



# **MADD**

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## **NEW MEXICO COURT MONITORING FOR SIX COUNTIES PROJECT**

**Interim Report One**

**Data: January 2008 through May 2008**

**Released: October 2008**

Funded through a contract with the New Mexico Department of Transportation,  
Traffic Safety Bureau.

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**DWI Court Monitoring for Six Counties Project**  
**Interim Report One – January through May 2008**  
**Released: October 2008**

**Executive Summary**

Interim Report One of the DWI Court Monitoring for Six Counties Project includes five months of initial tracking data for cases monitored in Bernalillo, Dona Ana, McKinley, Rio Arriba, San Juan and Santa Fe Counties. Mothers Against Drunk Driving (MADD) New Mexico is conducting the study under a four-year contract with the New Mexico Department of Transportation.

Cases Monitored January – May 2008		1353
Cases Pending		921
Cases Adjudicated		432
Cases Dismissed	62	
Guilty Pleas	357	
Pleas to Original Charge	201	
Pleas to a Reduced Charge	156	
Ignition Interlocks Ordered in cases found guilty of DWI charge	347	

**Selected Findings and Recommendations:**

**1. Reduced Pleas:**

- Findings: The report shows that several courts (Bernalillo Metropolitan Court, Santa Fe Magistrate, Aztec Magistrate Court and McKinley Magistrate Court) accepted pleas to a reduced DWI charge in more than 40 percent of the cases monitored. Of particular concern were several instances when defendants charged with aggravated DWI (blood alcohol content [BAC] was greater than .15) were allowed to plead to simple DWI, when defendants with multiple DWI charges were allowed to plead to first-time DWI charges, and cases where reduced pleas were accepted for defendants who had refused alcohol breath testing.
- Recommendations: To address terms under which reduced plea should be accepted, MADD urges prosecutors not to offer and judges not to accept pleas to reduce cases from aggravated to simple DWI where the defendant's BAC is greater than .17 or where cases involve multiple DWI convictions (unless exceptional circumstances apply). MADD also recommends additional training for prosecutors (many who have limited courtroom experience) regarding appropriate interactions with judges, the defense bar, and defendants.

**2. Waiver of Ignition Interlock Requirements:**

- Findings: In McKinley County, ignition interlocks were ordered in all 117 (100 percent) of cases where DWI offenders were found guilty of a DWI charge; however, in 84 cases (72 percent) the interlock requirements were waived when offenders signed an affidavit attesting that they did not own a vehicle.
- Recommendations: MADD recommends that probation or compliance units be tasked with determining whether defendants actually have a registered vehicle or regular access to a vehicle

prior to courts accepting affidavits waiving the interlock requirement. Compliance units should closely monitor these offenders to determine if they are complying with the terms of their sentences, specifically if they continue to drive. MADD also recommends that DWI offenders who claim they have neither a vehicle nor regular access to a vehicle be required to utilize alcohol monitoring as an alternative.

### **3. Other recommendations:**

- Place a public defender's office in McKinley County to alleviate substantial delays and inefficiencies of police and court time in Gallup Magistrate Court.
- Amend the Six Month Rule to charge the defense with time for continuances if an officer is present and the defense refuses the opportunity to conduct an interview.
- Prosecutors offices should adopt a policy whereby reduced pleas or lesser sentences are offered only at first pre-trial conferences so that defendants know no further reductions will be offered at a later date. As a result, "wait and see" strategies would not be viable, and the processing of cases would be more timely for courts, officers and defendants.
- UNM should resume its DA Clinic and augment prosecutor training programs for law students.

**NEW MEXICO COURT MONITORING  
FOR SIX COUNTIES PROJECT  
Interim Report One  
Data: January 2008 through May 2008  
Released: October 2008**

**Prepared by MADD:**

Executive Director: Terry Huertaz<sup>1</sup>

Court Monitoring Project Supervisor: Valerie Collanton

MADD NM Court Monitoring Advisory Committee:

Paul Biderman, Director, Institute of Public Law

Susan Connor, Station Manager, KOB-TV Channel 4

Donna Bevacqua-Young, Traffic Safety Resource Prosecutor, Administrative Office of the District Attorneys

Sammy Quintana, MADD National Board of Directors (1998-2004)

Rob Mitchell, San Juan County Alternative Sentencing Division Administrator

Paul Romero, MADD National Board of Directors

Margaret McLean, Assistant Attorney General, Division Director, Criminal Appeals

Kent Cravens, New Mexico State Senator

Questions about the report should be directed to Lora Lee Ortiz, MADD NM, 505-255-2955, [loralee.ortiz@madd.org](mailto:loralee.ortiz@madd.org). The full report can be downloaded from [www.stopdwinm.com](http://www.stopdwinm.com).

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<sup>1</sup> Ms. Huertaz has since resigned her position. Lora Lee Ortiz is the current Executive Director.

