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HOUSE BILL 457

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

FOR THE COURTS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING PENALTIES FOR FELONY DWI OFFENDERS; MANDATING TREATMENT FOR PERSONS CONVICTED A SECOND OR THIRD TIME FOR DWI; REQUIRING THAT THE CORRECTIONS DEPARTMENT PROVIDE SUBSTANCE ABUSE COUNSELING AND TREATMENT TO FELONY DWI OFFENDERS; AMENDING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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 committed
4 within New Mexico whether within the Criminal Code or not, but
5 not including a prior felony DWI conviction pursuant to the
6 provisions of Section 66-8-102 NMSA 1978; or

7 (2) [~~any~~] a 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 imprisonment
15 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~~] A person convicted of a noncapital felony
20 in this state, whether within the Criminal Code or the
21 Controlled Substances Act or not, who has incurred one prior
22 felony conviction [~~which~~] that was part of a separate
23 transaction or occurrence or conditional discharge [~~under~~]
24 pursuant to Section [31-20-7] 31-20-13 NMSA 1978 is a habitual
25 offender and his basic sentence shall be increased by one

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1 year, and the sentence imposed by this subsection shall not be
2 suspended or deferred.

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

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

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

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

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

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

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

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

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

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

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

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1 E. Every person under first conviction [~~under~~]
2 pursuant to this section shall be punished, notwithstanding
3 the provisions of Section 31-18-13 NMSA 1978, by imprisonment
4 for not more than ninety days or by a fine of not more than
5 five hundred dollars (\$500), or both; provided that if the
6 sentence is suspended in whole or in part or deferred, the
7 period of probation may extend beyond ninety days but shall
8 not exceed one year. Upon a first conviction [~~under~~] pursuant
9 to this section, an offender may be sentenced to not less than
10 forty-eight hours of community service or a fine of three
11 hundred dollars (\$300). The offender shall be ordered by the
12 court to participate in and complete a screening program
13 described in Subsection [~~H~~] K of this section and to attend a
14 driver rehabilitation program for alcohol or drugs, also known
15 as a "DWI school", approved by the traffic safety bureau of
16 the state highway and transportation department and also may
17 be required to participate in other rehabilitative services as
18 the court shall determine to be necessary. In addition to
19 those penalties, when an offender commits aggravated driving
20 while under the influence of intoxicating liquor or drugs, the
21 offender shall be sentenced to not less than forty-eight
22 consecutive hours in jail. If an offender fails 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, the offender shall be sentenced to not less than an

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

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

24 (1) upon a second conviction, each offender
25 shall be sentenced to a jail term of not less than seventy-two

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

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

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

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

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

20 J. Upon a seventh or subsequent conviction
21 pursuant to this section, an offender is guilty of a third
22 degree felony and, notwithstanding the provisions of Section
23 31-18-15 NMSA 1978, shall be sentenced to a term of
24 imprisonment of three years, two years of which shall not be
25 suspended, deferred or taken under advisement.

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

8 L. Upon a second or third conviction pursuant to
9 this section, an offender shall be required to participate in
10 and complete, within a time specified by the court, not less
11 than a thirty-day inpatient substance abuse treatment program
12 approved by the court or not less than a ninety-day outpatient
13 treatment program approved by the court. The requirement
14 imposed pursuant to this subsection shall not be suspended,
15 deferred or taken under advisement.

16 M. Upon a felony conviction pursuant to this
17 section, the corrections department shall provide substance
18 abuse counseling or treatment, or both, to the offender.

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

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1 ~~[J-]~~ 0. In the case of a first, second or third
2 offense ~~[under]~~ pursuant to this section, the magistrate court
3 has concurrent jurisdiction with district courts to try the
4 offender.

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

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

20 ~~[M-]~~ R. As used in this section:

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

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

3 Section 3. APPROPRIATION. -- Two million five hundred
4 thousand dollars (\$2,500,000) is appropriated from the general
5 fund to the corrections department for expenditure in fiscal
6 year 2002 for the purpose of providing or contracting for the
7 provisions of substance abuse counseling and treatment for
8 felony DWI offenders. Any unexpended or unencumbered balance
9 remaining at the end of fiscal year 2002 shall revert to the
10 general fund.

11 Section 4. EFFECTIVE DATE. -- The effective date of the
12 provisions of this act is July 1, 2001.

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