

PENALTIES FOR UNDER-21 ALCOHOL OFFENSES

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Under Age 18: Delinquent Acts

Adult Crimes

POSSESSION OF ALCOHOL

Law: **Delinquent Act:** "...buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse." 32A-2-3A(2).*

Fine: Not to exceed fine for adults 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1)(a) and (b).

License: 1st offense, 90 days revocation; 2nd or subsequent, 1 year, 32A-2-19H

Other: Place child on probation and transfer custody to CYFD for up to 6 months, 32A-2-19B(4). Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Misdemeanor** (applies to **age 18-20**): It is a violation of the Liquor Control Act for a minor to buy, attempt to buy, receive, possess or permit himself to be served with alcoholic beverages, 60-7B-1C. As used in the Liquor Control Act, "minor" means a person under 21 years of age, 60-7B-1E.

Fine: Maximum \$1,000 60-7B-1G and 31-19-1.

Jail: None specified; however, under the general misdemeanor statute, less than one year in county jail, 31-19-1A.

License: 90 day suspension on 2nd offense, or if driver is too young to have a license, 90 days added to the date he would otherwise be eligible to obtain a license, 60-7B-1G(2). On a 3rd or subsequent offense, two years suspension, or suspension until the offender reaches twenty-one years of age, whichever period of time is greater, 60-7B-1G(3). Up to 60 hours of community service related to reducing the incidence of DWI, depending on number of priors, 60-7B-1G.

Other:

* **Note:** the Children's Code Section 32A-2-3A(2) appears to provide an exception for minors, allowing them to be served alcohol "in the presence of the child's parent, guardian, custodian or adult spouse." **Note however,** that the Liquor Control Act declares it illegal to serve minors in a *licensed establishment* (see below) and for minors to allow themselves to be served alcohol in a licensed establishment. The Liquor Control Act specifically states that it is not a violation for a parent, legal guardian, or adult spouse of a minor to serve alcohol to the minor on "real property, other than licensed premises, under the control of the parent, legal guardian or adult spouse." 60-7B-1B(1). It is not a violation to provide alcohol to minors when they are used in the practice of religious beliefs, 60-7B-1B(2)

SELLING OR SERVING ALCOHOL TO A MINOR

Law: The Children's Code does not define the selling of alcohol by children to minors to be a delinquent act.

Fine: NA

Detention: NA

License: NA

Other: NA

Law: **Felony (4th degree):** (Liquor Control Act, applies to **age 18 or over**) To knowingly "(1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises; (2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor; (3) deliver alcoholic beverages to a minor; or (4) aid or assist a minor to buy, procure or be served with alcoholic beverages," 60-7B-1A. Minor here means someone under 21 years of age, 60-7B-1E.

Felony (4th degree): Contributing to the Delinquency of a Minor: any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of eighteen years, 30-6-3. (See *State v. Perea*, 2001-NMCA-002 and 2001-NMSC-026, 130 N.M. 732, 31 P.3d 1006, for further information on this crime.)

Fine: **Felony:** (4th Degree) Up to \$5,000, 60-7B-1F, or 30-6-3, and 31-18-15E(9)

Jail: **Felony** (4th Degree): 18 months prison, 60-7B-1F, or 30-6-3 and 31-18-15A(10)

PRESENTING OR MAKING A FALSE ID

Law: **Delinquent Act:** "altering or forging of a driver's license or permit or any making of a fictitious license or permit," 32A-2-3A(1)(h).

Fine: Not to exceed fine for adults, 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1)(a) and (b).

License: Suspension of license for unlawful or fraudulent use, 66-5-30A(6).

Other: Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Petty Misdemeanor** (Liquor Control Act, applies to **age 18-20**): AA minor who presents to any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor. @ 60-7B-7.

Fine: Liquor Control Act: up to \$500, 31-19-1B.

Jail: Liquor Control Act: up to 6 months, 31-19-1B.

Law: **Misdemeanor** (Motor Vehicle Code, applies to **age 18 and over**): A person who *uses or possesses* an altered, forged or fictitious driver's license, permit, or identification card is guilty of a misdemeanor, 66-5-18A.

Fine: Motor Vehicle Code: up to \$300, 66-8-7B.

Jail: Motor Vehicle Code: Up to 90 days, 66-8-7B.

Law: **Fourth Degree Felony** (Motor Vehicle Code, applies to **age 18 and over**): A person who *alters or forges* a driver's license, permit or identification card, or who *makes a fictitious* driver's license, permit or identification card is guilty of a fourth degree felony, 66-5-18B. OR, A person who possesses or uses a fraudulent, counterfeit or forged document to apply for or renew a driver's license, permit or identification card is guilty of a fourth degree felony.

Fine: Motor Vehicle Code: up to \$5,000, 66-8-9 and 31-18-15-E(8).

Jail: Motor Vehicle Code: up to 18 months in prison, 66-5-18, 31-18-15A(10).

