

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 94

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECONCILING MULTIPLE AMENDMENTS TO SECTION 66-8-102 NMSA 1978 (BEING LAWS 1953, CHAPTER 139, SECTION 54, AS AMENDED BY LAWS 2003, CHAPTER 51, SECTION 10 AND BY LAWS 2003, CHAPTER 90, SECTION 3 AND ALSO BY LAWS 2003, CHAPTER 164, SECTION 10); DECLARING AN EMERGENCY.

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 by Laws 2003, Chapter 51, Section 10 and by Laws 2003, Chapter 90, Section 3 and also by Laws 2003, Chapter 164, Section 10) 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. --

1 A. It is unlawful for a person who is under the
2 influence of intoxicating liquor to drive a vehicle within this
3 state.

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

7 C. It is unlawful for:

8 (1) a person who has an alcohol concentration
9 of eight one hundredths or more in his blood or breath to drive
10 a vehicle within this state; or

11 (2) a person who has an alcohol concentration
12 of four one hundredths or more in his blood or breath to drive
13 a commercial motor vehicle within this state.

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

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

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

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

underscored material = new
[bracketed material] = delete

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

. 149156. 2

underscored material = new
[bracketed material] = delete

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

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

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

. 149156. 2

underscored material = new
[bracketed material] = delete

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

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

. 149156. 2

underscored material = new
[bracketed material] = delete

1 ~~degree felony [as provided in Section 31-18-15 NMSA 1978, and~~
2 ~~shall be sentenced to a jail term of not less than six months,~~
3 ~~which shall not be suspended or deferred or taken under~~
4 ~~advisement] and, notwithstanding the provisions of Section~~
5 31-18-15 NMSA 1978, shall be sentenced to a term of
6 imprisonment of eighteen months, six months of which shall not
7 be suspended, deferred or taken under advisement.

8 H. Upon a fifth conviction pursuant to this
9 section, an offender is guilty of a fourth degree felony and,
10 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
11 shall be sentenced to a term of imprisonment of two years, one
12 year of which shall not be suspended, deferred or taken under
13 advisement.

14 I. Upon a sixth conviction pursuant to this
15 section, an offender is guilty of a third degree felony and,
16 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
17 shall be sentenced to a term of imprisonment of thirty months,
18 eighteen months of which shall not be suspended, deferred or
19 taken under advisement.

20 J. Upon a seventh or subsequent conviction pursuant
21 to this section, an offender is guilty of a third degree felony
22 and, notwithstanding the provisions of Section 31-18-15 NMSA
23 1978, shall be sentenced to a term of imprisonment of three
24 years, two years of which shall not be suspended, deferred or
25 taken under advisement.

. 149156. 2

underscored material = new
[bracketed material] = delete

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

9 L. Upon a second or third conviction pursuant to
10 this section, an offender shall be required to participate in
11 and complete, within a time specified by the court, not less
12 than a twenty-eight day inpatient, residential or in-custody
13 substance abuse treatment program approved by the court, not
14 less than a ninety-day outpatient treatment program approved by
15 the court or a drug court program approved by the court. The
16 requirement imposed pursuant to this subsection shall not be
17 suspended, deferred or taken under advisement.

18 M. Upon a felony conviction pursuant to this
19 section, the corrections department shall provide substance
20 abuse counseling and treatment to the offender.

21 ~~[I.]~~ N. Upon a first conviction for aggravated
22 driving while under the influence of intoxicating liquor or
23 drugs pursuant to the provisions of Subsection D of this
24 section, as a condition of probation, an offender shall be
25 required to have an ignition interlock device installed and

underscored material = new
[bracketed material] = delete

1 operating for a period of one year on all motor vehicles driven
2 by the offender, pursuant to rules adopted by the bureau.

3 Unless determined by the sentencing court to be indigent, the
4 offender shall pay all costs associated with having an ignition
5 interlock device installed on the appropriate motor vehicles.

6 If an offender drives a motor vehicle that does not have an
7 ignition interlock device installed on the motor vehicle, the
8 offender may be in violation of the terms and conditions of his
9 probation.

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

23 ~~[K-]~~ P. Upon any subsequent conviction pursuant to
24 this section, as a condition of probation, a subsequent
25 offender shall be required to have an ignition interlock device

. 149156. 2

underscored material = new
[bracketed material] = delete

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

11 [~~L-~~] Q. In the case of a first, second or third
12 offense under this section, the magistrate court has concurrent
13 jurisdiction with district courts to try the offender.

14 [~~M-~~] R. A conviction pursuant to a municipal or
15 county ordinance in New Mexico or a law of any other
16 jurisdiction, territory or possession of the United States or
17 of a tribe, [~~where~~] when that ordinance or law is equivalent to
18 New Mexico law for driving while under the influence of
19 intoxicating liquor or drugs, and prescribes penalties for
20 driving while under the influence of intoxicating liquor or
21 drugs, shall be deemed to be a conviction pursuant to this
22 section for purposes of determining whether a conviction is a
23 second or subsequent conviction.

24 [~~N-~~] S. In addition to any other fine or fee that
25 may be imposed pursuant to the conviction or other disposition

1 of the offense under this section, the court may order the
2 offender to pay the costs of any court-ordered screening and
3 treatment programs.

4 ~~[0-]~~ T. As used in this section:

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

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

12 Section 2. ~~EMERGENCY.~~ --It is necessary for the public
13 peace, health and safety that this act take effect immediately.

14 - 10 -
15
16
17
18
19
20
21
22
23
24
25