

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
SENATE BILL 447

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

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; IMPOSING A FEE; CREATING A FUND; AMENDING AND
ENACTING 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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underscored material = new
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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

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~~] one year but shall not exceed [~~one~~
4 ~~year~~] two years. Upon a first conviction under this section,
5 an offender may be sentenced to not less than forty-eight
6 hours of community service or a fine of three hundred dollars
7 (\$300). The offender shall be ordered by the court to
8 participate in and complete a screening program described in
9 Subsection H of this section and to attend a driver
10 rehabilitation program for alcohol or drugs, also known as a
11 "DWI school", approved by the [~~traffic safety~~] bureau [~~of the~~
12 ~~state highway and transportation department~~] and also may be
13 required to participate in other rehabilitative services as
14 the court shall determine to be necessary. In addition to
15 those penalties, when an offender commits aggravated driving
16 while 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~~] a first
9 conviction under this section [~~prior to July 1, 2003~~], as a
10 condition of probation, an offender [~~may~~] shall be required to
11 have an ignition interlock device installed and operating for
12 a period of one year on [~~all motor vehicles owned by the~~
13 ~~offender or available for the offender's personal use,~~
14 ~~pursuant to rules adopted by the traffic safety bureau~~] all
15 motor vehicles driven by the offender, pursuant to rules
16 adopted by the bureau. The offender shall be required to
17 prove one year of continuous, legal, alcohol-free driving
18 before the device may be removed. The offender shall pay all
19 costs associated with having an ignition interlock device
20 installed on the appropriate motor vehicles. If an offender
21 drives a motor vehicle that does not have an ignition
22 interlock device installed on the motor vehicle, the offender
23 shall be in violation of the terms and conditions of his
24 probation.

25 J. Upon any subsequent conviction pursuant to this

1 section, an offender may be required to have all motor
2 vehicles driven by the offender impounded or immobilized for
3 the period that the offender's driver's license is revoked or
4 have ignition interlock devices installed and operating for a
5 period of at least one year following reinstatement of his
6 driver's license on all motor vehicles driven by the offender
7 pursuant to rules adopted by the bureau. The offender shall
8 be required to prove one year of continuous, legal, alcohol-
9 free driving before the device may be removed. The offender
10 shall pay all costs associated with immobilizing or impounding
11 his motor vehicles or having ignition interlock devices
12 installed on the appropriation motor vehicles.

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

17 ~~[K.]~~ L. 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.

1 ~~[L.]~~ M In addition to any other fine or fee which
2 may be imposed pursuant to the conviction or other disposition
3 of 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.]~~ N. As used in this section:

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

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

14 Section 2. [NEW MATERIAL] IMPOSING A FEE--CREATING A
15 FUND.--

16 A. Beginning July 1, 2001, a fee is imposed on all
17 persons who provide ignition interlock devices to persons
18 convicted of driving while under the influence of intoxicating
19 liquor or drugs pursuant to Section 66-8-102 NMSA 1978 in the
20 amount of twenty percent of the amount charged to lease each
21 ignition interlock device to a person convicted pursuant to
22 that section and shall be paid monthly to the traffic safety
23 bureau of the state highway and transportation department
24 pursuant to rules adopted by the traffic safety bureau.

25 B. The "interlock device fund" is created in the

1 state treasury. The fee imposed pursuant to Subsection A of
2 this section shall be distributed to the fund by the traffic
3 safety bureau of the state highway and transportation
4 department.

5 C. Beginning January 1, 2002, all money in the
6 interlock device fund is appropriated to the local government
7 division of the department of finance and administration to
8 cover the costs of leasing ignition interlock devices to
9 indigent people who are required pursuant to convictions under
10 Section 66-8-102 NMSA 1978 to install those devices in their
11 vehicles.

12 D. The balance in and earnings on the fund shall
13 not revert to the general fund at the end of a fiscal year but
14 shall remain in the fund for distribution in subsequent years.

15 E. The fund shall be administered by the local
16 government division of the department of finance and
17 administration.

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