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SENATE BILL 3

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Peter Wirth

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; CLARIFYING THAT CERTAIN TERMS OF INCARCERATION ARE
MANDATORY AND THAT ELECTRONIC MONITORING OR COMMUNITY
SUPERVISION SHALL NOT BE SUBSTITUTED FOR INCARCERATION.

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 the person
2 incapable of safely driving a vehicle to drive a vehicle within
3 this state.

4 C. It is unlawful for:

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

11 (2) a person to drive a commercial motor
12 vehicle in this state if the person has an alcohol
13 concentration of four one hundredths or more in the person's
14 blood or breath within three hours of driving the commercial
15 motor vehicle and the alcohol concentration results from
16 alcohol consumed before or while driving the vehicle.

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

19 (1) drives a vehicle in this state and has an
20 alcohol concentration of sixteen one hundredths or more in the
21 person's blood or breath within three hours of driving the
22 vehicle and the alcohol concentration results from alcohol
23 consumed before or while driving the vehicle;

24 (2) has caused bodily injury to a human being
25 as a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or

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

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

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1 consecutive hours in jail. If an offender fails to complete,
2 within a time specified by the court, any community service,
3 screening program, treatment program or DWI school ordered by
4 the court or fails to comply with any other condition of
5 probation, the offender shall be sentenced to not less than an
6 additional forty-eight consecutive hours in jail. Any jail
7 sentence imposed pursuant to this subsection for failure to
8 complete, within a time specified by the court, any community
9 service, screening program, treatment program or DWI school
10 ordered by the court or for aggravated driving while under the
11 influence of intoxicating liquor or drugs shall not be
12 suspended, deferred or taken under advisement. On a first
13 conviction pursuant to this section, any time spent in jail for
14 the offense prior to the conviction for that offense shall be
15 credited to any term of imprisonment fixed by the court. A
16 deferred sentence pursuant to this subsection shall be
17 considered a first conviction for the purpose of determining
18 subsequent convictions.

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

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1 years. Notwithstanding any provision of law to the contrary
2 for suspension or deferment of execution of a sentence:

3 (1) upon a second conviction, an offender
4 shall be sentenced to a jail term of not less than ninety-six
5 consecutive hours, not less than forty-eight hours of community
6 service and a fine of five hundred dollars (\$500). In addition
7 to 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 ninety-six consecutive hours. If an offender fails to
11 complete, within a time specified by the court, any community
12 service, screening program or treatment program ordered by the
13 court, the offender shall be sentenced to not less than an
14 additional seven consecutive days in jail. A penalty imposed
15 pursuant to this paragraph shall not be suspended or deferred
16 or taken under advisement; and

17 (2) upon a third conviction, an offender shall
18 be sentenced to a jail term of not less than thirty consecutive
19 days, not less than ninety-six hours of community service and a
20 fine of seven hundred fifty dollars (\$750). In addition to
21 those penalties, when an offender commits aggravated driving
22 while under the influence of intoxicating liquor or drugs, the
23 offender shall be sentenced to a jail term of not less than
24 sixty consecutive days. If an offender fails to complete,
25 within a time specified by the court, any community service,

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1 screening program or treatment program ordered by the court,
2 the offender shall be sentenced to not less than an additional
3 sixty consecutive days in jail. A penalty imposed pursuant to
4 this paragraph shall not be suspended or deferred or taken
5 under advisement.

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

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

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

24 J. Upon a seventh or subsequent conviction pursuant
25 to this section, an offender is guilty of a third degree felony

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1 and, notwithstanding the provisions of Section 31-18-15 NMSA
2 1978, shall be sentenced to a term of imprisonment of three
3 years, two years of which shall not be suspended, deferred or
4 taken under advisement.

5 K. Terms of incarceration not to be suspended,
6 deferred or taken under advisement pursuant to the provisions
7 of Subsections E, F, G, H, I and J of this section are
8 mandatory, and an offender shall spend that period of time
9 incarcerated. No form of electronic monitoring or community
10 supervision shall be substituted for those incarceration terms.

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

19 [~~L-~~] M. Upon a second or third conviction pursuant
20 to this section, an offender shall be required to participate
21 in and complete, within a time specified by the court:

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

25 (2) not less than a ninety-day outpatient

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1 treatment program approved by the court;

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

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

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

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

16 [~~N.~~] O. Upon a conviction pursuant to this section,
17 an offender shall be required to obtain an ignition interlock
18 license and have an ignition interlock device installed and
19 operating on all motor vehicles driven by the offender,
20 pursuant to rules adopted by the bureau. Unless determined by
21 the sentencing court to be indigent, the offender shall pay all
22 costs associated with having an ignition interlock device
23 installed on the appropriate motor vehicles. The offender
24 shall operate only those vehicles equipped with ignition
25 interlock devices for:

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

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

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

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

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

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

24 ~~[Q.]~~ R. A conviction pursuant to a municipal or
25 county ordinance in New Mexico or a law of any other

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

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

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

21 [T-] U. As used in this section:

22 (1) "bodily injury" means an injury to a
23 person that is not likely to cause death or great bodily harm
24 to the person, but does cause painful temporary disfigurement
25 or temporary loss or impairment of the functions of any member

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1 or organ of the person's body; and

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

5 (a) has a gross combination weight
6 rating of more than twenty-six thousand pounds inclusive of a
7 towed unit with a gross vehicle weight rating of more than ten
8 thousand pounds;

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

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

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

16 Section 2. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2010.