

1 HOUSE BILL 355

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Rod Montoya

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10 AN ACT

11 RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING
12 LIQUOR OR DRUGS; INCREASING PENALTIES.

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

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

17 "66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY
18 VEHICLE.--

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

21 B. Great bodily harm by vehicle is the injuring of
22 a human being, to the extent defined in Section 30-1-12 NMSA
23 1978, in the unlawful operation of a motor vehicle.

24 C. A person who commits homicide by vehicle or
25 great bodily harm by vehicle while under the influence of

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1 intoxicating liquor or while under the influence of any drug or
2 while violating Section 66-8-113 NMSA 1978 is guilty of a
3 ~~[third]~~ second degree felony and shall be sentenced pursuant to
4 the provisions of Section 31-18-15 NMSA 1978, provided that
5 violation of speeding laws as set forth in the Motor Vehicle
6 Code shall not per se be a basis for violation of Section
7 66-8-113 NMSA 1978.

8 D. A person who commits homicide by vehicle or
9 great bodily harm by vehicle while under the influence of
10 intoxicating liquor or while under the influence of any drug,
11 as provided in Subsection C of this section, and who has
12 incurred a prior DWI conviction within ten years of the
13 occurrence for which ~~[he]~~ the person is being sentenced under
14 this section shall have ~~[his]~~ the person's basic sentence
15 increased by four years for each prior DWI conviction.

16 E. For the purposes of this section, "prior DWI
17 conviction" means:

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

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

24 F. A person who willfully operates a motor vehicle
25 in violation of Subsection C of Section 30-22-1 NMSA 1978 and

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1 directly or indirectly causes the death of or great bodily harm
2 to a human being is guilty of a third degree felony and shall
3 be sentenced pursuant to the provisions of Section 31-18-15
4 NMSA 1978."

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

7 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
8 LIQUOR OR DRUGS [~~AGGRAVATED DRIVING UNDER THE INFLUENCE OF~~
9 ~~INTOXICATING LIQUOR OR DRUGS -- PENALTIES]~~ .--

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

13 B. It is unlawful for a person who is under the
14 influence of any drug to a degree that renders the person
15 incapable of safely driving a vehicle to drive a vehicle within
16 this state.

17 C. It is unlawful for:

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

24 (2) a person to drive a commercial motor
25 vehicle in this state if the person has an alcohol

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1 concentration of four one hundredths or more in the person's
2 blood or breath within three hours of driving the commercial
3 motor vehicle and the alcohol concentration results from
4 alcohol consumed before or while driving the vehicle.

5 ~~[D. Aggravated driving under the influence of~~
6 ~~intoxicating liquor or drugs consists of:~~

7 ~~(1) driving a vehicle in this state with an~~
8 ~~alcohol concentration of sixteen one hundredths or more in the~~
9 ~~driver's blood or breath within three hours of driving the~~
10 ~~vehicle and the alcohol concentration results from alcohol~~
11 ~~consumed before or while driving the vehicle;~~

12 ~~(2) causing bodily injury to a human being as~~
13 ~~a result of the unlawful operation of a motor vehicle while~~
14 ~~driving under the influence of intoxicating liquor or drugs; or~~

15 ~~(3) refusing to submit to chemical testing, as~~
16 ~~provided for in the Implied Consent Act, and in the judgment of~~
17 ~~the court, based upon evidence of intoxication presented to the~~
18 ~~court, the driver was under the influence of intoxicating~~
19 ~~liquor or drugs.~~

20 ~~E.]~~ D. A first conviction pursuant to this section
21 shall be punished, notwithstanding the provisions of Section
22 31-18-13 NMSA 1978, by imprisonment for not more than ninety
23 days or by a fine of not more than five hundred dollars (\$500),
24 or both; provided that if the sentence is suspended in whole or
25 in part or deferred, the period of probation may extend beyond

