax on spirits, a \$.25 per liter tax on wine and \$.18 per gallon tax on beer wholesalers or distributors. Currently, 52 percent of these revenues are deposited into the Community Alcoholism Treatment and Detoxification Fund and the remaining 48 percent of receipts, approximately \$9 million dollars, is deposited into the General Fund.

The Task Force recommends that 100 percent of the receipts from the Liquor Excise Tax be channeled back into prevention and treatment. Further, the fund should be renamed "The Community Substance Abuse Screening, Treatment and DWI Prevention Fund." With the additional \$9 million dollars the Fund could be expanded so that it would include:

- Substance abuse screening of every convicted DWI offender who cannot otherwise afford it;

- Out-patient counseling and treatment services for every convicted DWI offender who needs it and cannot otherwise afford it;
- In-patient counseling and treatment services for every convicted DWI offender who needs it and cannot otherwise afford it. Initially, this part of the fund would be used to attract matching local and federal funds to construct incarceration/treatment regional facilities in Albuquerque, Farmington, Las Cruces and Santa Fe.
- Community based prevention programs for youth; and
- Detoxification Programs.

Such legislation would not involve a tax increase but would simply convert existing tax revenues of approximately \$9 million dollars to different purposes. The Liquor Excise Tax would become, in effect, a user fee for substance abuse screening, treatment and prevention.

  
*Another method of generating revenues to pay for treatment and prevention is the local option excise tax.*  


Another method of generating revenues to pay for treatment and prevention is the local option excise tax. Under this method the Legislature authorizes cities and counties to hold local elections and allow their citizens the option to impose additional alcohol taxes on themselves. Currently, no city or county, except McKinley County, has the authority to do so. McKinley County voters imposed a five percent local option tax on alcohol on themselves in 1991 which has generated more than \$600,000 annually for local treatment and prevention. If every county in New Mexico imposed a five percent local option tax on alcohol, it would generate more than \$16 million dollars annually.

The New Mexico Association of Counties, the New Mexico Municipal League and the New Mexico Alcohol Issues Consortium, among others, all support local option legislation.

