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**HOUSE BILL 124**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Rick Miera**

**AN ACT**

**RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR; ESTABLISHING A TIME FRAME FOR THE ADMINISTRATION OF A CHEMICAL TEST TO AN ALLEGED OFFENDER; AMENDING SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:**

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

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

**B. It is unlawful for [~~any~~] a person who is under**

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1 the influence of any drug to a degree that renders him  
2 incapable of safely driving a vehicle to drive [~~any~~] a vehicle  
3 within this state.

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

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

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

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

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

21 E. The alcohol concentration in a person's blood  
22 or breath shall be determined by a chemical test administered  
23 to the person within three hours of the alleged driving while  
24 under the influence of intoxicating liquor. If the chemical  
25 test is administered more than three hours after the alleged

1 driving while under the influence of intoxicating liquor, the  
2 test result is admissible as evidence of the alcohol  
3 concentration in the person's blood or breath at the time of  
4 the alleged driving and the trier of fact shall determine what  
5 weight to give the test result.

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

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

20 ~~[F.]~~ G. A second or third conviction ~~[under]~~  
21 pursuant to this section shall be punished, notwithstanding  
22 the provisions of Section 31-18-13 NMSA 1978, by imprisonment  
23 for not more than three hundred sixty-four days or by a fine  
24 of not more than one thousand dollars (\$1,000), or both;  
25 provided that if the sentence is suspended in whole or in

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1 part, the period of probation may extend beyond one year but  
2 shall not exceed five years. Notwithstanding any provision of  
3 law to the contrary for suspension or deferment of execution  
4 of a sentence:

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

19 (2) upon a third conviction, an offender  
20 shall be sentenced to a jail term of not less than thirty  
21 consecutive days and a fine of seven hundred fifty dollars  
22 (\$750). In addition to those penalties, when an offender  
23 commits aggravated driving while under the influence of  
24 intoxicating liquor or drugs, the offender shall be sentenced  
25 to a jail term of not less than sixty consecutive days. If an

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

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

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

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

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1 bureau.

2 [J-] K. In the case of a first, second or third  
3 offense [~~under~~] pursuant to this section, the magistrate court  
4 has concurrent jurisdiction with district courts to try the  
5 offender.

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

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

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

22 (1) "bodily injury" means an injury to a  
23 person that is not likely to cause death or great bodily harm  
24 to the person, but does cause painful temporary disfigurement  
25 or temporary loss or impairment of the functions of any member

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1 or organ of the person's body; and

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

4 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,  
5 Chapter 35, Section 518, as amended) is amended to read:

6 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL  
7 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

8 A. The results of a test performed pursuant to the  
9 Implied Consent Act may be introduced into evidence in any  
10 civil action or criminal action arising out of the acts  
11 alleged to have been committed by the person tested for  
12 driving a motor vehicle while under the influence of  
13 intoxicating liquor or drugs.

14 B. When the blood or breath of the person tested  
15 contains:

16 (1) an alcohol concentration of five one-  
17 hundredths or less, it shall be presumed that the person was  
18 not under the influence of intoxicating liquor; or

19 (2) an alcohol concentration of more than  
20 five one-hundredths but less than eight one-hundredths, no  
21 presumption shall be made that the person either was or was  
22 not under the influence of intoxicating liquor. However, the  
23 amount of alcohol in the person's blood or breath may be  
24 considered with other competent evidence in determining  
25 whether the person was under the influence of intoxicating



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1 liquor.

2 C. When the blood or breath of the person tested  
3 contains an alcohol concentration of eight one-hundredths or  
4 more, the arresting officer shall charge him with a violation  
5 of Section 66-8-102 NMSA 1978.

6 D. When a person is less than twenty-one years of  
7 age and the blood or breath of the person contains an alcohol  
8 concentration of two one-hundredths or more, the person's  
9 driving privileges shall be revoked pursuant to the provisions  
10 of the Implied Consent Act.

11 E. The determination of alcohol concentration  
12 shall be based on the grams of alcohol in one hundred  
13 milliliters of blood or the grams of alcohol in two hundred  
14 ten liters of breath.

15 F. The alcohol concentration in a person's blood  
16 or breath shall be determined by a chemical test administered  
17 to the person within three hours of the alleged driving while  
18 under the influence of intoxicating liquor. If the chemical  
19 test is administered more than three hours after the alleged  
20 driving while under the influence of intoxicating liquor, the  
21 test result is admissible as evidence of the alcohol  
22 concentration in the person's blood or breath at the time of  
23 the alleged driving and the trier of fact shall determine what  
24 weight to give the test result.

25 [F.] G. The presumptions in Subsection B of this

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1 section do not limit the introduction of other competent  
2 evidence concerning whether the person was under the influence  
3 of intoxicating liquor.

4 [G.] H. If a person is convicted of driving a  
5 motor vehicle while under the influence of intoxicating  
6 liquor, the trial judge shall be required to inquire into the  
7 past driving record of the person before sentence is entered  
8 in the matter."

9 Section 3. EFFECTIVE DATE. -- The effective date of the  
10 provisions of this act is July 1, 2002.