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1 ninety days but shall not exceed one year. Upon a first
2 conviction pursuant to this section, an offender shall be
3 sentenced to not less than ~~[twenty-four hours of community~~
4 ~~service]~~ thirty days in a treatment facility, or a detention
5 facility if a treatment facility is not available. In
6 addition, the offender may be required to pay a fine of three
7 hundred dollars (\$300). The offender shall be ordered by the
8 court to participate in and complete a screening program
9 described in Subsection ~~[K]~~ J of this section and to attend a
10 driver rehabilitation program for alcohol or drugs, also known
11 as a "DWI school", approved by the bureau and also may be
12 required to participate in other rehabilitative services as the
13 court shall determine to be necessary. ~~[In addition to those~~
14 ~~penalties, when an offender commits aggravated driving under~~
15 ~~the influence of intoxicating liquor or drugs, the offender~~
16 ~~shall be sentenced to not less than forty-eight consecutive~~
17 ~~hours in jail.]~~ If an offender fails to complete, within a time
18 specified by the court, ~~[any community service]~~ a screening
19 program, treatment program or DWI school ordered by the court
20 or fails to comply with any other condition of probation, the
21 offender shall be sentenced to not less than an additional
22 ~~[forty-eight consecutive hours]~~ seven days in jail. ~~[Any jail~~
23 ~~sentence imposed pursuant to this subsection for failure to~~
24 ~~complete, within a time specified by the court, any community~~
25 ~~service, screening program, treatment program or DWI school~~

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1 ~~ordered by the court or for aggravated driving under the~~
2 ~~influence of intoxicating liquor or drugs shall not be~~
3 ~~suspended, deferred or taken under advisement.]~~ On a first
4 conviction pursuant to this section, any time spent in jail for
5 the offense prior to the conviction for that offense shall be
6 credited to any term of imprisonment fixed by the court. A
7 deferred sentence pursuant to this subsection shall be
8 considered a first conviction for the purpose of determining
9 subsequent convictions.

10 ~~[F.]~~ E. A second ~~[or third]~~ conviction pursuant to
11 this section shall be punished, notwithstanding the provisions
12 of Section 31-18-13 NMSA 1978, by imprisonment for not more
13 than three hundred sixty-four days or by a fine of not more
14 than one thousand dollars (\$1,000), or both; provided that if
15 the sentence is suspended in whole or in part, the period of
16 probation may extend beyond one year but shall not exceed five
17 years. Notwithstanding any provision of law to the contrary
18 for suspension or deferment of execution of a sentence, ~~[(1)]~~
19 upon a second conviction, an offender shall be sentenced to a
20 jail term of not less than ~~[ninety-six consecutive hours, not~~
21 ~~less than forty-eight hours of community service]~~ ninety days
22 in a detention facility and a fine of five hundred dollars
23 (\$500). ~~[In addition to those penalties, when an offender~~
24 ~~commits aggravated driving under the influence of intoxicating~~
25 ~~liquor or drugs, the offender shall be sentenced to a jail term~~

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

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

22 G.] F. Upon a [fourth] third conviction pursuant to
23 this section, an offender is guilty of a fourth degree felony
24 and, notwithstanding the provisions of Section 31-18-15 NMSA
25 1978, shall be sentenced to a term of imprisonment of eighteen

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1 months, [~~six months~~] three hundred sixty-four days of which
2 shall not be suspended, deferred or taken under advisement.

3 [H.] G. Upon a [~~fifth~~] fourth conviction pursuant
4 to this section, an offender is guilty of a [~~fourth~~] third
5 degree felony and, notwithstanding the provisions of Section
6 31-18-15 NMSA 1978, shall be sentenced to a term of
7 imprisonment of [~~two~~] three years, [~~one year~~] two years of
8 which shall not be suspended, deferred or taken under
9 advisement.

10 [I.] H. Upon a [~~sixth~~] fifth conviction pursuant to
11 this section, an offender is guilty of a [~~third~~] second degree
12 felony and, notwithstanding the provisions of Section 31-18-15
13 NMSA 1978, shall be sentenced to a term of imprisonment of
14 [~~thirty months, eighteen months~~] nine years, five years of
15 which shall not be suspended, deferred or taken under
16 advisement.

17 [J.] I. Upon a [~~seventh~~] sixth or subsequent
18 conviction pursuant to this section, an offender is guilty of a
19 [~~third~~] second degree felony and, notwithstanding the
20 provisions of Section 31-18-15 NMSA 1978, shall be sentenced to
21 a term of imprisonment of [~~three years, two years~~] nine years
22 plus an additional year for each previous conviction pursuant
23 to this section, and seven years of which shall not be
24 suspended, deferred or taken under advisement.

25 [K.] J. Upon any conviction pursuant to this

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1 section, an offender shall be required to participate in and
2 complete, within a time specified by the court, an alcohol or
3 drug abuse screening program approved by the department of
4 finance and administration and, if necessary, a treatment
5 program approved by the court. The requirement imposed
6 pursuant to this subsection shall not be suspended, deferred or
7 taken under advisement.