## **INTRODUCTION**

In the early 1990s, Mothers Against Drunk Driving [MADD] began its court monitoring program to create accountability in the criminal justice system by capturing, analyzing and reporting DWI case data. Court monitoring has proven to be an effective tool in improving the legal system as it pertains to the adjudication of DWI cases.

In February 2007, the New Mexico Department of Transportation [NMDOT] issued a competitive Request for Proposals [RFP] for a project entitled “DWI Court Monitoring for Six Counties.” MADD responded to this RFP and in June 2007 was notified of award of the project. After the development of a contract to perform the requested services, MADD received authorization to proceed in late September 2007.

The New Mexico Court Monitoring for Six Counties Project builds upon MADD’s experience to accomplish the State’s goals of reducing drunk driving. The objectives of the New Mexico Court Monitoring for Six Counties Project are:

- To compile pertinent information on how DUI/DWI cases are handled;
- To make those involved in the legal system aware of the public interest and concern about the outcome of criminal cases; and
- To report relevant information gathered by the program to necessary entities so that the legal system can be improved.

Counties identified for court monitoring activities are: Bernalillo, Doña Ana, McKinley, San Juan, Santa Fe and Rio Arriba. These counties are part of the NMDOT “Impaired Driving Demonstration Project,” an effort funded by the National Highway Traffic Safety Administration to help identify innovative programs that are effective in reducing drunk driving.

In late October 2007, MADD hired a Court Monitoring Project Supervisor to oversee the project. Four Court Monitoring Project Specialists were hired in November and December 2007 to provide monitoring activities in the six identified counties. MADD trained these Specialists in early January 2008 on relevant state laws and their role in monitoring DWI cases.

Court monitoring under the project began in January 2008 and will last through June 2011. The project is not designed to be a scientific, statistical study of all DWI cases adjudicated during the monitoring period, nor does it focus on specific judges, attorneys or courtrooms. Instead it is an analysis of data pulled from cases selected on a random basis by the Court Monitoring Project Specialists who sit in various courtrooms in their counties and observe the legal process. In Bernalillo County, for example, cases are selected from booking forms on the Metropolitan Department of Corrections website, and no judge has been assigned at the time of selection.

Under the supervision of the Court Monitoring Project Supervisor, each Specialist will monitor a minimum of 200 cases per year in each county over a four-year time period. The Specialists will track and record general problems, concerns or trends in the handling of DWI cases. Of particular interest is whether mandatory sentencing laws, including interlock, are being followed, and when and why DWI charges are reduced or dismissed. NMDOT will release interim findings and recommendations twice a year. At the time of their release, these findings and recommendations will be made available to judges, prosecutors and other entities in the criminal justice system. Their feedback and suggestions will be critical as we go forward and extremely helpful in the preparation of the final report which will be released at the end of the project.

This initial report analyzes data from the first five months of the project. The Findings and Recommendations were based on this data and were reviewed by the Advisory Committee to the project. We recognize that this is a small sample, and that other issues may emerge as we continue to collect data. For example, while the report may identify a problem as being observed in one county only, this does not mean that that problem is not present in other counties. When we identify such problems in one county, we will look at other counties going forward to see if it exists there as well.

## **STATISTICS, FINDINGS AND RECOMMENDATIONS**<sup>2</sup>

### **BERNALILLO COUNTY:**

#### **BERNALILLO STATISTICS:**<sup>3</sup>

**No. of Cases Monitored: 220**

**Metropolitan Court: 220**

**No. of Cases Adjudicated: 61 (28%)**<sup>4</sup>

**No. of Dismissals: 8 (13%)**

**Officer Failure to Appear (FTA): 3 (37.5%)**

**Officer Agency: Albuquerque Police Department 3 (100%)**

**Reason for FTA: Unknown (all officers were issued subpoenas)**

**Discovery not provided by state: 3 (37.5%)**

**Other: 2 (25 %)**

**No. of Guilty Pleas: 53 (87%)**

**No. of Pleas to Original Charge: 31 (58%)**

**No. of Pleas to a Reduced DWI Charge: 22 (42%)**

Of the 22 pleas to reduced DWI charges, 9 defendants had a BAC of .17 or above; 3 defendants were allowed to plead down from a DWI 2 to a DWI 1, all having a BAC of .12 or above.

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<sup>2</sup> The statistics, findings and recommendations in this initial interim report are based on data collected from January 2008 through May 2008, the first five months of the project. Findings and recommendations are based on the trends and issues revealed by the data and observed by the Court Monitoring Project Specialists in each of the six identified counties.

<sup>3</sup> All cases were monitored in Metropolitan Court.

<sup>4</sup> For purposes of this report adjudicated includes dismissals, guilty pleas, probation violations (where applicable) and findings of not guilty (where indicated).

