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SENATE BILL 5

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Peter Wirth and Brian F. Egolf

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; INCREASING PENALTIES AND FINES FOR DWI OFFENDERS.

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. PERSONS UNDER THE INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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
influence of any drug to a degree that renders the person
incapable of safely driving a vehicle to drive a vehicle within

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1 this state.

2 C. It is unlawful for:

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

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

15 D. Aggravated driving while under the influence of
16 intoxicating liquor or drugs consists of a person who:

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

22 (2) has caused bodily injury to a human being
23 as a result of the unlawful operation of a motor vehicle while
24 driving under the influence of intoxicating liquor or drugs; or

25 (3) refused to submit to chemical testing, as

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1 provided for in the Implied Consent Act, and in the judgment of
2 the court, based upon evidence of intoxication presented to the
3 court, was under the influence of intoxicating liquor or drugs.

4 E. A ~~[person under]~~ first conviction pursuant to
5 this section shall be punished, notwithstanding the provisions
6 of Section 31-18-13 NMSA 1978, by imprisonment for not more
7 than ninety days ~~[or]~~ and by a fine of ~~[not more than five~~
8 ~~hundred dollars (\$500), or both]~~ one thousand dollars (\$1,000);
9 provided that if the sentence is suspended in whole or in part
10 or deferred, the period of probation may extend beyond ninety
11 days but shall not exceed one year. ~~[Upon a first conviction~~
12 ~~pursuant to this section]~~ In addition, an offender shall be
13 sentenced to:

14 (1) a jail term of seventy-two consecutive
15 hours or, for aggravated driving while under the influence of
16 intoxicating liquor or drugs, a jail term of one hundred twenty
17 consecutive hours. The jail term imposed pursuant to this
18 paragraph is mandatory and shall not be suspended, deferred or
19 taken under advisement;

20 (2) not less than twenty-four hours of
21 community service ~~[In addition, the offender may be required to~~
22 ~~pay a fine of three hundred dollars (\$300). The offender shall~~
23 ~~be ordered by the court to];~~

24 (3) participate in and complete a screening
25 program described in Subsection [K] M of this section; ~~[and to]~~

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1 (4) attend a driver rehabilitation program for
2 alcohol or drugs, also known as a "DWI school", approved by the
3 bureau; and ~~[also may be required to]~~

4 (5) participate in other rehabilitative
5 services as the court shall determine to be necessary. ~~[In~~
6 ~~addition to those penalties, when an offender commits~~
7 ~~aggravated driving while under the influence of intoxicating~~
8 ~~liquor or drugs, the offender shall be sentenced to not less~~
9 ~~than forty-eight consecutive hours in jail. If an offender~~
10 ~~fails to complete, within a time specified by the court, any~~
11 ~~community service, screening program, treatment program or DWI~~
12 ~~school ordered by the court or fails to comply with any other~~
13 ~~condition of probation, the offender shall be sentenced to not~~
14 ~~less than an additional forty-eight consecutive hours in jail.~~
15 ~~Any jail sentence imposed pursuant to this subsection for~~
16 ~~failure to complete, within a time specified by the court, any~~
17 ~~community service, screening program, treatment program or DWI~~
18 ~~school ordered by the court or for aggravated driving while~~
19 ~~under the influence of intoxicating liquor or drugs shall not~~
20 ~~be suspended, deferred or taken under advisement.]~~

21 F. On a first conviction pursuant to this section,
22 any time spent in jail for the offense prior to the conviction
23 for that offense shall be credited to any term of imprisonment
24 fixed by the court. A deferred sentence pursuant to Subsection
25 E of this ~~[subsection]~~ section shall be considered a first

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1 conviction for the purpose of determining subsequent
2 convictions.

3 ~~[F.]~~ G. A second ~~[or third]~~ conviction pursuant to
4 this section shall be punished, notwithstanding the provisions
5 of Section 31-18-13 NMSA 1978, by imprisonment for not more
6 than three hundred sixty-four days ~~[or]~~ and by a fine of ~~[not~~
7 ~~more than one thousand dollars (\$1,000), or both]~~ two thousand
8 dollars (\$2,000); provided that if the sentence is suspended in
9 whole or in part, the period of probation may extend beyond one
10 year but shall not exceed five years. Notwithstanding any
11 provision of law to the contrary for suspension or deferment of
12 execution of a sentence, ~~[(1)]~~ upon a second conviction, an
13 offender shall be:

14 (1) sentenced to a jail term of [not less than
15 ninety-six consecutive hours] seven consecutive days or, for
16 aggravated driving while under the influence of intoxicating
17 liquor or drugs, a jail term of fifteen consecutive days. The
18 jail term imposed pursuant to this paragraph is mandatory and
19 shall not be suspended, deferred or taken under advisement;

20 (2) sentenced to not less than forty-eight
21 hours of community service; and [a fine of five hundred dollars
22 (\$500)]

23 (3) required to participate in and complete,
24 which requirement shall not be suspended, deferred or taken
25 under advisement, within a time specified by the court:

