

ALBUQUERQUE CRIMINAL LAWYER BLOG

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New Mexico Senate Bill 151 to Introduce Reason Into DWI/DUI Enforcement

The Albuquerque Journal reports that New Mexico Senator Michael Sanchez has introduced Senate Bill 151 (SB 151) which will address two serious problems in New Mexico DWI/DUI enforcement: 1) under the limits DWI/DUI arrests on the impaired to the slightest degree standard, and 2) the arrest of drivers found sleeping in their vehicles while intoxicated. The latter will be addressed here with a follow up on "impaired to the slightest degree."

Senator Sanchez 's SB 151 would address the practice of arresting drivers who are asleep in their car by inserting language defining driving to mean only those situations where the "person is behind the wheel of a motor vehicle and causing the motor vehicle to move or exercising control over the movement of the vehicle. Exercising control over a motor vehicle alone, without any movement of the vehicle and with no immediate intent to move the vehicle, does not constitute driving." The current DWI/DUI enforcement practices and the law allow drivers to be arrested for sleeping while intoxicated under the theory that they are in control of the vehicle.

Those in opposition to the change in the law argue that a person sleeping his or her car could wake up and decide to drive. Sure, they could. Someone drunk and sleeping in bed could wake up and decide to drive. In fact, that person is probably just or more likely to decide to drive drunk. After all, the person that had the good sense to avoid driving by sleeping in their vehicle at least possesses the conscience or fear of arrest necessary to cause them to avoid driving. Why should it be presumed that they would exercise the good judgment to avoid driving while intoxicated when severely intoxicated then exercise less restraint as the effects of the alcohol begin to wear off?

The fact is that the policy of arresting drivers who are sleeping in their cars to avoid driving under the influence actively encourages them to engage in the very behavior New Mexico's DWI/DUI laws are meant to deter. According to the National Highway Traffic Safety Administration's law enforcement DWI Training materials, for every driver that is arrested for DWI, there are 500 to 2000 drunken drivers that go undetected. If this is so, and one must weigh the risks of getting arrested for sleeping in a vehicle in a public parking lot which are probably pretty high versus getting arrested for DWI which according to NHTSA are extremely low. Due to the severe consequences of a DWI/DUI conviction, an odds oriented driver would drive rather than sleep since driving carries at best according to NHTSA a

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1/500 chance of detection. I for one would rather the person sleep off their intoxication before getting behind the wheel drunk and possibly endangering me, my family or other innocent drivers.

The policy of arresting people for trying to do the right thing is wrong on purely a gut level. It makes no sense to punish someone for making a responsible decision. More than that, it endangers the public by more or less forcing people to drive home rather than sleep off their intoxication. New Mexico's DWI/DUI law and policy is irresponsible and dangerous. I am happy to hear that Senator Sanchez is pushing this bill.

To show your support for the bill, contact Senator Sanchez or your own representative at <http://legis.state.nm.us/lcs/legislatorsearch.aspx>.

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