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HOUSE BILL 381

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Lorenzo A. Larranaga

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; ELIMINATING LIMITED DRIVER'S LICENSES FOR CERTAIN OFFENDERS; INCREASING THE MINIMUM MANDATORY SENTENCE FOR A SECOND OFFENSE; PROVIDING FOR IMMOBILIZATION OR IMPOUNDMENT OF MOTOR VEHICLES OR THE INSTALLATION OF IGNITION INTERLOCK DEVICES; REQUIRING PHYSICAL CONFINEMENT IN JAIL.

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:

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

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

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

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

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

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

24 (d) who has not been adjudicated for an  
25 offense involving the use of alcohol or drugs during that

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1 period and who has no pending adjudications alleging an  
2 offense involving the use of alcohol or drugs at the time of  
3 his application; and

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

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

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

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

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

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

25 D. who, within any ten-year period, is three times

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

25 E. who has previously been afflicted with or who

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1 is suffering from any mental disability or disease [~~which~~  
2 that would render him unable to drive a motor vehicle with  
3 safety upon the highways and who has not, at the time of  
4 application, been restored to health;

5 F. who is required by the Motor Vehicle Code to  
6 take an examination, unless he has successfully passed the  
7 examination;

8 G. who is required under the laws of this state to  
9 deposit proof of financial responsibility and who has not  
10 deposited the proof;

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

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

20 J. who is a subsequent offender, unless the  
21 offender provides the department with proof that each motor  
22 vehicle owned by the offender or available for the offender's  
23 personal use is equipped with an ignition interlock device  
24 installed and operated for a period of six months following  
25 reinstatement of his driver's license pursuant to rules

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1 adopted by the bureau. An ignition interlock device shall be  
2 installed on the appropriate motor vehicles at the offender's  
3 expense. "

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

6 "66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR  
7 REVOCATION-- HEARING-- REVIEW. --

8 A. Upon suspension or revocation of a person's  
9 driver's license following conviction or adjudication as a  
10 delinquent under any law, ordinance or ~~[regulation]~~ rule  
11 relating to motor vehicles, a person may apply to the  
12 department for a license or permit to drive, limited to use  
13 allowing him to engage in gainful employment or to attend  
14 school, except that no person shall be eligible to apply:

15 (1) for a limited commercial driver's  
16 license;

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

21 (3) for a limited license when the person's  
22 license was revoked pursuant to an offense for which the  
23 person is a subsequent offender as defined in the Motor  
24 Vehicle Code ~~[except that a person who is convicted a second~~  
25 ~~or third time for driving under the influence of intoxicating~~

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1 ~~liquor or drugs, may apply for and shall receive a limited~~  
2 ~~license if he complies with the requirements set forth in~~  
3 ~~Subsections C and D of this section]; or~~

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

8 B. A person whose driver's license is revoked for  
9 the first time pursuant to the provisions of Paragraph (1) or  
10 (2) of Subsection C of Section 66-8-111 NMSA 1978 [~~or for the~~  
11 ~~second or third time pursuant to the provisions of Paragraph~~  
12 ~~(3) Subsection C of Section 66-8-111 NMSA 1978]~~ may apply for  
13 and shall receive a limited license or permit thirty days  
14 after suspension or revocation of his license if the person  
15 pays every fee, meets the criteria for limited driving  
16 privileges established in rules by the department and provides  
17 the department with documentation of the following:

18 (1) that the person is enrolled in a DWI  
19 school approved by the [~~traffic safety~~] bureau and an approved  
20 alcohol screening program;

21 (2) proof of financial responsibility  
22 pursuant to the provisions of the Mandatory Financial  
23 Responsibility Act;

24 [~~(3) if the person's driver's license is~~  
25 ~~revoked pursuant to the provisions of Paragraph (3) of~~

