

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Out of State DWI/DUI Convictions Count as Priors Under New Mexico Law

Often times when drivers are charged with DWI/DUI in New Mexico, they have prior DWI/DUI convictions from other states. Many times, the charge in New Mexico will be to a DWI/DUI First Offense despite the prior conviction.

Those charged often believe that they were not charged with a subsequent DWI/DUI because the out of state conviction does not count against them. In reality, what typically has happened is that there has been no search of interstate criminal records at the time of the original filing of the complaint.

This does not mean that the complaint cannot be amended once the out of state DWI/DUI conviction(s) are discovered by the District Attorney. Therefore, if there is an out of state conviction for DWI/DUI, it will likely be discovered well before the trial date. If not, it will be discovered at sentencing and factored into the DWI/DUI sentencing where there is a significant amount of latitude allowed the judge.

The use of out of state DWI/DUI is allowed both by statute, NMSA 66-8-102(Q) and by case law, *State v. Lewis*. NMSA 66-8-102(Q) clearly allows for the use of out of state convictions for consideration of a charge as first or subsequent DWI/DUI. In addition, the New Mexico Court of Appeals determined in *State v. Lewis* that the use of out of state convictions for enhancement purposes is allowed under New Mexico law. The court in *State v. Lewis* ruled that so long as the out of state DWI/DUI statute is substantially equivalent to NMSA 66-8-102, then the conviction can be used as a prior.

It is very important that you discuss your DWI/DUI history honestly with your attorney from the very first meeting. Prior convictions will almost always show at some point during the process. Hiding them from your attorney could severely impact the legal representation as the approaches for dealing with first time DWI/DUI and subsequent DWI/DUI can be very different particularly when it comes to consideration of plea offers. Surprises at trial are never good for you or your attorney. Surprises at sentencing can be extremely detrimental to your freedom.

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