

# NEW MEXICO SENTENCING COMMISSION

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## DWI De Novo Appeals

### Introduction

The New Mexico State Constitution allows for “appeals from final judgments from probate and other inferior courts.” In all appeals, this process is known as trial de novo unless otherwise specified by law. Trial de novo is a procedure by which a case is transferred from one court to the appellate court, either to review the legality of ruling or for a new trial entirely. Appeals from municipal, magistrate and metropolitan courts are appealed directly to the responsible district court. In all criminal cases, with the exception of driving while intoxicated (DWI) and domestic violence in the metropolitan court, this appeal is considered a trial de novo.

In New Mexico there is only one metropolitan court, which exists in Bernalillo County. The Bernalillo County Metropolitan Court replaces both the magistrate and municipal court in the County. In 1994, the Bernalillo County Metropolitan Court was designed as a court of record for both domestic violence and DWI cases. This means that upon appeal the case record is reviewed by a district court judge to determine if a legal error was made in the Metropolitan Court. This process does not provide the aggrieved party with an automatic right to a trial de novo in the District Court.

### Methodology

The New Mexico Sentencing Commission (NMSC) received an appropriation from the New Mexico State Legislature to study the prevalence and outcome of de novo appeals in DWI cases statewide except Bernalillo County. Using data provided from the New Mexico Administrative Office of the Courts, we reviewed de novo cases disposed from January 1, 2005 – December 31, 2007. During the study time period we found 451 cases were disposed. This time period yielded a sufficiently large number of cases and represented the recent trend in DWI de novo appeals. Due to limited funding we focused our data collection efforts on the counties with the highest incidence of DWI de novo appeals. The 1<sup>st</sup> Judicial District (Santa Fe County court cases), 9<sup>th</sup> Judicial District (Curry and Roosevelt County court cases), 10<sup>th</sup> Judicial District (Harding and

Quay County court cases), 12<sup>th</sup> Judicial District (Otero and Lincoln County court cases), and the 13<sup>th</sup> Judicial District (Sandoval County court cases) were selected to be part of the study. Cases in these court locations comprised 71% of DWI de novo appeals filed statewide. Table 1 lists the number of DWI de novo appeals filed by county. Counties shaded gray were included in the study.

After the court locations were selected, the court administrators in the respective districts were contacted. On-site data collection was arranged for Santa Fe, Sandoval, San Juan, Curry, and Roosevelt. In these counties, NMSC staff traveled to court facilities to make copies of the magistrate/municipal sentences and the district court information. The court administrators in the 10<sup>th</sup> and 12<sup>th</sup> Judicial Districts agreed to have their staff make copies of the appropriate paper work from the court files and send the copies to the NMSC.

The purpose of the data collection was to determine the outcomes of the magistrate/municipal and district court cases, document who filed the appeal, whether the defendant was represented by the public defender or private counsel, and the amount of time that lapsed between the magistrate/municipal and district court disposition dates. Cases filed with the district court for the purposes of reviewing a denial of plea withdrawal at the magistrate/municipal court, the non-award of pre-sentence credits in the magistrate/municipal sentence or other issues that did not require a trial de novo were excluded from the analysis. For these reasons 31 cases (9.7%) were excluded from the analysis.

There were a few anecdotal explanations shared with NMSC as to why DWI de novo appeals are filed. First was that filing an appeal delays the imposition of the sentence imposed by the magistrate/municipal court. Second, some private attorneys may encourage their clients to file an appeal. Reasons why attorneys may look favorably at filing an appeal include the chance of the case being dismissed if the officer fails to show or the district court judges may be seen as being more likely to impose a lesser sentence or reduced fines/fees. NMSC planned to see if the data collected would support any of these anecdotal explanations.

**Table 1. DWI De Novo Cases Disposed  
January 1, 2005 – December 31, 2007**

County	Count	Percentage
Sandoval	125	27.7%
San Juan	75	16.6%
Santa Fe	34	7.5%
Otero	27	6.0%
Curry	23	5.1%
Quay	17	3.8%
Dona Ana	15	3.3%
Taos	15	3.3%
Rio Arriba	14	3.1%
McKinley	13	2.9%
Eddy	11	2.4%
Roosevelt	9	2.0%
San Miguel	9	2.0%
Torrance	9	2.0%
Lincoln	8	1.8%
Grant	7	1.6%
Socorro	7	1.6%
Hidalgo	6	1.3%
Cibola	5	1.1%
Luna	5	1.1%
Chaves	4	0.9%
Lea	4	0.9%
Valencia	3	0.7%
Colfax	2	0.4%
Guadalupe	1	0.2%
Harding	1	0.2%
Mora	1	0.2%
Sierra	1	0.2%
Total	451	100.0%

