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SENATE BILL 133

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

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING FOR THE INSTALLATION OF AN IGNITION
INTERLOCK DEVICE ON MOTOR VEHICLES DRIVEN BY A FIRST-TIME
OFFENDER; PROVIDING FOR IMPOUNDMENT, IMMOBILIZATION OR
PLACEMENT OF AN IGNITION INTERLOCK DEVICE ON MOTOR VEHICLES
DRIVEN BY SUBSEQUENT OFFENDERS; IMPOSING A FEE; CREATING A
FUND; AMENDING AND ENACTING 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

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1 the influence of intoxicating liquor to drive [~~any~~] a vehicle
2 within this state.

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

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

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

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

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

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

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

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

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

23 (1) upon a second conviction, each offender
24 shall be sentenced to a jail term of not less than seventy-two
25 consecutive hours, forty-eight hours of community service and

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

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

25 G. Upon a fourth or subsequent conviction ~~[under]~~

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1 pursuant to this section, an offender is guilty of a fourth
2 degree felony, as provided in Section 31-18-15 NMSA 1978, and
3 shall be sentenced to a jail term of not less than six months,
4 which shall not be suspended or deferred or taken under
5 advisement.

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

13 I. Upon [~~any subsequent misdemeanor~~] a first
14 conviction [~~under~~] pursuant to this section [~~prior to July 1,~~
15 ~~2003~~], as a condition of probation, an offender [~~may~~] shall be
16 required to have an ignition interlock device installed and
17 operating [~~on all motor vehicles owned by the offender or~~
18 ~~available for the offender's personal use, pursuant to rules~~
19 ~~adopted by the traffic safety bureau~~] for a period of one year
20 on all motor vehicles driven by the offender, pursuant to
21 rules adopted by the bureau. The offender shall be required
22 to prove one year of continuous, legal, alcohol-free driving
23 before the device may be removed. The offender shall pay all
24 costs associated with having an ignition interlock device
25 installed on the appropriate motor vehicles. If an offender

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1 drives a motor vehicle that does not have an ignition
2 interlock device installed on the motor vehicle, the offender
3 shall be in violation of the terms and conditions of his
4 probation.

5 J. Upon any subsequent conviction pursuant to this
6 section, an offender may be required to have all motor
7 vehicles driven by the offender impounded or immobilized for
8 the period that the offender's driver's license is revoked or
9 have ignition interlock devices installed and operating for a
10 period of at least one year following reinstatement of his
11 driver's license on all motor vehicles driven by the offender,
12 pursuant to rules adopted by the bureau. The offender shall
13 be required to prove one year of continuous, legal, alcohol-
14 free driving before the device may be removed. The offender
15 shall pay all costs associated with immobilizing or impounding
16 his motor vehicles or having ignition interlock devices
17 installed on the appropriate motor vehicles.

18 [~~J.~~] K. In the case of a first, second or third
19 offense under this section, the magistrate court has
20 concurrent jurisdiction with district courts to try the
21 offender.

22 [~~K.~~] L. A conviction [~~under~~] pursuant to a
23 municipal or county ordinance in New Mexico or a law of any
24 other jurisdiction, territory or possession of the United
25 States that is equivalent to New Mexico law for driving while

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1 under the influence of intoxicating liquor or drugs, and that
2 prescribes penalties for driving while under the influence of
3 intoxicating liquor or drugs, shall be deemed to be a
4 conviction [~~under~~] pursuant to this section for purposes of
5 determining whether a conviction is a second or subsequent
6 conviction.

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

12 [~~M.~~] N. As used in this section:

13 (1) "bodily injury" means an injury to a
14 person that is not likely to cause death or great bodily harm
15 to the person, but does cause painful temporary disfigurement
16 or temporary loss or impairment of the functions of any member
17 or organ of the person's body; and

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

20 Section 2. [NEW MATERIAL] IMPOSING A FEE--CREATING A
21 FUND.--

22 A. Beginning July 1, 2002, a fee is imposed on all
23 persons who provide ignition interlock devices to persons
24 convicted of driving while under the influence of intoxicating
25 liquor or drugs pursuant to Section 66-8-102 NMSA 1978 in the

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1 amount of ten percent of the amount charged to lease each
2 ignition interlock device to a person convicted pursuant to
3 that section and shall be paid monthly to the traffic safety
4 bureau of the state highway and transportation department
5 pursuant to rules adopted by the traffic safety bureau.

6 B. The "interlock device fund" is created in the
7 state treasury. The fee imposed pursuant to Subsection A of
8 this section shall be distributed to the fund by the traffic
9 safety bureau of the state highway and transportation
10 department.

11 C. Beginning January 1, 2003, all money in the
12 interlock device fund is appropriated to the local government
13 division of the department of finance and administration to
14 cover the costs of leasing ignition interlock devices to
15 indigent people who are required, pursuant to convictions
16 under Section 66-8-102 NMSA 1978, to install those devices in
17 their vehicles.

18 D. Any balance remaining in the interlock device
19 fund shall not revert to the general fund at the end of any
20 fiscal year.

21 E. The interlock device fund shall be administered
22 by the local government division of the department of finance
23 and administration.

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