**No. of Interlocks Ordered: 52 (98%)**

The one case in which an interlock was not ordered was because defendant lived out of state (Florida).<sup>5</sup>

**BERNALILLO FINDINGS AND RECOMMENDATIONS:**

**BERNALILLO FINDING No. 1:**

Because the project is in its initial stages, this is a small sample. However, it is significant that of the cases that were dismissed, 76% were dismissed because either the officer failed to appear or the State failed to provide discovery. One recurring issue observed by the court monitor is the difficulty in scheduling officer interviews. Although a room has been provided at the courthouse to have on-the-spot interviews when the officer is present and an interview has yet to be conducted, many defense attorneys object because they claim they need to have their investigator (who is not present) conduct the interview. Some judges rule in favor of the defense and continue the case for the interview, while others require the defense attorney to either conduct the interview or to immediately have their investigator available.

The failure to appear at DWI proceedings or to provide discovery (including officer interviews) is a major problem because the reality is that there is little incentive for the defense to seek an early disposition of the case. Instead the rational defense strategy is to extend the case as long as possible. The strategy anticipates that either the Six Month Rule will run out before the interview can be conducted, or at some point the officers will not appear and the case will ultimately be dismissed without refiling. Following this strategy, the defense will enter a plea at the last moment if all prosecution witnesses are present.

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<sup>5</sup> The court monitors did not specifically track the reason why interlocks were not ordered. Thus we do not have those statistics for each county. However, this information will be monitored going forward so that we can determine the issues regarding the same in each of the six identified counties.

**BERNALILLO RECOMMENDATION No. 1:**

The following policies are recommended to address this issue:

1. To facilitate more uniform policies, it is suggested that DWI cases be assigned to a finite number of judges on a rotating basis.
2. A policy should be adopted by the court that encourages judges to order defense attorneys to conduct on-the-spot interviews (investigator present or not).
3. In conjunction with this policy, the Six Month Rule should be amended to charge the defense with the time for continuance if an officer is present and the defense refuses the opportunity to conduct an interview.
4. As incentive for early pleas, the prosecutor's office should adopt a policy whereby it offers either reduced pleas (for offenses other than DWI 1) or lesser sentences only at the first pre-trial conference. If defendants and defense counsel knew that no reduced plea would be offered at a later date, or that a stiffer sentence would be the outcome for later pleas, the "wait and see" strategy would no longer be viable.
5. A policy should be adopted by the court under which judges are encouraged, when appropriate, to abide by the stiffer sentencing recommendations made by prosecutors when the defendant fails to plead at the earliest stage of the proceeding.

**BERNALILLO FINDING No. 2:**

When an officer fails to appear, the court is dismissing the case without prejudice when there is time left on the Six Month Rule. In all cases observed to date, the prosecutor's office has not refiled these cases.

**BERNALILLO RECOMMENDATION No. 2:**

The court should adopt a policy of resetting the case when there is time left on the Six Month Rule.

The prosecutor's office should adopt a policy of immediately refiling dismissed cases if they are dismissed with time left on the Six Month Rule so that these cases do not fall through the cracks

**BERNALILLO FINDING No. 3:**

It is significant that 42% of guilty pleas were to reduced DWI charges. In 41% of those cases, the defendant's BAC was .17 or higher, and in 3 cases was above .22. Additionally, 3 defendants were allowed to plead down from a DWI 2 to a DWI 1, all having a BAC of .12 or above. As detailed below, reduced pleas is a problem in almost all counties. This sends the wrong message to the community: i.e. that repeat offenses are not taken with the seriousness that they deserve.

**BERNALILLO RECOMMENDATION No. 3:**

It is recommended that the prosecutor's office adopt a number of policies to address the issue of reduced pleas:

1. Prosecutors should not be allowed to reduce cases from aggravated to simple DWI where the defendant's BAC is .17 or above, unless there are exceptional circumstances as approved by a supervisor.

2. Pleas to a reduced charge should only be offered at the first pre-trial conference.
3. Prosecutors should not be allowed to offer reduced pleas on charges of DWI 2 or above, unless there are exceptional circumstances as approved by a supervisor.
4. Many prosecutors (assistant district attorneys or ADAs) handling DWI cases in New Mexico are recent law school graduates and thus have limited courtroom experience. These findings point to a need for additional training regarding appropriate interactions with judges, the defense bar, and defendants. More training is also needed on how to prepare DWI cases for trial. Since many of these prosecutors graduate from UNM Law School, it is recommended that UNM resume its DA Clinic and augment other prosecutor training programs for law students in the areas identified above and throughout this report. Also, DWI prosecutors should be required to attend (annually) regional trainings on DWI-related case law, including updates and changes to local, state and federal laws conducted by the New Mexico Traffic Safety Resource Prosecutor.

**BERNALILLO FINDING No. 4:**

In Bernalillo and other counties, judges do not appear to regularly order interlocks if defendants live out-of-state. Excessive waivers of ignition interlocks are also of concern. While judges are ordering interlocks, installation of the devices appears to be routinely waived if defendants claim they have no access to a vehicle

**BERNALILLO RECOMMENDATION No. 4:**

The law provides that: "Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and

operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau." NMSA 66-8-102(N). It appears judges are interpreting this statute to mean that interlock devices need only be ordered if the defendant is a New Mexico resident. Clarification of this statute is needed. Prosecutors should consider taking a test case to the Supreme Court for interpretation of the law as it currently is written.

