

1 HOUSE BILL 395

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Emily Kane

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10 AN ACT

11 RELATING TO PUBLIC SAFETY; ENACTING THE TWENTY-FOUR SEVEN
12 SOBRIETY ACT; CREATING A SOBRIETY PROGRAM FOR PERSONS CONVICTED
13 OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS
14 OR OTHER OFFENSES INVOLVING ALCOHOL OR MARIJUANA OR OTHER
15 CONTROLLED SUBSTANCES; PROVIDING POWERS AND DUTIES; PROVIDING
16 FOR COURT-ORDERED PARTICIPATION IN THE PROGRAM TO INCLUDE COSTS
17 AND EXPENSES PAID BY THE OFFENDER; CREATING A FUND.

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

20 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
21 through 5 of this act may be cited as the "Twenty-Four Seven
22 Sobriety Act".

23 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
24 Twenty-Four Seven Sobriety Act:

25 A. "court" means a magistrate, metropolitan or

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1 district court;

2 B. "designee" means the person designated by a
3 sheriff to provide program services;

4 C. "fund" means the twenty-four seven sobriety
5 fund;

6 D. "office" means the office of the attorney
7 general; and

8 E. "program" means the twenty-four seven sobriety
9 program.

10 SECTION 3. [NEW MATERIAL] PROGRAM CREATED--
11 ADMINISTRATION--PURPOSE.--

12 A. The "twenty-four seven sobriety program" is
13 created and shall be administered by the office. The purpose
14 of the program is to coordinate efforts among various state and
15 local government courts and agencies to find and implement
16 alternatives to incarceration for certain offenses that involve
17 driving under the influence of intoxicating liquor or drugs and
18 other offenses involving alcohol or marijuana or other
19 controlled substances.

20 B. The office shall promulgate rules for the
21 administration of the program to:

22 (1) regulate the nature and manner of testing
23 for alcohol or drugs;

24 (2) provide for procedures and apparatus for
25 testing, including electronic monitoring devices;

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1 (3) determine and set participation and user
2 fees; provided that user fees for twice-daily testing shall not
3 be less than one dollar (\$1.00) per test or more than the
4 actual cost of the test; and

5 (4) require the submission of reports and
6 information by law enforcement agencies within this state.

7 C. Each county, through its sheriff, may
8 participate in the program. If a sheriff is unwilling or
9 unable to participate in the program, the sheriff may designate
10 another person willing to provide program services. If twice-
11 daily testing is ordered, the sheriff or designee shall
12 establish the testing locations and times for the county but
13 shall have at least one location and two daily testing times
14 approximately twelve hours apart.

15 D. A court may require participation in the
16 program, to include the payment by the offender of associated
17 costs and expenses of the program, as a condition of:

- 18 (1) any bond or pretrial release;
19 (2) the granting of a suspended imposition of
20 sentence, suspended execution of sentence or probation; or
21 (3) the placement of a delinquent or youthful
22 offender.

23 E. The parole board may condition parole upon
24 participation in the program, to include the payment by the
25 parolee of associated costs and expenses.

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1 SECTION 4. ~~[NEW MATERIAL]~~ USER FEES--DISTRIBUTION.--All
2 user fees collected pursuant to the Twenty-Four Seven Sobriety
3 Act shall be distributed as follows:

4 A. all user fees collected in the administration of
5 twice-daily testing in a county shall be paid into the treasury
6 of that county or, if the sheriff is not participating and has
7 designated another person to participate in the program,
8 retained by that the designee; provided that testing user fees
9 shall be applied and used only to defray the recurring costs of
10 twice-daily testing, including maintaining equipment, funding
11 support services and ensuring compliance;

12 B. any installation and deactivation fees collected
13 in the administration of electronic alcohol monitoring device
14 testing shall be collected by the sheriff or designee and paid
15 into the general fund of the county, the proceeds of which
16 shall be used only to defray the recurring expenses of the
17 program, including maintaining equipment, funding support
18 services and ensuring compliance;

19 C. daily user fees collected in the administration
20 of electronic alcohol monitoring device testing shall be
21 deposited in the fund; and

22 D. all user fees collected as a result of the
23 administration of the program, other than those collected by
24 the county or the designee, for twice daily testing shall be
25 deposited in the fund.

