

HOUSE BILL 337

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Tim D. Lewis

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING THE PENALTY FOR HOMICIDE BY VEHICLE WHILE VIOLATING SECTION 66-8-113 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 521, AS AMENDED); INCREASING THE PENALTIES FOR GREAT BODILY HARM BY VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS OR WHILE VIOLATING SECTION 66-8-113 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 521, AS AMENDED); INCREASING PENALTIES FOR FOURTH AND SUBSEQUENT OFFENSES.

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

SECTION 1. Section 66-8-101 NMSA 1978 (being Laws 1978, Chapter 35, Section 509, as amended) is amended to read:

"66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY VEHICLE.--

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1 A. Homicide by vehicle is the killing of a human
2 being in the unlawful operation of a motor vehicle.

3 B. Great bodily harm by vehicle is the injuring of
4 a human being, to the extent defined in Section 30-1-12 NMSA
5 1978, in the unlawful operation of a motor vehicle.

6 C. A person who commits homicide by vehicle or
7 great bodily harm by vehicle while under the influence of
8 intoxicating liquor [~~or~~], while under the influence of any drug
9 or while violating Section 66-8-113 NMSA 1978 is guilty of a
10 second degree felony and shall be sentenced pursuant to the
11 provisions of Section 31-18-15 NMSA 1978

12 ~~[D. A person who commits homicide by vehicle while~~
13 ~~violating Section 66-8-113 NMSA 1978 is guilty of a third~~
14 ~~degree felony and shall be sentenced pursuant to the provisions~~
15 ~~of Section 31-18-15 NMSA 1978];~~ provided that violation of
16 speeding laws as set forth in the Motor Vehicle Code shall not
17 per se be a basis for violation of Section 66-8-113 NMSA 1978.

18 ~~[E. A person who commits great bodily harm by~~
19 ~~vehicle while under the influence of intoxicating liquor, while~~
20 ~~under the influence of any drug or while violating Section~~
21 ~~66-8-113 NMSA 1978 is guilty of a third degree felony and shall~~
22 ~~be sentenced pursuant to the provisions of Section 31-18-15~~
23 ~~NMSA 1978, provided that violation of speeding laws as set~~
24 ~~forth in the Motor Vehicle Code shall not per se be a basis for~~
25 ~~violation of Section 66-8-113 NMSA 1978.~~

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1 ~~F.~~ D. A person who commits homicide by vehicle or
2 great bodily harm by vehicle while under the influence of
3 intoxicating liquor or while under the influence of any drug,
4 as provided in Subsection C [~~or E~~] of this section, and who has
5 incurred a prior DWI conviction within ten years of the
6 occurrence for which the person is being sentenced under this
7 section shall have the person's basic sentence increased by
8 four years for each prior DWI conviction.

9 ~~G.~~ E. For the purposes of this section, "prior
10 DWI conviction" means:

11 (1) a prior conviction under Section 66-8-102
12 NMSA 1978; or

13 (2) a prior conviction in New Mexico or any
14 other jurisdiction, territory or possession of the United
15 States, including a tribal jurisdiction, when the criminal act
16 is driving under the influence of alcohol or drugs.

17 ~~H.~~ F. A person who willfully operates a motor
18 vehicle in violation of Subsection C of Section 30-22-1 NMSA
19 1978 and directly or indirectly causes the death of or great
20 bodily harm to a human being is guilty of a third degree felony
21 and shall be sentenced pursuant to the provisions of Section
22 31-18-15 NMSA 1978."

23 **SECTION 2.** Section 66-8-102 NMSA 1978 (being Laws 1953,
24 Chapter 139, Section 54, as amended) is amended to read:

25 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING

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

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

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

23 D. Aggravated driving under the influence of
24 intoxicating liquor or drugs consists of:

25 (1) driving a vehicle in this state with an

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1 alcohol concentration of sixteen one hundredths or more in the
2 driver's blood or breath within three hours of driving the
3 vehicle and the alcohol concentration results from alcohol
4 consumed before or while driving the vehicle;

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

8 (3) refusing 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, the driver was under the influence of intoxicating
12 liquor or drugs.

