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HOUSE BILL 784

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

ROBERT A. PERLS

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR A MANDATORY JAIL TERM  
UPON A FIRST CONVICTION FOR DRIVING WHILE UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR OR DRUGS; AMENDING A SECTION OF THE MOTOR  
VEHICLE CODE.

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 INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

B. It is unlawful for any person who is under the

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

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

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

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

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

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

19 E. Every person [~~under~~] upon first conviction under  
20 this section shall be punished, notwithstanding the provisions  
21 of Section 31-18-13 NMSA 1978, by imprisonment for a basic  
22 sentence of not less than twenty-four consecutive hours, which  
23 shall not be suspended or deferred, but not for more than ninety  
24 days. [~~or by~~] The court may also impose a fine of not more than  
25 five hundred dollars (\$500). [~~or both; provided that~~] If any

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

1 intoxicating liquor or drugs shall not be suspended, deferred or  
2 taken under advisement. On a first conviction under this  
3 section, any time spent in jail for the offense prior to the  
4 conviction for that offense shall be credited to any term of  
5 imprisonment fixed by the court. A deferred sentence under this  
6 subsection shall be considered a first conviction for the  
7 purpose of determining subsequent convictions.

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

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

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1 screening program or treatment program ordered by the court, the  
2 offender shall be sentenced to not less than an additional seven  
3 consecutive days in jail. A penalty imposed pursuant to this  
4 paragraph shall not be suspended or deferred or taken under  
5 advisement; and

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

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

24 H. Upon any conviction under this section, an  
25 offender shall be required to participate in and complete,

1 within a time specified by the court, an alcohol or drug abuse  
2 screening program and if necessary, a treatment program approved  
3 by the court.

4 I. In the case of a first, second or third offense  
5 under this section, the magistrate court has concurrent  
6 jurisdiction with district courts to try the offender.

7 J. A conviction under a municipal or county  
8 ordinance prescribing penalties for driving while under the  
9 influence of intoxicating liquor or drugs shall be deemed to be  
10 a conviction under this section for purposes of determining  
11 whether a conviction is a second or subsequent conviction.

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

17 L. As used in this section:

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

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

25 Section 2. EFFECTIVE DATE. --The effective date of the

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provisions of this act is July 1, 1996.

- 7 -

# **State of New Mexico House of Representatives**

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 10, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 784

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

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Cisco McSorley, Chairman



FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 2 Against

Yes: 7

No: Baca, Pederson

Excused: Alwin, Gubbels, Sanchez, R. G.

Absent: Luna

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