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HOUSE BILL 323

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Stevan Pearce

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; ELIMINATING THE AVAILABILITY OF A LIMITED DRIVER'S LICENSE FOR CERTAIN DWI OFFENDERS; INCREASING THE MINIMUM MANDATORY SENTENCE FOR A PERSON CONVICTED A SECOND TIME FOR DWI; PROVIDING FOR THE IMMOBILIZATION OR IMPOUNDMENT OF VEHICLES OR THE INSTALLATION OF IGNITION INTERLOCK DEVICES ON VEHICLES; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The [~~division~~ department] shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the [~~division~~ department] may, in its discretion, issue:

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1 (1) an instruction permit to a person
2 fifteen years of age or over who is enrolled in and attending
3 or has completed a driver education course that includes a
4 DWI education and prevention component approved by the bureau
5 or offered by a public school;

6 (2) a provisional license to any person
7 fifteen years and six months of age or older:

8 (a) who has completed a driver
9 education course approved by the bureau or offered by a
10 public school that includes a DWI education and prevention
11 component and has had an instruction permit for at least six
12 months; and

13 (b) who has successfully completed a
14 practice driving component;

15 (3) a driver's license to any person sixteen
16 years and six months of age or older:

17 (a) who has had a provisional license
18 for the twelve-month period immediately preceding the date of
19 the application for the driver's license;

20 (b) who has complied with restrictions
21 on that license;

22 (c) who has not been convicted of a
23 traffic violation that was committed during the ninety days
24 prior to applying for a driver's license; and

25 (d) who has not been adjudicated for an
offense involving the use of alcohol or drugs during that
period and who has no pending adjudications alleging an

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1 offense involving the use of alcohol or drugs at the time of
2 his application; and

3 (4) to any person thirteen years of age or
4 older who passes an examination prescribed by the ~~[division]~~
5 department, a license restricted to the operation of a
6 motorcycle, provided:

7 (a) the motor is not in excess of one
8 hundred cubic centimeters displacement;

9 (b) no holder of an initial license may
10 carry any other passenger while driving a motorcycle; and

11 (c) the ~~[director]~~ secretary approves
12 and certifies motorcycles as not in excess of one hundred
13 cubic centimeters displacement and by ~~[regulation]~~ rule
14 provides for a method of identification of such motorcycles
15 by all law enforcement officers;

16 B. whose license or driving privilege has been
17 suspended or denied, during the period of suspension or
18 denial, or to any person whose license has been revoked,
19 except as provided in Section 66-5-32 NMSA 1978;

20 C. who is an habitual drunkard, an habitual user
21 of narcotic drugs or an habitual user of any drug to a degree
22 ~~[which]~~ that renders him incapable of safely driving a motor
23 vehicle;

24 D. who, within any ten-year period, is three times
25 convicted of driving a motor vehicle while under the
influence of intoxicating liquor or narcotic drug regardless
of whether the convictions are under the laws or ordinances

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1 of this state or any municipality or county of this state or
2 under the laws or ordinances of any other state, the District
3 of Columbia or any governmental subdivision thereof. Ten
4 years after being so convicted for the third time, the person
5 may apply to any district court of this state for restoration
6 of the license, and the court, upon good cause being shown,
7 may order restoration of the license applied for; provided
8 that the person has not been subsequently convicted of
9 driving a motor vehicle while under the influence of
10 intoxicating liquor or drug in the ten-year period prior to
11 his request for restoration of his license. Upon issuance of
12 the order of restoration, a certified copy shall immediately
13 be forwarded to the ~~[division]~~ department, and if the person
14 is otherwise qualified for the license applied for, the three
15 previous convictions shall not prohibit issuance of the
16 license applied for. Should the person be subsequently once
17 convicted of driving a motor vehicle while under the
18 influence of intoxicating liquor or drug, the ~~[division]~~
19 department shall revoke his license for five years, after
20 which time he may apply for restoration of his license as
21 provided in this subsection;