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1 ~~Subsection C of Section 66-8-111 NMSA 1978, the person shall~~  
2 ~~provide proof that each motor vehicle to be operated by the~~  
3 ~~person, if he receives a limited license, shall be equipped~~  
4 ~~with an ignition interlock device installed and operated~~  
5 ~~pursuant to rules adopted by the traffic safety bureau] and~~  
6 ~~[either]~~

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

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

13           ~~[C.—A person who is convicted a second or third~~  
14 ~~time for driving under the influence of intoxicating liquor or~~  
15 ~~drugs may apply for and shall receive a limited license thirty~~  
16 ~~days after suspension or revocation of his license if the~~  
17 ~~person pays every fee, meets the criteria for limited driving~~  
18 ~~privileges established in rule by the department and provides~~  
19 ~~the department with documented proof:~~

20           ~~(1) of enrollment in a DWI school approved by~~  
21 ~~the traffic safety bureau and an approved alcohol screening~~  
22 ~~program;~~

23           ~~(2) of financial responsibility pursuant to~~  
24 ~~the provisions of the Mandatory Financial Responsibility Act;~~  
25 ~~and either~~

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

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

6                   ~~D. In addition to the requirements set forth in~~  
7 ~~Subsection C of this section, a person who is convicted a~~  
8 ~~second or third time for driving under the influence of~~  
9 ~~intoxicating liquor or drugs shall provide the department with~~  
10 ~~his judgment and sentence. The judgment and sentence shall~~  
11 ~~attest that the person will be on probation for the entire~~  
12 ~~period that a limited license will be in effect and that, as a~~  
13 ~~condition of probation, the person shall provide proof that~~  
14 ~~each motor vehicle to be operated by the person is equipped~~  
15 ~~with an ignition interlock device installed and operated~~  
16 ~~pursuant to rules adopted by the traffic safety bureau. The~~  
17 ~~ignition interlock device shall be installed on the~~  
18 ~~appropriate motor vehicle at the person's expense.~~

19                   ~~E.]~~ C. Upon receipt of a fully completed  
20 application that complies with statutes and rules for a  
21 limited license and payment of the fee specified in this  
22 subsection, the department shall issue a limited license or  
23 permit to the applicant showing the limitations specified in  
24 the approved application. For each limited license or permit  
25 to drive, the applicant shall pay to the department a fee of

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1 forty-five dollars (\$45.00), which shall be transferred to the  
2 state highway and transportation department. All money  
3 collected ~~[under]~~ pursuant to this subsection shall be used  
4 for DWI prevention and education programs for elementary and  
5 secondary school students. The state highway and  
6 transportation department shall coordinate with the department  
7 of health to ensure that there is no program duplication. The  
8 limited license or permit to drive may be suspended as  
9 provided in Section 66-5-30 NMSA 1978.

10 ~~[F-]~~ D. The department, within twenty days of  
11 denial of an application for a limited driver's license or  
12 permit pursuant to this section, shall afford the applicant a  
13 hearing in the county in which the applicant resides, unless  
14 the department and the licensee agree that the hearing may be  
15 held in some other county. The department may extend the  
16 twenty-day period, provided that the extension is in writing  
17 and made no later than fifteen days after receipt of an  
18 application. Upon hearing, the hearing officer designated by  
19 the department may administer oaths and may issue subpoenas  
20 for the attendance of witnesses and the production of relevant  
21 books and papers. The hearing officer shall make specific  
22 findings as to whether the applicant has shown proof of  
23 financial responsibility for the future and enrollment in an  
24 approved DWI school and an approved alcohol screening program  
25 and meets established uniform criteria for limited driving

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1 privileges adopted by rule of the department. The hearing  
2 officer shall enter an order either approving or denying the  
3 applicant's request for a limited license or permit to drive.  
4 If any of the specific findings set forth in this subsection  
5 are not found by the hearing officer, the applicant's request  
6 for a limited license or permit shall not be approved.

7 [G-] E. A person adversely affected by an order of  
8 the hearing officer may seek review within thirty days in the  
9 district court in the county in which he resides. On review,  
10 it is for the court to determine only whether the applicant  
11 met the requirements in this section for issuance of a limited  
12 license or permit to drive."

