

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 403, 420, 478, 624, 1233 & 1247

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO CRIMINAL LAW; MODIFYING THE CRIME OF DRIVING UNDER
THE INFLUENCE OF INTOXICATING LIQUOR TO ALLOW THREE HOURS FOR
THE ADMINISTRATION OF A CHEMICAL TEST TO DETERMINE ALCOHOL
CONCENTRATION; PROVIDING FOR THE ADMISSIBILITY OF CHEMICAL
TESTS TAKEN MORE THAN THREE HOURS AFTER DRIVING; ESTABLISHING
MINIMUM HOURS FOR COMMUNITY SERVICE; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005; 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 2005, Chapter 241,
Section 5 and by Laws 2005, Chapter 269, Section 5) is amended
to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING

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1 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
2 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

6 B. It is unlawful for a person who is under the
7 influence of any drug to a degree that renders ~~[him]~~ the person
8 incapable of safely driving a vehicle to drive a vehicle within
9 this state.

10 C. It is unlawful for:

11 (1) a person ~~[who]~~ to drive a vehicle in this
12 state if the person has an alcohol concentration of eight one
13 hundredths or more in ~~[his]~~ the person's blood or breath ~~[to~~
14 ~~drive a vehicle within this state]~~ within three hours of
15 driving the vehicle and the alcohol concentration results from
16 alcohol consumed before or while driving the vehicle; or

17 (2) a person ~~[who]~~ to drive a commercial motor
18 vehicle in this state if the person has an alcohol
19 concentration of four one hundredths or more in ~~[his]~~ the
20 person's blood or breath ~~[to drive a commercial motor vehicle~~
21 ~~within this state]~~ within three hours of driving the commercial
22 motor vehicle and the alcohol concentration results from
23 alcohol consumed before or while driving the vehicle.

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

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1 (1) drives a vehicle in this state and has an
2 alcohol concentration of sixteen one hundredths or more in
3 ~~[his] the person's blood or breath [while driving a vehicle~~
4 ~~within this state]~~ within three hours of driving the vehicle
5 and the alcohol concentration results from alcohol consumed
6 before or while driving the vehicle;

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

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

14 E. A person under first conviction pursuant to this
15 section shall be punished, notwithstanding the provisions of
16 Section 31-18-13 NMSA 1978, by imprisonment for not more than
17 ninety days or by a fine of not more than five hundred dollars
18 (\$500), or both; provided that if the sentence is suspended in
19 whole or in part or deferred, the period of probation may
20 extend beyond ninety days but shall not exceed one year. Upon
21 a first conviction pursuant to this section, an offender shall
22 be sentenced to not less than twenty-four hours ~~[and not more~~
23 ~~than forty-eight hours]~~ of community service. In addition, the
24 offender may be required to pay a fine of three hundred dollars
25 (\$300). The offender shall be ordered by the court to

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

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1 considered a first conviction for the purpose of determining
2 subsequent convictions.

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

12 (1) upon a second conviction, an offender
13 shall be sentenced to a jail term of not less than ninety-six
14 consecutive hours, not less than forty-eight hours of community
15 service and a fine of five hundred dollars (\$500). In addition
16 to those penalties, when an offender commits aggravated driving
17 while under the influence of intoxicating liquor or drugs, the
18 offender shall be sentenced to a jail term of not less than
19 ninety-six consecutive hours. If an offender fails to
20 complete, within a time specified by the court, any community
21 service, screening program or treatment program ordered by the
22 court, the offender shall be sentenced to not less than an
23 additional seven consecutive days in jail. A penalty imposed
24 pursuant to this paragraph shall not be suspended or deferred
25 or taken under advisement; and

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

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

21 H. Upon a fifth conviction pursuant to this
22 section, an offender is guilty of a fourth degree felony and,
23 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
24 shall be sentenced to a term of imprisonment of two years, one
25 year of which shall not be suspended, deferred or taken under

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1 advisement.

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

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

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

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

- 25 (1) not less than a twenty-eight-day

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1 inpatient, residential or in-custody substance abuse treatment
2 program approved by the court;

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

5 (3) a drug court program approved by the
6 court; or

7 (4) any other substance abuse treatment
8 program approved by the court.

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

11 M. Upon a felony conviction pursuant to this
12 section, the corrections department shall provide substance
13 abuse counseling and treatment to the offender in its custody.
14 While the offender is on probation or parole under its
15 supervision, the corrections department shall also provide
16 substance abuse counseling and treatment to the offender or
17 shall require the offender to obtain substance abuse counseling
18 and treatment.

