

March 16, 2003

Madam President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 117, as amended

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. Strike the senate public affairs committee amendments in their entirety.

2. On page 1, lines 13 and 14, strike "PROVIDING ADDITIONAL PENALTIES FOR A DWI OFFENSE WITHIN THREE YEARS OF A PRIOR DWI CONVICTION;".

3. On page 1, lines 15 through 17, strike "LOWERING THE PRESUMPTION OF INTOXICATION FOR CRIMINAL DWI FOR A PERSON LESS THAN TWENTY-ONE YEARS OF AGE;".

4. On pages 7 through 20, strike Sections 3 through 5 in their entirety and insert in lieu thereof the following sections to read:

"Section 3. 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 him incapable of safely driving a vehicle to drive a vehicle within this state.

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C. It is unlawful for:

(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; and

(2) a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor vehicle within this state.

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

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

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

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

E. [~~Every~~] A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection [~~H~~] K of

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this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

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

(1) upon a second conviction, [~~each~~] an offender shall be sentenced to a jail term of not less than [~~seventy-two~~] ninety-six consecutive hours, forty-eight hours of community service

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and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, ~~[any]~~ a community service program, a screening program or a treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

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

G. Upon a fourth ~~[or subsequent]~~ conviction pursuant to this section, an offender is guilty of a fourth degree felony ~~[as provided in]~~ and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, [and] shall be sentenced to a [jail term of not less than six months] term of imprisonment of eighteen months, six months of which shall not be suspended or deferred or taken under advisement.

H. Upon a fifth conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of two years, one year of which shall not be suspended, deferred or taken under advisement.

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

J. Upon a seventh or subsequent conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

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

L. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court, not less than a ninety-day outpatient treatment program approved by the court or a drug court program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender.

~~[I.]~~ N. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of this section, as a condition of

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probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

~~[J.]~~ O. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

~~[K.]~~ P. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

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

~~[M.]~~ R. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States that is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and that prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

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

~~[O.]~~ T. As used in this section:

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

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

Section 4. Section 66-8-102.1 NMSA 1978 (being Laws 1982, Chapter 102, Section 2, as amended) is amended to read:

"66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of

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the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle."

Section 5. Section 66-8-110 NMSA 1978 (being Laws 1978, Chapter 35, Section 518, as amended) is amended to read:

"66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--
LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of [~~five one hundredths~~
~~or~~] less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor [~~or~~];

(2) an alcohol concentration of [~~more than five one hundredths~~] at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, [However] unless the person is driving a commercial motor vehicle; and

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(b) the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor;
or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

C. ~~[When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more]~~ The arresting officer shall charge ~~[him]~~ the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

(2) four one hundredths or more if the person is driving a commercial motor vehicle.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the

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person before sentence is entered in the matter."".

Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

No: 0

Excused: Lopez

Absent: None

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