The waiver issue is a significant problem. It is recommended that:

1. Courts order the interlock and let probation determine whether the defendant has a registered vehicle or has access to a vehicle. As part of this process, the Department of Finance and Administration (DFA) should consider requiring compliance monitoring for all DWI offenders through its county-based local DWI affiliate (LDWI) programs.
2. DWI offenders who claim they have neither a vehicle nor regular access to a vehicle be required to utilize alcohol monitoring as an alternative.

**BERNALILLO FINDING No. 5:**

The monitor has observed that when blood draws are done (e.g. for suspected drugs), it takes at least three months for test results to come back to the court because of limited laboratory technicians.

**BERNALILLO RECOMMENDATION No. 5:**

Resources should be spent to hire more technicians to reduce time needed to process tests and avoid the potential running of the Six Month Rule.

**DOÑA ANA COUNTY:**

**DOÑA ANA STATISTICS:**

**No. of Cases Monitored: 395**

**Magistrate Court: 391**

**Municipal Court: 2**

**District Court: 2**

**No. of Cases Adjudicated: 125 (32%)**

**Magistrate Court: 121<sup>6</sup> (31%)**

**Municipal Court: 2 (100%)**

**District Court: 2 (100%)**

**No. of Dismissals (Magistrate Court): 6 (5%)**

**Officer FTA: 2 (33%):**

**Officer Agency: Las Cruces City Police Department 2 (100%)**

**Reason for FTA: Unknown**

**Prosecutor FTA: 1 (17%)**

**Declined Prosecution: 2 (33%)**

**Other: 1 (17%)**

**No. of Probation Violations (Magistrate Court): 10 (8%)**

**No. of Guilty Pleas: 109 (95%)<sup>7</sup>**

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<sup>6</sup> Although the adjudication rate appears to be low, it should be noted that the Doña Ana District Attorney has adopted a policy of transferring cases from Magistrate Court to District Court if a plea is not taken by the defendant at arraignment. We have begun tracking the number of how many cases are being transferred and will be able to give that percentage in our next report.

<sup>7</sup> These percentages exclude probation violations from the total cases adjudicated (125 – 10 = 109 DWI “Guilty Pleas”.

**Magistrate Court: 105 (95%)**

**Municipal Court: 2 (100%)**

**District Court: 2 (100%)**

**No. of Pleas to Original Charge: 104 (95%)**

**Magistrate Court: 100 (95%)**

**Municipal Court: 2 (100%)**

**District Court: 2 (100%)**

**No. of Pleas to a Reduced DWI Charge (Magistrate Court): 5 (5%)**

Of the 5 pleas to reduced DWI Charge, 4 defendants had a BAC of .17 or higher (one was a refusal).

**No. of Interlocks Ordered: 109 (100%)**

## **DOÑA ANA COUNTY FINDINGS AND RECOMMENDATIONS:**

### **DOÑA ANA FINDING No. 1:**

Doña Ana County has low dismissal and low reduced plea rates in Magistrate Court. However it should be noted that the majority of cases that do not plead guilty at arraignment are transferred to District Court.

### **DOÑA ANA RECOMMENDATION No. 1:**

The monitor has not yet had an opportunity to observe enough cases in District Court to determine if this practice will continue in that forum. It is recommended that monitoring continue in district court to determine whether dismissals and reduced pleas will become an issue, or if we will continue to see low dismissal and reduced plea rates in District Court.

**DOÑA ANA FINDING No. 2:**

The court monitor has observed that in the majority of cases adjudicated at arraignment in Magistrate Court, the defendant does not have counsel. The plea is negotiated between the prosecutor and the defendant with no defense attorney present. While the defendant can and does waive counsel at the plea, for purposes of charging a DWI 2 or higher, the waiver of counsel must be effective. In Doña Ana County, defendants are shown a video of their rights, in English, before arraignment. The court clerk begins the video at approximately 8:30 a.m. before the docket is called. Thus, there is no record of which defendants were actually present when video rights were given. While the court asks the defendant if he saw the video before taking a plea, that may not be sufficient to find a knowing waiver of rights. Additionally, once the first defendant pleads guilty, the court merely asks subsequent defendants who plead guilty if they heard the plea proceedings involving the first defendant and if there are any questions. Even though subsequent defendants answer in the affirmative, again, this may not be sufficient if challenged in a subsequent proceeding.

**DOÑA ANA RECOMMENDATION No. 2:**

The following policies should be adopted to address this issue:

1. A Public Defender should be available in the courtroom to confer with and negotiate pleas for defendants who lack counsel. Otherwise no plea negotiations should be undertaken until a defendant has the opportunity to confer with counsel.
2. The court should have a sign-in sheet for defendants before video rights are shown. At that point, the court should ascertain whether any defendant requires the Spanish or Navajo video.

