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SENATE BILL 409

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

INTRODUCED BY

Craig Brandt

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; INCREASING PENALTIES AND MANDATORY PERIODS OF
INCARCERATION FOR FOURTH AND SUBSEQUENT OFFENSES; PROVIDING
THAT AN EIGHTH OR SUBSEQUENT OFFENSE IS A SECOND DEGREE FELONY.

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

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

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1 B. It is unlawful for a person who is under the
2 influence of any drug to a degree that renders the person
3 incapable of safely driving a vehicle to drive a vehicle within
4 this state.

5 C. It is unlawful for:

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

12 (2) a person to drive a commercial motor
13 vehicle in this state if the person has an alcohol
14 concentration of four one hundredths or more in the person's
15 blood or breath within three hours of driving the commercial
16 motor vehicle and the alcohol concentration results from
17 alcohol consumed before or while driving the vehicle.

18 D. Aggravated driving under the influence of
19 intoxicating liquor or drugs consists of:

20 (1) driving a vehicle in this state with an
21 alcohol concentration of sixteen one hundredths or more in the
22 driver's blood or breath within three hours of driving the
23 vehicle and the alcohol concentration results from alcohol
24 consumed before or while driving the vehicle;

25 (2) causing bodily injury to a human being as

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1 a result of the unlawful operation of a motor vehicle while
2 driving under the influence of intoxicating liquor or drugs; or
3 (3) refusing to submit to chemical testing, as
4 provided for in the Implied Consent Act, and in the judgment of
5 the court, based upon evidence of intoxication presented to the
6 court, the driver was under the influence of intoxicating
7 liquor or drugs.

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

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

21 F. A second or third conviction pursuant to this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 three hundred sixty-four days or by a fine of not more than one
25 thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of
2 probation may extend beyond one year but shall not exceed five
3 years. Notwithstanding any provision of law to the contrary
4 for suspension or deferment of execution of a sentence:

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

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

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

8 G. Upon a fourth 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 [~~eighteen~~
12 thirty months, [~~six~~ eighteen months of which shall not be
13 suspended, deferred or taken under advisement.

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

20 I. Upon a sixth conviction pursuant to this
21 section, an offender is guilty of a third degree felony and,
22 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
23 shall be sentenced to a term of imprisonment of [~~thirty~~ forty-
24 two months, [~~eighteen~~ thirty months of which shall not be
25 suspended, deferred or taken under advisement.

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

7 K. Upon an eighth or subsequent conviction pursuant
8 to this section, an offender is guilty of a second degree
9 felony and, notwithstanding the provisions of Section 31-18-15
10 NMSA 1978, shall be sentenced to a term of imprisonment of
11 twelve years, ten years of which shall not be suspended,
12 deferred or taken under advisement.

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

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

24 (1) not less than a twenty-eight-day
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

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

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

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

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

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

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1 The offender shall operate only those vehicles equipped with
2 ignition interlock devices for:

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

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

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

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

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

23 [~~P-~~] Q. An offender who obtains an ignition
24 interlock license and installs an ignition interlock device
25 prior to conviction shall be given credit at sentencing for the

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1 time period the ignition interlock device has been in use.

2 [Q-] R. In the case of a first, second or third
3 offense under this section, the magistrate court has concurrent
4 jurisdiction with district courts to try the offender.

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

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

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

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1 served by the offender on probation.

2 ~~[U-]~~ V. As used in this section:

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

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

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

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

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

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

22 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
23 provisions of this act is July 1, 2013.

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