



Aaron Mitchell, Esq.
1100 Fourth St. NW Ste. A
Albuquerque NM, 87102
(505) 420-1826

MVD IMPLIED CONSENT ACT HEARINGS:

When an individual is arrested on suspicion of DWI/DUI in New Mexico, they are subject to both criminal prosecution and administrative action by the Motor Vehicle Division (MVD). After the arrest, law enforcement will issue a Notice of Revocation, typically at the time of arrest or shortly thereafter. Upon receiving this notice, you have a strict deadline of **ten (10) calendar days** to submit a written request for an MVD hearing to contest the revocation of your driving privileges. It is important to note that the request must be **mailed on or before the tenth day**; it is not required to be received by the MVD within that period.

If you fail to submit a timely request for a hearing within the initial ten (10) calendar day period, your driving privileges will be automatically revoked approximately twenty (20) days after you were served with the Notice of Revocation—that is, around ten (10) days following the expiration of the original deadline.

If you submit a timely request for a hearing within the required ten (10) calendar days, the New Mexico Motor Vehicle Division (MVD) will schedule a hearing to allow you to contest the proposed revocation of your driving privileges. By law, this hearing must be scheduled within **ninety (90) days** from the date you were served with the Notice of Revocation. Currently, MVD hearings are conducted virtually via telephone conference, involving an administrative hearing officer, the State's witnesses, and your defense attorney.

During the hearing, the administrative hearing officer will first hear testimony from the State's witnesses regarding the circumstances of your DWI/DUI allegation. Your attorney will then have the opportunity to cross-examine those witnesses and challenge the evidence presented. If appropriate, your attorney may also introduce evidence or call witnesses on your behalf.

Following the hearing, it generally takes the administrative hearing officer approximately **two to four weeks** to issue a written decision. While you await the outcome of the hearing, your driver's license will remain valid, and you will be permitted to drive without the requirement of an ignition interlock device or an interlock-specific license.

It is important to understand that **MVD Implied Consent Act Revocation Hearings** are entirely separate from the criminal court proceedings related to a DWI/DUI charge. The legal standard the State must meet at an MVD hearing to establish guilt is significantly lower than in a criminal case. Specifically, the State is only required to prove its case by a **preponderance of the evidence**—meaning it must demonstrate that it is **more likely than not** (greater than 50% likelihood) that you were driving while intoxicated at the time of the alleged offense.

Because this burden of proof is considerably lower than the "beyond a reasonable doubt" standard used in criminal court, successfully contesting the revocation of your driving privileges can be challenging.



Aaron Mitchell, Esq.
1100 Fourth St. NW Ste. A
Albuquerque NM, 87102
(505) 420-1826

Nevertheless, with a comprehensive defense strategy and the guidance of experienced legal counsel, it is possible to identify deficiencies in the State's evidence and pursue a favorable outcome in your case.

In addition to the lower burden of proof applied at MVD hearings, one of the primary challenges in avoiding the revocation of your driving privileges is that success often requires prevailing in **both** the administrative (MVD) proceeding and the criminal case. For example, even if your attorney successfully defends against revocation at the MVD hearing, your driving privileges may still be at risk if your criminal case results in a conviction. This may occur if you choose to accept a plea agreement—whether to mitigate potential penalties, avoid the uncertainty of trial, or for other strategic reasons—or if you proceed to trial and are ultimately found guilty. In either scenario, the criminal court will forward a DWI Abstract to the MVD, triggering an administrative revocation of your driver's license regardless of the outcome of your earlier MVD hearing.

An **Abstract of Record** is an official court document submitted to the New Mexico Motor Vehicle Division (MVD) that details the outcome of a traffic-related conviction. This document includes key information such as the charges filed, the offenses resulting in a guilty finding, and any sentence imposed by the court. In DWI/DUI cases, the MVD relies on the Abstract of Record and a review of your criminal history—including any out-of-state DWI/DUI convictions—to determine the appropriate period of license revocation. The length of the revocation varies based on the number of prior convictions and can range from **six (6) months** to a **lifetime revocation**.

