

# Effects of Dram Shop Liability and Enhanced Overservice Law Enforcement Initiatives on Excessive Alcohol Consumption and Related Harms

## A Commentary on a New Mexico Perspective

Rachel O'Connor, MPA

### Introduction

Prevention experts agree that strengthening and enforcing alcohol sales and service regulations is an effective strategy for reducing alcohol-related harms.<sup>1-4</sup> Despite this, few states have taken comprehensive liquor-control measures as a means of injury prevention. The scientists behind the papers published in this issue of the *American Journal of Preventive Medicine* should be commended for reviewing recent study results to revitalize the discussion concerning the effectiveness of both dram shop liability and enhanced overservice law enforcement on excessive alcohol consumption and related harms.<sup>5,6</sup> This commentary seeks to document the experience of enhanced overservice enforcement and policy reform efforts in the state of New Mexico, and to provide guidance for states contemplating similar efforts toward increasing public health and safety.

### History

New Mexico has a long history of leading the nation in deaths due to alcohol-involved driving. From the late 1970s through 2006, the State was consistently ranked among the top states for alcohol-involved motor-vehicle traffic crash fatality rates by the National Highway Traffic Safety Administration (NHTSA). Progressive prevention efforts in the early 1990s led to measured success in reducing fatalities, but in 1997 numbers again trended upward.

In 2003, Bill Richardson was elected to serve as the Governor of the State of New Mexico. Among his many priorities was a commitment to alleviate the State's long-entrenched driving-while intoxicated (DWI) problem. In 2004, the Governor appointed a DWI Czar with cabinet-

level authority to lead the State's efforts to reduce death and injury due to drunk driving. Priority was given to a multi-agency, coordinated approach toward addressing the problem, with emphasis on the areas of law enforcement, adjudication, public awareness, and liquor control.

The Richardson administration liquor-control reforms sought to maximize deterrence by simultaneously increasing both the perception of certainty of detection of illegal sales and service, and the likelihood of swift and severe punishment. Efforts included increasing the enforcement of regulations prohibiting sales to intoxicated patrons and minors, and increasing penalties for each respective violation. In addition, the state sought to change existing regulations that greatly reduced the likelihood of liquor license revocation for chronic violators. Increased enforcement and policy changes were coupled with a high-profile public awareness campaign.

Anti-DWI and liquor enforcement efforts in New Mexico spanned from late 2004 through 2010. During this time period, the state reduced its alcohol-involved crashes and fatalities by more than 35%, and by 2008 for the first time in history New Mexico was reliably out of the top ten for all impaired driving measures. Chronicled below is a description of the liquor-control policy and enforcement measures taken by the State that are believed to have been a major contributor to the overall increase in public safety.

### Policy and Program Changes in Liquor Control, 2004-2010

New Mexico's efforts to increase enforcement and engage in liquor-control reform were based on a number of key indicators. First, almost half of all convicted DWI offenders reported being served at a licensed establishment prior to arrest.<sup>7</sup> Second, the State was not actively enforcing the current liquor-control regulations, nor were violators being prosecuted for overservice. Existing regula-

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Address correspondence to: *AJPM* Editorial Office, 9500 Gilman Drive, La Jolla CA 92093-0811. E-mail: [ajpm@ucsd.edu](mailto:ajpm@ucsd.edu).  
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tions were not stringent enough to serve as a deterrent or to discourage recidivism. And finally, despite its longstanding alcohol problem, New Mexico had never revoked a liquor license for violations of liquor control.

Primary efforts to boost enforcement for overservice began in late 2004 when the Governor's office allocated \$500,000 to the New Mexico Department of Public Safety (DPS), Special Investigations Division, for the development of a Mobile Strike Unit. The team consisted of six officers who would serve as a "roving" unit to enhance the State's efforts to enforce the liquor-control act in the five counties where DWI was the deadliest. Priority was given to enforcing those regulations most relevant to injury prevention, including regulations against sales to intoxicated patrons and underage minors. From 2005 to 2010, the number of citations issued by DPS for illegal overservice more than quadrupled.

Despite increased enforcement, the State remained hampered by existing regulations that lacked the muscle necessary to discourage irresponsible service. In the spring of 2005, the Governor appointed a Liquor Control Task Force to examine and make recommendation to strengthen the State's Liquor Control Act regulations. The Task Force included 28 members representing key state agencies, the liquor industry, and anti-DWI advocates. After meeting 12 times, the Task Force recommended increasing the penalties for those licensees who repeatedly sold to intoxicated patrons or minors.

