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**SENATE BILL 207**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Kent L. Cravens**

**AN ACT**

**RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECONCILING MULTIPLE AMENDMENTS TO SECTION 66-8-102 NMSA 1978 (BEING LAWS 1953, CHAPTER 139, SECTION 54, AS AMENDED BY LAWS 2003, CHAPTER 51, SECTION 10 AND BY LAWS 2003, CHAPTER 90, SECTION 3 AND ALSO BY LAWS 2003, CHAPTER 164, SECTION 10); DECLARING AN EMERGENCY.**

**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 by Laws 2003, Chapter 51, Section 10 and by Laws 2003, Chapter 90, Section 3 and also by Laws 2003, Chapter 164, Section 10) 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. --**

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1           A. It is unlawful for a person who is under the  
2 influence of intoxicating liquor to drive a vehicle within this  
3 state.

4           B. It is unlawful for a person who is under the  
5 influence of any drug to a degree that renders him incapable of  
6 safely driving a vehicle to drive a vehicle within this state.

7           C. It is unlawful for:

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

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

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

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

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

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

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1           E. A person under first conviction pursuant to this  
2 section shall be punished, notwithstanding the provisions of  
3 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
4 ninety days or by a fine of not more than five hundred dollars  
5 (\$500), or both; provided that if the sentence is suspended in  
6 whole or in part or deferred, the period of probation may  
7 extend beyond ninety days but shall not exceed one year. Upon  
8 a first conviction pursuant to this section, an offender may be  
9 sentenced to not less than forty-eight hours of community  
10 service or a fine of three hundred dollars (\$300). The  
11 offender shall be ordered by the court to participate in and  
12 complete a screening program described in Subsection [H] K of  
13 this section and to attend a driver rehabilitation program for  
14 alcohol or drugs, also known as a "DWI school", approved by the  
15 bureau and also may be required to participate in other  
16 rehabilitative services as the court shall determine to be  
17 necessary. In addition to those penalties, when an offender  
18 commits aggravated driving while under the influence of  
19 intoxicating liquor or drugs, the offender shall be sentenced  
20 to not less than forty-eight consecutive hours in jail. If an  
21 offender fails to complete, within a time specified by the  
22 court, any community service, screening program, treatment  
23 program or DWI school ordered by the court, the offender shall  
24 be sentenced to not less than an additional forty-eight  
25 consecutive hours in jail. Any jail sentence imposed pursuant

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1 to this subsection for failure to complete, within a time  
2 specified by the court, any community service, screening  
3 program, treatment program or DWI school ordered by the court  
4 or for aggravated driving while under the influence of  
5 intoxicating liquor or drugs shall not be suspended, deferred  
6 or taken under advisement. On a first conviction pursuant to  
7 this section, any time spent in jail for the offense prior to  
8 the conviction for that offense shall be credited to any term  
9 of imprisonment fixed by the court. A deferred sentence  
10 pursuant to this subsection shall be considered a first  
11 conviction for the purpose of determining subsequent  
12 convictions.

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

22 (1) upon a second conviction, an offender  
23 shall be sentenced to a jail term of not less than [~~seventy-~~  
24 ~~two~~] ninety-six consecutive hours, forty-eight hours of  
25 community service and a fine of five hundred dollars (\$500).

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1 In addition to those penalties, when an offender commits  
2 aggravated driving while under the influence of intoxicating  
3 liquor or drugs, the offender shall be sentenced to a jail term  
4 of not less than ninety-six consecutive hours. If an offender  
5 fails to complete, within a time specified by the court, any  
6 community service, screening program or treatment program  
7 ordered by the court, the offender shall be sentenced to not  
8 less than an additional seven consecutive days in jail. A  
9 penalty imposed pursuant to this paragraph shall not be  
10 suspended or deferred or taken under advisement; and

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

24 G. Upon a fourth [~~or subsequent~~] conviction  
25 pursuant to this section, an offender is guilty of a fourth

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1 ~~degree felony [as provided in Section 31-18-15 NMSA 1978, and~~  
2 ~~shall be sentenced to a jail term of not less than six months,~~  
3 ~~which shall not be suspended or deferred or taken under~~  
4 ~~advisement]~~ and, notwithstanding the provisions of Section  
5 31-18-15 NMSA 1978, shall be sentenced to a term of  
6 imprisonment of eighteen months, six months of which shall not  
7 be suspended, deferred or taken under advisement.

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

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

20 J. Upon a seventh or subsequent conviction pursuant  
21 to this section, an offender is guilty of a third degree felony  
22 and, notwithstanding the provisions of Section 31-18-15 NMSA  
23 1978, shall be sentenced to a term of imprisonment of three  
24 years, two years of which shall not be suspended, deferred or  
25 taken under advisement.

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

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

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

21           ~~[I.]~~ N. Upon a first conviction for aggravated  
22 driving while under the influence of intoxicating liquor or  
23 drugs pursuant to the provisions of Subsection D of this  
24 section, as a condition of probation, an offender shall be  
25 required to have an ignition interlock device installed and

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1 operating for a period of one year on all motor vehicles driven  
2 by the offender, pursuant to rules adopted by the bureau.

3 Unless determined by the sentencing court to be indigent, the  
4 offender shall pay all costs associated with having an ignition  
5 interlock device installed on the appropriate motor vehicles.

6 If an offender drives a motor vehicle that does not have an  
7 ignition interlock device installed on the motor vehicle, the  
8 offender may be in violation of the terms and conditions of his  
9 probation.

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

23 ~~[K-]~~ P. Upon any subsequent conviction pursuant to  
24 this section, as a condition of probation, a subsequent  
25 offender shall be required to have an ignition interlock device

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1 installed and operating for a period of at least one year on  
2 all motor vehicles driven by the subsequent offender, pursuant  
3 to rules adopted by the bureau. Unless determined by the  
4 sentencing court to be indigent, the subsequent offender shall  
5 pay all costs associated with having an ignition interlock  
6 device installed on the appropriate motor vehicles. If a  
7 subsequent offender drives a motor vehicle that does not have  
8 an ignition interlock device installed on the motor vehicle,  
9 the subsequent offender may be in violation of the terms and  
10 conditions of his probation.

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

14 [~~M-~~] R. A conviction pursuant to a municipal or  
15 county ordinance in New Mexico or a law of any other  
16 jurisdiction, territory or possession of the United States or  
17 of a tribe, [~~where~~] when that ordinance or law is equivalent to  
18 New Mexico law for driving while under the influence of  
19 intoxicating liquor or drugs, and prescribes penalties for  
20 driving while under the influence of intoxicating liquor or  
21 drugs, shall be deemed to be a conviction pursuant to this  
22 section for purposes of determining whether a conviction is a  
23 second or subsequent conviction.

24 [~~N-~~] S. In addition to any other fine or fee that  
25 may be imposed pursuant to the conviction or other disposition

1 of the offense under this section, the court may order the  
2 offender to pay the costs of any court-ordered screening and  
3 treatment programs.

4 [0-] T. As used in this section:

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

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

12 Section 2. ~~EMERGENCY.~~ --It is necessary for the public  
13 peace, health and safety that this act take effect immediately.

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