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1 SECTION 5. ~~[NEW MATERIAL]~~ FUND CREATED--ADMINISTRATION.--

2 The "twenty-four seven sobriety fund" is created as a
3 nonreverting fund in the state treasury. The fund shall be
4 administered by the office to defray the costs of operating the
5 program, including purchasing and maintaining equipment and
6 funding support services. The fund consists of appropriations,
7 user fees, gifts, grants, donations and other payments.
8 Expenditures from the fund shall be on warrant of the secretary
9 of finance and administration upon vouchers signed by the
10 attorney general or the attorney general's authorized
11 representative.

12 SECTION 6. Section 66-8-102 NMSA 1978 (being Laws 1953,
13 Chapter 139, Section 54, as amended) is amended to read:

14 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
15 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
16 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

17 A. It is unlawful for a person who is under the
18 influence of intoxicating liquor to drive a vehicle within this
19 state.

20 B. It is unlawful for a person who is under the
21 influence of any drug to a degree that renders the person
22 incapable of safely driving a vehicle to drive a vehicle within
23 this state.

24 C. It is unlawful for:

25 (1) a person to drive a vehicle in this state

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1 if the person has an alcohol concentration of eight one
2 hundredths or more in the person's blood or breath within three
3 hours of driving the vehicle and the alcohol concentration
4 results from alcohol consumed before or while driving the
5 vehicle; or

6 (2) a person to drive a commercial motor
7 vehicle in this state if the person has an alcohol
8 concentration of four one hundredths or more in the person's
9 blood or breath within three hours of driving the commercial
10 motor vehicle and the alcohol concentration results from
11 alcohol consumed before or while driving the vehicle.

12 D. Aggravated driving under the influence of
13 intoxicating liquor or drugs consists of:

14 (1) driving a vehicle in this state with an
15 alcohol concentration of sixteen one hundredths or more in the
16 driver's blood or breath within three hours of driving the
17 vehicle and the alcohol concentration results from alcohol
18 consumed before or while driving the vehicle;

19 (2) causing bodily injury to a human being as
20 a result of the unlawful operation of a motor vehicle while
21 driving under the influence of intoxicating liquor or drugs; or

22 (3) refusing to submit to chemical testing, as
23 provided for in the Implied Consent Act, and in the judgment of
24 the court, based upon evidence of intoxication presented to the
25 court, the driver was under the influence of intoxicating

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1 liquor or drugs.

2 E. A first conviction pursuant to this section
3 shall be punished, notwithstanding the provisions of Section
4 31-18-13 NMSA 1978, by imprisonment for not more than ninety
5 days or by a fine of not more than five hundred dollars (\$500),
6 or both; provided that if the sentence is suspended in whole or
7 in part or deferred, the period of probation may extend beyond
8 ninety days but shall not exceed one year. Upon a first
9 conviction pursuant to this section, an offender shall be
10 sentenced to not less than twenty-four hours of community
11 service. In addition, the offender may be required to pay a
12 fine of three hundred dollars (\$300). The offender shall be
13 ordered by the court to participate in and complete a screening
14 program described in Subsection K of this section and to attend
15 a driver rehabilitation program for alcohol or drugs, also
16 known as a "DWI school", approved by the bureau and also may be
17 required to participate in other rehabilitative services as the
18 court shall determine to be necessary. In addition to those
19 penalties, when an offender commits aggravated driving under
20 the influence of intoxicating liquor or drugs, the offender
21 shall be sentenced to not less than forty-eight consecutive
22 hours in jail. If an offender fails to complete, within a time
23 specified by the court, any community service, screening
24 program, treatment program or DWI school ordered by the court
25 or fails to comply with any other condition of probation, the

