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HOUSE BILL 863

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

INTRODUCED BY

Ri ck Mi era

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING THAT A CHEMICAL TEST TO DETERMINE ALCOHOL CONCENTRATION BE PERFORMED NO LATER THAN TWO HOURS AFTER A PERSON IS PLACED UNDER ARREST; AMENDING SECTIONS OF THE NMSA 1978.

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

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

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1 B. It is unlawful for ~~any~~ a person who is under
2 the influence of any drug to a degree that renders him
3 incapable of safely driving a vehicle to drive ~~any~~ a vehicle
4 within this state.

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

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

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

22 E. Every person under first conviction under this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 ninety days or by a fine of not more than five hundred dollars

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

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

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

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

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1 ninety-six consecutive hours. If an offender fails to
2 complete, within a time specified by the court, any community
3 service, screening program or treatment program ordered by the
4 court, the offender shall be sentenced to not less than an
5 additional seven consecutive days in jail. A penalty imposed
6 pursuant to this paragraph shall not be suspended or deferred
7 or taken under advisement; and

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

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

14 J. In the case of a first, second or third offense
15 under this section, the magistrate court has concurrent
16 jurisdiction with district courts to try the offender.

17 K. A conviction under a municipal or county
18 ordinance in New Mexico or a law of any other jurisdiction,
19 territory or possession of the United States that is
20 equivalent to New Mexico law for driving while under the
21 influence of intoxicating liquor or drugs, and that prescribes
22 penalties for driving while under the influence of
23 intoxicating liquor or drugs shall be deemed to be a
24 conviction under this section for purposes of determining
25 whether a conviction is a second or subsequent conviction.

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1 L. In addition to any other fine or fee which may
2 be imposed pursuant to the conviction or other disposition of
3 the offense under this section, the court may order the
4 offender to pay the costs of any court-ordered screening and
5 treatment programs.

6 M For the purposes of this section, a chemical
7 test shall be performed on a person no later than two hours
8 after the person was placed under arrest to determine the
9 alcohol concentration in the person's blood or breath.

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

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

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

18 Section 2. Section 66-8-109 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 517, as amended) is amended to read:

20 "66-8-109. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF
21 COSTS--ADDITIONAL TESTS. --

22 A. Only the persons authorized by Section
23 66-8-103 NMSA 1978 shall withdraw blood from any person for
24 the purpose of determining its alcohol or drug content. This
25 limitation does not apply to the taking of samples of breath.

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1 B. The person tested shall be advised by the law
2 enforcement officer of the person's right to be given an
3 opportunity to arrange for a physician, licensed professional
4 or practical nurse or laboratory technician or technologist
5 who is employed by a hospital or physician of his own choosing
6 to perform a chemical test in addition to any test performed
7 at the direction of a law enforcement officer.

8 C. Upon the request of the person tested, full
9 information concerning the test performed at the direction of
10 the law enforcement officer shall be made available to him as
11 soon as it is available from the person performing the test.

12 D. The law enforcement agency represented by the
13 law enforcement officer at whose direction the chemical test
14 is performed shall pay for the chemical test.

15 E. If a person exercises his right under
16 Subsection B of this section to have a chemical test performed
17 upon him by a person of his own choosing, the cost of that
18 test shall be paid by the law enforcement agency represented
19 by the law enforcement officer at whose direction a chemical
20 test was administered under Section 66-8-107 NMSA 1978.

21 F. For the purposes of the Implied Consent Act, a
22 chemical test shall be performed on a person no later than two
23 hours after the person was placed under arrest to determine
24 the alcohol concentration in the person's blood or breath."

25 Section 3. EFFECTIVE DATE.--The effective date of the

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provisions of this act is July 1, 2001.