Many individuals mistakenly use the terms **suspension** and **revocation** interchangeably when referring to limitations on driving privileges. However, these terms have distinct legal meanings and consequences. In the context of a DWI/DUI allegation in New Mexico, only **revocation** applies—suspension is not a penalty used in these cases.

A **suspension** of driving privileges is a temporary withdrawal of your right to drive, during which you are generally prohibited from operating a motor vehicle except under specific, limited circumstances. In contrast, a **revocation** following a DWI/DUI arrest requires you to take affirmative steps to restore your driving privileges. Specifically, once your license is revoked, you must install an ignition interlock device on any vehicle you drive and obtain an **ignition interlock license** from the MVD. After these conditions are met, you are permitted to drive without restrictions on time, location, or purpose—provided the ignition interlock device does not detect the presence of alcohol in your breath.

Tips Regarding Submitting Your MVD Hearing Request:

When submitting your request for an MVD Implied Consent Act Hearing, it is strongly recommended that you send your request via USPS Certified Mail or a comparable tracked mailing service. Doing so provides **proof of mailing** and a record of when your request was sent, which can be crucial if the request is delayed or misplaced. Additionally, when completing the request form, check both boxes highlighted in yellow **on**



Aaron Mitchell, Esq.
1100 Fourth St. NW Ste. A
Albuquerque NM, 87102
(505) 420-1826

the form depicted below, as these selections are essential to properly initiate and preserve your right to contest the proposed revocation of your driving privileges. Finally, be sure not to forget to include the required \$25.00 payment with your request via check or money order.

If name has changed since any of the actions below were taken, give former name first, then current name.

Requestor Information			
Name			
Mailing Address			
City		State	Zip Code
Email Address		Primary Phone Number	DOB
Driver License Number	State	DWI Citation Number	Arrest Date

Reason for Hearing Request

I hereby request a hearing for the purpose of: (check only one box)

IMPLIED CONSENT ACT - Contesting the revocation of my driver's license and/or driving privileges based on violation of the Implied Consent Act. Refusal to submit to the breath/blood test; failure of breath/blood test, blood alcohol content (BAC) at or above .08 (or BAC at or above .02 for persons less than 21 years of age, or at or above .04 if the person was driving a commercial motor vehicle).

Request must be submitted or postmarked within ten (10) days from the date of receipt of notice of revocation and must include an Administrative Hearing Fee of \$25.00 or a sworn form MVD-10813 Statement of Indigency.

If you want the officer to be a witness at your hearing, you must so indicate by checking the box below. If you do not check the box below the police officer will not be required to attend the hearing, and the hearing officer will instead rely on an affidavit submitted by the officer.

I want the officer to be a witness at my hearing.

This form can be located online using the following link: <https://www.mvd.newmexico.gov/hearing-requests/>

Locating Your Citation Number for the MVD Request Form:

When completing the MVD hearing request form, you will be asked to provide your **citation number**. To locate this information, refer to the examples provided below, which illustrate where the citation number typically appears on your citation document. If you were not given a copy of your citation at the time of your arrest, upon your release from custody, or if you no longer have access to the citation, you may simply enter "N/A" in the citation number field.



Aaron Mitchell, Esq.
 1100 Fourth St. NW Ste. A
 Albuquerque NM, 87102
 (505) 420-1826

2154352 \$

ABSTRACT OF RECORD

STATE OF NEW MEXICO
 COUNTY OF: ALBUQUERQUE
 CITY OF: ALBUQUERQUE

DWI CITATION
 MVD-10811
 REV. 09/16

HEARING DATE: [REDACTED] COUNSEL REQUESTED: [REDACTED]
 COUNSEL NAME: [REDACTED] COUNSEL WAIVED: [REDACTED]

PLEA OF DEFENDANT: NOLLE GUILTY NOT GUILTY

COURT FINE: GUILTY NOT GUILTY DISMISSED

SENTENCE OF COURT: FINE \$ [REDACTED] JAIL [REDACTED] DAYS

LAB FEES: \$ [REDACTED] BOND FORFEIT: \$ [REDACTED] COSTS: \$ [REDACTED]

