

1 **14-4503. Driving with a blood or breath alcohol concentration of eight one-hundredths (.08)**
2 **or more; essential elements.**

3 For you to find the defendant guilty of driving with a blood or breath alcohol concentration
4 of eight one-hundredths (.08) or more [as charged in Count _____]¹, the state must prove to
5 your satisfaction beyond a reasonable doubt each of the following elements of the crime:

- 6 1. The defendant operated a motor vehicle²;
- 7 2. Within three (3) hours of driving, the defendant had an alcohol concentration of
8 eight one-hundredths (.08) grams or more in [one hundred milliliters of blood]³ [or] [two hundred
9 ten liters of breath] and the alcohol concentration resulted from alcohol consumed before or while
10 driving the vehicle.

11 3. This happened in New Mexico, on or about the _____ day of _____,
12 _____.

13 USE NOTES

- 14 1. Insert count number if more than one count is charged.
- 15 2. For the definition of “motor vehicle,” *see* § 66-1-4.11 (H) NMSA 1978 (2007).
- 16 3. Use only the applicable alternative or alternatives.

17 [Adopted, October 1, 1985; UJI Criminal Rule 35.02 NMSA 1978; UJI 14-4502 SCRA 1986; as
18 amended, effective August 1, 1989; May 1, 1997; as amended by Supreme Court Order No. 08-
19 8300-008, effective March 21, 2008; as amended by Supreme Court Order No. 16-8300-010,
20 effective for all cases pending or filed on or after December 31, 2016.]

21 **Committee commentary.** — This instruction pertains to NMSA 1978, Section 66-8-102 (1953),
22 which makes it a criminal offense for a person to drive any vehicle within New Mexico while

1 having eight one-hundredths or more alcohol in the person’s blood or breath. It is commonly
2 known as the “[~~per se~~] per se” violation.

3 NMSA 1978, Section 66-8-110(C) (2007), provides that [~~“when the blood or breath of the person~~
4 ~~tested contains an alcohol concentration of eight one-hundredths or more, the arresting officer shall~~
5 ~~charge him with a violation of Section 66-8-102 NMSA 1978.”] an “arresting officer shall charge
6 the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of
7 the person contains an alcohol concentration of . . . eight one hundredths or more.” The
8 determination of blood or breath concentration is based on the grams of alcohol in one hundred
9 milliliters of blood or grams of alcohol in two hundred ten liters of breath. *See* NMSA 1978, § 66-
10 8-111(C) (2025). Therefore, Section 66-8-102(C) and Section 66-8-110 create a [~~per se~~] per se
11 standard. It is not necessary for the state to prove that the defendant was driving impaired in order
12 for the jury to render a guilty verdict under Section 66-8-102(C) [~~NMSA 1978~~].~~

13 For a discussion of alternative charges under [~~NMSA 1978, Sections~~] Section 66-8-102(A), (C)
14 [~~and 66-8-102(C)~~], [~~see~~] see committee commentary for UJI 14-4501 [~~NMRA~~].

15 For a discussion of the meaning of the phrase “to drive,” [~~see~~] see committee commentary for UJI
16 14-4501 NMRA.

17 This instruction pertains to [~~NMSA 1978~~], Section 66-8-102(C)(1) (2007), which makes it a
18 criminal offense for “a person to drive a vehicle in this state if the person has an alcohol
19 concentration of eight one hundredths or more in the person’s blood or breath within three hours
20 of driving the vehicle and the alcohol concentration results from alcohol consumed before or while
21 driving the vehicle.” It is commonly known as the “[~~per se~~] per se” violation. This instruction
22 should be used for all driving under the influence of intoxicating liquor cases in which a [~~per se~~]
23 per se violation is alleged to have been committed after April 1, 2007, to reflect amendments to

1 Section 66-8-102. The [~~committee~~] Committee amended this instruction in 2016 to remove the
2 brackets around the phrase, “and the alcohol concentration resulted from alcohol consumed before
3 or while driving the vehicle.” The [~~committee~~] Committee determined that Section 66-8-102(C)(1)
4 makes this an essential element in all cases and it should not be omitted from the instruction.
5 Section 66-8-110(C)(1) provides, “The arresting officer shall charge the person tested with a
6 violation of § 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol
7 concentration of . . . eight one hundredths or more.”
8 “The determination of alcohol concentration shall be based on the grams of alcohol in one hundred
9 milliliters of blood or the grams of alcohol in two hundred ten liters of breath.” [~~NMSA 1978, §~~
10 Section 66-8-110(F).
11 Therefore, Sections 66-8-102(C) and 66-8-110 create a [~~per se~~] per se standard. It is not necessary
12 for the state to prove that the defendant was driving “while under the influence” in order for the
13 jury to render a guilty verdict under Section 66-8-102(C).
14 For a discussion of alternative charges under Sections 66-8-102(A) and 66-8-102(C), [~~see~~] see
15 committee commentary for UJI 14-4501.
16 For a discussion of the meaning of the phrase “to drive,” [~~see~~] see committee commentary for UJI
17 14-4501.
18 [As amended by Supreme Court Order No. 16-8300-010[, ~~effective for all cases pending or filed~~
19 ~~on or after December 31, 2016~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]