



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-038300 Employee DWI/DUI Policy	Issued: 06/08/05 Effective: 06/08/05	Reviewed: 09/29/23 Revised: 03/04/15
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

- A. NMSA 1978, Section 33-1-6(B)

REFERENCE:

- A. NMSA 1978, Section 66-8-102, as amended.
- B. NMAC 1.5.3 Use of State Vehicle and NMAC 1.7.8 Drug and Alcohol Abuse
- C. NMCD Policy *CD-022000*, *CD-037900*, *CD-038100* and *CD-031800*.

PURPOSE:

Establish procedures which ensure that no employees of the New Mexico Corrections Department (the “Department”) operate a motor vehicle while in a physically or mentally impaired condition due to the consumption of alcohol, drugs, or other controlled substances.

APPLICABILITY:

New Mexico Corrections Department employees.

ATTACHMENTS:

- A. **Driving While Intoxicated/Driving under the Influence (“DWI/DUI”) Policy Acknowledgment** (*CD-038301.A*)

DEFINITIONS:

- A. Alcohol: Includes all consumable non-prescription substances that contain alcohol, including, but not limited to, any intoxicating agent in beverage alcohol (e.g. beer, spirits, wine, malt beverages, and other intoxicating liquors), ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- B. Alcohol Use: Any consumption of alcohol as defined above.
- C. Controlled Substance: Includes the following five classes of drugs: narcotics, depressants, stimulants, hallucinogens, and cannabis. This includes any chemical substances having the capacity to affect behavior and regulated by law with regard to possession and use.

D. Driving While Intoxicated / Driving Under the Influence of Intoxicating Liquor or Drugs (“DWI/DUI”):

1. Operation of a vehicle by a person who is under the influence of intoxicating liquor; or,
2. Operation of a vehicle by a person who is under the influence of any drug to a degree that renders them incapable of safely driving a vehicle; or,
3. Operation of a vehicle by a person who has an alcohol concentration of eight one hundredths or more in their blood or breath; or,
4. Operation of a commercial motor vehicle by a person who has an alcohol concentration of four one hundredths or more in their blood or breath.

E. Drug: Includes the following types of controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines; metabolites of previously delineated drugs; or any non-prescription substances containing previously delineated drugs.

F. Off Duty: Any time outside of an employee’s work hours.

G. Offense: Any arrest or conviction of DWI/DUI.

H. On Duty: Any time during an employee’s work hours (including lunch hours, breaks, overtime and flex time).

POLICY:

- A. New Mexico suffers from a relatively high rate of DWI/DUI and its detrimental impact on society is a significant problem in New Mexico.
- B. The Department incarcerates in its prisons and supervises on probation or parole, offenders who have been convicted of DWI/DUI.
- C. It is imperative that the Department has the confidence of the public and these offenders in addressing DWI/DUI; thus, the Department must be aware of any instance that an employee has been charged with or alleged to have violated criminal laws; including DWI/DUI laws, and any administrative or court action that limits, suspends, or revokes the driver’s license of a Department employee.
- D. The Department is committed to maintaining a professional corrections system that promotes lawful conduct and the highest level of respect for the law by all Department employees. Requiring employees to strictly adhere to laws concerning DWI/DUI will foster the Department’s image of integrity within society.
- E. The vast majority of Department employees have job duties that at least occasionally require the employee to drive an automobile, which in turn requires a valid driver’s license. Therefore, the Department has an interest in knowing the status of any employee’s driver’s license and any charges of DWI/DUI and their disposition.

- F. All Department employees shall sign receipt of having received a copy of this DWI/DUI policy and accompanying procedure which shall be part of the new employee orientation packet.
- G. Violation of this policy and/or the accompanying procedure shall be grounds for disciplinary action, up to and including dismissal.
- H. Nothing in this policy or accompanying procedure shall be considered as limiting the Department's right to take administrative or disciplinary action, up to and including dismissal, for involvement with alcohol, controlled substances, or drugs not specifically addressed in this policy.
- I. This policy and the accompanying procedure do not in any way supersede or otherwise limit the Drug-Free and Alcohol-Free Workplace, *CD-037900*; the Omnibus Drug and Testing Policy, *CD-038100*; or the Use of State and Privately Owned Motor Vehicles, *CD-022000*. To the extent that the terms of the DWI/DUI Policy conflicts with the above-listed or any other Department policy, the policy with the more stringent terms and/or sanction will apply.



