

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 565

3 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

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10 AN ACT

11 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
12 AMENDING A SECTION OF THE MOTOR VEHICLE CODE TO PROVIDE FOR
13 ALTERNATIVE SENTENCING OF AN OFFENDER OF DRIVING UNDER THE
14 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS TO WEAR A SECURED
15 CONTINUOUS REMOTE ALCOHOL MONITORING BRACELET; RECONCILING
16 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953,
20 Chapter 139, Section 54, as amended by Laws 2007, Chapter 321,
21 Section 10 and by Laws 2007, Chapter 322, Section 1) is amended
22 to read:

23 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
24 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
25 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 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 to drive a vehicle in this state
10 if the person has an alcohol concentration of eight one
11 hundredths or more in the person's blood or breath within three
12 hours of driving the vehicle and the alcohol concentration
13 results from alcohol consumed before or while driving the
14 vehicle; or

15 (2) a person 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 the person's
18 blood or breath within three hours of driving the commercial
19 motor vehicle and the alcohol concentration results from
20 alcohol consumed before or while driving the vehicle.

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

23 (1) drives a vehicle in this state and has an
24 alcohol concentration of sixteen one hundredths or more in the
25 person's blood or breath within three hours of driving the

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1 vehicle and the alcohol concentration results from alcohol
2 consumed before or while driving the vehicle;

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

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

10 E. A person under first conviction pursuant to this
11 section shall be punished, notwithstanding the provisions of
12 Section 31-18-13 NMSA 1978, by imprisonment for not more than
13 ninety days or by a fine of not more than five hundred dollars
14 (\$500), or both; provided that if the sentence is suspended in
15 whole or in part or deferred, the period of probation may
16 extend beyond ninety days but shall not exceed one year. Upon
17 a first conviction pursuant to this section, an offender shall
18 be sentenced to not less than twenty-four hours of community
19 service. In addition, the offender may be required to pay a
20 fine of three hundred dollars (\$300). The offender shall be
21 ordered by the court to participate in and complete a screening
22 program described in Subsection K of this section and to attend
23 a driver rehabilitation program for alcohol or drugs, also
24 known as a "DWI school", approved by the bureau and also may be
25 required to participate in other rehabilitative services as the

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

23 F. A second or third conviction pursuant to this
24 section shall be punished, notwithstanding the provisions of
25 Section 31-18-13 NMSA 1978, by imprisonment for not more than

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

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

21 (2) upon a third conviction, an offender shall
22 be sentenced to a jail term of not less than thirty consecutive
23 days, not less than ninety-six hours of community service and a
24 fine of seven hundred fifty dollars (\$750). In addition to
25 those penalties, when an offender commits aggravated driving

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1 while under the influence of intoxicating liquor or drugs, the
2 offender shall be sentenced to a jail term of not less than
3 sixty consecutive days. If an offender fails to complete,
4 within a time specified by the court, any community service,
5 screening program or treatment program ordered by the court,
6 the offender shall be sentenced to not less than an additional
7 sixty consecutive days in jail. A penalty imposed pursuant to
8 this paragraph shall not be suspended or deferred or taken
9 under advisement.

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

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

22 I. Upon a sixth conviction pursuant to this
23 section, an offender is guilty of a third degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of thirty months,

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1 eighteenth months of which shall not be suspended, deferred or
 2 taken under advisement.

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

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

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

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

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

25 (3) a drug court program approved by the

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1 court; or

2 (4) any other substance abuse treatment
3 program approved by the court.

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

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

14 N. Upon a conviction pursuant to this section, an
15 offender shall be required to obtain an ignition interlock
16 license and have an ignition interlock device installed and
17 operating on all motor vehicles driven by the offender,
18 pursuant to rules adopted by the bureau or wear a secured
19 continuous remote alcohol monitoring bracelet as the sentencing
20 court deems necessary. Unless determined by the sentencing
21 court to be indigent, the offender shall pay all costs
22 associated with having an ignition interlock device installed
23 on the appropriate motor vehicles or all costs associated with
24 having a secured continuous remote alcohol monitoring bracelet
25 installed and monitored by the sentencing court. The offender

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1 shall wear the secured continuous remote alcohol monitoring
2 bracelet or 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 0. 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 or the secured continuous remote alcohol monitoring
16 bracelet requirement provided in this section and for
17 restoration of a driver's license. A district court may, for
18 good cause shown, remove the ignition interlock device or
19 alcohol monitoring bracelet requirement and order restoration
20 of the license; provided that the offender has not been
21 subsequently convicted of driving a motor vehicle while under
22 the influence of intoxicating liquor or drugs. Good cause may
23 include an alcohol screening and proof from the interlock or
24 bracelet vendor that the person has not had violations of the
25 interlock device or bracelet.

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1 P. In the case of a first, second or third offense
2 under this section, the magistrate court has concurrent
3 jurisdiction with district courts to try the offender.

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

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

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

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1 T. As used in this section:

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

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

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

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

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

18 (d) is of any size and is used in the
 19 transportation of hazardous materials, which requires the motor
 20 vehicle to be placarded under applicable law."

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