A clerk should be present during the showing of video rights to ensure each defendant that has signed-in remains in the courtroom while the video is being played.

3. The court should inform each defendant individually of the consequences of their plea rather than relying upon a defendant's indication that he heard a prior defendant's proceedings and has no questions.

**DOÑA ANA FINDING No. 3:**

The monitor has observed that compliance checks are not being conducted on a regular basis, and in several cases it has gone unnoticed for months that defendants have not yet had an ordered interlock installed in their vehicle. Additionally, the monitor has heard defendants discussing the fact that they are able to obtain another vehicle without the required interlock.

**DOÑA ANA RECOMMENDATION No. 3:**

Compliance units need to be more diligent in monitoring their cases to ensure that defendants are complying with interlock orders and all other terms of their probation. Additionally, courts should adopt a policy requiring defendants to show proof of interlock within 15 days of sentencing.

**MCKINLEY COUNTY:**

**MCKINLEY STATISTICS:**

**No. of Cases Monitored: 369**

**McKinley County Magistrate Court: 357**

**Gallup District Court: 12**

**No. of Cases Adjudicated: 160**

**Magistrate Court: 160 (45%)**

**District Court: 0 (0%)**

**No. of Dismissals: 31 (19%)**

**Officer FTA: 14 (45%)**

**Officer Agency: Gallup Police Department 8 (57%)**

**Reason for FTA: Unknown**

**Officer Agency: New Mexico State Police 1 (7%)**

**Reason for FTA: Unknown**

**Officer Agency: McKinley County Sheriff 5 (36%)**

**Reason for FTA: Unknown**

**Officer Requested: 1 (3%)**

**Six Month Rule: 4 (13%)**

**Prosecutor Dismissed: 3 (10%)**

**Prosecutor Failure to File Motion or Follow a Rule: 3 (10%)**

**Lack of Jurisdiction (tribal land): 4 (13%)**

**Suppression of Evidence: 1 (3%)**

**Reason Unknown: 1 (3%)**

**No. of Not Guilty Findings: 3 (2%)**

**No. of Guilty Pleas: 126 (79%)**

**No. of Pleas to Original Charge: 28 (22%)**

**No. of Pleas to a Reduced Charge: 98 (78%)**

BAC information is available for 83 of the reduced plea cases. Of those cases, 29 were refusals and 38 had a BAC of .17 or higher, and of those, 14 had a BAC of .22 or higher.

**No. of Cases Pled from a DWI Charge to a non-DWI Charge: 9 (7%)**

Of the cases pled to a non-DWI charge: 4 defendants had a BAC result of .08/.07; 1 defendant had a BAC result of .08/.08;<sup>8</sup> 1 defendant had a BAC of .07; 1 defendant had a BAC result of .07/.06; 1 defendant was a refusal and 1 defendant's result was unknown.

**No. of Interlocks Ordered: 117 (100%)<sup>9</sup>**

**No. of Interlocks Waived:<sup>10</sup> 84 (71%) (Of this number 9 were waived because the defendant lived out of state)**

**No. Waived by Affidavit at Sentencing: 57 (68%)**

**No. Waived after Sentencing: 27 (32%)**

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<sup>8</sup> The police report indicated a BAC of .08/.08; however the Judgment and Sentencing Report listed the defendant's BAC at .07.

<sup>9</sup> Percentage reflects the number of guilty pleas to a DWI charge and excludes the 9 pleas to a non-DWI charge.

<sup>10</sup> The court monitors did not specifically track the waiver of interlocks, which is why a waiver statistic is not available for each county. However this will be monitored going forward so that we can determine the issues regarding the same in each of the six identified counties.

## **MCKINLEY FINDINGS AND RECOMMENDATIONS:<sup>11</sup>**

### **MCKINLEY FINDING No. 1:**

The percentage of dismissals because an officer failed to appear is very high at 45%.

### **MCKINLEY RECOMMENDATION No. 1:**

Before a recommendation can be made to combat this problem, more data must be collected to determine the reason why officers are failing to appear. The monitor will watch this trend closely to determine the issues.

### **MCKINLEY FINDING No. 2:**

The number of reduced pleas is a significant problem. McKinley County has one of the highest percentages of reduced pleas among the six identified counties at 61%.<sup>12</sup> Eighty-nine Defendants (61%) were allowed to plead to reduced DWI charges, while nine defendants were allowed to plead to non-DWI charges. While the BAC for those nine defendants was below .08, there was evidence in the majority of those cases that the defendant was impaired as defined by the statute. 52 defendants had a BAC level of .17 or higher, while 14 of those were above .22 and 29 were refusals. As in the majority of counties, judges do not question the prosecutor's reduction in charges and go along with all plea recommendations.

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<sup>11</sup> All findings and recommendations are for Gallup Magistrate Court as there were no adjudications in District Court.

<sup>12</sup> Only San Juan had a higher percentage (64%), however the sample size in that county was significantly smaller than in McKinley.

