

# Excessive DUI Law

David Zokaites

July 1, 2025

# Background

- We want people to be safe
- Hurting others is illegal
- Getting ready to injure is illegal
- Being able to injure is just normal
- Many legal parts of life can be manipulated to hurt:
- Write contracts, drive, use tools, own guns, enforce bad laws, donate to PACs, write biased news, ...
- Can't criminalize everything potentially harmful

# Important Ideas

- Drunk drivers are dangerous
- Cause accidents, injury, death
- So don't drive when drunk
- Sleep it off somewhere
- Even better – don't get drunk
- Also very good – support addiction treatment

# Excessive Government Caution

- Illegal to sleep in your car in SD while drunk
- Law is unnecessarily overzealous and unconstitutional

# The Law

- SDCL “32-23-1. Driving or control of vehicle prohibited with alcohol in blood ... ”
- “No person may drive or be in actual physical control of any vehicle while:”
- “(1) There is 0.08 percent or more by weight of alcohol in that person's blood ...”
- “(3) Under the influence of any controlled drug ... incapable of safely driving”

# Problem Phrase

- “Control of vehicle”
- Excessively broad
- Punishes something that is safe
- Sleeping in your car while drunk should be legal
- Sitting on your car while drunk should be legal

# Some Alternate Approaches

- Georgia. Must be in control of a **MOVING** vehicle for DUI. GA Code § 40-6-391 (2024):  
"(a) A person shall not drive or be in actual physical control of any moving vehicle while: (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;"
- New Hampshire. Law (NH RSA 265-A:1(VI)) allows sleeping while drunk in your car as long as you're not in the driver's seat

# Alternates Continued

- New South Wales, Australia (Road Transport Act 2013 - Sect 112)
- OK to be drunk in a car if you're not driving
- California
- Must be actually driving for a DUI

# Recommendation

- Use Sioux Falls home rule charter to amend South Dakota law
- Add the word “moving” to the law
- "No person may drive or be in actual physical control of any MOVING vehicle ..."

# Enjoy South Dakota