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1 offender shall be sentenced to not less than an additional
2 forty-eight consecutive hours in jail. Any jail sentence
3 imposed pursuant to this subsection for failure to complete,
4 within a time specified by the court, any community service,
5 screening program, treatment program or DWI school ordered by
6 the court or for aggravated driving under the influence of
7 intoxicating liquor or drugs shall not be suspended, deferred
8 or taken under advisement. On a first conviction pursuant to
9 this section, any time spent in jail for the offense prior to
10 the conviction for that offense shall be credited to any term
11 of imprisonment fixed by the court. A deferred sentence
12 pursuant to this subsection shall be considered a first
13 conviction for the purpose of determining subsequent
14 convictions.

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

24 (1) upon a second conviction, an offender
25 shall be sentenced to a jail term of not less than ninety-six

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

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

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1 under advisement.

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

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

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

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

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1 K. Upon any conviction pursuant to this section, an
2 offender shall be required to participate in and complete,
3 within a time specified by the court, an alcohol or drug abuse
4 screening program approved by the department of finance and
5 administration and, if necessary, a treatment program approved
6 by the court. The court may order participation in a twenty-
7 four seven sobriety program pursuant to the Twenty-Four Seven
8 Sobriety Act. The requirement imposed pursuant to this
9 subsection shall not be suspended, deferred or taken under
10 advisement.

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

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

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

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

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

23 The requirement imposed pursuant to this subsection shall
24 not be suspended, deferred or taken under advisement. Programs
25 under this subsection may include a twenty-four seven sobriety

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1 program pursuant to the Twenty-Four Seven Sobriety Act.

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

10 N. Upon a conviction pursuant to this section, an
11 offender shall be required to obtain an ignition interlock
12 license and have an ignition interlock device installed and
13 operating on all motor vehicles driven by the offender,
14 pursuant to rules adopted by the [~~traffic safety~~] bureau.
15 Unless determined by the bureau to be indigent, the offender
16 shall pay all costs associated with having an ignition
17 interlock device installed on the appropriate motor vehicles.
18 The offender shall operate only those vehicles equipped with
19 ignition interlock devices for:

20 (1) a period of one year, for a first
21 offender;

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

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

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

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

15 P. An offender who obtains an ignition interlock
16 license and installs an ignition interlock device prior to
17 conviction shall be given credit at sentencing for the time
18 period the ignition interlock device has been in use.

19 Q. In the case of a first, second or third offense
20 under this section, the magistrate court has concurrent
21 jurisdiction with district courts to try the offender.

22 R. A conviction pursuant to a municipal or county
23 ordinance in New Mexico or a law of any other jurisdiction,
24 territory or possession of the United States or of a tribe,
25 when that ordinance or law is equivalent to New Mexico law for

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1 driving under the influence of intoxicating liquor or drugs,
2 and prescribes penalties for driving under the influence of
3 intoxicating liquor or drugs, shall be deemed to be a
4 conviction pursuant to this section for purposes of determining
5 whether a conviction is a second or subsequent conviction.

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

11 T. With respect to this section and notwithstanding
12 any provision of law to the contrary, if an offender's sentence
13 was suspended or deferred in whole or in part and the offender
14 violates any condition of probation, the court may impose any
15 sentence that the court could have originally imposed and
16 credit shall not be given for time served by the offender on
17 probation.

18 U. As used in this section:

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

24 (2) "commercial motor vehicle" means a motor
25 vehicle or combination of motor vehicles used in commerce to

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1 transport passengers or property if the motor vehicle:

2 (a) has a gross combination weight
3 rating of more than twenty-six thousand pounds inclusive of a
4 towed unit with a gross vehicle weight rating of more than ten
5 thousand pounds;

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

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

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