

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 735

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING FOR THE INSTALLATION OF AN IGNITION
INTERLOCK DEVICE ON THE MOTOR VEHICLE OF A FIRST-TIME
OFFENDER; AMENDING A SECTION OF THE NMSA 1978.

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 [~~any~~] a person who is under
the influence of intoxicating liquor to drive [~~any~~] a vehicle
within this state.

B. It is unlawful for [~~any~~] a person who is under

underscored material = new
[bracketed material] = delete

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

4 C. It is unlawful for [~~any~~] a person who has an
5 alcohol concentration of eight one-hundredths or more in his
6 blood or breath to drive [~~any~~] a vehicle within this state.

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

9 (1) has an alcohol concentration of sixteen
10 one-hundredths or more in his blood or breath while driving
11 [~~any~~] a vehicle within this state;

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

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

21 E. Every person under first conviction under this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 ninety days or by a fine of not more than five hundred dollars
25 (\$500), or both; provided that if the sentence is suspended in

. 135489. 1

underscored material = new
[bracketed material] = delete

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

. 135489. 1

underscored material = new
[bracketed material] = delete

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

9 F. A second or third conviction under this section
10 shall be punished, notwithstanding the provisions of Section
11 31-18-13 NMSA 1978, by imprisonment for not more than three
12 hundred sixty-four days or by a fine of not more than one
13 thousand dollars (\$1,000), or both; provided that if the
14 sentence is suspended in whole or in part, the period of
15 probation may extend beyond one year but shall not exceed five
16 years. Notwithstanding any provision of law to the contrary
17 for suspension or deferment of execution of a sentence:

18 (1) upon a second conviction, each offender
19 shall be sentenced to a jail term of not less than seventy-two
20 consecutive hours, forty-eight hours of community service and
21 a fine of five hundred dollars (\$500). In addition to those
22 penalties, when an offender commits aggravated driving while
23 under the influence of intoxicating liquor or drugs, the
24 offender shall be sentenced to a jail term of not less than
25 ninety-six consecutive hours. If an offender fails to

underscored material = new
[bracketed material] = delete

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

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

20 G. Upon a fourth or subsequent conviction under
21 this section, an offender is guilty of a fourth degree felony,
22 as provided in Section 31-18-15 NMSA 1978, and shall be
23 sentenced to a jail term of not less than six months, which
24 shall not be suspended or deferred or taken under advisement.

25 H. Upon any conviction under this section, an

underscored material = new
[bracketed material] = delete

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

7 I. Upon [~~any subsequent misdemeanor~~] a first
8 conviction under this section [~~prior to July 1, 2003~~], as a
9 condition of probation, an offender [~~may~~] shall be required to
10 have an ignition interlock device installed and operating for
11 a period of one year on [~~all motor vehicles owned by the~~
12 ~~offender or available for the offender's personal use,~~
13 ~~pursuant to rules adopted by the traffic safety bureau~~] the
14 motor vehicle primarily driven by the offender and any other
15 motor vehicle the offender elects to designate, pursuant to
16 rules adopted by the bureau. The offender shall pay all costs
17 associated with having an ignition interlock device installed
18 on the appropriate motor vehicles.

19 J. In the case of a first, second or third offense
20 under this section, the magistrate court has concurrent
21 jurisdiction with district courts to try the offender.

22 K. A conviction under a municipal or county
23 ordinance in New Mexico or a law of any other jurisdiction,
24 territory or possession of the United States that is
25 equivalent to New Mexico law for driving while under the

underscored material = new
[bracketed material] = delete

1 influence of intoxicating liquor or drugs, and that prescribes
2 penalties for driving while under the influence of
3 intoxicating liquor or drugs, shall be deemed to be a
4 conviction under this section for purposes of determining
5 whether a conviction is a second or subsequent conviction.

6 L. In addition to any other fine or fee which may
7 be imposed pursuant to the conviction or other disposition of
8 the offense under this section, the court may order the
9 offender to pay the costs of any court-ordered screening and
10 treatment programs.

11 M. As used in this section:

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

17 (2) "conviction" means an adjudication of
18 guilt and does not include imposition of a sentence."

19 Section 2. EFFECTIVE DATE. -- The effective date of the
20 provisions of this act is July 1, 2001.