## **MCKINLEY RECOMMENDATION No. 2:**

It is recommended that a number of policies be adopted to address the issue of reduced pleas:

The prosecutor's office should adopt a policy where by prosecutors are not allowed to reduce cases from aggravated to simple DWI where the defendant's BAC is .17 or above, unless there are exceptional circumstances as approved by a supervisor.

1. Pleas to a reduced charge should only be offered at the first pre-trial conference.
2. Prosecutors should not be allowed to offer reduced pleas on charges of DWI 2 or above, unless there are exceptional circumstances as approved by a supervisor.
3. Offer additional training to judges as to parameters of reduced pleas that are acceptable versus those that should be rejected. .
4. Many prosecutors (assistant district attorneys or ADAs) handling DWI cases in New Mexico are recent law school graduates and thus have limited courtroom experience. These findings point to a need for additional training regarding appropriate interactions with judges, the defense bar, and defendants. More training is also needed on how to prepare DWI cases for trial. Since many of these prosecutors graduate from UNM Law School, it is recommended that UNM resume its DA Clinic and augment other prosecutor training programs for law students in the areas identified above and throughout this report. Also, DWI prosecutors should be required to attend (annually) regional trainings on DWI-related case law, including updates and changes to local, state and federal laws conducted by the New Mexico Traffic Safety Resource Prosecutor.

**MCKINLEY FINDING No. 3:**

Interlocks were waived in 71% of cases. In the majority of these cases, the defendants claimed to have no vehicle, although it is very likely the defendants have access to other vehicles not registered to them. Additionally, in nine cases, judges waived interlocks because the defendants were out-of state residents.

**MCKINLEY RECOMMENDATION No. 3:**

The law provides that: "Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau." NMSA 66-8-102(N). It appears judges are interpreting this statute to mean that interlock devices need only be ordered if the defendant is a New Mexico resident. Clarification of this statute is needed. Prosecutors should consider taking a test case to the Supreme Court for interpretation of the law as it currently is written.

The waiver issue is a significant problem. It is recommended that:

1. Courts order the interlock and let probation determine whether the defendant has a registered vehicle or has access to a vehicle. As part of this process, the Department of Finance and Administration (DFA) should consider requiring compliance monitoring for all DWI offenders through its county-based local DWI affiliate (LDWI) programs.
2. DWI offenders who claim they have neither a vehicle nor regular access to a vehicle be required to utilize alcohol monitoring as an alternative.

**MCKINLEY FINDING No. 4:**

Defense attorneys are late to court in a substantial number of cases. In several instances, cases are delayed several hours while the court either waits for defense counsel to appear or to confer with their client once they do appear. As a result cases are delayed and officers are often required to wait several hours for their case to be called.

**MCKINLEY RECOMMENDATION No. 4:**

Currently there is no public defender's office in Gallup. Rather private attorneys are contracted to provide this service. It is recommended that the state consider opening a public defender's office in Gallup to solve this problem.

In the meantime, the court should adopt the following policies:

1. Judges should hold in contempt and fine defense attorneys who are excessively late.
2. Judges should require that defense attorneys confer with their clients before cases are called in order to ensure the smooth operation of court proceedings.

**MCKINLEY FINDING No. 5:**

Previously, judges had their "DWI Day" on different days of the week. Recently, they have begun holding their "DWI Day" on the same day of the week, necessitating that officers, prosecutors and defense attorneys appear in multiple courtrooms at the same time. This is resulting in more delay and contributing to the problem of officers failing to appear.

**MCKINLEY RECOMMENDATION No. 5:**

Judges should hold their “DWI Day” on different days to avoid as much overlap as possible.

**MCKINLEY FINDING No. 6:**

Judges hold proceedings at the bench. These proceedings cannot be heard by the general public because the parties speak in soft tones without microphones. Additionally, plea negotiations on other cases are taking place in front of the bench between defense counsel and prosecutors while the judge is conducting these proceedings. Thus for all practical purposes these proceedings are closed to the public.

**MCKINLEY RECOMMENDATION No. 6:**

The court should adopt a policy that all proceedings must be held in open court and in a manner in which they can be heard by the general public. Additionally the court should require that all plea negotiations be conducted either before court begins, or outside the courtroom while other cases are being heard.

