

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Factors Leading to a Charge of Aggravated DWI in New Mexico

An **aggravated DWI** carries very **serious consequences** in New Mexico including mandatory jail time. Aggravated DWI carries all the same elements as a simple DWI along with a number of possible additional elements.

A simple DWI involves driving under the influence of alcohol, driving under the influence of drugs, and/or driving with a breath or blood alcohol level above .08. Keep in mind that the .08 mark in New Mexico is not necessary for a conviction for DWI. The .08 mark simply leads to a presumption of driving while intoxicated. Many drivers to their surprise and dismay are convicted at lower levels. In addition, the presumptive level goes down to .04 for drivers of commercial vehicles.

Aggravated DWI carries additional elements in addition to those listed above. These elements are deemed to be more egregious than the standard elements of a simple DWI warranting more severe penalties. There are a number of possible circumstances that will lead to a charge of aggravated DWI.

Perhaps the most common aggravating factor in DWI is a breath or blood alcohol score of .16 or above. In essence, a score of twice the legal limit will result in a charge of aggravated DWI. A close second to the high breath/blood alcohol score as an aggravating factor is a refusal to take the breath alcohol test. The Implied Consent Act results in an automatic aggravation of the DWI charges for a refusal. A refusal will be found even in situation where a driver delays or otherwise waives in the consent. In short, a driver must take the breath alcohol test and must take it in short order or risk a charge of aggravated DWI as evidenced under [State v. Suazo](#).

A less common, though often far more serious aggravating factor, is DWI involving bodily harm. These cases involve DWI auto accidents resulting in injuries. The injuries may occur to the driver, the passengers, other drivers or pedestrians. These cases are taken very seriously as one might expect from a glimpse at the tragic DWI accidents that occur each year in New Mexico.

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A conviction for aggravated DWI carries a number of possible more serious consequences beyond the mandatory 48 hour jail time. Much of DWI sentencing is discretionary with the judge. The sentences must simply fall between the mandatory minimums and the maximums allowed by law. There is a great deal of latitude with the court between the minimum and the maximum sentencing.

Judges and prosecutors alike do not look kindly on aggravated DWI. This is particularly so with very high breath alcohol scores or accidents involving injuries. Not only will the original sentencing be more severe, judges are often very hard on those that violate probation under an aggravated DWI. This may be so even with seemingly minor technical probation violations. This can make probation very unpleasant as if it were not unpleasant enough.

In short, DWI is taken seriously in New Mexico. Aggravated DWI, as the term suggests, is taken even more seriously. It is simply not worth it. After all, even if you beat the charges, you still spent a night or two in jail, spent a minimum of 6 months going through the court process, and parted with a great deal of hard earned income paying me or some other DWI attorney to get through a very stressful and difficult process.

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