22 E. who has previously been afflicted with or who
23 is suffering from any mental disability or disease ~~[which]~~
24 that would render him unable to drive a motor vehicle with
25 safety upon the highways and who has not, at the time of
application, been restored to health;

F. who is required by the Motor Vehicle Code to

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1 take an examination, unless he has successfully passed the
2 examination;

3 G. who is required under the laws of this state to
4 deposit proof of financial responsibility and who has not
5 deposited the proof;

6 H. when the [~~director~~] secretary has good cause to
7 believe that the operation of a motor vehicle on the highways
8 by the person would be inimical to public safety or welfare;
9 [~~or~~]

10 I. as a motorcycle driver who is less than
11 eighteen years of age and who has not presented a certificate
12 or other evidence of having successfully completed a
13 motorcycle driver education program licensed or offered in
14 conformance with [~~regulations~~] rules of the bureau; or

15 J. who is a subsequent offender, unless the
16 offender provides the department with proof that each motor
17 vehicle owned by the offender or available for the offender's
18 personal use is equipped with an ignition interlock device
19 installed and operated pursuant to rules adopted by the
20 bureau. An ignition interlock device shall be installed on
21 the appropriate motor vehicles at the offender's expense."

22 Section 2. Section 66-5-35 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 257, as amended) is amended to read:

24 "66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR
25 REVOCATION--HEARING--REVIEW.--

A. Upon suspension or revocation of a person's
driver's license following conviction or adjudication as a

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1 delinquent under any law, ordinance or ~~[regulation]~~ rule
2 relating to motor vehicles, a person may apply to the
3 department for a license or permit to drive, limited to use
4 allowing him to engage in gainful employment or to attend
5 school, except that no person shall be eligible to apply:

6 (1) for a limited commercial driver's
7 license;

8 (2) for a limited license when the person's
9 driver's license was revoked pursuant to the provisions of
10 the Implied Consent Act, except as provided in Subsection B
11 of this section;

12 (3) for a limited license when the person's
13 license was revoked pursuant to an offense for which the
14 person is a subsequent offender as defined in the Motor
15 Vehicle Code ~~[except that a person who is convicted a second~~
16 ~~or third time for driving under the influence of intoxicating~~
17 ~~liquor or drugs, may apply for and shall receive a limited~~
18 ~~license if he complies with the requirements set forth in~~
19 ~~Subsections C and D of this section]; or~~

20 (4) for a limited license when the person's
21 driver's license was revoked pursuant to a conviction for
22 committing homicide by vehicle or great bodily injury by
23 vehicle, as provided in Section 66-8-101 NMSA 1978.

24 B. A person whose driver's license is revoked for
25 the first time pursuant to the provisions of Paragraph (1) or
(2) of Subsection C of Section 66-8-111 NMSA 1978 ~~[or for the~~
~~second or third time pursuant to the provisions of Paragraph~~

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1 ~~(3) Subsection C of Section 66-8-111 NMSA 1978~~ may apply for
2 and shall receive a limited license or permit thirty days
3 after suspension or revocation of his license if the person
4 pays every fee, meets the criteria for limited driving
5 privileges established in rules by the department and
6 provides the department with documentation of the following:

7 (1) that the person is enrolled in a DWI
8 school approved by the traffic safety bureau and an approved
9 alcohol screening program;

10 (2) proof of financial responsibility
11 pursuant to the provisions of the Mandatory Financial
12 Responsibility Act;

13 ~~[(3) if the person's driver's license is~~
14 ~~revoked pursuant to the provisions of Paragraph (3) of~~
15 ~~Subsection C of Section 66-8-111 NMSA 1978, the person shall~~
16 ~~provide proof that each motor vehicle to be operated by the~~
17 ~~person, if he receives a limited license, shall be equipped~~
18 ~~with an ignition interlock device installed and operated~~
19 ~~pursuant to rules adopted by the traffic safety bureau] and~~
20 either

21 (3) proof of gainful employment or gainful
22 self-employment and that the person needs a limited license
23 to travel to and from his place of employment; or

24 (4) proof that the person is enrolled in
25 school and needs a limited license to travel to and from
school.

