

HOUSE BILL 183

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Sheryl Williams Stapleton

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; REQUIRING FIRST OFFENDERS TO BE ORDERED TO ATTEND A  
DWI FOLLOW-UP PROGRAM.

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. DRIVING UNDER THE INFLUENCE OF INTOXICATING  
LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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 the person

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1 incapable of safely driving a vehicle to drive a vehicle within  
2 this state.

3 C. It is unlawful for:

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

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

16 D. Aggravated driving under the influence of  
17 intoxicating liquor or drugs consists of:

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

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

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

6 E. A first conviction pursuant to this section  
7 shall be punished, notwithstanding the provisions of Section  
8 31-18-13 NMSA 1978, by imprisonment for not more than ninety  
9 days or by a fine of not more than five hundred dollars (\$500),  
10 or both; provided that if the sentence is suspended in whole or  
11 in part or deferred, the period of probation may extend beyond  
12 ninety days but shall not exceed one year. Upon a first  
13 conviction pursuant to this section, an offender shall be  
14 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 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 to  
21 attend a DWI follow-up program, approved by the bureau, that  
22 will begin three to five months after the offender finishes the  
23 DWI school. An offender also may be required to participate in  
24 other rehabilitative services as the court shall determine to  
25 be necessary. In addition to those penalties, when an offender

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

21 F. A second or third conviction pursuant to this  
22 section shall be punished, notwithstanding the provisions of  
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
24 three hundred sixty-four days or by a fine of not more than one  
25 thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of  
2 probation may extend beyond one year but shall not exceed five  
3 years. Notwithstanding any provision of law to the contrary  
4 for suspension or deferment of execution of a sentence:

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

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

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1 sixty consecutive days. If an offender fails to complete,  
2 within a time specified by the court, any community service,  
3 screening program or treatment program ordered by the court,  
4 the offender shall be sentenced to not less than an additional  
5 sixty consecutive days in jail. A penalty imposed pursuant to  
6 this paragraph shall not be suspended or deferred or taken  
7 under advisement.

8 G. Upon a fourth 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 eighteen  
12 months, six months of which shall not be suspended, deferred or  
13 taken under advisement.

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

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

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1           J. Upon a seventh or subsequent conviction pursuant  
2 to this section, an offender is guilty of a third degree felony  
3 and, notwithstanding the provisions of Section 31-18-15 NMSA  
4 1978, shall be sentenced to a term of imprisonment of three  
5 years, two years of which shall not be suspended, deferred or  
6 taken under advisement.

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

15           L. Upon a second or third conviction pursuant to  
16 this section, an offender shall be required to participate in  
17 and complete, within a time specified by the court:

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

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

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

25                   (4) any other substance abuse treatment

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1 program approved by the court.

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

4 M. Upon a felony conviction pursuant to this  
5 section, the corrections department shall provide substance  
6 abuse counseling and treatment to the offender in its custody.  
7 While the offender is on probation or parole under its  
8 supervision, the corrections department shall also provide  
9 substance abuse counseling and treatment to the offender or  
10 shall require the offender to obtain substance abuse counseling  
11 and treatment.

12 N. Upon a conviction pursuant to this section, an  
13 offender shall be required to obtain an ignition interlock  
14 license and have an ignition interlock device installed and  
15 operating on all motor vehicles driven by the offender,  
16 pursuant to rules adopted by the traffic safety bureau. Unless  
17 determined by the bureau to be indigent, the offender shall pay  
18 all costs associated with having an ignition interlock device  
19 installed on the appropriate motor vehicles. The offender  
20 shall operate only those vehicles equipped with ignition  
21 interlock devices for:

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

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

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

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

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

17 P. An offender who obtains an ignition interlock  
18 license and installs an ignition interlock device prior to  
19 conviction shall be given credit at sentencing for the time  
20 period the ignition interlock device has been in use.

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

24 R. A conviction pursuant to a municipal or county  
25 ordinance in New Mexico or a law of any other jurisdiction,

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1 territory or possession of the United States or of a tribe,  
2 when that ordinance or law is equivalent to New Mexico law for  
3 driving under the influence of intoxicating liquor or drugs,  
4 and prescribes penalties for driving under the influence of  
5 intoxicating liquor or drugs, shall be deemed to be a  
6 conviction pursuant to this section for purposes of determining  
7 whether a conviction is a second or subsequent 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. With respect to this section and notwithstanding  
14 any provision of law to the contrary, if an offender's sentence  
15 was suspended or deferred in whole or in part and the offender  
16 violates any condition of probation, the court may impose any  
17 sentence that the court could have originally imposed and  
18 credit shall not be given for time served by the offender on  
19 probation.

20 U. As used in this section:

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

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

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

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

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

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

15                   **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
16 provisions of this act is July 1, 2011.