19 N. Upon a conviction pursuant to this section, an
20 offender shall be required to obtain an ignition interlock
21 license and have an ignition interlock device installed and
22 operating on all motor vehicles driven by the offender,
23 pursuant to rules adopted by the bureau. Unless determined by
24 the sentencing court to be indigent, the offender shall pay all
25 costs associated with having an ignition interlock device

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1 installed on the appropriate motor vehicles. The offender
2 shall operate only those vehicles equipped with ignition
3 interlock devices for:

4 (1) a period of one year, for a first
5 offender;

6 (2) a period of two years, for a second
7 conviction pursuant to this section;

8 (3) a period of three years, for a third
9 conviction pursuant to this section; or

10 (4) the remainder of the offender's life, for
11 a fourth or subsequent conviction pursuant to this section.

12 O. Five years from the date of conviction and every
13 five years thereafter, a fourth or subsequent offender may
14 apply to a district court for removal of the ignition interlock
15 device requirement provided in this section and for restoration
16 of a driver's license. A district court may, for good cause
17 shown, remove the ignition interlock device requirement and
18 order restoration of the license; provided that the offender
19 has not been subsequently convicted of driving a motor vehicle
20 while under the influence of intoxicating liquor or drugs.
21 Good cause may include an alcohol screening and proof from the
22 interlock vendor that the person has not had violations of the
23 interlock device.

24 P. In the case of a first, second or third offense
25 under this section, the magistrate court has concurrent

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1 jurisdiction with district courts to try the offender.

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

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

17 S. With respect to this section and notwithstanding
18 any provision of law to the contrary, if an offender's sentence
19 was suspended or deferred in whole or in part and the offender
20 violates any condition of probation, the court may impose any
21 sentence that the court could have originally imposed and
22 credit shall not be given for time served by the offender on
23 probation.

24 T. As used in this section:

25 (1) "bodily injury" means an injury to a

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1 person that is not likely to cause death or great bodily harm
2 to the person, but does cause painful temporary disfigurement
3 or temporary loss or impairment of the functions of any member
4 or organ of the person's body;

5 (2) "commercial motor vehicle" means a motor
6 vehicle or combination of motor vehicles used in commerce to
7 transport passengers or property if the motor vehicle:

8 (a) has a gross combination weight
9 rating of more than twenty-six thousand pounds inclusive of a
10 towed unit with a gross vehicle weight rating of more than ten
11 thousand pounds;

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

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

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

19 (3) "conviction" means an adjudication of
20 guilt and does not include imposition of a sentence."

21 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 518, as amended by Laws 2003, Chapter 51,
23 Section 12 and by Laws 2003, Chapter 90, Section 5) is amended
24 to read:

25 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL

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1 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

2 A. The results of a test performed pursuant to the
3 Implied Consent Act may be introduced into evidence in any
4 civil action or criminal action arising out of the acts alleged
5 to have been committed by the person tested for driving a motor
6 vehicle while under the influence of intoxicating liquor or
7 drugs.

8 B. When the blood or breath of the person tested
9 contains:

10 (1) an alcohol concentration of less than four
11 one hundredths, it shall be presumed that the person was not
12 under the influence of intoxicating liquor;

13 (2) an alcohol concentration of at least four
14 one hundredths but less than eight one hundredths:

15 (a) no presumption shall be made that
16 the person either was or was not under the influence of
17 intoxicating liquor, unless the person is driving a commercial
18 motor vehicle; and

19 (b) the amount of alcohol in the
20 person's blood or breath may be considered with other competent
21 evidence in determining whether the person was under the
22 influence of intoxicating liquor; or

23 (3) an alcohol concentration of four one
24 hundredths or more and the person is driving a commercial
25 vehicle, it shall be presumed that the person is under the

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1 influence of intoxicating liquor.

2 C. The arresting officer shall charge the person
3 tested with a violation of Section 66-8-102 NMSA 1978 when the
4 blood or breath of the person contains an alcohol concentration
5 of:

6 (1) eight one hundredths or more; or

7 (2) four one hundredths or more if the person
8 is driving a commercial motor vehicle.

9 D. When a person is less than twenty-one years of
10 age and the blood or breath of the person contains an alcohol
11 concentration of two one hundredths or more, the person's
12 driving privileges shall be revoked pursuant to the provisions
13 of the Implied Consent Act.

14 E. If the test performed pursuant to the Implied
15 Consent Act is administered more than three hours after the
16 person was driving a vehicle, the test result may be introduced
17 as evidence of the alcohol concentration in the person's blood
18 or breath at the time of the test and the trier of fact shall
19 determine what weight to give the test result for the purpose
20 of determining a violation of Section 66-8-102 NMSA 1978.

21 [~~E.~~] F. The determination of alcohol concentration
22 shall be based on the grams of alcohol in one hundred
23 milliliters of blood or the grams of alcohol in two hundred ten
24 liters of breath.

25 [~~F.~~] G. The presumptions in Subsection B of this
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1 section do not limit the introduction of other competent
2 evidence concerning whether the person was under the influence
3 of intoxicating liquor.

4 [G.] H. If a person is convicted of driving a motor
5 vehicle while under the influence of intoxicating liquor, the
6 trial judge shall [~~be required to~~] inquire into the past
7 driving record of the person before sentence is entered in the
8 matter."

9 Section 3. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.

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