~~[C. A person who is convicted a second or third~~

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1 ~~time for driving under the influence of intoxicating liquor~~
2 ~~or~~
3 ~~drugs may apply for and shall receive a limited license~~
4 ~~thirty days after suspension or revocation of his license if~~
5 ~~the person pays every fee, meets the criteria for limited~~
6 ~~driving privileges established in rule by the department and~~
7 ~~provides the department with documented proof:~~

8 ~~(1) of enrollment in a DWI school approved~~
9 ~~by the traffic safety bureau and an approved alcohol~~
10 ~~screening program;~~

11 ~~(2) of financial responsibility pursuant to~~
12 ~~the provisions of the Mandatory Financial Responsibility Act;~~
13 ~~and either~~

14 ~~(3) of gainful employment or gainful self-~~
15 ~~employment and that the person needs a limited license to~~
16 ~~travel to and from his place of employment; or~~

17 ~~(4) of enrollment in school and that the~~
18 ~~person needs a limited license to travel to and from school.~~

19 ~~D. In addition to the requirements set forth in~~
20 ~~Subsection C of this section, a person who is convicted a~~
21 ~~second or third time for driving under the influence of~~
22 ~~intoxicating liquor or drugs shall provide the department~~
23 ~~with his judgment and sentence. The judgment and sentence~~
24 ~~shall attest that the person will be on probation for the~~
25 ~~entire period that a limited license will be in effect and~~
~~that, as a condition of probation, the person shall provide~~
~~proof that each motor vehicle to be operated by the person is~~

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1 ~~equipped with an ignition interlock device installed and~~
2 ~~operated pursuant to rules adopted by the traffic safety~~
3 ~~bureau. The ignition interlock device shall be installed on~~
4 ~~the appropriate motor vehicle at the person's expense.~~

5 ~~E.]~~ C. Upon receipt of a fully completed
6 application that complies with statutes and rules for a
7 limited license and payment of the fee specified in this
8 subsection, the department shall issue a limited license or
9 permit to the applicant showing the limitations specified in
10 the approved application. For each limited license or permit
11 to drive, the applicant shall pay to the department a fee of
12 forty-five dollars (\$45.00), which shall be transferred to
13 the state highway and transportation department. All money
14 collected ~~[under]~~ pursuant to this subsection shall be used
15 for DWI prevention and education programs for elementary and
16 secondary school students. The state highway and
17 transportation department shall coordinate with the
18 department of health to ensure that there is no program
19 duplication. The limited license or permit to drive may be
20 suspended as provided in Section 66-5-30 NMSA 1978.

21 ~~[F-]~~ D. The department, within twenty days of
22 denial of an application for a limited driver's license or
23 permit pursuant to this section, shall afford the applicant a
24 hearing in the county in which the applicant resides, unless
25 the department and the licensee agree that the hearing may be
held in some other county. The department may extend the
twenty-day period, provided that the extension is in writing

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1 and made no later than fifteen days after receipt of an
2 application. Upon hearing, the hearing officer designated by
3 the department may administer oaths and may issue subpoenas
4 for the attendance of witnesses and the production of
5 relevant books and papers. The hearing officer shall make
6 specific findings as to whether the applicant has shown proof
7 of financial responsibility for the future and enrollment in
8 an approved DWI school and an approved alcohol screening
9 program and meets established uniform criteria for limited
10 driving privileges adopted by rule of the department. The
11 hearing officer shall enter an order either approving or
12 denying the applicant's request for a limited license or
13 permit to drive. If any of the specific findings set forth
14 in this subsection are not found by the hearing officer, the
15 applicant's request for a limited license or permit shall not
16 be approved.

17 ~~[G.]~~ E. A person adversely affected by an order of
18 the hearing officer may seek review within thirty days in the
19 district court in the county in which he resides. On review,
20 it is for the court to determine only whether the applicant
21 met the requirements in this section for issuance of a
22 limited license or permit to drive."

