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**SENATE BILL 344**

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

**INTRODUCED BY**

**Leonard Lee Rawson**

**AN ACT**

**RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT A FELONY DWI CONVICTION MAY BE USED AS A PRIOR FELONY CONVICTION FOR THE PURPOSE OF SENTENCING A HABITUAL OFFENDER; CLARIFYING THAT A PERSON CONVICTED OF DWI SHALL SERVE THE MINIMUM MANDATORY PORTION OF HIS SENTENCE IN JAIL OR PRISON; MANDATING TREATMENT FOR SECOND AND SUBSEQUENT DWI OFFENDERS; AMENDING SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended by Laws 1993, Chapter 77, Section 9 and also by Laws 1993, Chapter 283, Section 1) is amended to read:**

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1 "31-18-17. HABITUAL OFFENDERS-- ALTERATION OF BASIC  
2 SENTENCE. --

3 A. For the purposes of this section, "prior felony  
4 conviction" means:

5 (1) a conviction for a prior felony committed  
6 [~~within~~] in New Mexico whether within the Criminal Code or  
7 not, including a conviction for a felony pursuant to the  
8 provisions of Section 66-8-102 NMSA 1978; or

9 (2) any prior felony for which the person was  
10 convicted other than an offense triable by court martial if:

11 (a) the conviction was rendered by a  
12 court of another state, the United States, a territory of the  
13 United States or the commonwealth of Puerto Rico;

14 (b) the offense was punishable, at the  
15 time of conviction, by death or a maximum term of imprisonment  
16 of more than one year; or

17 (c) the offense would have been  
18 classified as a felony in this state at the time of  
19 conviction.

20 B. Any person convicted of a noncapital felony in  
21 this state whether within the Criminal Code or the Controlled  
22 Substances Act or not who has incurred one prior felony  
23 conviction [~~which~~] that was part of a separate transaction or  
24 occurrence or conditional discharge under Section [~~31-20-7~~]  
25 31-20-13 NMSA 1978 is a habitual offender and his basic

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1 sentence shall be increased by one year, and the sentence  
2 imposed by this subsection shall not be suspended or deferred.

3 C. Any person convicted of a noncapital felony in  
4 this state whether within the Criminal Code or the Controlled  
5 Substances Act or not who has incurred two prior felony  
6 convictions [~~whi-eh~~] that were parts of separate transactions  
7 or occurrences or conditional discharge under Section  
8 [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual offender and his  
9 basic sentence shall be increased by four years, and the  
10 sentence imposed by this subsection shall not be suspended or  
11 deferred.

12 D. Any person convicted of a noncapital felony in  
13 this state whether within the Criminal Code or the Controlled  
14 Substances Act or not who has incurred three or more prior  
15 felony convictions [~~whi-eh~~] that were parts of separate  
16 transactions or occurrences or conditional discharge under  
17 Section [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual offender  
18 and his basic sentence shall be increased by eight years, and  
19 the sentence imposed by this subsection shall not be suspended  
20 or deferred. "

21 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,  
22 Chapter 139, Section 54, as amended) is amended to read:

23 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING  
24 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE  
25 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 vehicle  
7 [~~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 being  
18 as a result of the unlawful operation of a motor vehicle while  
19 driving under the influence of intoxicating liquor or drugs;  
20 or

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

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

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1 be sentenced to not less than an additional forty-eight  
2 consecutive hours of physical confinement in jail. Any jail  
3 sentence imposed ~~[under]~~ pursuant to this subsection for  
4 failure to complete, within a time specified by the court, any  
5 community service, screening program, treatment program or DWI  
6 school ordered by the court or for aggravated driving while  
7 under the influence of intoxicating liquor or drugs shall not  
8 be suspended, deferred or taken under advisement. On a first  
9 conviction ~~[under]~~ pursuant to this section, any time spent in  
10 jail for the offense prior to the conviction for that offense  
11 shall be credited to any term of imprisonment fixed by the  
12 court. A deferred sentence ~~[under]~~ pursuant to this  
13 subsection shall be considered a first conviction for the  
14 purpose of determining subsequent convictions.

