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HOUSE BILL 592

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF DRUGS; CREATING A  
NEW VIOLATION FOR DRIVING WITH A DETECTABLE AMOUNT OF A  
CONTROLLED SUBSTANCE IN THE BLOOD WHEN POSSESSION OF THE  
CONTROLLED SUBSTANCE IS NOT AUTHORIZED BY THE CONTROLLED  
SUBSTANCES ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
SECTION OF LAW IN LAWS 2007.

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 2007, Chapter 321,  
Section 10 and by Laws 2007, Chapter 322, Section 1) 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 the person  
6 incapable of safely driving a vehicle to drive a vehicle within  
7 this state.

8           C. It is unlawful for a person who has a detectable  
9 amount of a controlled substance or its metabolite in the  
10 person's blood to drive a vehicle in this state if possession  
11 of that controlled substance is in violation of the Controlled  
12 Substances Act.

13           ~~[C-]~~ D. It is unlawful for:

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

20                   (2) a person to drive a commercial motor  
21 vehicle in this state if the person has an alcohol  
22 concentration of four one hundredths or more in the person's  
23 blood or breath within three hours of driving the commercial  
24 motor vehicle and the alcohol concentration results from  
25 alcohol consumed before or while driving the vehicle.

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1           ~~[D-]~~ E. Aggravated driving while under the  
2 influence of intoxicating liquor or drugs consists of a person  
3 who:

4                   (1) drives a vehicle in this state and has an  
5 alcohol concentration of sixteen one hundredths or more in the  
6 person's blood or breath within three hours of driving the  
7 vehicle and the alcohol concentration results from alcohol  
8 consumed before or while driving the vehicle;

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

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

16           ~~[E-]~~ F. A person under first conviction pursuant to  
17 this section shall be punished, notwithstanding the provisions  
18 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
19 than ninety days or by a fine of not more than five hundred  
20 dollars (\$500), or both; provided that if the sentence is  
21 suspended in whole or in part or deferred, the period of  
22 probation may extend beyond ninety days but shall not exceed  
23 one year. Upon a first conviction pursuant to this section, an  
24 offender shall be sentenced to not less than twenty-four hours  
25 of community service. In addition, the offender may be

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

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1 of imprisonment fixed by the court. A deferred sentence  
2 pursuant to this subsection shall be considered a first  
3 conviction for the purpose of determining subsequent  
4 convictions.

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

14 (1) upon a second conviction, an offender  
15 shall be sentenced to a jail term of not less than ninety-six  
16 consecutive hours, not less than forty-eight hours of community  
17 service and a fine of five hundred dollars (\$500). In addition  
18 to those penalties, when an offender commits aggravated driving  
19 while under the influence of intoxicating liquor or drugs, the  
20 offender shall be sentenced to a jail term of not less than  
21 ninety-six consecutive hours. If an offender fails to  
22 complete, within a time specified by the court, any community  
23 service, screening program or treatment program ordered by the  
24 court, the offender shall be sentenced to not less than an  
25 additional seven consecutive days in jail. A penalty imposed

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1 pursuant to this paragraph shall not be suspended or deferred  
2 or taken under advisement; and

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

17 [~~G.~~] H. Upon a fourth conviction pursuant to this  
18 section, an offender is guilty of a fourth degree felony and,  
19 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
20 shall be sentenced to a term of imprisonment of eighteen  
21 months, six months of which shall not be suspended, deferred or  
22 taken under advisement.

23 [~~H.~~] I. Upon a fifth conviction pursuant to this  
24 section, an offender is guilty of a fourth degree felony and,  
25 notwithstanding the provisions of Section 31-18-15 NMSA 1978,

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1 shall be sentenced to a term of imprisonment of two years, one  
2 year of which shall not be suspended, deferred or taken under  
3 advisement.

