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SENATE BILL 301

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

INTRODUCED BY  
L. Skip Vernon

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT A FELONY DWI CONVICTION MAY BE USED AS A PRIOR FELONY CONVICTION FOR THE PURPOSE OF SENTENCING A HABITUAL OFFENDER; CLARIFYING THAT A PERSON CONVICTED OF DWI SHALL SERVE THE MINIMUM MANDATORY PORTION OF HIS SENTENCE IN JAIL OR PRISON; MANDATING TREATMENT FOR SECOND AND SUBSEQUENT 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.--

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

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

7                   (2) any prior felony for which the person  
8 was convicted other than an offense triable by court martial  
9 if:

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

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

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

19           B. Any person convicted of a noncapital felony in  
20 this state whether within the Criminal Code or the Controlled  
21 Substances Act or not who has incurred one prior felony  
22 conviction ~~[which]~~ that was part of a separate transaction or  
23 occurrence or conditional discharge under Section ~~[31-20-7]~~  
24 31-20-13 NMSA 1978 is a habitual offender and his basic  
25 sentence shall be increased by one year, and the sentence  
imposed by this subsection shall not be suspended or  
deferred.

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

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

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

21 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING  
22 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE  
23 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

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

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

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

22 E. Every person under first conviction ~~[under]~~  
23 pursuant to this section shall be punished, notwithstanding  
24 the provisions of Section 31-18-13 NMSA 1978, by imprisonment  
25 for not more than ninety days or by a fine of not more than  
five hundred dollars (\$500), or both; provided that if the  
sentence is suspended in whole or in part or deferred, the

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

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1 or taken under advisement. On a first conviction [~~under~~  
2 pursuant to this section, any time spent in jail for the  
3 offense prior to the conviction for that offense shall be  
4 credited to any term of imprisonment fixed by the court. A  
5 deferred sentence [~~under~~] pursuant to this subsection shall  
6 be considered a first conviction for the purpose of  
7 determining subsequent convictions.

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

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

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

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

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

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

8           I. Upon any second or subsequent conviction  
9 pursuant to this section, an offender shall be required to  
10 participate in and complete, within a time specified by the  
11 court, not less than a thirty-day in-patient treatment  
12 program approved by the court or not less than a sixty-day  
13 out-patient treatment program approved by the court. The  
14 penalty imposed pursuant to this subsection shall not be  
15 suspended, deferred or taken under advisement.

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

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

~~[K.]~~ L. A conviction ~~[under]~~ pursuant to a



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1 municipal or county ordinance in New Mexico or a law of any  
2 other jurisdiction, territory or possession of the United  
3 States that is equivalent to New Mexico law for driving while  
4 under the influence of intoxicating liquor or drugs, and  
5 prescribes penalties for driving while under the influence of  
6 intoxicating liquor or drugs, shall be deemed to be a  
7 conviction ~~[under]~~ pursuant to this section for purposes of  
8 determining whether a conviction is a second or subsequent  
9 conviction.

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

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

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

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

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