

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 569

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; EXPANDING THE OFFENSE OF AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING A SECTION OF THE MOTOR VEHICLE CODE.

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 a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the

underscored material = new
[bracketed material] = delete

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

3 C. It is unlawful for a person who has an alcohol
4 concentration of eight one hundredths or more in his blood or
5 breath to drive a vehicle within this state.

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

8 (1) has an alcohol concentration of sixteen
9 one hundredths or more in his blood or breath while driving a
10 vehicle within this state;

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

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

20 (4) while under the influence of intoxicating
21 liquor or drugs to a degree that renders the person incapable
22 of safely driving a vehicle, drives a vehicle within this state
23 with one or more passengers who are less than eighteen years of
24 age.

25 E. [~~Every~~] A person under first conviction pursuant

. 144429. 1

underscored material = new
[bracketed material] = delete

1 to this section shall be punished, notwithstanding the
2 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
3 not more than ninety days or by a fine of not more than five
4 hundred dollars (\$500), or both; provided that if the sentence
5 is suspended in whole or in part or deferred, the period of
6 probation may extend beyond ninety days but shall not exceed
7 one year. Upon a first conviction pursuant to this section, an
8 offender may be sentenced to not less than forty-eight hours of
9 community service or a fine of three hundred dollars (\$300).
10 The offender shall be ordered by the court to participate in
11 and complete a screening program described in Subsection H of
12 this section and to attend a driver rehabilitation program for
13 alcohol or drugs, also known as a "DWI school", approved by the
14 bureau and also may be required to participate in other
15 rehabilitative services as the court shall determine to be
16 necessary. 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 not less than forty-eight consecutive hours in jail. If an
20 offender fails to complete, within a time specified by the
21 court, any community service, screening program, treatment
22 program or DWI school ordered by the court, the offender shall
23 be sentenced to not less than an additional forty-eight
24 consecutive hours in jail. Any jail sentence imposed pursuant
25 to this subsection for failure to complete, within a time

. 144429. 1

underscored material = new
[bracketed material] = delete

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

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

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

underscored material = new
[bracketed material] = delete

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

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

23 G. Upon a fourth or subsequent conviction pursuant
24 to this section, an offender is guilty of a fourth degree
25 felony, as provided in Section 31-18-15 NMSA 1978, and shall be

. 144429. 1

underscored material = new
[bracketed material] = delete

1 sentenced to a jail term of not less than six months, which
2 shall not be suspended or deferred or taken under advisement.

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

10 I. Upon a first conviction for aggravated driving
11 while under the influence of intoxicating liquor or drugs
12 pursuant to the provisions of Subsection D of this section,
13 as a condition of probation, an offender shall be required to
14 have an ignition interlock device installed and operating for a
15 period of one year on all motor vehicles driven by the
16 offender, pursuant to rules adopted by the bureau. Unless
17 determined by the sentencing court to be indigent, the offender
18 shall pay all costs associated with having an ignition
19 interlock device installed on the appropriate motor vehicles.
20 If an offender drives a motor vehicle that does not have an
21 ignition interlock device installed on the motor vehicle, the
22 offender may be in violation of the terms and conditions of his
23 probation.

24 J. Upon a first conviction for driving while under
25 the influence of intoxicating liquor or drugs pursuant to the

. 144429. 1

underscored material = new
[bracketed material] = delete

1 provisions of Subsection A, B or C of this section, as a
2 condition of probation, an offender may be required to have an
3 ignition interlock device installed and operating for a period
4 of one year on all motor vehicles driven by the offender,
5 pursuant to rules adopted by the bureau. Unless determined by
6 the sentencing court to be indigent, the offender shall pay all
7 costs associated with having an ignition interlock device
8 installed on the appropriate motor vehicles. If an offender
9 drives a motor vehicle that does not have an ignition interlock
10 device installed on the motor vehicle, the offender may be in
11 violation of the terms and conditions of his probation.

12 K. Upon any subsequent conviction pursuant to this
13 section, as a condition of probation, a subsequent offender
14 shall be required to have an ignition interlock device
15 installed and operating for a period of at least one year on
16 all motor vehicles driven by the subsequent offender, pursuant
17 to rules adopted by the bureau. Unless determined by the
18 sentencing court to be indigent, the subsequent offender shall
19 pay all costs associated with having an ignition interlock
20 device installed on the appropriate motor vehicles. If a
21 subsequent offender drives a motor vehicle that does not have
22 an ignition interlock device installed on the motor vehicle,
23 the subsequent offender may be in violation of the terms and
24 conditions of his probation.

25 L. In the case of a first, second or third offense

underscored material = new
[bracketed material] = delete

1 under this section, the magistrate court has concurrent
2 jurisdiction with district courts to try the offender.

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

12 N. In addition to any other fine or fee [~~which~~
13 that may be imposed pursuant to the conviction or other
14 disposition of the offense under this section, the court may
15 order the offender to pay the costs of any court-ordered
16 screening and treatment programs.

17 O. As used in this section:

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

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

25 Section 2. EFFECTIVE DATE. --The effective date of the

. 144429. 1

underscoring material = new
[bracketed material] = delete

1 provisions of this act is July 1, 2003.

2 - 9 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25