**SAN JUAN COUNTY:**

**SAN JUAN STATISTICS:**

**No. of Cases Monitored: 162**

**Aztec Magistrate Court: 144**

**Farmington Magistrate Court: 18**

**No. of Cases Adjudicated: 22 (14%)**

**Aztec Magistrate Court: 20 (14%)**

**Farmington Magistrate Court: 2 (11%)**

**No. of Dismissals: 8 (36%)**

**Aztec Magistrate Court: 7 (35%)**

**Officer FTA: 5 (71.4%)**

**Officer Agency: New Mexico State Police (5) (100%)**

**Reason for FTA: Unknown**

**Officer Dismissed: 1 (14.3%)**

**Court Dismissed (lack of probable cause): 1 (14.3%)**

**Farmington Magistrate Court: 1 (50%)**

**Officer FTA: 1 (100%)**

**Officer Agency: Farmington Police Department (1) (100%)**

**Reason for FTA: Unknown.**

**No. of Guilty Pleas: 14 (64%)**

**Aztec Magistrate Court: 13 (65%)**

**Farmington Magistrate Court: 1 (50%)**

**No. of Pleas to Original Charge: 5 (36%)**

**Aztec Magistrate Court: 5 (38%)**

**Farmington Magistrate Court: 0 (0%)**

**No. of Pleas to a Reduced DWI Charge: 9 (64%)**

**Aztec Magistrate Court: 8 (62%)**

Two defendants had a BAC of .18 or above. One defendant who refused was allowed to plead from a DWI 3 aggravated to a DWI 1 non-aggravated.

**Farmington Magistrate Court: 1 (100%)**

Charge was reduced from DWI 1 aggravated to simple DWI. BAC was .25.

**No. of Interlocks Ordered: 14 (100%)**

**Aztec Magistrate Court: 13 (100%)**

**Farmington Magistrate Court: 1 (100%)**

### **SAN JUAN FINDINGS AND RECOMMENDATIONS:**

**Aztec Magistrate Court:**

**SAN JUAN FINDING No. 1:**

The number of dismissals where the officer failed to appear is significant at 71%.

**SAN JUAN RECOMMENDATION No. 1:**

While this is a very small sample, the number is high enough to warrant concern. We will continue to watch this closely and we will monitor the reasons to determine the issues and trends going forward.

**SAN JUAN FINDING No. 2:**

The number of reduced pleas is significant at 62%. Additionally, in 38% of those pleas, the defendant either had a high BAC or was allowed to plead down from a DWI 3 aggravated to a simple DWI.

**SAN JUAN RECOMMENDATION No. 2:**

This is a small sample of cases; however the number of reduced pleas is significant. Additionally, defendants have been allowed to plead to reduced charges with high BAC's and have been allowed to plead down from DWI 3 aggravated to simple DWI. We will continue to monitor this closely to determine if this is a continuing trend going forward.

**Farmington Magistrate Court:**

**SAN JUAN FINDING No. 3:**

We only have two adjudications to look at for this time period, but both cause concern. The dismissal was because the officer failed to appear. The one plea was to a reduced charged: from a DWI 3 to simple DWI where the defendant's BAC was .25.

**SAN JUAN RECOMMENDATION No. 3:**

Monitoring will continue to determine if this is a trend going forward regarding dismissals for officers failing to appear and reduced pleas.

**SANTA FE COUNTY:**<sup>13</sup>

**SANTA FE STATISTICS:**

**No. of Cases Monitored: 153**

**Magistrate Court: 118**

**Municipal Court: 35**

**No. of Cases Adjudicated: 36 (24%)**

**Magistrate Court: 30 (25%)**

**Municipal Court: 6 (17%)**

**No. of Dismissals: 3 (8%)**

**Magistrate Court: 3 (10%)**

**Officer FTA: (0)**

**Unknown: (2) (66%)**

**DA Failed to Refile: (1) (33%) (4<sup>th</sup> offense)**

**No. of Guilty Pleas: 33 (92%)**

**Magistrate Court: 27 (90%)**

**Municipal Court: 6 (100%)**

**No. of Pleas to Original Charge: 21 (64%)**

**Magistrate Court: 16 (59%)**

**Municipal Court: 5 (83%)**

**No. of Pleas to a Reduced DWI Charge: 12 (36%)**

**Magistrate Court: 11 (41%)**

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<sup>13</sup> The numbers for Santa Fe and Rio Arriba Counties only track cases monitored by a new courtroom monitor, who replaced the previous monitor in April 2008.

**Municipal Court: 1 (17%)**

All reduced pleas were from aggravated to simple. BAC levels were not available.

**No. of Interlocks Ordered: 33 (100%)**

**SANTA FE FINDINGS AND RECOMMENDATIONS:**

**SANTA FE FINDING No. 1:**

In several cases, it was observed that the prosecutor had not ordered the necessary paperwork to prove prior DWI convictions. This resulted in reduced pleas when the defendant had priors.

**SANTA FE RECOMMENDATION No. 1:**

The prosecutor's office should adopt a policy requiring that ADAs order the necessary paperwork immediately upon the filing of a case charging the defendant with a DWI 2 or above. Prosecutors should consider obtaining the necessary information from the District Attorney's Office in the jurisdiction where the previous conviction occurred.

**SANTA FE FINDING No. 2:**

One dismissal in Magistrate Court was due to the failure of the prosecutor to refile on a 4<sup>th</sup> offense after the case was sent from District Court back to Magistrate Court.

**SANTA FE RECOMMENDATION No. 2:**

The prosecutor's office should adopt a policy requiring that ADAs immediately refile cases that are dismissed without prejudice so that they do not fall through the cracks.

