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HOUSE BILL 789

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

INTRODUCED BY

THOMAS G. DOLLIVER

AN ACT

RELATING TO CORRECTIONS; INCREASING THE PENALTIES FOR HOMICIDE BY VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING CERTAIN SECTIONS OF THE MOTOR VEHICLE CODE.

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

Section 1. Section 66-8-101 NMSA 1978 (being Laws 1978, Chapter 35, Section 509, as amended) is amended to read:

"66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY INJURY BY VEHICLE. --

A. Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle.

B. Great bodily injury by vehicle is the injuring of a human being, to the extent defined in Section 30-1-12 NMSA

Underscored material = new
[bracketed material] = delete

1 1978, in the unlawful operation of a motor vehicle.

2 C. Any person who commits homicide by vehicle while
3 under the influence of intoxicating liquor or while under the
4 influence of any drug shall be punished, notwithstanding the
5 provisions of Section 31-18-13 NMSA 1978, upon conviction by
6 imprisonment for not less than ten years. The jail sentence
7 imposed under this subsection shall not be suspended, deferred
8 or taken under advisement.

9 [~~C.~~] D. Any person who commits [~~homicide by vehicle~~
10 ~~or~~] great bodily injury by vehicle while under the influence of
11 intoxicating liquor or while under the influence of any drug or
12 while violating Section 66-8-113 NMSA 1978 is guilty of a third
13 degree felony and shall be sentenced pursuant to the provisions
14 of Section 31-18-15 NMSA 1978, provided that violation of
15 speeding laws as set forth in the Motor Vehicle Code shall not
16 per se be a basis for violation of Section 66-8-113 NMSA 1978.

17 [~~D.~~] E. Any person who commits homicide by vehicle
18 or great bodily injury by vehicle while under the influence of
19 intoxicating liquor or while under the influence of any drug, as
20 provided in Subsection C or D of this section, and who has
21 incurred a prior DWI conviction within ten years of the
22 occurrence for which he is being sentenced under this section
23 shall have his basic sentence increased by two years for each
24 prior DWI conviction.

25 [~~E.~~] F. For the purposes of this section, "prior DWI

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1 conviction" means:

2 (1) a prior conviction under Section 66-8-102
3 NMSA 1978; or

4 (2) a prior conviction in New Mexico or any
5 other jurisdiction, territory or possession of the United States
6 when the criminal act is driving under the influence of alcohol
7 or drugs.

8 [F.] G. Any person who willfully operates a motor
9 vehicle in violation of Subsection C of Section 30-22-1 NMSA
10 1978 and directly or indirectly causes the death of or great
11 bodily injury to a human being is guilty of a third degree
12 felony and shall be sentenced pursuant to the provisions of
13 Section 31-18-15 NMSA 1978. "

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

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

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

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

25 C. It is unlawful for any person who has an alcohol

Underscored material = new
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1 concentration of eight one-hundredths or more in his blood or
2 breath to drive any vehicle within this state.

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

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

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

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

16 E. Every person ~~[under]~~ upon a first conviction
17 under this section shall be punished, notwithstanding the
18 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
19 not less than forty-eight consecutive hours or more than ninety
20 days or by a fine of not less than two hundred fifty dollars
21 (\$250) or more than five hundred dollars (\$500), or both.
22 ~~[provided that if the sentence is suspended in whole or in part~~
23 ~~or deferred]~~ The jail sentence imposed under this subsection
24 shall not be suspended, deferred or taken under advisement. The
25 period of probation may extend beyond ninety days but shall not

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1 exceed one year. Upon a first conviction under this section, an
2 offender may be sentenced to not less than forty-eight hours of
3 community service [~~or a fine of three hundred dollars (\$300)~~].
4 The offender shall be ordered by the court to attend a driver
5 rehabilitation program for alcohol or drugs, also known as a
6 "DWI school", approved by the traffic safety bureau of the state
7 highway and transportation department and also may be required
8 to participate in other rehabilitative services as the court
9 shall determine to be necessary. In addition to those
10 penalties, when an offender commits aggravated driving while
11 under the influence of intoxicating liquor or drugs, the
12 offender shall be sentenced to not less than [~~forty-eight~~
13 ninety-six consecutive hours in jail and a fine of five hundred
14 dollars (\$500). If an offender fails to complete, within a time
15 specified by the court, any community service, screening
16 program, treatment program or DWI school ordered by the court,
17 the offender shall be sentenced to not less than an additional
18 forty-eight consecutive hours in jail. Any jail sentence
19 imposed under this subsection for failure to complete, within a
20 time specified by the court, any community service, screening
21 program, treatment program or DWI school ordered by the court or
22 for aggravated driving while under the influence of intoxicating
23 liquor or drugs shall not be suspended, deferred or taken under
24 advisement. On a first conviction under this section, any time
25 spent in jail for the offense prior to the conviction for that

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1 offense shall be credited to any term of imprisonment fixed by
2 the court. [~~A deferred sentence under this subsection shall be~~
3 ~~considered a first conviction for the purpose of determining~~
4 ~~subsequent convictions.~~]

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

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

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1 penalty imposed pursuant to this paragraph shall not be
2 suspended or deferred or taken under advisement; and

3 (2) upon a third ~~[conviction, an offender shall~~
4 ~~be sentenced to a jail term of not less than thirty consecutive~~
5 ~~days and a fine of seven hundred fifty dollars (\$750)]~~ or
6 subsequent conviction under this section, an offender is guilty
7 of a fourth degree felony, as provided in Section 31-18-15 NMSA
8 1978, and shall be sentenced to a jail term of not less than one
9 year and a fine of seven hundred fifty dollars (\$750), which
10 shall not be suspended or deferred or taken under advisement.

11 In addition to those penalties, when an offender commits
12 aggravated driving while under the influence of intoxicating
13 liquor or drugs, the offender shall be sentenced to a jail term
14 of not less than ~~[sixty consecutive days]~~ nine months. If an
15 offender fails to complete, within a time specified by the
16 court, any screening program or treatment program ordered by the
17 court, the offender shall be sentenced to not less than an
18 additional sixty consecutive days in jail. A penalty imposed
19 pursuant to this paragraph shall not be suspended or deferred or
20 taken under advisement.

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

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1 ~~H.~~ G. Upon any conviction under this section, an
2 offender shall be required to participate in and complete,
3 within a time specified by the court, an alcohol or drug abuse
4 screening program and if necessary, a treatment program approved
5 by the court.

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

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

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

19 ~~L.~~ K. As used in this section:

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

25 (2) "conviction" means an adjudication of guilt

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and does not include imposition of a sentence."

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 11, 1996

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 789

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, strike lines 13 through 15 and insert in lieu
thereof "DRUGS; AMENDING A SECTION OF THE MOTOR VEHICLE CODE. ".

2. On page 3, strike lines 14 through 25 and strike all of
pages 4 through 9.,

and thence referred to the JUDICIARY COMMITTEE.

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

HCPAC/HB 789

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Respectfully submitted,

Gary K. King, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Baca, Charley, Vigil

Absent: None

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State of New Mexico House of Representatives

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 13, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 789, as amended

**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,

Cisco McSorley, Chairman

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 1 Against

Yes: 10

No: Pederson

Excused: Sanchez, R. G. , Stewart

Absent: None

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Underscored material = new
[bracketed material] = delete