COND. VEH. DRIVER INFORMATION

NAME (LAST): [REDACTED] (FIRST): [REDACTED] (MIDDLE): [REDACTED]

ADDRESS: [REDACTED]

CITY: [REDACTED] STATE: [REDACTED] ZIP CODE: [REDACTED]

DATE OF BIRTH: [REDACTED] SEX: [REDACTED] HEIGHT: [REDACTED] WT: [REDACTED] SOCIAL SECURITY NUMBER: [REDACTED]

CLASSIFICATION: [REDACTED]

TRAFFIC: [REDACTED] WEATHER: [REDACTED] ROAD: [REDACTED] LIGHT: [REDACTED] ACCIDENT: [REDACTED]

CMV: YES NO PASSENGER (1 OR MORE): YES NO

THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING:
 66-8-102 NMSA 1978 STATUTE OR ORDINANCE & SECTION

MVD-11015E
 REV. 04/21

ALBUQUERQUE POLICE DEPT

COUNTY CODE: 02 AGENCY: 200

NYC 7478961 1

STATE OF NEW MEXICO
 UNIFORM TRAFFIC

NAME (LAST): [REDACTED] NAME (FIRST): [REDACTED] NAME (MIDDLE): [REDACTED] NAME: [REDACTED]

PHYSICAL ADDRESS: [REDACTED] CITY: ALBUQUERQUE STATE: NM

MAILING ADDRESS: [REDACTED] CITY: ALBUQUERQUE STATE: NM

STATE: NM ID PROVIDED: YES DRIVER LICENSE NUMBER: [REDACTED] DATE OF BIRTH: [REDACTED] SEX: M HEIGHT: 5' 05" WEIGHT: 140

PHONE NUMBER: [REDACTED] EMAIL ADDRESS: [REDACTED]

2024 NOV 1 PM 3:15

The following examples demonstrate behavior that would cause the Division to deny a driver their reinstatement:¹

¹ <https://www.mvd.newmexico.gov/nm-drivers-licenses-ids/dwi-information/#::~:~:text=The%20Implied%20Consent%20Act%20governs,based%20on%20all%20available%20evidence.>



Aaron Mitchell, Esq.
1100 Fourth St. NW Ste. A
Albuquerque NM, 87102
(505) 420-1826

Example A: A Driver revoked from January 1, 2022 through January 1, 2023 pursuant to a DUI conviction installs an ignition interlock device in their vehicle and then purchases their interlock-restricted license on 1/1/22. However, on 10/1/22, they have the interlock device removed to sell their vehicle and fail to have it installed in their new vehicle. The driver's revocation period ends as scheduled on 1/1/23, and they request a review for reinstatement eligibility on that date. They are denied reinstatement because they have failed to drive with an interlock device in conjunction with their interlock-restricted driver's license for the full six-month period immediately prior to their request for reinstatement review.

Example B: As before, a driver is revoked from 1/1/22 through 1/1/23, and they purchase their interlock-restricted driver's license on 1/1/22. However, their interlock-restricted driver's license is suspended for failure to pay child support on 2/1/22, and they do not resolve that issue and reinstate their interlock-restricted license before requesting a review for reinstatement eligibility on 1/1/23. They are denied reinstatement because they have failed to drive with a valid interlock license during the six months prior to requesting a review for reinstatement.

Example C: As before, a driver is revoked from 1/1/22 through 1/1/23, and they purchase their interlock-restricted driver's license on 1/1/22. From 1/1/22 through 9/30/22, their interlock license remains valid and they have no lockouts or tampering recorded on the interlock device. However, on 10/1/22, their interlock device records a lockout for too many high breath alcohol violations. This occurs again on 12/24/22. The driver submits their request for reinstatement review on 1/1/23. They are denied reinstatement because, despite their otherwise excellent records and device eligibility, they have two lockouts for high breath alcohol content recorded on their interlock device within the 6 months immediately prior to requesting a review for reinstatement.