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HOUSE BILL 83

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Sarah Maestas Barnes and Rod Montoya

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING THE PENALTY FOR HOMICIDE BY VEHICLE OR GREAT BODILY HARM BY VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS WHILE VIOLATING SECTION 66-8-113 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 521, AS AMENDED); INCREASING PENALTIES AND MANDATORY PERIODS OF INCARCERATION FOR FOURTH AND SUBSEQUENT OFFENSES; PROVIDING THAT AN EIGHTH OR SUBSEQUENT OFFENSE IS A SECOND DEGREE FELONY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 66-8-101 NMSA 1978 (being Laws 1978, Chapter 35, Section 509, as amended) is amended to read:

"66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY VEHICLE.--

A. Homicide by vehicle is the killing of a human

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1 being in the unlawful operation of a motor vehicle.

2 B. Great bodily harm by vehicle is the injuring of  
3 a human being, to the extent defined in Section 30-1-12 NMSA  
4 1978, in the unlawful operation of a motor vehicle.

5 C. A person who commits homicide by vehicle or  
6 great bodily harm by vehicle while under the influence of  
7 intoxicating liquor or while under the influence of any drug or  
8 while violating Section 66-8-113 NMSA 1978 is guilty of a  
9 [~~third~~] second degree felony and shall be sentenced pursuant to  
10 the provisions of Section 31-18-15 NMSA 1978, provided that  
11 violation of speeding laws as set forth in the Motor Vehicle  
12 Code shall not per se be a basis for violation of Section  
13 66-8-113 NMSA 1978.

14 D. A person who commits homicide by vehicle or  
15 great bodily harm by vehicle while under the influence of  
16 intoxicating liquor or while under the influence of any drug,  
17 as provided in Subsection C of this section, and who has  
18 incurred a prior DWI conviction within ten years of the  
19 occurrence for which [~~he~~] the person is being sentenced under  
20 this section shall have [~~his~~] the person's basic sentence  
21 increased by four years for each prior DWI conviction.

22 E. For the purposes of this section, "prior DWI  
23 conviction" means:

24 (1) a prior conviction under Section 66-8-102  
25 NMSA 1978; or

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1 (2) a prior conviction in New Mexico or any  
2 other jurisdiction, territory or possession of the United  
3 States, including a tribal jurisdiction, when the criminal act  
4 is driving under the influence of alcohol or drugs.

5 F. A person who willfully operates a motor vehicle  
6 in violation of Subsection C of Section 30-22-1 NMSA 1978 and  
7 directly or indirectly causes the death of or great bodily harm  
8 to a human being is guilty of a third degree felony and shall  
9 be sentenced pursuant to the provisions of Section 31-18-15  
10 NMSA 1978."

11 SECTION 2. Section 66-8-102 NMSA 1978 (being Laws 1953,  
12 Chapter 139, Section 54, as amended) is amended to read:

13 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING  
14 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
15 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

16 A. It is unlawful for a person who is under the  
17 influence of intoxicating liquor to drive a vehicle within this  
18 state.

19 B. It is unlawful for a person who is under the  
20 influence of any drug to a degree that renders the person  
21 incapable of safely driving a vehicle to drive a vehicle within  
22 this state.

23 C. It is unlawful for:

24 (1) a person to drive a vehicle in this state  
25 if the person has an alcohol concentration of eight one

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1 hundredths or more in the person's blood or breath within three  
2 hours of driving the vehicle and the alcohol concentration  
3 results from alcohol consumed before or while driving the  
4 vehicle; or

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

11 D. Aggravated driving under the influence of  
12 intoxicating liquor or drugs consists of:

13 (1) driving a vehicle in this state with an  
14 alcohol concentration of sixteen one hundredths or more in the  
15 driver's blood or breath within three hours of driving the  
16 vehicle and the alcohol concentration results from alcohol  
17 consumed before or while driving the vehicle;

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

21 (3) refusing to submit to chemical testing, as  
22 provided for in the Implied Consent Act, and in the judgment of  
23 the court, based upon evidence of intoxication presented to the  
24 court, the driver was under the influence of intoxicating  
25 liquor or drugs.

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1           E. A first conviction pursuant to this section  
2 shall be punished, notwithstanding the provisions of Section  
3 31-18-13 NMSA 1978, by imprisonment for not more than ninety  
4 days or by a fine of not more than five hundred dollars (\$500),  
5 or both; provided that if the sentence is suspended in whole or  
6 in part or deferred, the period of probation may extend beyond  
7 ninety days but shall not exceed one year. Upon a first  
8 conviction pursuant to this section, an offender shall be  
9 sentenced to not less than twenty-four hours of community  
10 service. In addition, the offender may be required to pay a  
11 fine of three hundred dollars (\$300). The offender shall be  
12 ordered by the court to participate in and complete a screening  
13 program described in Subsection ~~[K]~~ L of this section and to  
14 attend a driver rehabilitation program for alcohol or drugs,  
15 also known as a "DWI school", approved by the bureau and also  
16 may be required to participate in other rehabilitative services  
17 as the court shall determine to be necessary. In addition to  
18 those penalties, when an offender commits aggravated driving  
19 under the influence of intoxicating liquor or drugs, the  
20 offender shall be sentenced to not less than forty-eight  
21 consecutive hours in jail. If an offender fails to complete,  
22 within a time specified by the court, any community service,  
23 screening program, treatment program or DWI school ordered by  
24 the court or fails to comply with any other condition of  
25 probation, the offender shall be sentenced to not less than an

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

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

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

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

12 (2) upon a third conviction, an offender shall  
13 be sentenced to a jail term of not less than thirty consecutive  
14 days, not less than ninety-six hours of community service and a  
15 fine of seven hundred fifty dollars (\$750). In addition to  
16 those penalties, when an offender commits aggravated driving  
17 under the influence of intoxicating liquor or drugs, the  
18 offender shall be sentenced to a jail term of not less than  
19 sixty consecutive days. If an offender fails to complete,  
20 within a time specified by the court, any community service,  
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 thirty months, [~~six~~] eighteen months of which shall not be  
6 suspended, deferred or 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~~] three  
11 years, [~~one year~~] two years of which shall not be suspended,  
12 deferred or taken under 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~~] forty-  
17 two months, [~~eighteen~~] thirty months of which shall not be  
18 suspended, deferred or taken under advisement.

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

25           K. Upon an eighth or subsequent conviction pursuant

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1 to this section, an offender is guilty of a second degree  
2 felony and, notwithstanding the provisions of Section 31-18-15  
3 NMSA 1978, shall be sentenced to a term of imprisonment of  
4 twelve years, ten years of which shall not be suspended,  
5 deferred or taken under advisement.

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

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

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

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

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

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

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

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

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

- 21                   (1) a period of one year, for a first  
22 offender;
- 23                   (2) a period of two years, for a second  
24 conviction pursuant to this section;
- 25                   (3) a period of three years, for a third

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1 conviction pursuant to this section; or

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

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

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

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

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

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1 of a tribe, when that ordinance or law is equivalent to New  
2 Mexico law for driving under the influence of intoxicating  
3 liquor or drugs, and prescribes penalties for driving 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.]~~ T. In addition to any other fine or fee that  
9 may be imposed pursuant to the conviction or other disposition  
10 of the offense under this section, the court may order the  
11 offender to pay the costs of any court-ordered screening and  
12 treatment programs.

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

20 ~~[U.]~~ V. 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 3. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2016.