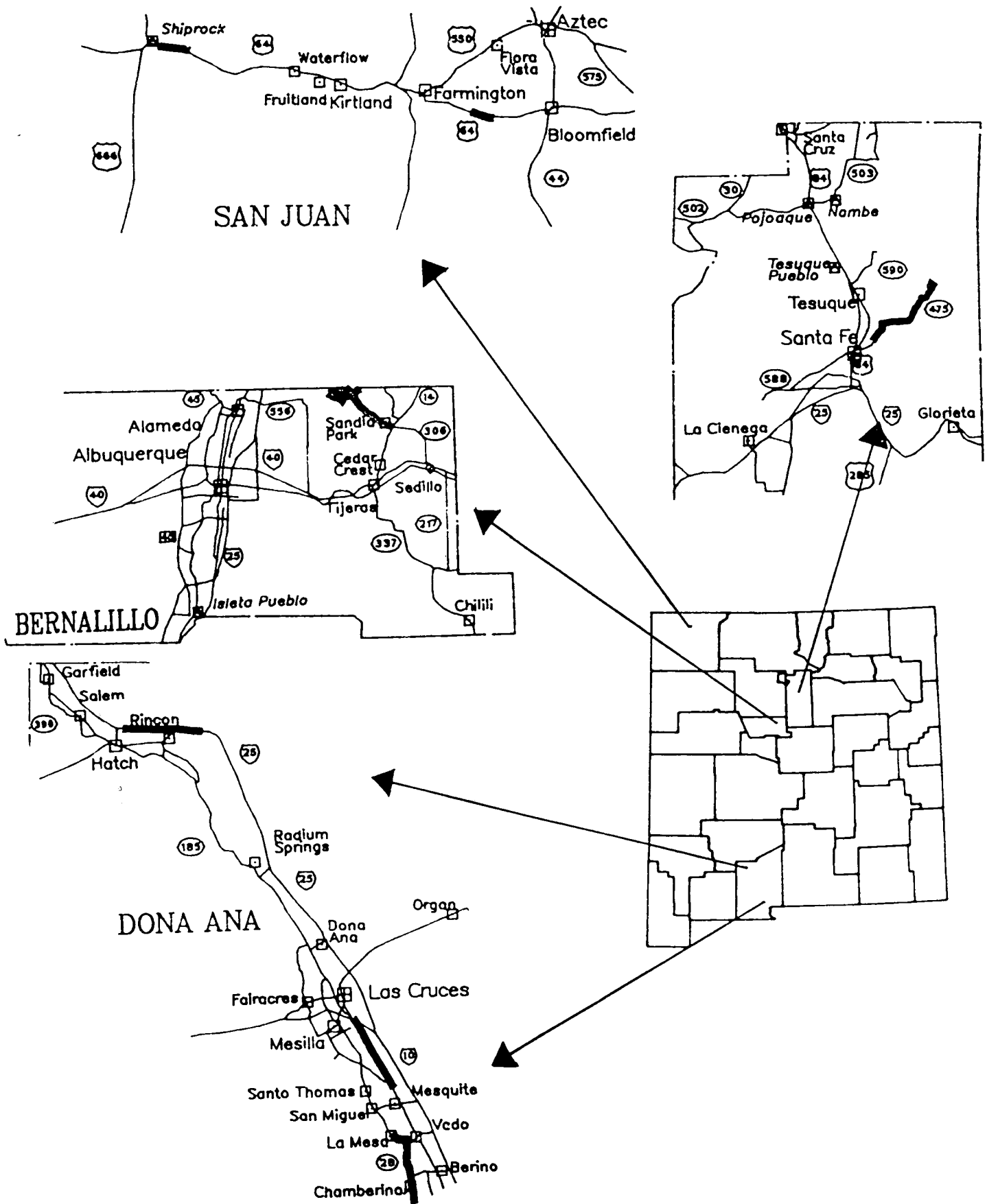


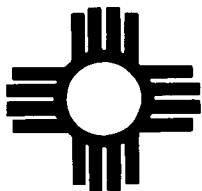
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# New Mexico's Highest Crash Rate Highway Segments, 1991

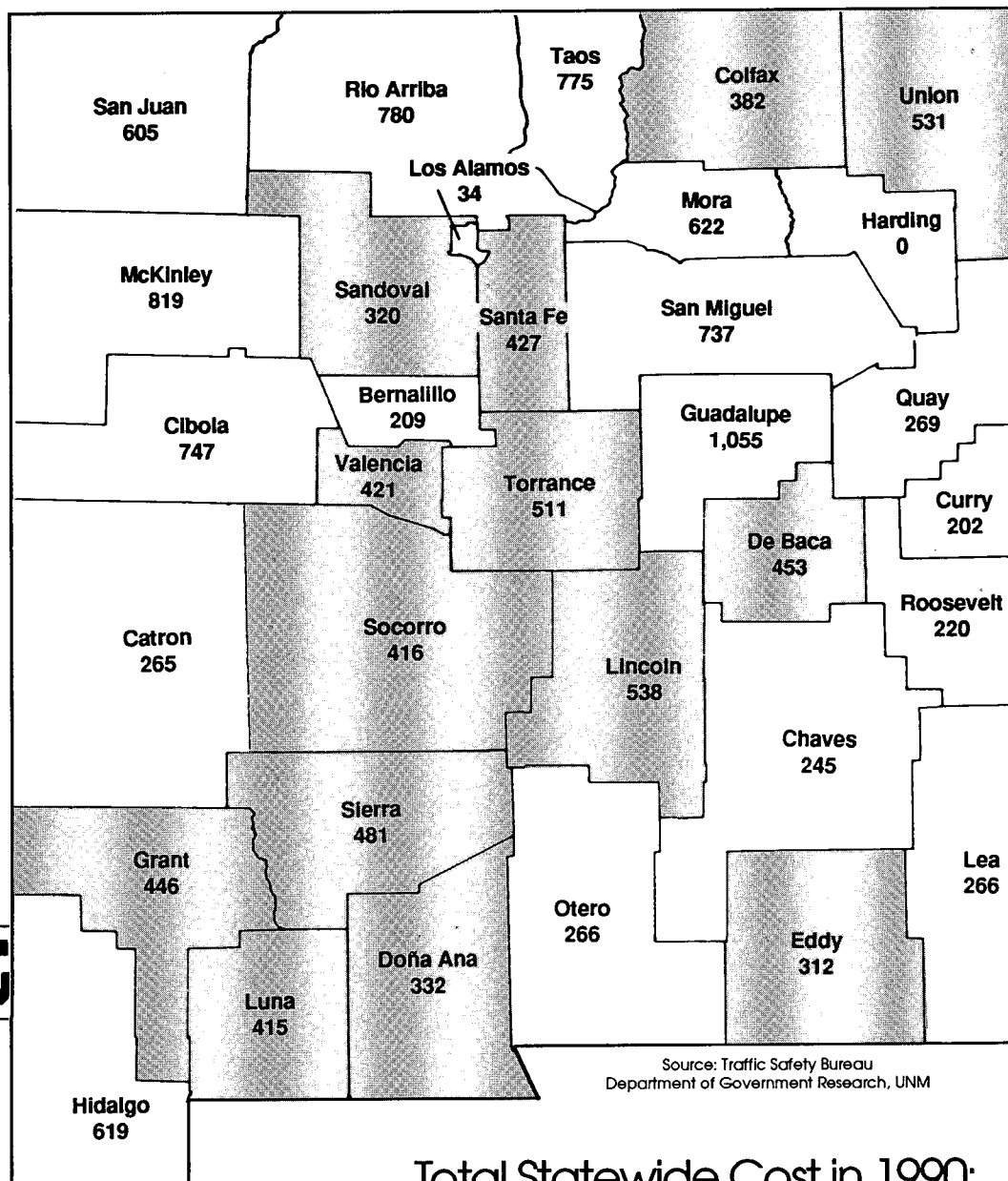




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# Per Capita Costs of New Mexico Alcohol-Involved Crashes by County, 1990

□ Up to \$300   □ \$301 - \$600   □ More than \$600



Source: Traffic Safety Bureau  
 Department of Government Research, UNM

Total Statewide Cost in 1990:  
 \$549,287,000