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

4 (b) not less than a ninety-day
5 outpatient treatment program approved by the court;

6 (c) a drug court program approved by the
7 court; or

8 (d) any other substance abuse treatment
9 program approved by the court. [~~In addition to those~~
10 ~~penalties, when an offender commits aggravated driving while~~
11 ~~under the influence of intoxicating liquor or drugs, the~~
12 ~~offender shall be sentenced to a jail term of not less than~~
13 ~~ninety-six consecutive hours.]~~

14 H. If an offender with a first or second conviction
15 fails to complete, within a time specified by the court, any
16 community service, screening program, [~~or~~] treatment program or
17 DWI school ordered by the court, the offender shall be
18 sentenced to the following mandatory jail terms that shall not
19 be suspended, deferred or taken under advisement:

20 (1) for a first conviction, not less than an
21 additional forty-eight consecutive hours in jail; and

22 (2) for a second conviction, not less than an
23 additional seven consecutive days in jail. [~~A penalty imposed~~
24 ~~pursuant to this paragraph shall not be suspended or deferred~~
25 ~~or taken under advisement; and~~

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1 ~~(2) upon a third conviction, an offender shall~~
2 ~~be sentenced to a jail term of not less than thirty consecutive~~
3 ~~days, not less than ninety-six hours of community service and a~~
4 ~~fine of seven hundred fifty dollars (\$750). In addition to~~
5 ~~those penalties, when an offender commits aggravated driving~~
6 ~~while under the influence of intoxicating liquor or drugs, the~~
7 ~~offender shall be sentenced to a jail term of not less than~~
8 ~~sixty consecutive days. If an offender fails to complete,~~
9 ~~within a time specified by the court, any community service,~~
10 ~~screening program or treatment program ordered by the court,~~
11 ~~the offender shall be sentenced to not less than an additional~~
12 ~~sixty consecutive days in jail. A penalty imposed pursuant to~~
13 ~~this paragraph shall not be suspended or deferred or taken~~
14 ~~under advisement.~~

15 G.] I. Upon a [fourth] third conviction pursuant to
16 this section, an offender is guilty of a fourth degree felony
17 and, notwithstanding the provisions of Section 31-18-15 NMSA
18 1978, shall be [sentenced to] punished by a term of
19 imprisonment of eighteen months, six months of which shall not
20 be suspended, deferred or taken under advisement, and a fine of
21 five thousand dollars (\$5,000).

22 [H.] J. Upon a [fifth] fourth conviction pursuant
23 to this section, an offender is guilty of a fourth degree
24 felony and, notwithstanding the provisions of Section 31-18-15
25 NMSA 1978, shall be [sentenced to] punished by a term of

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1 imprisonment of two years, one year of which shall not be
2 suspended, deferred or taken under advisement, and a fine of
3 five thousand dollars (\$5,000).

4 [~~I.~~] K. Upon a [~~sixth~~] fifth conviction pursuant to
5 this section, an offender is guilty of a third degree felony
6 and, notwithstanding the provisions of Section 31-18-15 NMSA
7 1978, shall be [~~sentenced to~~] punished by a term of
8 imprisonment of thirty months, eighteen months of which shall
9 not be suspended, deferred or taken under advisement, and a
10 fine of five thousand dollars (\$5,000).

11 [~~J.~~] L. Upon a [~~seventh~~] sixth or subsequent
12 conviction pursuant to this section, an offender is guilty of a
13 third degree felony and, notwithstanding the provisions of
14 Section 31-18-15 NMSA 1978, shall be [~~sentenced to~~] punished by
15 a term of imprisonment of three years, two years of which shall
16 not be suspended, deferred or taken under advisement, and a
17 fine of five thousand dollars (\$5,000).

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

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1 ~~[L. 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 ~~M.]~~ 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 ~~[N.]~~ O. Upon a conviction pursuant to this section,
24 an 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 sentencing court to be indigent, the offender shall pay all
4 costs associated with having an ignition interlock device
5 installed on the appropriate motor vehicles. The offender
6 shall operate only those vehicles equipped with ignition
7 interlock devices 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 [~~0.~~] P. Five years from the date of conviction and
17 every five years thereafter, a fourth or subsequent offender
18 may apply to a district court for removal of the ignition
19 interlock device requirement provided in this section and for
20 restoration of a driver's license. A district court may, for
21 good cause shown, remove the ignition interlock device
22 requirement and order restoration of the license; provided that
23 the offender has not been subsequently convicted of driving a
24 motor vehicle while under the influence of intoxicating liquor
25 or drugs. Good cause may include an alcohol screening and

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

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

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

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

21 [S-] T. With respect to this section and
22 notwithstanding any provision of law to the contrary, if an
23 offender's sentence was suspended or deferred in whole or in
24 part and the offender violates any condition of probation, the
25 court may impose any sentence that the court could have

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1 originally imposed and credit shall not be given for time
2 served by the offender on probation.

3 ~~[F.]~~ U. As used in this section:

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

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

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

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

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

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

23 Section 2. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2010.