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HOUSE BILL 108

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Tim D. Lewis

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.

B. It is unlawful for a person who is under the

1 influence of any drug to a degree that renders the person  
2 incapable of safely driving a vehicle to drive a vehicle within  
3 this state.

4 C. It is unlawful for:

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

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

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

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

24 (2) causing bodily injury to a human being as  
25 a result of the unlawful operation of a motor vehicle while

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

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

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

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

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

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

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

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

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

13 H. Upon a fifth 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 [~~two~~] three  
17 years, [~~one year~~] two years of which shall not be suspended,  
18 deferred or taken under advisement.

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

25 J. Upon a seventh [~~or subsequent~~] conviction

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

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

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

20 [~~L-~~] M. Upon a second or third conviction pursuant  
21 to this section, an offender shall be required to participate  
22 in 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-]~~ N. 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-]~~ O. Upon a conviction pursuant to this section,  
18 an 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 ~~[traffic safety]~~ bureau.  
22 Unless determined by the bureau to be indigent, the offender  
23 shall pay all costs associated with having an ignition  
24 interlock device installed on the appropriate motor vehicles.  
25 The offender shall operate only those vehicles equipped with

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

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

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

4           [R-] S. A conviction pursuant to a municipal or  
5 county ordinance in New Mexico or a law of any other  
6 jurisdiction, territory or possession of the United States or  
7 of a tribe, when that ordinance or law is equivalent to New  
8 Mexico law for driving under the influence of intoxicating  
9 liquor or drugs, and prescribes penalties for driving 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           [S-] T. In addition to any other fine or fee that  
15 may be imposed pursuant to the conviction or other disposition  
16 of the offense under this section, the court may order the  
17 offender to pay the costs of any court-ordered screening and  
18 treatment programs.

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

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1                   [~~U-~~] V. 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."

21                   **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
22 provisions of this act is July 1, 2012.