23 Section 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
24 Chapter 139, Section 54, as amended) is amended to read:

25 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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1 A. It is unlawful for [~~any~~] a person who is under
2 the influence of intoxicating liquor to drive [~~any~~] a vehicle
3 [~~within~~] in this state.

4 B. It is unlawful for [~~any~~] a person who is under
5 the influence of any drug to a degree that renders him
6 incapable of safely driving a vehicle to drive [~~any~~] a
7 vehicle [~~within~~] in this state.

8 C. It is unlawful for [~~any~~] a person who has an
9 alcohol concentration of eight one-hundredths or more in his
10 blood or breath to drive [~~any~~] a vehicle [~~within~~] in this
11 state.

12 D. Aggravated driving while under the influence of
13 intoxicating liquor or drugs consists of a person who:

14 (1) has an alcohol concentration of sixteen
15 one-hundredths or more in his blood or breath while driving
16 [~~any~~] a vehicle [~~within~~] in this state;

17 (2) has caused bodily injury to a human
18 being as a result of the unlawful operation of a motor
19 vehicle while driving under the influence of intoxicating
20 liquor or drugs; or

21 (3) refused to submit to chemical testing,
22 as provided for in the Implied Consent Act, and in the
23 judgment of the court, based upon evidence of intoxication
24 presented to the court, was under the influence of
25 intoxicating liquor or drugs.

 E. Every person under first conviction [~~under~~]
pursuant to this section shall be punished, notwithstanding

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1 the provisions of Section 31-18-13 NMSA 1978, by imprisonment
2 for not more than ninety days or by a fine of not more than
3 five hundred dollars (\$500), or both; provided that if the
4 sentence is suspended in whole or in part or deferred, the
5 period of probation may extend beyond ninety days but shall
6 not exceed one year. Upon a first conviction [~~under~~
7 pursuant to this section, an offender may be sentenced to not
8 less than forty-eight hours of community service or a fine of
9 three hundred dollars (\$300). The offender shall be ordered
10 by the court to participate in and complete a screening
11 program described in Subsection H of this section and to
12 attend a driver rehabilitation program for alcohol or drugs,
13 also known as a "DWI school", approved by the [~~traffic~~
14 safety] bureau [~~of the state highway and transportation~~
15 ~~department~~] and also may be required to participate in other
16 rehabilitative services as the court shall determine to be
17 necessary. In addition to those penalties, when an offender
18 commits aggravated driving while under the influence of
19 intoxicating liquor or drugs, the offender shall be sentenced
20 to not less than forty-eight consecutive hours in jail. If
21 an offender fails to complete, within a time specified by the
22 court, any community service, screening program, treatment
23 program or DWI school ordered by the court, the offender
24 shall be sentenced to not less than an additional forty-eight
25 consecutive hours in jail. Any jail sentence imposed [~~under~~
pursuant to this subsection for failure to complete, within a
time specified by the court, any community service, screening

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1 program, treatment program or DWI school ordered by the court
2 or for aggravated driving while under the influence of
3 intoxicating liquor or drugs shall not be suspended, deferred
4 or taken under advisement. On a first conviction ~~[under]~~
5 pursuant to this section, any time spent in jail for the
6 offense prior to the conviction for that offense shall be
7 credited to any term of imprisonment fixed by the court. A
8 deferred sentence ~~[under]~~ pursuant to this subsection shall
9 be considered a first conviction for the purpose of
10 determining subsequent convictions.

11 F. A second or third conviction ~~[under]~~ pursuant
12 to this section shall be punished, notwithstanding the
13 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
14 not more than three hundred sixty-four days or by a fine of
15 not more than one thousand dollars (\$1,000), or both;
16 provided that if the sentence is suspended in whole or in
17 part, the period of probation may extend beyond one year but
18 shall not exceed five years. Notwithstanding any provision
19 of law to the contrary for suspension or deferment of
20 execution of a sentence:

21 (1) upon a second conviction, each offender
22 shall be sentenced to a jail term of not less than ~~[seventy-~~
23 ~~two consecutive hours]~~ five consecutive days, forty-eight
24 hours of community service and a fine of five hundred dollars
25 (\$500). In addition to those penalties, when an offender
commits aggravated driving while under the influence of
intoxicating liquor or drugs, the offender shall be sentenced

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1 to a jail term of not less than ninety-six consecutive hours.

