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HOUSE BILL 492

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING MANDATORY HOURS OF COMMUNITY SERVICE FOR DWI OFFENDERS UPON A FIRST, SECOND AND THIRD CONVICTION; 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) 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

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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:

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

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

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

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

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

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

22 E. A person under first conviction pursuant to 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

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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 but shall not exceed one year. Upon
4 a first conviction pursuant to this section, an offender ~~may~~
5 shall be sentenced to not less than ~~[forty-eight]~~ twenty-four
6 hours of community service ~~[or]~~. In addition, the offender may
7 be required to pay a fine of three hundred dollars (\$300). The
8 offender shall be ordered by the court to participate in and
9 complete a screening program described in Subsection K of this
10 section and to attend a driver rehabilitation program for
11 alcohol or drugs, also known as a "DWI school", approved by the
12 bureau and also may be required to participate in other
13 rehabilitative services as the court shall determine to be
14 necessary. In addition to those penalties, when an offender
15 commits aggravated driving while under the influence of
16 intoxicating liquor or drugs, the offender shall be sentenced
17 to not less than forty-eight consecutive hours in jail. If an
18 offender fails to complete, within a time specified by the
19 court, any community service, screening program, treatment
20 program or DWI school ordered by the court or fails to comply
21 with any other condition of probation, the offender shall be
22 sentenced to not less than an additional forty-eight
23 consecutive hours in jail. Notwithstanding any provision of
24 law to the contrary, if an offender's sentence was suspended or
25 deferred in whole or in part, and the offender violates any

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

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

25 (1) upon a second conviction, an offender

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1 shall be sentenced to a jail term of not less than ninety-six
2 consecutive hours, forty-eight hours of community service and a
3 fine of five hundred dollars (\$500). In addition to those
4 penalties, when an offender commits aggravated driving while
5 under the influence of intoxicating liquor or drugs, the
6 offender shall be sentenced to a jail term of not less than
7 ninety-six consecutive hours. If an offender fails to
8 complete, within a time specified by the court, any community
9 service, screening program or treatment program ordered by the
10 court, the offender shall be sentenced to not less than an
11 additional seven consecutive days in jail. A penalty imposed
12 pursuant to this paragraph shall not be suspended or deferred
13 or taken under advisement; and

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

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1 paragraph shall not be suspended or deferred or taken under
2 advisement.

3 G. Upon a fourth conviction pursuant to this
4 section, an offender is guilty of a fourth degree felony and,
5 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
6 shall be sentenced to a term of imprisonment of eighteen
7 months, six months of which shall not be suspended, deferred or
8 taken under advisement.

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

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

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

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1 taken under advisement.

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

10 L. Upon a second or third conviction pursuant to
11 this section, an offender shall be required to participate in
12 and complete, within a time specified by the court:

13 (1) not less than a twenty-eight-day
14 inpatient, residential or in-custody substance abuse treatment
15 program approved by the court;

16 (2) not less than a ninety-day outpatient
17 treatment program approved by the court;

18 (3) a drug court program approved by the
19 court; or

20 (4) any other substance abuse treatment
21 program approved by the court.

22 The requirement imposed pursuant to this subsection shall
23 not be suspended, deferred or taken under advisement.

24 M Upon a felony conviction pursuant to this
25 section, the corrections department shall provide substance

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1 abuse counseling and treatment to the offender in its custody.
2 While the offender is on probation or parole under its
3 supervision, the corrections department shall also provide
4 substance abuse counseling and treatment to the offender or
5 shall require the offender to obtain substance abuse counseling
6 and treatment.

7 N. Upon a first conviction for aggravated driving
8 while under the influence of intoxicating liquor or drugs
9 pursuant to the provisions of Subsection D of this section, as
10 a condition of probation, an offender shall be required to have
11 an ignition interlock device installed and operating for a
12 period of one year on all motor vehicles driven by the
13 offender, pursuant to rules adopted by the bureau. Unless
14 determined by the sentencing court to be indigent, the offender
15 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 O. Upon a first conviction for driving while under
22 the influence of intoxicating liquor or drugs pursuant to the
23 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 P. Upon any subsequent conviction pursuant to this
10 section, as a condition of probation, a subsequent offender
11 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 Q. In the case of a first, second or third offense
23 under this section, the magistrate court has concurrent
24 jurisdiction with district courts to try the offender.

25 R. A conviction pursuant to a municipal or county

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

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

15 T. 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;

21 (2) "commercial motor vehicle" means a motor
22 vehicle or combination of motor vehicles used in commerce to
23 transport passengers or property if the motor vehicle:

24 (a) has a gross combination weight
25 rating of more than twenty-six thousand pounds inclusive of a

1 towed unit with a gross vehicle weight rating of more than ten
2 thousand pounds;

3 (b) has a gross vehicle weight rating of
4 more than twenty-six thousand pounds;

5 (c) is designed to transport sixteen or
6 more passengers, including the driver; or

7 (d) is of any size and is used in the
8 transportation of hazardous materials, which requires the motor
9 vehicle to be placarded under applicable law; and

10 (3) "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.

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