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

25 (1) upon a second conviction, each offender

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1 shall be sentenced to a ~~[jail]~~ term of not less than seventy-  
2 two consecutive hours of physical confinement in jail, forty-  
3 eight hours of community service and a fine of five hundred  
4 dollars (\$500). In addition to those penalties, when an  
5 offender commits aggravated driving while under the influence  
6 of intoxicating liquor or drugs, the offender shall be  
7 sentenced to a ~~[jail]~~ term of not less than ninety-six  
8 consecutive hours of physical confinement in jail. If an  
9 offender fails to complete, within a time specified by the  
10 court, any community service ~~[screening program]~~ or treatment  
11 program ordered by the court, the offender shall be sentenced  
12 to not less than an additional seven consecutive days of  
13 physical confinement in jail. A penalty imposed pursuant to  
14 this paragraph shall not be suspended or deferred or taken  
15 under advisement; and

16 (2) upon a third conviction, an offender  
17 shall be sentenced to a ~~[jail]~~ term of not less than thirty  
18 consecutive days of physical confinement in jail and a fine of  
19 seven hundred fifty dollars (\$750). In addition to those  
20 penalties, when an offender commits aggravated driving while  
21 under the influence of intoxicating liquor or drugs, the  
22 offender shall be sentenced to a ~~[jail]~~ term of not less than  
23 sixty consecutive days of physical confinement in jail. If an  
24 offender fails to complete, within a time specified by the  
25 court, any ~~[screening program or]~~ treatment program ordered by

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1 the court, the offender shall be sentenced to not less than an  
2 additional sixty consecutive days of physical confinement in  
3 jail. A penalty imposed pursuant to this paragraph shall not  
4 be suspended or deferred or taken under advisement.

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

11 H. Upon [~~any~~] a first conviction [~~under~~] pursuant  
12 to this section, an offender shall be required to participate  
13 in and complete, within a time specified by the court, an  
14 alcohol or drug abuse screening program and, if necessary, a  
15 treatment program approved by the court. The penalty imposed  
16 pursuant to this subsection shall not be suspended, deferred  
17 or taken under advisement.

18 I. Upon any second or subsequent conviction  
19 pursuant to this section, an offender shall be required to  
20 participate in and complete, within a time specified by the  
21 court, not less than a thirty-day in-patient treatment program  
22 approved by the court or not less than a sixty-day out-patient  
23 treatment program approved by the court. The penalty imposed  
24 pursuant to this subsection shall not be suspended, deferred  
25 to taken under advisement.



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1           ~~[I.]~~ J. Upon any subsequent misdemeanor conviction  
2           ~~[under]~~ pursuant to this section prior to July 1, 2003, as a  
3           condition of probation, an offender may be required to have an  
4           ignition interlock device installed and operating on all motor  
5           vehicles owned by the offender or available for the offender's  
6           personal use, pursuant to rules adopted by the traffic safety  
7           bureau.

8           ~~[J.]~~ K. In the case of a first, second or third  
9           offense ~~[under]~~ pursuant to this section, the magistrate court  
10          has concurrent jurisdiction with district courts to try the  
11          offender.

12          ~~[K.]~~ L. A conviction ~~[under]~~ pursuant to a  
13          municipal or county ordinance in New Mexico or a law of any  
14          other jurisdiction, territory or possession of the United  
15          States that is equivalent to New Mexico law for driving while  
16          under the influence of intoxicating liquor or drugs, and  
17          prescribes penalties for driving while under the influence of  
18          intoxicating liquor or drugs shall be deemed to be a  
19          conviction ~~[under]~~ pursuant to this section for purposes of  
20          determining whether a conviction is a second or subsequent  
21          conviction.

22          ~~[L.]~~ M. In addition to any other fine or fee  
23          ~~[which]~~ that may be imposed pursuant to the conviction or  
24          other disposition of the offense ~~[under]~~ pursuant to this  
25          section, the court may order the offender to pay the costs of

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1 any court-ordered screening and treatment programs.

2 [M-] N. As used in this section:

3 (1) "bodily injury" means an injury to a  
4 person that is not likely to cause death or great bodily harm  
5 to the person, but does cause painful temporary disfigurement  
6 or temporary loss or impairment of the functions of any member  
7 or organ of the person's body; and

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

10 Section 3. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2001.

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