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SENATE BILL 443

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

INTRODUCED BY

Rod Adair

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; 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;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2005.

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

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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~~] the person
6 incapable of safely driving a vehicle to drive a vehicle within
7 this state.

8 C. It is unlawful for:

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

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

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

24 (1) drives a vehicle in this state and has an
25 alcohol concentration of sixteen one hundredths or more in

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1 [his] the person's blood or breath [~~while driving a vehicle~~
2 ~~within this state~~] within three hours of driving the vehicle
3 and the alcohol concentration results from alcohol consumed
4 before or while driving the vehicle;

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 shall
20 be sentenced to not less than twenty-four hours and not more
21 than forty-eight hours of community service. In addition, the
22 offender may be required to pay a fine of three hundred dollars
23 (\$300). The offender shall be ordered by the court to
24 participate in and complete a screening program described in
25 Subsection K of this section and to attend a driver

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

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1 F. A second or third 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 three hundred sixty-four days or by a fine of not more than one
5 thousand dollars (\$1,000), or both; provided that if the
6 sentence is suspended in whole or in part, the period of
7 probation may extend beyond one year but shall not exceed five
8 years. Notwithstanding any provision of law to the contrary
9 for suspension or deferment of execution of a sentence:

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

24 (2) upon a third conviction, an offender shall
25 be sentenced to a jail term of not less than thirty consecutive

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

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

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

25 I. Upon a sixth conviction pursuant to this

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

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

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

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

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

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

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

5 (4) any other substance abuse treatment
6 program approved by the court.

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

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

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

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1 interlock devices for:

2 (1) a period of one year, for a first
3 offender;

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

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

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

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

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

22 T. As used in this section:

23 (1) "bodily injury" means an injury to a
24 person that is not likely to cause death or great bodily harm
25 to the person, but does cause painful temporary disfigurement

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1 or temporary loss or impairment of the functions of any member
2 or organ of the person's body;

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

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

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

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

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

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