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

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1 a driver rehabilitation program for alcohol or drugs, also
2 known as a "DWI school", approved by the bureau and also may be
3 required to participate in other rehabilitative services as the
4 court shall determine to be necessary. In addition to those
5 penalties, when an offender commits aggravated driving under
6 the influence of intoxicating liquor or drugs, the offender
7 shall be sentenced to not less than forty-eight consecutive
8 hours in jail. If an offender fails to complete, within a time
9 specified by the court, any community service, screening
10 program, treatment program or DWI school ordered by the court
11 or fails to comply with any other condition of probation, the
12 offender shall be sentenced to not less than an additional
13 forty-eight consecutive hours in jail. Any jail sentence
14 imposed pursuant to this subsection for failure to complete,
15 within a time specified by the court, any community service,
16 screening program, treatment program or DWI school ordered by
17 the court or for aggravated driving under the influence of
18 intoxicating liquor or drugs shall not be suspended, deferred
19 or taken under advisement. On a first conviction pursuant to
20 this section, any time spent in jail for the offense prior to
21 the conviction for that offense shall be credited to any term
22 of imprisonment fixed by the court. A deferred sentence
23 pursuant to this subsection shall be considered a first
24 conviction for the purpose of determining subsequent
25 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, not less than forty-eight hours of community
13 service and a fine of five hundred dollars (\$500). In addition
14 to those penalties, when an offender commits aggravated driving
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, not less than ninety-six hours of community service and a
2 fine of seven hundred fifty dollars (\$750). In addition to
3 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 sixty consecutive days. If an offender fails to complete,
7 within a time specified by the court, any community service,
8 screening program or treatment program ordered by the court,
9 the offender shall be sentenced to not less than an additional
10 sixty consecutive days in jail. A penalty imposed pursuant to
11 this paragraph shall not be suspended or deferred or taken
12 under 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 thirty months, [~~six~~] eighteen months of which shall not be
18 suspended, deferred or 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~~] three
23 years, [~~one year~~] two years of which shall not be suspended,
24 deferred or taken under 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~~] forty-
4 two months, [~~eighteen~~] thirty months of which shall not be
5 suspended, deferred or taken under advisement.

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

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

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

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1 M. Upon a second or third conviction pursuant to
2 this section, an offender shall be required to participate in
3 and complete, within a time specified by the court:

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

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

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

11 (4) any other substance abuse treatment
12 program approved by the court.

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

15 N. Upon a felony conviction pursuant to this
16 section, the corrections department shall provide substance
17 abuse counseling and treatment to the offender in its custody.
18 While the offender is on probation or parole under its
19 supervision, the corrections department shall also provide
20 substance abuse counseling and treatment to the offender or
21 shall require the offender to obtain substance abuse counseling
22 and treatment.

23 O. Upon a conviction pursuant to this section, an
24 offender shall be required to obtain an ignition interlock
25 license and have an ignition interlock device installed and

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1 operating on all motor vehicles driven by the offender,
2 pursuant to rules adopted by the bureau. Unless determined by
3 the bureau to be indigent, the offender shall pay all costs
4 associated with having an ignition interlock device installed
5 on the appropriate motor vehicles. The offender shall operate
6 only those vehicles equipped with ignition interlock devices
7 for:

8 (1) a period of one year, for a first
9 offender;

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

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

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

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

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1 interlock vendor that the person has not had violations of the
2 interlock device.

3 Q. An offender who obtains an ignition interlock
4 license and installs an ignition interlock device prior to
5 conviction shall be given credit at sentencing for the time
6 period the ignition interlock device has been in use.

7 R. In the case of a first, second or third offense
8 under this section, the magistrate court has concurrent
9 jurisdiction with district courts to try the offender.

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

19 T. In addition to any other fine or fee that may be
20 imposed pursuant to the conviction or other disposition of the
21 offense under this section, the court may order the offender to
22 pay the costs of any court-ordered screening and treatment
23 programs.

24 U. With respect to this section and notwithstanding
25 any provision of law to the contrary, if an offender's sentence

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1 was suspended or deferred in whole or in part and the offender
2 violates any condition of probation, the court may impose any
3 sentence that the court could have originally imposed and
4 credit shall not be given for time served by the offender on
5 probation.

6 V. As used in this section:

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

12 (2) "commercial motor vehicle" means a motor
13 vehicle or combination of motor vehicles used in commerce to
14 transport passengers or property if the motor vehicle:

15 (a) has a gross combination weight
16 rating of more than twenty-six thousand pounds inclusive of a
17 towed unit with a gross vehicle weight rating of more than ten
18 thousand pounds;

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

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

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

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SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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