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SENATE BILL 306

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

INTRODUCED BY

Joseph J. Carraro

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; 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. --

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

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1 conviction" means:

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

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

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

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

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

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

25 C. Any person convicted of a noncapital felony in

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

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

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

20 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
21 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
22 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

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

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

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

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

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

23 E. Every person under first conviction ~~[under]~~
24 pursuant to this section shall be punished, notwithstanding
25 the provisions of Section 31-18-13 NMSA 1978, by imprisonment

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

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

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

21 (1) upon a second conviction, each offender
22 shall be sentenced to a jail term of not less than
23 ~~[seventy-two consecutive hours]~~ five consecutive days,
24 forty-eight hours of community service and a fine of five
25 hundred dollars (\$500). In addition to those penalties, when

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1 an offender commits aggravated driving while under the
2 influence of intoxicating liquor or drugs, the offender shall
3 be sentenced to a jail term of not less than ~~[ninety-six~~
4 ~~consecutive hours]~~ ten consecutive days. If an offender fails
5 to complete, within a time specified by the court, any
6 community service ~~[screening program]~~ or treatment program
7 ordered by the court, the offender shall be sentenced to not
8 less than an additional seven consecutive days in jail. A
9 penalty imposed pursuant to this paragraph shall not be
10 suspended or deferred or taken under advisement; and

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

24 G. Upon a fourth or subsequent conviction ~~[under]~~
25 pursuant to this section, an offender is guilty of a fourth

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1 degree felony, as provided in Section 31-18-15 NMSA 1978, and
2 shall be sentenced to a [~~ja~~] term of imprisonment of not
3 less than six months, which shall not be suspended or deferred
4 or taken under advisement.

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

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

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

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

5 K. A conviction ~~[under]~~ pursuant to a municipal or
6 county ordinance in New Mexico or a law of any other
7 jurisdiction, territory or possession of the United States
8 that is equivalent to New Mexico law for driving while under
9 the 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. In addition to any other fine or fee ~~[which]~~
16 that may be imposed pursuant to the conviction or other
17 disposition of the offense ~~[under]~~ pursuant to this section,
18 the court may order the offender to pay the costs of any
19 court-ordered screening and treatment programs.

20 M. 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

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

Section 3. EFFECTIVE DATE. -- The effective date of the
provisions of this act is July 1, 2001.