

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Crime Down, Jails and Prisons are Overflowing**

The U.S. Supreme Court just ordered the State of California to reduce crowding in prisons. Interestingly, on heels of this opinion, the New York Times reported that violent crime rates are at the lowest levels in 40 years.

California is not alone in prison overcrowding. Many states have similar problems. This is not surprising in light of the fact that the United States has 2.3 million people behind bars, by far the largest prison population in the world. The question that comes to mind is why the prison population continues to grow as crime rates are in decline?

The answer is simple. Prisons are quite profitable. But only if they are full. The problem becomes how to keep the prisons full as crime declines. There are many creative solutions to this problem. The most obvious solution is to create more criminal offenses. If folks are not committing the crimes that are on the books, the simple solution is to write a new book.

Thus, each year countless new criminal statutes are proposed, some of which are plainly geared to expanding the scope of criminal conduct to otherwise common practices. A few examples from New Mexico's past legislative session might help. There was legislation introduced to make it a felony to text while driving thus creating the opportunity to imprison the entire teen population. There was legislation introduced to make it a crime to pass within 5 feet of a bicyclist in a car geared perhaps to jailing grandmas. There was legislation passed to make it a crime for a minor to "appear" intoxicated again targeting teens. Sadly, there are many teenagers that simply cannot avoid appearing intoxicated any more than they can resist testing as most a parent of a teen will attest.

These are just the bills criminalizing the New Mexico public introduced last session. It does not touch on the DWI laws that though originally well intended are now moving in a very dangerous direction. Take for example the impaired to the slightest degree standard which basically allows the conviction of a driver for DWI if the arresting officer

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says he believes the person was intoxicated. Worse yet is the recently reported proclivity, and let's hope it is not a trend, to charge passengers with DWI. This should be a real boon for corrections. Finally, it has now become common to arrest folks for DWI for prescription medications of all varieties including Ritalin which is designed to increase focus and attention.

The bottom line if the people will not commit the criminal acts on the books, then the only option for keeping prisons full is to criminalize the behavior that they do engage in. Rest assured, California will not release prisoners. Instead, it will take the option left open by the Supreme Court of simply building more prisons as will other states. And those prisons will be full to overflowing.

We can all take comfort in knowing that private corrections companies will take a slight hit in profits as they are compelled to build new and expensive facilities. And the prison population will grow and grow until sometime in the distant future another such ruling is issued, as they have been time and time again, ordering California or some other state to reduce crowding. Presto! More prisons, more prisoners, and more proposed legislation making it a crime to "appear" to be some variety of criminal.

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