**Table 2. Number of Cases By Court Type  
and County**

County	Court Type		Total
	Municipal	Magistrate	
Curry	0	22	22
Harding	0	1	1
Lincoln	0	1	1
Otero	21	3	24
Quay	0	15	15
Roosevelt	0	8	8
Sandoval	113	9	122
San Juan	5	64	69
Santa Fe	0	26	26
Total	139	149	288

magistrate/municipal court. In all of the cases appealed by prosecution, the decision of the lower court was affirmed by the district court.

Of defendants appealing to district court, 27% were represented by public defenders. Almost 3% of defendants were self-represented, and private counsel represented the remaining 70% of defendants. The percentage of defendants represented by a public defender varied by county. San Juan County had the largest percentage with 72.5% of defendants represented by public defenders. Only one of the defendants in Sandoval County was represented by a public defender. Table 3 lists the percentage of defendants represented by public defenders by county.

For defendants represented by private defense counsel, if the same attorney represented two or more defendants a numeric code was assigned. The attorney numeric codes were looked at by county. With the exception of the smallest counties (Harding, Lincoln, Quay and Roosevelt) where there are few cases and a small number of attorneys practicing law, no other county had any one attorney who represented more than 25% of defendants. Using 25% as the threshold, it does not appear to be a particular attorney encouraging their clients to file de novo appeals.

## Results

### COURT OF ORIGINATION

The originating court for DWI de novo appeals were nearly equally divided between municipal and magistrate courts; 52% of cases were originally filed in magistrate court and 48% were originally filed in municipal court. This split between municipal and magistrate cases varied by county. Only three counties had cases originating from both magistrate and municipal courts. Table 2 lists the number of cases that originated from municipal and magistrate courts by county.

### WHO FILES THE APPEAL

The vast majority (96.9%) of DWI de novo appeals are filed by defendants. The 3% of cases filed by prosecutors were all in cases where the prosecution was appealing the dismissal of charges by the

### DISTRICT COURT CASE DISPOSITION

The disposition of each de novo appeal case was coded into 8 categories. The most common disposition was a conviction. Nearly 46% of defendants were convicted. In 2% of cases the DWI charge was dismissed and the defendant was convicted of a different charge. In 20% of cases the charges were dismissed. There are several reasons why cases were dismissed including the prosecutor dismissed the charge, police officers not being available at trial, insufficient evidence, suppression of evidence, and the six month rule. In 3% of cases the defendant was acquitted of the charges.

County		Represented by Public Defender		
		No	Yes	Total
Curry	Count	11	11	22
	Percent	50.0%	50.0%	100.0%
Harding	Count	1	0	1
	Percent	100.0%	.0%	100.0%
Lincoln	Count	1	0	1
	Percent	100.0%	.0%	100.0%
Otero	Count	19	5	24
	Percent	79.2%	20.8%	100.0%
Quay	Count	13	2	15
	Percent	86.7%	13.3%	100.0%
Roosevelt	Count	4	4	8
	Percent	50.0%	50.0%	100.0%
Sandoval	Count	120	2	122
	Percent	98.4%	1.6%	100.0%
San Juan	Count	19	50	69
	Percent	27.5%	72.5%	100.0%
Santa Fe	Count	22	4	26
	Percent	84.6%	15.4%	100.0%
Total	Count	210	78	288
	Percent	72.9%	27.1%	100.0%

District Court Case Disposition	Number of Cases	Percentage
Conviction		
Convicted	132	45.8%
DWI Dismissed Convicted Other Charge	7	2.4%
Charges Dismissed		
Charges Dismissed	57	19.8%
Acquittal		
Acquittal	9	3.1%
Other		
Defendant Withdrew Appeal	14	4.9%
Appeal Dismissed	55	19.1%
Appealed to Court of Appeals	14	4.9%
Total	288	100.0%

In 19% of cases, the district court dismissed the appeal. In 5% of cases the defendant withdrew their appeal. Both of these dispositional types require the case be remanded to the magistrate/municipal court for the original sentence to be imposed.

Five percent of cases were further appealed to the NM Court of Appeals (COA). The outcome of these cases is discussed in more detail below. Table 4 lists the district court case dispositions.

