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**HOUSE BILL 494**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Joseph Cervantes**

**AN ACT**

**RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING THAT JAIL TIME SPENT PRIOR TO A FIRST DWI CONVICTION NOT BE CREDITED TO ANY IMPRISONMENT TERM OF AN OFFENDER; 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) 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**

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

3 C. It is unlawful for:

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

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

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

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

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

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

22 E. A person under first conviction pursuant to this  
23 section shall be punished, notwithstanding the provisions of  
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
25 ninety days or by a fine of not more than five hundred dollars

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

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

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

24 (1) upon a second conviction, an offender  
25 shall be sentenced to a jail term of not less than ninety-six

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

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

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1           G. Upon a fourth conviction pursuant to this  
2 section, an offender is guilty of a fourth degree felony and,  
3 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
4 shall be sentenced to a term of imprisonment of eighteen  
5 months, six months of which shall not be suspended, deferred or  
6 taken under advisement.

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

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

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

25           K. Upon any conviction pursuant to this section, an

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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 approved by the department of finance and  
4 administration and, if necessary, a treatment program approved  
5 by the court. The requirement imposed pursuant to this  
6 subsection shall not be suspended, deferred or taken under  
7 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 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. Upon a first conviction for aggravated driving  
6 while under the influence of intoxicating liquor or drugs  
7 pursuant to the provisions of Subsection D of this section, as  
8 a condition of probation, an offender shall be required to have  
9 an ignition interlock device installed and operating for a  
10 period of one year on all motor vehicles driven by the  
11 offender, pursuant to rules adopted by the bureau. Unless  
12 determined by the sentencing court to be indigent, the offender  
13 shall pay all costs associated with having an ignition  
14 interlock device installed on the appropriate motor vehicles.  
15 If an offender drives a motor vehicle that does not have an  
16 ignition interlock device installed on the motor vehicle, the  
17 offender may be in violation of the terms and conditions of his  
18 probation.

19 O. Upon a first conviction for driving while under  
20 the influence of intoxicating liquor or drugs pursuant to the  
21 provisions of Subsection A, B or C of this section, as a  
22 condition of probation, an offender may be required to have an  
23 ignition interlock device installed and operating for a period  
24 of one year on all motor vehicles driven by the offender,  
25 pursuant to rules adopted by the bureau. Unless determined by

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1 the sentencing court to be indigent, the offender shall pay all  
2 costs associated with having an ignition interlock device  
3 installed on the appropriate motor vehicles. If an offender  
4 drives a motor vehicle that does not have an ignition interlock  
5 device installed on the motor vehicle, the offender may be in  
6 violation of the terms and conditions of his probation.

7 P. Upon any subsequent conviction pursuant to this  
8 section, as a condition of probation, a subsequent offender  
9 shall be required to have an ignition interlock device  
10 installed and operating for a period of at least one year on  
11 all motor vehicles driven by the subsequent offender, pursuant  
12 to rules adopted by the bureau. Unless determined by the  
13 sentencing court to be indigent, the subsequent offender shall  
14 pay all costs associated with having an ignition interlock  
15 device installed on the appropriate motor vehicles. If a  
16 subsequent offender drives a motor vehicle that does not have  
17 an ignition interlock device installed on the motor vehicle,  
18 the subsequent offender may be in violation of the terms and  
19 conditions of his probation.

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

23 R. A conviction pursuant to a municipal or county  
24 ordinance in New Mexico or a law of any other jurisdiction,  
25 territory or possession of the United States or of a tribe,

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

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

13 T. As used in this section:

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

19 (2) "commercial motor vehicle" means a motor  
20 vehicle or combination of motor vehicles used in commerce to  
21 transport passengers or property if the motor vehicle:

22 (a) has a gross combination weight  
23 rating of more than twenty-six thousand pounds inclusive of a  
24 towed unit with a gross vehicle weight rating of more than ten  
25 thousand pounds;

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

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

5 (d) is of any size and is used in the  
6 transportation of hazardous materials, which requires the motor  
7 vehicle to be placarded under applicable law; and

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

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