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SENATE BILL 447

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

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; PROVIDING FOR THE INSTALLATION OF AN IGNITION  
INTERLOCK DEVICE ON THE MOTOR VEHICLE OF A FIRST-TIME  
OFFENDER; AMENDING A SECTION 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.

B. It is unlawful for [~~any~~] a person who is under

1 the influence of any drug to a degree that renders him  
2 incapable of safely driving a vehicle to drive [~~any~~] a vehicle  
3 within 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 this state.

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

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

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

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

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

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

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

9 F. A second or third conviction under this section  
10 shall be punished, notwithstanding the provisions of Section  
11 31-18-13 NMSA 1978, by imprisonment for not more than three  
12 hundred sixty-four days or by a fine of not more than one  
13 thousand dollars (\$1,000), or both; provided that if the  
14 sentence is suspended in whole or in part, the period of  
15 probation may extend beyond one year but shall not exceed five  
16 years. Notwithstanding any provision of law to the contrary  
17 for suspension or deferment of 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-two  
20 consecutive hours, forty-eight hours of community service and  
21 a fine of five hundred dollars (\$500). In addition to those  
22 penalties, when an offender commits aggravated driving while  
23 under the influence of intoxicating liquor or drugs, the  
24 offender shall be sentenced to a jail term of not less than  
25 ninety-six consecutive hours. If an offender fails to

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

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

25 H. Upon any conviction under this section, an

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

7 I. Upon [~~any subsequent misdemeanor~~] a first  
8 conviction under this section [~~prior to July 1, 2003~~], as a  
9 condition of probation, an offender [~~may~~] shall be required to  
10 have an ignition interlock device installed and operating for  
11 a period of one year on [~~all motor vehicles owned by the~~  
12 ~~offender or available for the offender's personal use,~~  
13 ~~pursuant to rules adopted by the traffic safety bureau~~] the  
14 motor vehicle primarily driven by the offender and any other  
15 motor vehicle the offender elects to designate, pursuant to  
16 rules adopted by the bureau. The offender shall pay all costs  
17 associated with having an ignition interlock device installed  
18 on the appropriate motor vehicles.

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

22 K. A conviction under a municipal or county  
23 ordinance in New Mexico or a law of any other jurisdiction,  
24 territory or possession of the United States that is  
25 equivalent to New Mexico law for driving while under the

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1 influence of intoxicating liquor or drugs, and that prescribes  
2 penalties for driving while under the influence of  
3 intoxicating liquor or drugs, shall be deemed to be a  
4 conviction under this section for purposes of determining  
5 whether a conviction is a second or subsequent conviction.

6 L. In addition to any other fine or fee which may  
7 be imposed pursuant to the conviction or other disposition of  
8 the offense under this section, the court may order the  
9 offender to pay the costs of any court-ordered screening and  
10 treatment programs.

11 M. As used in this section:

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

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

19 Section 2. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2001.