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HOUSE BILL 129

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

INTRODUCED BY

Sarah Maestas Barnes

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING THE REQUIREMENTS FOR TESTING THE BLOOD OF A PERSON SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

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 breath  
3 testing, as provided for in the Implied Consent Act, and in the  
4 judgment of the court, based upon evidence of intoxication  
5 presented to the court, the driver was under the influence of  
6 intoxicating 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 L of this section and to attend  
20 a driver rehabilitation program for alcohol or drugs, also  
21 known as a "DWI school", approved by the bureau and also may be  
22 required to participate in other rehabilitative services as the  
23 court shall determine to be necessary. In addition to those  
24 penalties, when an offender commits aggravated driving under  
25 the influence of intoxicating liquor or drugs, the offender

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

25 J. Upon a seventh 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 three years,  
4 two years of which shall not be suspended, deferred or taken  
5 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 L. Upon any conviction pursuant to this section, an  
13 offender shall be required to participate in and complete,  
14 within a time specified by the court, an alcohol or drug abuse  
15 screening program approved by the department of finance and  
16 administration and, if necessary, a treatment program approved  
17 by the court. The requirement imposed pursuant to this  
18 subsection shall not be suspended, deferred or taken under  
19 advisement.

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

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

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

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1           R. 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           S. 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 under the influence of intoxicating liquor or drugs,  
9 and prescribes penalties for driving under the influence of  
10 intoxicating liquor or drugs, shall be deemed to be a  
11 conviction pursuant to this section for purposes of determining  
12 whether a conviction is a second or subsequent conviction.

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

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

25           V. As used in this section:

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

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

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

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

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

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

20 SECTION 2. Section 66-8-107 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 515, as amended) is amended to read:

22 "66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

23 A. Any person who operates a motor vehicle within  
24 this state shall be deemed to have given consent, subject to  
25 the provisions of the Implied Consent Act:

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1                   (1) to chemical tests of ~~[his]~~ that person's  
2 breath or blood or both, approved by the scientific laboratory  
3 division of the department of health pursuant to the provisions  
4 of Section 24-1-22 NMSA 1978 as determined by a law enforcement  
5 officer; or

6                   (2) for the purpose of determining the drug or  
7 alcohol content of ~~[his]~~ the person's blood if the person is  
8 arrested for any offense arising out of the acts alleged to  
9 have been committed while the person was driving a motor  
10 vehicle while under the influence of an intoxicating liquor or  
11 drug.

12                   B. A test of blood or breath or both, approved by  
13 the scientific laboratory division of the department of health  
14 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall  
15 be administered at the direction of a law enforcement officer  
16 having reasonable grounds to believe the person to have been  
17 driving a motor vehicle within this state while under the  
18 influence of intoxicating liquor or drug. Unless the person  
19 gives express consent to a chemical blood test or exigent  
20 circumstances exist, a chemical blood test shall only be  
21 administered after a warrant has been obtained pursuant to  
22 Section 66-8-111 NMSA 1978."

23                   SECTION 3. Section 66-8-111 NMSA 1978 (being Laws 1978,  
24 Chapter 35, Section 519, as amended) is amended to read:

25                   "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
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1        GROUND FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

2                A. If a person under arrest for violation of an  
3 offense enumerated in the Motor Vehicle Code refuses upon  
4 request of a law enforcement officer to submit to chemical  
5 tests designated by the law enforcement agency as provided in  
6 Section 66-8-107 NMSA 1978, none shall be administered except  
7 when a municipal judge, magistrate or district judge issues a  
8 search warrant authorizing chemical tests as provided in  
9 Section 66-8-107 NMSA 1978 upon finding in a law enforcement  
10 officer's written affidavit that there is probable cause to  
11 believe that the person has driven a motor vehicle while under  
12 the influence of alcohol or a controlled substance [~~thereby~~  
13 ~~causing the death or great bodily injury of another person, or~~  
14 ~~there is probable cause to believe that the person has~~  
15 ~~committed a felony while under the influence of alcohol or a~~  
16 ~~controlled substance and that chemical tests as provided in~~  
17 ~~Section 66-8-107 NMSA 1978 will produce material evidence in a~~  
18 ~~felony prosecution)].~~

19                B. The department, upon receipt of a statement  
20 signed under penalty of perjury from a law enforcement officer  
21 stating the officer's reasonable grounds to believe the  
22 arrested person had been driving a motor vehicle within this  
23 state while under the influence of intoxicating liquor or drugs  
24 and that, upon request, the person refused to submit to a  
25 chemical test after being advised that failure to submit could

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1 result in revocation of the person's privilege to drive, shall  
2 revoke the person's New Mexico driver's license or any  
3 nonresident operating privilege for a period of one year or  
4 until all conditions for license reinstatement are met,  
5 whichever is later.

