

ALBUQUERQUE CRIMINAL LAWYER BLOG

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More on New Mexico Senate Bill 151: Impaired to the Slightest Degree

In the last post, I looked at how New Mexico Senator Michael Sanchez' Senate Bill 151 (SB 151) would eliminate the practice of arresting drivers found sleeping in their vehicles while intoxicated. Fortunately, Senator Sanchez went further to address the routine practice of arresting drivers who are below the legal limit of .08 on what is often referred to as the impaired to the slightest degree standard.

The impaired to the slightest degree standard creates many issues regarding discretionary enforcement of the laws. The standard basically creates absolute discretion on the part of a DWI/DUI officer. The history of civil rights alone should be enough of an argument to prevent this kind of latitude in law enforcement. Even assuming that there are no possible racial, ethnic, sexual, religious, or other possible prejudices in law enforcement, there are other equally pernicious pressures on law enforcement for DWI/DUI convictions.

Most recently, it has been suggested that the Albuquerque DWI/DUI Unit has quotas that must be met. There are also overtime incentives for these arrests since going to court entails overtime pay. There are broader funding pressures of offices of prosecutors across New Mexico, since funding for DWI/DUI enforcement, which make no mistake is big business, is often tied to prosecution statistics. This pressure is likely to grow in the current budget environment. Finally, the press must always weigh in with an attack every time an officer, prosecutor or judge exercises some rational discretion on DWI/DUI enforcement. The pressures for arrest and conviction are simply too great to have any latitude at all in the enforcement of New Mexico's DWI/DUI laws.

In fact, I can think of no other law that has such a vague standard. "Impaired to the slightest degree?" Really? What does this mean? It has no meaning other than that given to it by the officer at any particular time. So what if the cop needs to meet a quota, just doesn't like the driver, is trying to impress the boss, or is just having a bad day (I assume cops probably have more than their share of stressful days)? Perhaps it is more insidious. Perhaps the cop is looking to book more overtime for a new fishing boat? And most frightening of all for all of us, maybe the cop is prejudice against the driver for race, ethnicity, religion, political affiliation, age, sex or some other grounds that taints his judgment even slightly.

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The fact is the law should be precisely written. Citizens should know what to expect. There should be a standard that they can meet. They must be able to avoid violation of the law through thoughtful and responsible conduct. There is no such standard currently in New Mexico's DWI/DUI law enforcement. In fact, most people still believe the standard is .08 blood alcohol level. Many plan their evenings around this belief. Some even buy portable blood alcohol test devices to insure they comply with the law. There are even bars and restaurants that have these devices for their patrons. And the fact is, it simply does not matter. It is left to the cop.

The law should not be drafted for the 99% of law enforcement officers that conscientiously perform their duties. It should be drafted to protect against that very small percentage of those that don't. There should be a standard, any standard will do, .08, .04, .01 or even any alcohol at all. The public has a right to know the law and in its current state, the law is unknowable. There is simply no possible way for citizen to know whether or not they will be arrested for DWI/DUI if they are below .08. Due to the severe consequences of a DWI/DUI conviction, this is unacceptable and more than a little frightening.

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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