8 ~~[L. Upon a second or third conviction pursuant to~~
9 ~~this section, an offender shall be required to participate in~~
10 ~~and complete, within a time specified by the court:~~

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

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

16 ~~(3) a drug court program approved by the~~
17 ~~court; or~~

18 ~~(4) any other substance abuse treatment~~
19 ~~program approved by the court.~~

20 ~~The requirement imposed pursuant to this subsection shall~~
21 ~~not be suspended, deferred or taken under advisement.~~

22 ~~M.]~~ K. Upon a felony conviction pursuant to this
23 section, the corrections department shall provide substance
24 abuse counseling and treatment to the offender in its custody.

25 While the offender is on probation or parole under its

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1 supervision, the corrections department shall also provide
2 substance abuse counseling and treatment to the offender or
3 shall require the offender to obtain substance abuse counseling
4 and treatment.

5 [N-] L. Upon a conviction pursuant to this section,
6 an offender shall be required to obtain an ignition interlock
7 license and have an ignition interlock device installed and
8 operating on all motor vehicles driven by the offender,
9 pursuant to rules adopted by the [~~traffic safety~~] bureau.
10 Unless determined by the bureau to be indigent, the offender
11 shall pay all costs associated with having an ignition
12 interlock device installed on the appropriate motor vehicles.
13 The offender shall operate only those vehicles equipped with
14 ignition interlock devices for:

- 15 (1) a period of one year, for a first
16 offender;
- 17 (2) a period of [~~two~~] five years, for a second
18 conviction pursuant to this section;
- 19 (3) a period of [~~three~~] ten years, for a third
20 conviction pursuant to this section; or
- 21 (4) the remainder of the offender's life, for
22 a [~~fourth~~] third or subsequent conviction pursuant to this
23 section.

24 [O-] M. Five years from the date of conviction and
25 every five years thereafter, a fourth or subsequent offender

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1 may apply to a district court for removal of the ignition
2 interlock device requirement provided in this section and for
3 restoration of a driver's license. A district court may, for
4 good cause shown, remove the ignition interlock device
5 requirement and order restoration of the license; provided that
6 the offender has not been subsequently convicted of driving a
7 motor vehicle under the influence of intoxicating liquor or
8 drugs. Good cause may include an alcohol screening and proof
9 from the interlock vendor that the person has not had
10 violations of the interlock device.

11 [P-] N. An offender who obtains an ignition
12 interlock license and installs an ignition interlock device
13 prior to conviction shall be given credit at sentencing for the
14 time period the ignition interlock device has been in use.

15 [Q-] O. In the case of a first or second [~~or third~~]
16 offense [~~under~~] pursuant to this section, the magistrate court
17 has concurrent jurisdiction with district courts to try the
18 offender.

19 [R-] P. A conviction pursuant to a municipal or
20 county ordinance in New Mexico or a law of any other
21 jurisdiction, territory or possession of the United States or
22 of a tribe, when that ordinance or law is equivalent to New
23 Mexico law for driving under the influence of intoxicating
24 liquor or drugs, and prescribes penalties for driving under the
25 influence of intoxicating liquor or drugs, shall be deemed to

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1 be a conviction pursuant to this section for purposes of
2 determining whether a conviction is a second or subsequent
3 conviction.

4 ~~[S-]~~ Q. In addition to any other fine or fee that
5 may be imposed pursuant to the conviction or other disposition
6 of the offense under this section, the court ~~[may]~~ shall order
7 the offender to pay the costs of any court-ordered screening
8 and treatment programs.

9 ~~[F-]~~ R. With respect to this section and
10 notwithstanding any provision of law to the contrary, if an
11 offender's sentence was suspended or deferred in whole or in
12 part and the offender violates any condition of probation, the
13 court may impose any sentence that the court could have
14 originally imposed and credit shall not be given for time
15 served by the offender on probation.

16 ~~[U-]~~ S. As used in this section:

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

22 (2) "commercial motor vehicle" means a motor
23 vehicle or combination of motor vehicles used in commerce to
24 transport passengers or property if the motor vehicle:

25 (a) has a gross combination weight

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1 rating of more than twenty-six thousand pounds inclusive of a
2 towed unit with a gross vehicle weight rating of more than ten
3 thousand pounds;

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

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

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

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2015.