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SENATE BILL 99

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

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 CONVICTION FOR THE PURPOSE OF SENTENCING A HABITUAL OFFENDER; MANDATING TREATMENT FOR SECOND AND SUBSEQUENT 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) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE. --

A. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or

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1 occurrence or conditional discharge under Section 31-20-13 NMSA
2 1978 is a habitual offender and his basic sentence shall be
3 increased by one year. The sentence imposed pursuant to this
4 subsection shall not be suspended or deferred, unless the court
5 makes a specific finding that the prior felony conviction and
6 the instant felony conviction are both for nonviolent felony
7 offenses and that justice will not be served by imposing a
8 mandatory sentence of imprisonment and that there are
9 substantial and compelling reasons, stated on the record, for
10 departing from the sentence imposed pursuant to this
11 subsection.

12 B. A person convicted of a noncapital felony in
13 this state whether within the Criminal Code or the Controlled
14 Substances Act or not who has incurred two prior felony
15 convictions that were parts of separate transactions or
16 occurrences or conditional discharge under Section 31-20-13
17 NMSA 1978 is a habitual offender and his basic sentence shall
18 be increased by four years. The sentence imposed by this
19 subsection shall not be suspended or deferred.

20 C. A person convicted of a noncapital felony in
21 this state whether within the Criminal Code or the Controlled
22 Substances Act or not who has incurred three or more prior
23 felony convictions that were parts of separate transactions or
24 occurrences or conditional discharge under Section 31-20-13
25 NMSA 1978 is a habitual offender and his basic sentence shall

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1 be increased by eight years. The sentence imposed by this
2 subsection shall not be suspended or deferred.

3 D. As used in this section, "prior felony
4 conviction" means:

5 (1) a conviction, when less than ten years
6 have passed prior to the instant felony conviction since the
7 person completed serving his sentence or period of probation or
8 parole for the prior felony, whichever is later, for a prior
9 felony committed within New Mexico whether within the Criminal
10 Code or not, [~~but not~~] including a conviction for a felony
11 pursuant to the provisions of Section 66-8-102 NMSA 1978; or

12 (2) a prior felony, when less than ten years
13 have passed prior to the instant felony conviction since the
14 person completed serving his sentence or period of probation or
15 parole for the prior felony, whichever is later, for which the
16 person was convicted other than an offense triable by court
17 martial if:

18 (a) the conviction was rendered by a
19 court of another state, the United States, a territory of the
20 United States or the commonwealth of Puerto Rico;

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

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

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1 E. As used in this section, "nonviolent felony
2 offense" means application of force, threatened use of force or
3 a deadly weapon was not used by the offender in the commission
4 of the offense."

5 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
6 Chapter 139, Section 54, as amended by Laws 2003, Chapter 51,
7 Section 10 and by Laws 2003, Chapter 90, Section 3 and also by
8 Laws 2003, Chapter 164, Section 10) is amended to read:

9 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
10 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
11 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

12 A. It is unlawful for a person who is under the
13 influence of intoxicating liquor to drive a vehicle within this
14 state.

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

18 C. It is unlawful for:
19 (1) a person who has an alcohol concentration
20 of eight one hundredths or more in his blood or breath to drive
21 a vehicle within this state; or
22 (2) a person who has an alcohol concentration
23 of four one hundredths or more in his blood or breath to drive
24 a commercial motor vehicle within this state.

25 D. Aggravated driving while under the influence of

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1 intoxicating liquor or drugs consists of a person who:

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

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

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

12 E. A person under first 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 ninety days or by a fine of not more than five hundred dollars
16 (\$500), or both; provided that if the sentence is suspended in
17 whole or in part or deferred, the period of probation may
18 extend beyond ninety days but shall not exceed one year. Upon
19 a first conviction pursuant to this section, an offender may be
20 sentenced to not less than forty-eight hours of community
21 service or a fine of three hundred dollars (\$300). The
22 offender shall be ordered by the court to participate in and
23 complete a screening program described in Subsection H of this
24 section and to attend a driver rehabilitation program for
25 alcohol or drugs, also known as a "DWI school", approved by the

