

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Drinking + Driving + Kids = Felony Child Abuse**

New Mexico takes DWI extremely seriously and for good reason. New Mexico has for years ranked among the national leaders in DWI accidents and fatalities. Unfortunately, many DWI fatalities in New Mexico and other states involve child passengers.

There is a growing trend in New Mexico and other states to charge DWI drivers with child abuse when children are present in the car at the time of the DWI offense. In New Mexico, parents charged with DWI with their children present often find themselves charged with Abandonment or Abuse of a Child, a third degree felony carrying up to 3 years in prison for the first offense.

The law is intended to protect children from the dangers of drunken driving. The law is admirable in its intentions. However, the way the law is enforced can lead to some rather draconian results. For instance, there is a trend across New Mexico, particularly in Albuquerque, to charge drivers with DWI at breath alcohol levels below, often well below .08. Not only are drivers being charged at these levels, they are regularly being convicted. The conviction of DWI at these levels would carry with it possible conviction for Abandonment or Abuse of Child when children were present.

It is impossible to identify any standard in DWI arrests and prosecution in cases involving breath alcohol levels below .08. Instead, the prosecutor need only show that the driver's ability to drive was "impaired to the slightest degree." Your guess is as good as mine as to what this means other than you are impaired if the officer, sometimes right out of the police academy, says you are impaired. This is no standard at all and when New Mexico parents may face felony prosecution for child abuse for a glass of wine or two with dinner, lack of standards is unacceptable.

There was legislation presented in the last legislative session to redress the problems with such a vague standard. Unfortunately, no action was taken on the bill. Worse still until the standard is addressed, families could be torn apart by overly aggressive and misguided enforcement of DWI laws. Many would argue that no alcohol at all is acceptable before driving. Perhaps this is a valid position but it is not the law. The law is meant to deter driving impaired by alcohol.

If New Mexico's intent is to completely prohibit alcohol and driving, then pass a law to that effect. At least then drivers will know that it is against the law to drink even a little and get behind the wheel. What is not acceptable is leaving it

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at the sole discretion of the officer to decide whether or not you are impaired despite a low breath alcohol level, exposing law abiding citizens to DWI and child abuse charges. The legislature needs to act one way or the other and it needs to hear your voice no matter which side you are on. [Contact them now.](#)

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