The Liquor Control Task Force recommended regulatory change to allow the State to revoke a liquor license for those licensees who were found guilty of three such violations within a rolling 12-month period. Previously the State had required five violations prior to moving to revoke, a policy that was out of sync with other surrounding states. The Task Force also recommended that New Mexico amend the time period to establish the presumptive evidence of overservice from 60 to 90 minutes after exiting a drinking establishment. The State moved forward with a series of public hearings that ultimately led to the adoption of both the "Three Strikes" rule and the amendment to the *per se* law. The new regulations were announced by the Governor and went into effect on October 15, 2006.

Next, the State sought to actively upgrade prosecutorial efforts. Aided by funds from the New Mexico Department of Transportation, in 2007 the Regulation and Licensing Department (RLD) hired a full-time prosecutor and staff to actively prosecute Three Strikes cases and other overservice violations. For the first time in history, in 2007 the State revoked a liquor license under the Three Strikes regulation. From 2007 through 2010, the State revoked four liquor licenses and penalized many more for overservice and/or violations for sales to minors.

Increased enforcement of the Three Strikes rule was wedded with a concentrated public awareness effort to maximize deterrence by increasing the perception of risk. The Governor's Office, DPS, and RLD worked cooperatively to maximize multimedia press coverage regarding ongoing enforcement operations, the Three Strikes policy, and high-profile DWI crashes that involved overservice. In 2007 Governor Richardson announced that the State was citing U.S. Airways for its actions in a highly publicized and controversial DWI case that hinged on overservice by an airline, thus further increasing the perception that overservice of any kind would not be tolerated in New Mexico. The leadership role taken by the Governor ensured that the administration was successful in bringing service issues to the forefront of the public discussion regarding the overservice of alcohol and its impact on public safety.

## Challenges

States pursuing reform to their alcohol-control policies should be prepared to face considerable challenges. The liquor industry rallied vigorous opposition to the Three Strikes rule through targeted public awareness and testimony at regulatory hearings. Objections were based on their assertion that levels of intoxication were difficult for servers to gauge and that law enforcement might be tempted to "target" certain establishments. In addition, the industry rightly argued that although other states may have more stringent regulations, they were not enforcing them.

Industry objections were countered by a number of experts who provided support for changes to New Mexico's regulations. New Mexico had a documented history of overservice that challenged public safety. The existing regulation that required five sustained violations within a 12-month period was notably out of sync with regulations in other states. Most importantly, as a result of this lax regulation, New Mexico lacked a viable mechanism to revoke the licenses of the state's most chronic offenders, and a viable deterrent to overservice, thus sending a message that overservice was tolerated in New Mexico.

The State also faced significant challenges at the onset of the increased prosecutions of overservice cases. Increased prosecution was met by increasingly engaged defense efforts from violators. Law enforcement personnel needed to update and change policies of breathalyzing and machine calibration to meet the rigorous requirement now needed in court hearing procedures. Policies regarding the observation of overservice and the collection of evidence needed to be refined and standardized. States eager to increase enforcement should seek technical assistance to ensure that procedures routinely used in

liquor enforcement are at par with more-rigorous court standards.

Finally, New Mexico faced significant challenges in evaluating its liquor-control efforts. From 2004 to 2010, the State implemented a comprehensive set of DWI reforms that also included enhanced DWI law enforcement, thus making it difficult to ferret out the effect of particular initiatives on public safety. Changes in industry attitudes and practices were easily conveyed in anecdotal form, but proved difficult to quantify let alone tie to public health outcomes at the local level.

## Conclusions and Recommendations

The review by the Task Force on Community Preventive Services<sup>5</sup> concludes that while the perceived threat of dram shop liability was associated with more responsible service practice, there was insufficient evidence to conclude that enforcement of overservice laws was associated with reductions in alcohol-related harm.

The authors rightly pointed out that a small number of states actually enforce laws that prohibit sales to intoxicated patrons, leading to few "natural experiments" in this important area of prevention research. As a result, few states are in a position to provide comprehensive data to support the conclusion that increased enforcement of overservice is a viable deterrent to alcohol-related harms. Yet the New Mexico model tends to suggest that comprehensive reform, coupled with enforcement, and amplified by adjudication and public awareness, has a potentially positive impact on public safety.

States seeking to replicate all or part of New Mexico's model should note the unique composition of factors that are believed to have contributed to the transformation of liquor-control practices. Reform efforts were comprehensive and included bolstering both law enforcement and prosecution efforts. In addition, the State simultaneously adopted increased penalties for individual citations for overservice and increased the State's capacity to revoke the license of chronically noncompliant establishments. The State also benefited from its tough per se law,

which stated that presumptive evidence of overservice can be established by a blood alcohol level of 0.14 g/dL in patrons within 90 minutes of exiting a drinking establishment. And finally, New Mexico's efforts were coordinated and championed by the highest levels of State government, lending credence to the perception within the community that violators would be detected and swiftly and severely punished.

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