

**AN EVALUATION OF THE 2007 DWI PROSECUTION PROGRAM IN THE 3RD
JUDICIAL DISTRICT IN NM**

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ABSTRACT

In July 2007 the District Attorney, City Attorney and local police department joined forces in Las Cruces, NM to implement a Domestic Violence and Driving While Intoxicated (DWI) Initiative. The purpose of this initiative was to divert these case types from the local municipal court to the magistrate court which is part of the state court system. Historically these cases were filed with the municipal court. The result was intended to be a better protected public.

Impact on the local justice system has been broad. The municipal court has had a reduction of these time intensive cases that it was accustomed to and equipped for. The state public defender's office is now required to provide indigent attorney services for these cases, whereas before the city funded indigent attorney services when the cases were in the municipal court. Police officers now take the cases to jury trials and prosecute them because the District Attorney does not represent all DWI cases.

This examination focuses on DWI cases filed in the Third Judicial District. The issues being examined by this research is to determine the impact upon the local administration of justice. Further, to define to what degree, if any, the DWI prosecutorial program is a successful initiative; and whether the protection of the public has been improved as a result. Furthermore, a comparative analysis of the supporting data from the state court system and the municipal court system will be offered.

The City of Las Cruces is a home rule municipality governed by a Charter adopted through a city-wide election. Adoption of the Charter permits the municipality to exercise all legislative powers and perform all functions not expressly denied by general law or charter and its purpose is to provide for maximum local self government. By and through the authority of

the Charter, the City of Las Cruces has adopted a local DWI Ordinance for enforcement in the municipality.

The State District Attorney in the Third Judicial District prosecutes in the Magistrate and the District Courts. They represent the State in all criminal matters but decline the prosecution in minor cases, while the City Attorney prosecutes in the Municipal Court.

DWI offenses may lead to death, injury or disability; as a result the public tends to focus on any weaknesses in the system. Some of the weaknesses are: hard policy making decisions in prosecutorial discretion, a lack of monitoring of sentencing compliance or consistency, a tendency to avoid political influence of law enforcement, a lack of government oversight of police activity and the lack of experience and training in the highly technical and complex legal issues surrounding DWI prosecution.

The methods utilized in this study were a data analysis of case information, the use of a survey and a literature review. A review of the DWI cases in the Municipal Court and the Magistrate Court over a six month time frame was examined. Data from the New Mexico DWI Resource Center was also examined. In addition, a survey was sent to 333 parties such as prosecutors, defense attorneys, police officers and judges. The responses were analyzed.

The major findings from the survey revealed that the perception about the success of the program indicates that 56% of the people who responded do not think the initiative has been successful. Most respondents think the Municipal Court is doing a better job in sound and timely dispositions of DWI cases in comparison to the Magistrate Court. The issues of prosecutors being capable and DWI offenders being monitored effectively were generally neutral. An examination of sentencing practices in both courts was difficult to compare as the data from the Magistrate Court was largely unavailable. A determination that the Municipal

Court *does* sentence DWI offenders in excess of the minimum requirements provided by law is apparent in over half the cases examined.

If the measurement of a safer community for the residents of Dona Ana County is in higher sentences as suggested in the 2007 DWI prosecution initiative press release, the program does not appear to have had that result. The result of the DWI prosecution program in the Third Judicial District appears to be a strain on the judicial system. Diverting cases from the Municipal Court to the Magistrate Court has not resulted in higher sentencing or more intensive supervision of offenders. Also of note is that significant difference in case handling and record keeping by the different courts impact the system.

A DWI prosecution initiative that is focused on prosecutorial consistency with an emphasis on sentencing recommendations should be implemented. First and second DWI cases filed by the LCPD should be filed in the Municipal Court and third offenses sent to Magistrate Court. Further, changes to data entry process and record keeping throughout the judicial district should be evaluated.