2
3 If an offender fails to complete, within a time specified by
4 the court, any community service, screening program or
5 treatment program ordered by the court, the offender shall be
6 sentenced to not less than an additional seven consecutive
7 days in jail. A penalty imposed pursuant to this paragraph
8 shall not be suspended or deferred or taken under advisement;
9 and

10 (2) upon a third conviction, an offender
11 shall be sentenced to a jail term of not less than thirty
12 consecutive days and a fine of seven hundred fifty dollars
13 (\$750). In addition to those penalties, when an offender
14 commits aggravated driving while under the influence of
15 intoxicating liquor or drugs, the offender shall be sentenced
16 to a jail term of not less than sixty consecutive days. If
17 an offender fails to complete, within a time specified by the
18 court, any screening program or treatment program ordered by
19 the court, the offender shall be sentenced to not less than
20 an additional sixty consecutive days in jail. A penalty
21 imposed pursuant to this paragraph shall not be suspended or
22 deferred or taken under advisement.

23 G. Upon a fourth or subsequent conviction [~~under~~
24 pursuant to this section, an offender is guilty of a fourth
25 degree felony, as provided in Section 31-18-15 NMSA 1978, and
shall be sentenced to a jail term of not less than six
months, which shall not be suspended or deferred or taken

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1 under advisement.

2 H. Upon any conviction [~~under~~] pursuant to this
3 section, an offender shall be required to participate in and
4 complete, within a time specified by the court, an alcohol or
5 drug abuse screening program and, if necessary, a treatment
6 program approved by the court. The penalty imposed pursuant
7 to this subsection shall not be suspended, deferred or taken
8 under advisement.

9 I. Upon any subsequent [~~misdemeanor~~] conviction
10 [~~under~~] pursuant to this section [~~prior to July 1, 2003~~], as
11 a condition of probation, an offender [~~may~~] shall be required
12 to have all motor vehicles owned by the offender impounded or
13 immobilized for the period that the offender's driver's
14 license is revoked or have an ignition interlock device
15 installed and operating for a period of six months following
16 reinstatement of his driver's license on all motor vehicles
17 owned by the offender or available for the offender's
18 personal use, pursuant to rules adopted by the [~~traffic~~
19 ~~safety~~] bureau. The offender shall pay all costs associated
20 with immobilizing or impounding his motor vehicles or having
21 an ignition interlock device installed on the appropriate
22 motor vehicles.

23 J. In the case of a first, second or third offense
24 [~~under~~] pursuant to this section, the magistrate court has
25 concurrent jurisdiction with district courts to try the
offender.

K. A conviction under a municipal or county

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1 ordinance in New Mexico or a law of any other jurisdiction,
2 territory or possession of the United States that is
3 equivalent to New Mexico law for driving while under the
4 influence of intoxicating liquor or drugs, and prescribes
5 penalties for driving while under the influence of
6 intoxicating liquor or drugs shall be deemed to be a
7 conviction ~~[under]~~ pursuant to this section for purposes of
8 determining whether a conviction is a second or subsequent
9 conviction.

10 L. In addition to any other fine or fee ~~[which]~~
11 that may be imposed pursuant to the conviction or other
12 disposition of the offense ~~[under]~~ pursuant to this section,
13 the court may order the offender to pay the costs of any
14 court-ordered screening and treatment programs.

15 M. As used in this section:
16 (1) "bodily injury" means an injury to a
17 person that is not likely to cause death or great bodily harm
18 to the person, but does cause painful temporary disfigurement
19 or temporary loss or impairment of the functions of any
20 member or organ of the person's body; and
21 (2) "conviction" means an adjudication of
22 guilt and does not include imposition of a sentence."

23 Section 4. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2000.