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HOUSE BILL 320

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Anna M. Crook

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING AN OFFENDER CONVICTED OF A FIRST, SECOND OR THIRD DWI TO BE PLACED ON PROBATION FOR THE ENTIRE TIME THE OFFENDER IS REQUIRED TO OBTAIN AN IGNITION INTERLOCK DEVICE; REQUIRING THE DEFENDANT TO REMAIN IN CONTACT WITH THE IGNITION INTERLOCK PROVIDER AS A CONDITION OF PROBATION.

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

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1 state.

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

6 C. It is unlawful for:

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

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

19 D. Aggravated driving under the influence of
20 intoxicating liquor or drugs consists of:

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

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

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

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

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

22 F. A second or third 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 three hundred sixty-four days or by a fine of not more than one

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1 thousand dollars (\$1,000), or both; provided that if the
2 sentence is suspended in whole or in part, the period of
3 probation may extend beyond one year but shall not exceed five
4 years. Notwithstanding any provision of law to the contrary
5 for suspension or deferment of execution of a sentence:

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

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

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

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

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

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

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1 taken under advisement.

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

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

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

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

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

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

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

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

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

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

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

25 (2) a period of two years, for a second

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1 conviction pursuant to this section;

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

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

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

18 P. Upon a first, second or third conviction
19 pursuant to this section, an offender shall be placed on
20 probation for the entire time that the offender is ordered to
21 obtain an ignition interlock license and have an ignition
22 interlock device installed on a motor vehicle pursuant to
23 Subsection N of this section. The court shall order, as a
24 condition of probation, that the offender remain in regular
25 contact with the ignition interlock provider and notify the

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1 provider of any change in address or contact information during
2 that period.

3 [P-] Q. An offender who obtains an ignition
4 interlock license and installs an ignition interlock device
5 prior to conviction shall be given credit at sentencing for the
6 time period the ignition interlock device has been in use.

7 [Q-] R. In the case of a first, second or third
8 offense under this section, the magistrate court has concurrent
9 jurisdiction with district courts to try the offender.

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

20 [S-] T. In addition to any other fine or fee that
21 may be imposed pursuant to the conviction or other disposition
22 of the offense under this section, the court may order the
23 offender to pay the costs of any court-ordered screening and
24 treatment programs.

25 [T-] U. With respect to this section and

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1 notwithstanding any provision of law to the contrary, if an
2 offender's sentence was suspended or deferred in whole or in
3 part and the offender violates any condition of probation, the
4 court may impose any sentence that the court could have
5 originally imposed and credit shall not be given for time
6 served by the offender on probation.

7 ~~[U-]~~ V. As used in this section:

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

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

16 (a) has a gross combination weight
17 rating of more than twenty-six thousand pounds inclusive of a
18 towed unit with a gross vehicle weight rating of more than ten
19 thousand pounds;

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

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

24 (d) is of any size and is used in the
25 transportation of hazardous materials, which requires the motor

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1 vehicle to be placarded under applicable law."

2 SECTION 2. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2012.

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