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AUTHORITY:

Policy *CD-038300*

PROCEDURES:

A. Self-Reporting Responsibility:

All employees who are charged with, arrested for, adjudicated guilty, or convicted of the criminal offense DWI/DUI must submit a written report of such fact to their supervisor within three (3) working days (not including weekends and legal holidays) of such occurrence. Additionally, any other action, whether by an administrative agency (e.g. Motor Vehicle Division) or the courts that results in a Department employee's license being restricted, limited, suspended, or revoked, must also be reported in writing to the employee's supervisor within three (3) working days (not including weekends and legal holidays) of such occurrence.

B. Employee Assistance:

Any employee who is a user of illegal drugs or an abuser of alcohol should avail themselves of the counseling and rehabilitation services offered by the Employee Assistance Program (EAP). Employees can obtain information about the EAP by contacting the Human Resources Bureau.

C. Investigation:

During the investigation of any alleged DWI/DUI, the employee shall be required to cooperate fully with the investigation, to include, but not be limited to the following;

1. Upon request, the employee shall provide the investigating personnel with all requested documentation, e.g., traffic citations, criminal complaint, court documents, etc., within three (3) working days (not including weekends or legal holidays) of the receipt of such documentation or a request for such documentation.
2. The employee shall cooperate in an investigative interview in an attempt to obtain all relevant facts surrounding the case.
3. The employee shall be required to notify the NMCD investigating officer of any scheduled court dates within three (3) working days (not including weekends or legal holidays) of learning of said schedule.

4. The employee shall be required to notify the investigating officer of any court actions or administrative actions taken against the employee, e.g., revoked or suspended license, reissued or restricted license, etc. within three (3) working days (not including weekends or legal holidays) of such actions.
5. The employee may be required to participate in a polygraph examination.

D. Sanctions:

1. Discipline for DWI/DUI will not necessarily be dependent upon a criminal conviction, a finding of guilt, or any other final adjudication by a court. The Department may discipline an employee for DWI/DUI even if an employee is not ultimately criminally charged or convicted of the crime of DWI/DUI. However, the disposition of any criminal or administrative charges may be considered in determining the appropriate discipline, if such disposition has occurred.
2. Aggravating circumstances will be considered when determining the sanction to be imposed upon an employee for DWI/DUI and may be used to enhance the level of discipline imposed.

Aggravating circumstances include, but are not limited to, the following: driving a state vehicle while intoxicated; prior DWIs/DUIs; bodily injury to a human being as a result of operating a vehicle while intoxicated; seeking “professional courtesy” or leniency by using the employee’s position with the Department; or extensive damage to the property of another.

3. The Secretary shall suspend a Department employee’s privilege to drive a State vehicle, while the employee goes through the administrative process. If convicted, the employee’s state driving privilege shall be revoked. The Secretary reserves the right to suspend limit or revoke an employee’s driving privileges for any other good cause.
4. Discipline for DWI/DUI will not necessarily be progressive, and a first offense may be grounds for dismissal. Minimum sanctions are as follows:

a. Off Duty Offenses:

- First Offense-5-day suspension.
- Second Offense-Dismissal.

b. On Duty Offenses:

Any employee who incurs a DWI/DUI while on duty shall be dismissed.

c. Driving State Vehicle:

Any employee who incurs a DWI/DUI while driving a State vehicle shall be dismissed.

E. Post or assignment:

If an employee incurs a DWI/DUI offense, regardless of whether the employee's license has been suspended, revoked, limited, or restricted, the facility may change, limit, or otherwise restrict their post assignments. Employees who have incurred a DWI/DUI offense may not be permitted to work certain posts, including but not limited to, the following:

1. Vehicle Patrol assignments.
2. Transportation assignments.
3. Any post, assignment, or duty that may require or result in the employee driving a State vehicle.

NEW MEXICO CORRECTIONS DEPARTMENT
DWI/DUI Acknowledgment Form

I, _____ (print name), acknowledge that I have received a copy of the **Employee DWI/DUI Policy**, CD-038300.

I acknowledge that I fully understand that it is contrary to NMCD policy to drive while intoxicated, and that a violation of this policy will subject me to discipline up to and including dismissal. I realize that as a condition of my employment I must abide by the terms of this policy, and will notify the Corrections Department in writing if I am charged with, arrested for, adjudicated guilty, or convicted of the criminal offense of Driving While Intoxicated (DWI)/ Driving Under the Influence (DUI) within three (3) working days (not including weekends and legal holidays) of such occurrence.

Employee's Signature

Date

xc: Employee file