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1 bureau and also may be required to participate in other
2 rehabilitative services as the court shall determine to be
3 necessary. In addition to those penalties, when an offender
4 commits aggravated driving while under the influence of
5 intoxicating liquor or drugs, the offender shall be sentenced
6 to not less than forty-eight consecutive hours in jail. If an
7 offender fails to complete, within a time specified by the
8 court, any community service, screening program, treatment
9 program or DWI school ordered by the court, the offender shall
10 be sentenced to not less than an additional forty-eight
11 consecutive hours in jail. Any jail sentence imposed pursuant
12 to this subsection for failure to complete, within a time
13 specified by the court, any community service, screening
14 program, treatment program or DWI school ordered by the court
15 or for aggravated driving while under the influence of
16 intoxicating liquor or drugs shall not be suspended, deferred
17 or taken under advisement. On a first conviction pursuant to
18 this section, any time spent in jail for the offense prior to
19 the conviction for that offense shall be credited to any term
20 of imprisonment fixed by the court. A deferred sentence
21 pursuant to this subsection shall be considered a first
22 conviction for the purpose of determining subsequent
23 convictions.

24 F. A second or third conviction pursuant to this
25 section shall be punished, notwithstanding the provisions of

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1 Section 31-18-13 NMSA 1978, by imprisonment for not more than
2 three hundred sixty-four days or by a fine of not more than one
3 thousand dollars (\$1,000), or both; provided that if the
4 sentence is suspended in whole or in part, the period of
5 probation may extend beyond one year but shall not exceed five
6 years. Notwithstanding any provision of law to the contrary
7 for suspension or deferment of execution of a sentence:

8 (1) upon a second conviction, an offender
9 shall be sentenced to a jail term of not less than [~~seventy-two~~
10 ~~consecutive hours~~] five consecutive days, forty-eight hours of
11 community service and a fine of five hundred dollars (\$500).

12 In addition to those penalties, when an offender commits
13 aggravated driving while under the influence of intoxicating
14 liquor or drugs, the offender shall be sentenced to a jail term
15 of not less than [~~ninety-six consecutive hours~~] ten consecutive
16 days. If an offender fails to complete, within a time
17 specified by the court, any community service, screening
18 program or treatment program ordered by the court, the offender
19 shall be sentenced to not less than an additional seven
20 consecutive days in jail. A penalty imposed pursuant to this
21 paragraph shall not be suspended or deferred or taken under
22 advisement; and

23 (2) upon a third conviction, an offender shall
24 be sentenced to a jail term of not less than thirty consecutive
25 days and a fine of seven hundred fifty dollars (\$750). In

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1 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 sixty consecutive days. If an offender fails
5 to complete, within a time specified by the court, any
6 screening program or treatment program ordered by the court,
7 the offender shall be sentenced to not less than an additional
8 sixty consecutive days in jail. A penalty imposed pursuant to
9 this paragraph shall not be suspended or deferred or taken
10 under advisement.

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

16 H. Upon ~~any~~ a first conviction pursuant to this
17 section, an offender shall be required to participate in and
18 complete, within a time specified by the court, an alcohol or
19 drug abuse screening program approved by the department of
20 finance and administration and, if necessary, a treatment
21 program approved by the court. The requirement imposed
22 pursuant to this subsection shall not be suspended, deferred or
23 taken under advisement.

24 I. Upon a second or subsequent conviction pursuant
25 to this section, an offender shall be required to participate

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1 in and complete, within a time specified by the court, not less
2 than a thirty-day inpatient treatment program approved by the
3 court or not less than a sixty-day outpatient treatment program
4 approved by the court. The requirement imposed pursuant to
5 this subsection shall not be suspended, deferred or taken under
6 advisement.

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

21 ~~[J-]~~ K. Upon a first conviction for driving while
22 under the influence of intoxicating liquor or drugs pursuant to
23 the provisions of Subsection A, B or C of this section, as a
24 condition of probation, an offender may be required to have an
25 ignition interlock device installed and operating for a period

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

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

22 [L-] M. In the case of a first, second or third
23 offense under this section, the magistrate court has concurrent
24 jurisdiction with district courts to try the offender.

25 [M-] N. A conviction pursuant to a municipal or

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

10 [N-] 0. In addition to any other fine or fee that
11 may be imposed pursuant to the conviction or other disposition
12 of the offense under this section, the court may order the
13 offender to pay the costs of any court-ordered screening and
14 treatment programs.

15 [0-] P. As used in this section:

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

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

23 Section 3. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 2004.