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HOUSE BILL 352

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

R. David Pederson

AN ACT

RELATING TO CRIMINAL LAW; INCREASING CRIMINAL PENALTIES FOR
HABITUAL 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:

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

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

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

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(2) ~~[any]~~ a prior felony for which the person was convicted other than an offense triable by court martial if:

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

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

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

B. ~~[Any]~~ A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction ~~[which]~~ that was part of a separate transaction or occurrence or conditional discharge ~~[under]~~ pursuant to Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by one year, and the sentence imposed by this subsection shall not be suspended or deferred.

C. ~~[Any]~~ A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony convictions ~~[which]~~ that were parts of separate transactions or occurrences or conditional discharge ~~[under]~~ pursuant to Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a

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1 habitual offender and his basic sentence shall be increased
2 by four years, and the sentence imposed by this subsection
3 shall not be suspended or deferred.

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

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

15 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
16 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
17 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

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

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

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

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

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

15 E. Every person under first conviction ~~[under]~~
16 pursuant to this section shall be punished, notwithstanding
17 the provisions of Section 31-18-13 NMSA 1978, by imprisonment
18 for not more than ninety days or by a fine of not more than
19 five hundred dollars (\$500), or both; provided that if the
20 sentence is suspended in whole or in part or deferred, the
21 period of probation may extend beyond ninety days but shall
22 not exceed one year. Upon a first conviction under this
23 section, an offender may be sentenced to not less than forty-
24 eight hours of community service or a fine of three hundred
25 dollars (\$300). The offender shall be ordered by the court
to participate in and complete a screening program described
in Subsection ~~[H]~~ K of this section and to attend a driver

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1 rehabilitation program for alcohol or drugs, also known as a
2 "DWI school", approved by the traffic safety bureau of the
3 state highway and transportation department and also may be
4 required to participate in other rehabilitative services as
5 the court shall determine to be necessary. In addition to
6 those penalties, when an offender commits aggravated driving
7 while under the influence of intoxicating liquor or drugs,
8 the offender shall be sentenced to not less than forty-eight
9 consecutive hours in jail. If an offender fails to complete,
10 within a time specified by the court, any community service,
11 screening program, treatment program or DWI school ordered by
12 the court, the offender shall be sentenced to not less than
13 an additional forty-eight consecutive hours in jail. Any
14 jail sentence imposed under this subsection for failure to
15 complete, within a time specified by the court, any community
16 service, screening program, treatment program or DWI school
17 ordered by the court or for aggravated driving while under
18 the influence of intoxicating liquor or drugs shall not be
19 suspended, deferred or taken under advisement. On a first
20 conviction under this section, any time spent in jail for the
21 offense prior to the conviction for that offense shall be
22 credited to any term of imprisonment fixed by the court. A
23 deferred sentence under this subsection shall be considered a
24 first conviction for the purpose of determining subsequent
25 convictions.

F. A second or third conviction ~~[under]~~ pursuant
to this section shall be punished, notwithstanding the

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1 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
2 not more than three hundred sixty-four days or by a fine of
3 not more than one thousand dollars (\$1,000), or both;
4 provided that if the sentence is suspended in whole or in
5 part, the period of probation may extend beyond one year but
6 shall not exceed five years. Notwithstanding any provision
7 of law to the contrary for suspension or deferment of
8 execution of a sentence:

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

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

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

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

16 H. Upon a fifth conviction pursuant to this
17 section, an offender is guilty of a fourth degree felony and,
18 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
19 shall be sentenced to a term of imprisonment of two years,
20 one year of which shall not be suspended, deferred or taken
21 under advisement.

22 I. Upon a sixth conviction pursuant to this
23 section, an offender is guilty of a fourth degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of thirty
months, eighteen months of which shall not be suspended,
deferred or taken under advisement.

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1 J. Upon a seventh or subsequent conviction
2 pursuant to this section, an offender is guilty of a third
3 degree felony and, notwithstanding the provisions of Section
4 31-18-15 NMSA 1978, shall be sentenced to a term of
5 imprisonment of three years, two years of which shall not be
6 suspended, deferred or taken under advisement.

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

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

21 ~~[J.]~~ M. In the case of a first, second or third
22 offense ~~[under]~~ pursuant to this section, the magistrate
23 court has concurrent jurisdiction with district courts to try
24 the offender.

25 ~~[K.]~~ N. A conviction under a municipal or county
ordinance in New Mexico or a law of any other jurisdiction,
territory or possession of the United States that is

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

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

13 ~~[M.]~~ P. As used in this section:

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

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

21 Section 3. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2000.