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

10 ~~[J.]~~ K. Upon a seventh or subsequent conviction  
11 pursuant to this section, an offender is guilty of a third  
12 degree felony and, notwithstanding the provisions of Section  
13 31-18-15 NMSA 1978, shall be sentenced to a term of  
14 imprisonment of three years, two years of which shall not be  
15 suspended, deferred or taken under advisement.

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

24 ~~[L.]~~ M. Upon a second or third conviction pursuant  
25 to this section, an offender shall be required to participate

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1 in and complete, within a time specified by the court:

2 (1) not less than a twenty-eight-day  
3 inpatient, residential or in-custody substance abuse treatment  
4 program approved by the court;

5 (2) not less than a ninety-day outpatient  
6 treatment program approved by the court;

7 (3) a drug court program approved by the  
8 court; or

9 (4) any other substance abuse treatment  
10 program approved by the court.

11 The requirement imposed pursuant to this subsection shall  
12 not be suspended, deferred or taken under advisement.

13 ~~[M.]~~ N. Upon a felony conviction pursuant to this  
14 section, the corrections department shall provide substance  
15 abuse counseling and treatment to the offender in its custody.  
16 While the offender is on probation or parole under its  
17 supervision, the corrections department shall also provide  
18 substance abuse counseling and treatment to the offender or  
19 shall require the offender to obtain substance abuse counseling  
20 and treatment.

21 ~~[N.]~~ O. Upon a conviction pursuant to this section,  
22 an offender shall be required to obtain an ignition interlock  
23 license and have an ignition interlock device installed and  
24 operating 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. The offender  
4 shall operate only those vehicles equipped with ignition  
5 interlock devices for:

6 (1) a period of one year, for a first  
7 offender;

8 (2) a period of two years, for a second  
9 conviction pursuant to this section;

10 (3) a period of three years, for a third  
11 conviction pursuant to this section; or

12 (4) the remainder of the offender's life, for  
13 a fourth or subsequent conviction pursuant to this section.

14 [~~0.~~] P. Five years from the date of conviction and  
15 every five years thereafter, a fourth or subsequent offender  
16 may apply to a district court for removal of the ignition  
17 interlock device requirement provided in this section and for  
18 restoration of a driver's license. A district court may, for  
19 good cause shown, remove the ignition interlock device  
20 requirement and order restoration of the license; provided that  
21 the offender has not been subsequently convicted of driving a  
22 motor vehicle while under the influence of intoxicating liquor  
23 or drugs. Good cause may include an alcohol screening and  
24 proof from the interlock vendor that the person has not had  
25 violations of the interlock device.

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

4           [~~Q-~~] R. A conviction pursuant to a municipal or  
5 county ordinance in New Mexico or a law of any other  
6 jurisdiction, territory or possession of the United States or  
7 of a tribe, when that ordinance or law is equivalent to New  
8 Mexico law for driving while under the influence of  
9 intoxicating liquor or drugs, and prescribes penalties for  
10 driving while under the influence of intoxicating liquor or  
11 drugs, shall be deemed to be a conviction pursuant to this  
12 section for purposes of determining whether a conviction is a  
13 second or subsequent conviction.

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

19           [~~S-~~] T. With respect to this section and  
20 notwithstanding any provision of law to the contrary, if an  
21 offender's sentence was suspended or deferred in whole or in  
22 part and the offender violates any condition of probation, the  
23 court may impose any sentence that the court could have  
24 originally imposed and credit shall not be given for time  
25 served by the offender on probation.

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1                   ~~[F.]~~ U. As used in this section:

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

7                   (2) "commercial motor vehicle" means a motor  
8 vehicle or combination of motor vehicles used in commerce to  
9 transport passengers or property if the motor vehicle:

10                   (a) has a gross combination weight  
11 rating of more than twenty-six thousand pounds inclusive of a  
12 towed unit with a gross vehicle weight rating of more than ten  
13 thousand pounds;

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

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

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

21                   Section 2. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2008.