# Administrative Office of the Courts

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## STATE SUPREME COURT RULING CLARIFIES POLICE REQUIREMENTS IN DWI ARRESTS

SANTA FE – The New Mexico Supreme Court ruled Thursday that police must advise people arrested for drunken driving of their right to an independent blood-alcohol test but law enforcement has no obligation to help arrange for the test.

The unanimous decision by the state's highest court overturned a 2015 ruling by the Court of Appeals that concluded state law required police officers to "meaningfully cooperate" with DWI arrestees who want to obtain a test to independently determine their blood alcohol concentration. Defendants could use the independent test results to potentially challenge evidence from a breath alcohol test administered by police after an arrest.

The Supreme Court's decision came in a case in which an Albuquerque police officer arrested Stefan Chakerian around 2 a.m. on Sept. 24, 2008 for speeding and driving under the influence of alcohol. Before administering a breath alcohol test, the officer advised Chakerian of his right under state law to have an independent test performed by someone of his choosing. The arresting law enforcement agency must pay for the independent test.

At the Metropolitan Detention Center, Chakerian told the officer he wanted the additional chemical test and the officer provided access to a telephone, a telephone directory and a pen for 20 to 30 minutes. Chakerian testified at his trial that the access lasted 10 to 15 minutes, but he did not make any calls because he believed too much time had lapsed for an additional test and was uncertain who to call.

The Supreme Court concluded the officer's actions "were sufficient to afford Defendant a reasonable opportunity to obtain an independent chemical test."

"At a minimum, the arrestee must be provided with the means to contact a person of the arrestee's choosing in order to arrange for a chemical test," the Court said in an opinion written by Senior Justice Petra Jimenez Maes.

"The statute provides only that a qualified person may perform the test," the Court said. "It does not limit the arrestee's ability to contact someone other than the person who will actually perform the test, such as a friend or family member, to ask for help making arrangements for the test."

The Court also said, "Police may not unnecessarily hinder or interfere with an arrestee's attempt to exercise the right to an additional test."

At issue in the case was the arresting officer's obligations under a provision in New Mexico law that states: "The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer."

Chakerian's actions indicated that he understood his right to arrange for an independent test, the Court said in affirming his convictions of DWI and speeding.

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To read the opinion in *State v. Chakerian*, No. S-1-SC-35121, please visit the New Mexico Compilation Commission's website using the following link:
http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,121.pdf

The Supreme Court filed two other opinions today.

To read the opinion in *State v. Tapia*, No. S-1-SC-35183, please use the following link:
http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,183.pdf

To read the opinion in *State v. Chadwick-McNally*, No. S-1-SC-36127, please use the following link:
http://www.nmcompcomm.us/nmcases/nmsc/slips/SC36,127.pdf