**SANTA FE FINDING No. 3:**

In several cases, the prosecutor failed to notify officers to appear. While this has not yet resulted in dismissal, we have only monitored a small number of cases to date.

**SANTA FE RECOMMENDATION No. 3:**

The prosecutor's office should work with the appropriate police agencies to develop a policy for notifications. We will continue to monitor this area to determine trends and issues going forward.

**SANTA FE FINDING No. 4:**

The court monitor observed that in the majority of cases adjudicated at arraignment in Magistrate Court, the defendant does not have counsel. The plea is negotiated between the prosecutor and the defendant with no defense attorney present. While the defendant can and does waive counsel at the plea, for purposes of charging a DWI 2 or higher, the waiver of counsel must be effective.

**SANTA FE RECOMMENDATION No. 4:**

A Public Defender should be available in the magistrate courtrooms to confer with and negotiate pleas for defendants who lack counsel. Otherwise no plea negotiations should be undertaken until a defendant has the opportunity to confer with counsel.

**SANTA FE FINDING No. 5:**

Judges are scheduling 90 day compliance checks at the time of sentencing to follow up on whether a defendant is complying with the terms of his or her probation.

**SANTA FE RECOMMENDATION No. 5:**

This is a positive practice that should be followed where feasible (smaller counties), by other courts.

**RIO ARRIBA COUNTY:** <sup>14</sup>

**RIO ARRIBA STATISTICS:**

**No. of Cases Monitored: 54**

**Magistrate Court: 54**

**No. of Cases Adjudicated: 28 (52%)**

**No. of Dismissals: 6 (21%)**

**Officer FTA: 6 (100%)**

**Officer Agency: Rio Arriba Sheriff (3) (50%)**

**Reason for FTA: Late Notifications**

**Agency: Unknown (3) (50%)**

**Reason for FTA: Unknown**

**No. of Guilty Pleas: 22 (79%)**

**No. of Pleas to Original Charge: 12 (55%)**

**No. of Pleas to a Reduced DWI Charge: 10 (45%)**

BAC levels were not available for the majority of cases; 2 cases were reduced where BAC was .16. One case was reduced from DWI 3 to DWI 1 and one case was reduced from DWI 3 to DWI 1.

**No. of Interlocks Ordered: 22 (100%)**

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<sup>14</sup> The numbers for Santa Fe and Rio Arriba Counties only track cases monitored by a new courtroom monitor, who replaced the previous monitor in April 2008.

## **RIO ARRIBA FINDINGS AND RECOMMENDATIONS:**

### **RIO ARRIBA FINDING No. 1:**

In several cases, it was observed that the prosecutor had not ordered the necessary paperwork to prove prior DWI convictions. This resulted in reduced pleas when the defendant had priors.

### **RIO ARRIBA RECOMMENDATION No. 1:**

The prosecutor's office should adopt a policy requiring that ADAs order the necessary paperwork immediately upon the filing of a case charging the defendant with a DWI 2 or above. Prosecutors should consider obtaining the necessary information from the District Attorney's Office in the jurisdiction where the previous conviction occurred.

### **RIO ARRIBA FINDING No. 2:**

In at least three cases, the prosecutor has failed to timely notify officers to appear resulting in dismissals. In fact all dismissals in Rio Arriba County were because an officer failed to appear. In one case, the prosecutor acquiesced in the dismissal, and the officer appeared right after the dismissal papers were signed.

### **RIO ARRIBA RECOMMENDATION No. 2:**

The prosecutor's office should work with the appropriate police agencies to develop a policy for notifications.

**RIO ARRIBA FINDING No. 3:**

In some cases, the monitor has observed the prosecutor arguing defense positions as to a lesser sentence or why a case should be dismissed. This has occurred even though defense counsel is present (but silent!).

**RIO ARRIBA RECOMMENDATION No. 3:**

To maximize the efficiency of the court, it is recommended that prosecutors receive more training on how to work with judges, the defense bar and how to take cases to trial. Since many of these prosecutors graduate from UNM Law School, it is recommended that UNM revitalize its DA Clinic and augment prosecutor's training program for law students. It should also be mandatory that DWI ADAs attend the statewide prosecutor's training and update annually.

## CONCLUSION

While this first interim report analyzes only a small amount of data, the first five months of court monitoring in the six identified counties has already shown emerging trends, issues and areas of concern. In almost all counties, the rate of dismissals and reduced pleas is significantly high. Of particular concern is the fact that many defendants given a reduced plea had a high BAC or were charged with a DWI 2 or above. Other issues have emerged regarding the efficiency of the courts, including the level of training for prosecutors and the manner in which courts are conducting DWI proceedings. While interlocks are being ordered in most cases, there is concern regarding waivers and the failure to consistently order interlocks for out of state defendants.

Court monitoring under the project will continue to focus on the areas of concern identified in this report, as well as additional issues as they come to light. Based on the cumulative data, we will continue to revise and develop recommendations going forward in order to improve the handling and adjudication of DWI cases across the legal system.