License: Suspension of license for unlawful or fraudulent use, 66-5-30A(6).

Other: Probation required when sentence is suspended or deferred, 31-19-1C, 31-20-5.

DWI

Law: **Delinquent Act:** "driving while under the influence of intoxicating liquor or drugs," 32A-2-3A(1)(a)

Fine: Not to exceed fine for adults, 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1)(a) and (b).

License: Revocation from 1 year to permanent revocation, depending on number of prior offenses, 66-5-29C; setback of graduated driving privileges for at least 90 days, 66-5-8C, 66-5-1.1F.

Other: Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Misdemeanor** (Motor Vehicle Code, applies to **age 18 or over**): Drive a vehicle within the state while under the influence of intoxicating liquor, or while under the influence of any drug, to a degree which renders the person incapable of driving safely; or drive with an alcohol concentration of .08 or more in the breath or blood, (.04 for commercial licenses), tested within 3 hours of driving when the BAC is from alcohol consumed before or while driving, 66-8-102.

Felony: 4th degree, or 3rd degree, depending on number of prior offenses, 66-8-102G, H, I and J.

Fine: Up to \$5,000, depending on the number of prior offenses, 66-8-102E and F (misdemeanors), and 31-18-15E(9), (felonies).

Jail: Up to 3 years in prison, depending on the number of prior offenses: see 66-8-102E and F (misdemeanors) and 66-8-102 G and H for felonies.

License: Revocation from 1 year to permanent, depending on priors, 66-5-5D, 66-5-29C, and 66-8-102N and O, with interlock license required and a minimum of 6 months of interlock usage with no attempts to circumvent or tamper, 66-5-33.1B(4)

Other: Mandatory screening and ignition interlock, mandatory treatment for a subsequent offense, community service, up to 5 years probation, 66-8-102.

VEHICULAR HOMICIDE

Law: **Delinquent Act:** "homicide by vehicle;" 32A-2-3A(1)(e).

Fine: Not to exceed fine for adults, 32A-2-19B.

Detention: Up to 15 days in a local detention facility 32A-2-19B(3); or up to 2 year commitment in a rehab facility, 32A-2-19B(1)(a) and (b).

License: Revocation 1 year, ignition interlock license not allowed, 66-5-29A(4) & B.

Other: Probation under conditions and limitations as court may prescribe, 32A-2-19B(2).

Law: **Third Degree Felony** (Motor Vehicle Code, applies to **age 18 or over**): Killing a human being in the unlawful operation of a motor vehicle, including while under the influence of intoxicating liquor or any drug, 66-8-101.

Fine: Not to exceed \$5,000, 31-18-15E(6).

Jail: Up to 6 years, with mandatory 4 years extra for each prior DWI conviction within the last 10 years, 66-8-101D and 31-18-15A(7).

License: Revocation 1 year, ignition interlock license not allowed, 66-5-29A(4) & B

Other: Probation, 31-20-5.

OPEN CONTAINER

Law: **Misdemeanor:** A person under age 18 who is charged with a traffic violation will be prosecuted as an adult (in a municipal, magistrate or metropolitan court), if no delinquent act is charged, 32A-2-29A,B.

Delinquent Act: may be charged with possession under the Children's Code, 32A-2-3A(2) (for penalties, see "Possession" above.)

Fine: Same as adults, 66-8-138

Detention: Same as adults. Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations. 32A-2-29D.

License: Same as adults, 32A-2-29.

Law: **Misdemeanor** (Motor Vehicle Code): Knowingly drink any alcoholic beverage or have in one's possession any receptacle containing alcohol which has been opened, had its seal broken or the contents of which have been partially removed, while in a motor vehicle upon any public highway within the state, 66-8-138.

Fine: Not more than \$300, 66-8-7B.

Jail: Not more than 90 days, 66-8-7B.

License: 3 months revocation for 2nd offense, 1 year for subsequent offenses, 66-8-139B.

Other: Probation when sentence is suspended or deferred, 31-19-1C.

ADMINISTRATIVE LICENSE REVOCATION FOR DWI

Law: **This is a non-criminal sanction which applies to all drivers:** Driving privileges will be revoked administratively (through the MVD, not through the courts) for driving in New Mexico with a blood or breath alcohol concentration of .02 or higher (if under age 21), or .08 or higher (if 21 or over), or .04 or higher (driving a commercial vehicle) or for refusing to take a chemical test. 66-8-111B and C.

Fine: None: **Jail:** None

License: **Under 21:** 1 year revocation, 66-8-111C(2); **Under 18:** DWI is a traffic violation that will set back graduated driving privileges for drivers under 18 for at least 90 days, 66-5-8C; see 66-5-1.1F for definition of a "traffic violation."

21/over: 1st offense: 6 months revocation, 66-8-111C(1); subsequent offense or any refusal: 1 year revocation; 66-8-111C(3) and 66-8-111B.