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

15 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING  
16 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE  
17 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

25 C. It is unlawful for [~~any~~] a person who has an

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1 alcohol concentration of eight one-hundredths or more in his  
2 blood or breath to drive [~~any~~] a vehicle [~~within~~] in this  
3 state.

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

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

9 (2) has caused bodily injury to a human being  
10 as a result of the unlawful operation of a motor vehicle while  
11 driving under the influence of intoxicating liquor or drugs;  
12 or

13 (3) refused to submit to chemical testing, as  
14 provided for in the Implied Consent Act, and in the judgment  
15 of the court, based upon evidence of intoxication presented to  
16 the court, was under the influence of intoxicating liquor or  
17 drugs.

18 E. Every person under first conviction [~~under~~]  
19 pursuant to this section shall be punished, notwithstanding  
20 the provisions of Section 31-18-13 NMSA 1978, by imprisonment  
21 for not more than ninety days or by a fine of not more than  
22 five hundred dollars (\$500), or both; provided that if the  
23 sentence is suspended in whole or in part or deferred, the  
24 period of probation may extend beyond ninety days but shall  
25 not exceed one year. Upon a first conviction [~~under~~] pursuant

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1 to this section, an offender ~~may~~ be sentenced to not less than  
2 forty-eight hours of ~~community~~ service or a fine of three  
3 hundred dollars (\$300). The offender shall be ordered by the  
4 court to participate in and ~~complete~~ a screening program  
5 described in Subsection H of this section and to attend a  
6 driver rehabilitation program for alcohol or drugs, also known  
7 as a "DWI school", approved by the [~~traffic safety~~] bureau [~~of~~  
8 ~~the state highway and transportation department~~] and also may  
9 be required to participate in other rehabilitative services as  
10 the court shall determine to be necessary. In addition to  
11 those penalties, when an offender ~~commits~~ aggravated driving  
12 while under the influence of intoxicating liquor or drugs, the  
13 offender shall be sentenced to not less than forty-eight  
14 consecutive hours of physical confinement in jail. If an  
15 offender fails to complete, within a time specified by the  
16 court, any ~~community~~ service, screening program, treatment  
17 program or DWI school ordered by the court, the offender shall  
18 be sentenced to not less than an additional forty-eight  
19 consecutive hours of physical confinement in jail. Any jail  
20 sentence imposed [~~under~~] pursuant to this subsection for  
21 failure to complete, within a time specified by the court, any  
22 ~~community~~ service, screening program, treatment program or DWI  
23 school ordered by the court or for aggravated driving while  
24 under the influence of intoxicating liquor or drugs shall not  
25 be suspended, deferred or taken under advisement. On a first

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1 conviction [~~under~~] pursuant to this section, any time spent in  
2 jail for the offense prior to the conviction for that offense  
3 shall be credited to any term of imprisonment fixed by the  
4 court. A deferred sentence [~~under~~] pursuant to this  
5 subsection shall be considered a first conviction for the  
6 purpose of determining subsequent convictions.

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

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

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

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

22 G. Upon a fourth or subsequent conviction [~~under~~]  
23 pursuant to this section, an offender is guilty of a fourth  
24 degree felony, as provided in Section 31-18-15 NMSA 1978, and  
25 shall be sentenced to a [~~jail~~] term of imprisonment of not

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1 less than six months, which shall not be suspended or deferred  
2 or taken under advisement.

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

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



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1 offender.

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

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

17 M. As used in this section:

18 (1) "bodily injury" means an injury to a  
19 person that is not likely to cause death or great bodily harm  
20 to the person, but does cause painful temporary disfigurement  
21 or temporary loss or impairment of the functions of any member  
22 or organ of the person's body; and

23 (2) "conviction" means an adjudication of  
24 guilt and does not include imposition of a sentence. "

25 Section 4. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2001.

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