6 C. The department, upon receipt of a statement  
7 signed under penalty of perjury from a law enforcement officer  
8 stating the officer's reasonable grounds to believe the  
9 arrested person had been driving a motor vehicle within this  
10 state while under the influence of intoxicating liquor and that  
11 the person submitted to chemical testing pursuant to Section  
12 66-8-107 NMSA 1978 and the test results indicated an alcohol  
13 concentration in the person's blood or breath of eight one  
14 hundredths or more if the person is twenty-one years of age or  
15 older, four one hundredths or more if the person is driving a  
16 commercial motor vehicle or two one hundredths or more if the  
17 person is less than twenty-one years of age, shall revoke the  
18 person's license or permit to drive or [~~his~~] the person's  
19 nonresident operating privilege for a period of:

20 (1) six months or until all conditions for  
21 license reinstatement are met, whichever is later, if the  
22 person is twenty-one years of age or older;

23 (2) one year or until all conditions for  
24 license reinstatement are met, whichever is later, if the  
25 person was less than twenty-one years of age at the time of the

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1 arrest, notwithstanding any provision of the Children's Code;  
2 or

3 (3) one year or until all conditions for  
4 license reinstatement are met, whichever is later, if the  
5 ~~[person has previously had his]~~ person's license has been  
6 revoked previously pursuant to the provisions of this section,  
7 notwithstanding the provisions of Paragraph (1) of this  
8 subsection.

9 D. The determination of alcohol concentration shall  
10 be based on the grams of alcohol in one hundred milliliters of  
11 blood or the grams of alcohol in two hundred ten liters of  
12 breath.

13 E. If the person subject to the revocation  
14 provisions of this section is a resident or will become a  
15 resident within one year and is without a license to operate a  
16 motor vehicle in this state, the department shall deny the  
17 issuance of a license to ~~[him]~~ the person for the appropriate  
18 period of time as provided in Subsections B and C of this  
19 section.

20 F. A statement signed by a law enforcement officer,  
21 pursuant to the provisions of Subsection B or C of this  
22 section, shall be sworn to by the officer or shall contain a  
23 declaration substantially to the effect: "I hereby declare  
24 under penalty of perjury that the information given in this  
25 statement is true and correct to the best of my knowledge."

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1 The statement may be signed and submitted electronically in a  
2 manner and form approved by the department. A law enforcement  
3 officer who signs a statement knowing that the statement is  
4 untrue in any material issue or matter is guilty of perjury as  
5 provided in Section 66-5-38 NMSA 1978."

6 SECTION 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984,  
7 Chapter 72, Section 7, as amended) is amended to read:

8 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
9 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
10 HEARING.--On behalf of the department, a law enforcement  
11 officer requesting a chemical test or directing the  
12 administration of a chemical test pursuant to [~~Section~~]  
13 Sections 66-8-107 and 66-8-111 NMSA 1978 shall serve immediate  
14 written notice of revocation and of right to a hearing before  
15 the administrative hearings office pursuant to the Implied  
16 Consent Act on a person who refuses to permit chemical testing  
17 or on a person who submits to a chemical test the results of  
18 which indicate an alcohol concentration in the person's blood  
19 or breath of eight one hundredths or more if the person is  
20 twenty-one years of age or older, four one hundredths or more  
21 if the person is driving a commercial motor vehicle or two one  
22 hundredths or more if the person is less than twenty-one years  
23 of age. Upon serving notice of revocation, the law enforcement  
24 officer shall take the license or permit of the driver, if any,  
25 and issue a temporary license valid for twenty days or, if the

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1 driver requests a hearing pursuant to Section 66-8-112 NMSA  
2 1978, valid until the date the administrative hearings office  
3 issues the order following that hearing; provided that a  
4 temporary license shall not be issued to a driver without a  
5 valid license or permit. The law enforcement officer shall  
6 send the person's driver's license to the department along with  
7 the signed statement required pursuant to Section 66-8-111 NMSA  
8 1978."

9 SECTION 5. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2017.