### CASES APPEALED TO THE COA

Of cases that were appealed to the COA, 57% of the district court decisions were reversed. Defendants filed all of these cases. Of the eight cases where the district court's decision was reversed, four convictions were reversed and four dismissals were overturned. Table 5 lists the COA decision compared to the district disposition.

### AMOUNT OF TIME LAPSED

The number of days between the magistrate/municipal court date of disposition and the district court date of disposition was calculated. The median number of days was calculated for each disposition type. Since there was considerable variation in the number of days

from the magistrate/municipal court date of disposition and the district court date of disposition, we used the median to report number of days that elapsed instead of an average (mean). The median statistic represents the middle score in the data: half the scores are greater than the median and half are less than the median. In situations where there is a large dispersion (standard deviation) in the data the median is a more descriptive measure of the central tendency than the mean.

The number of days was not calculated for cases that were appealed to the COA. Cases where the defendant withdrew their appeal had the lowest number of median days to disposition in district court (121 days). Cases where the defendant was convicted had a median of 176 days. Cases where the appeal was dismissed by the district court had the largest median number of days (242 days). Table 6 lists the median number of days by district court case disposition.

Court of Appeals Decision		District Court Disposition		
		Convicted	Appeal Dismissed	Total
Reversed	Count	4	4	8
	Percent	40.0%	100.0%	57.1%
Affirmed	Count	6	0	6
	Percent	60.0%	.0%	42.9%
Total	Count	10	4	14
	Percent	100.0%	100.0%	100.0%

**Table 6. Median Number of Days to District Court Disposition by Disposition Type**

District Case Disposition	Number	Median Number of Days
Convicted	128	176
Appeal Dismissed	51	242
Charges Dismissed	53	181
Defendant Withdrew	12	121
Acquittal	9	203
DWI Dismissed Convicted Other Charge	7	202
Total	260	182

### DIFFERENCES IN SENTENCES

For the 132 cases where the defendant was convicted in district court, the median sentence, probation and fines and fees differences were calculated. The following formulas were used:

District jail sentence = total number of days sentenced – total number of days suspended

Magistrate/municipal jail sentence = total number of days sentenced – total number of days suspended

Sentence difference = District jail sentence – Magistrate/municipal jail sentence

Probation difference = District probation sentence – Magistrate/municipal probation sentence

Fines and fees difference = District total fines and fees – Magistrate/municipal total fines and fees

A negative number indicates the district court sentence was less than the magistrate/municipal court sentence. A value of zero would include no difference between the district court and magistrate/municipal court sentence.

In 36% percent of cases, the district court jail sentence was the same as the magistrate/municipal court sentence. District court jail sentences had a median of 2 days less of a jail sentence than the original magistrate/municipal court sentence. In 33% percent of cases, the district court fines and fees total were the same as the magistrate/municipal court fines and fees total. District court cases ordered a median of \$294 fewer fines and fees.

In 46% percent of district court cases, the probation sentences were the same as the magistrate/municipal court sentence. Half of district court probation

**Table 7. Sentence Differences**

	Difference Jail Sentence	Difference Probation Sentence	Difference Fines and Fee
Percentage with no difference	35.6%	46.2%	33.3%
Median	-2.0	0.0	-294

sentences were higher than the magistrate/municipal court probation sentence. Table 7 contains the sentence differences.

### Conclusion

In New Mexico, DWI de novo appeals are rarely filed. Using information from the Administrative Office of the Courts *Annual Statistical Report on DWI Court Dispositions in New Mexico*, 29,459 cases were adjudicated in magistrate and municipal courts in fiscal years 2005-2007. In calendar years 2005-2007, 451 de novo appeals were filed for an appeal rate of 1.5%. While the appeal rate may be low, the availability of this process is important. Of the 288 cases reviewed, filing a de novo appeal resulted in the reversal of a DWI conviction in 73 cases (25.3% of cases). Overall, 69.8% of the convictions from magistrate and municipal courts are upheld when re-convictions are combined with cases where the defendant withdraws their appeal or the judge dismisses the appeal. In 4.9% of cases the defendant further appeals the district court conviction to the New Mexico Court of Appeals.

The results of this study confirm that filing a DWI de novo does create a delay in the imposition of a sentence. The median number of days from the magistrate court date of disposition and the district court date of disposition was 182 days. There is not any evidence of particular attorneys using the process more frequently than others. At the onset of the study, we expected defendants to be represented by private counsel, however we found a high incidence of public defender representation.

Looking at cases where the defendant is convicted in district court, there appears to be some benefit for defendants in terms of reduced jail sentence and fines and fees. ■