

1 AN ACT

2 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING
3 LIQUOR OR DRUGS; INCREASING THE PENALTY FOR HOMICIDE BY
4 VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR
5 DRUGS; INCREASING PENALTIES AND MANDATORY PERIODS OF
6 INCARCERATION FOR EIGHTH OR SUBSEQUENT OFFENSES; PROVIDING
7 THAT AN EIGHTH OR SUBSEQUENT OFFENSE IS A SECOND DEGREE
8 FELONY.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "66-8-101. HOMICIDE BY VEHICLE--GREAT BODILY HARM BY
14 VEHICLE.--

15 A. Homicide by vehicle is the killing of a human
16 being in the unlawful operation of a motor vehicle.

17 B. Great bodily harm by vehicle is the injuring of
18 a human being, to the extent defined in Section 30-1-12 NMSA
19 1978, in the unlawful operation of a motor vehicle.

20 C. A person who commits homicide by vehicle while
21 under the influence of intoxicating liquor or while under the
22 influence of any drug is guilty of a second degree felony and
23 shall be sentenced pursuant to the provisions of Section
24 31-18-15 NMSA 1978.

25 D. A person who commits homicide by vehicle while

1 violating Section 66-8-113 NMSA 1978 is guilty of a third
2 degree felony and shall be sentenced pursuant to the
3 provisions of Section 31-18-15 NMSA 1978, provided that
4 violation of speeding laws as set forth in the Motor Vehicle
5 Code shall not per se be a basis for violation of Section
6 66-8-113 NMSA 1978.

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

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

23 G. For the purposes of this section, "prior DWI
24 conviction" means:

- 25 (1) a prior conviction under Section

1 66-8-102 NMSA 1978; or

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

7 H. A person who willfully operates a motor vehicle
8 in violation of Subsection C of Section 30-22-1 NMSA 1978 and
9 directly or indirectly causes the death of or great bodily
10 harm to a human being is guilty of a third degree felony and
11 shall be sentenced pursuant to the provisions of Section
12 31-18-15 NMSA 1978."

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

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

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

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

25 C. It is unlawful for:

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

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

13 D. Aggravated driving under the influence of
14 intoxicating liquor or drugs consists of:

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

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

24 (3) refusing to submit to chemical testing,
25 as provided for in the Implied Consent Act, and in the

1 judgment of the court, based upon evidence of intoxication
2 presented to the court, the driver was under the influence of
3 intoxicating liquor or drugs.

4 E. A first conviction pursuant to this section
5 shall be punished, notwithstanding the provisions of Section
6 31-18-13 NMSA 1978, by imprisonment for not more than ninety
7 days or by a fine of not more than five hundred dollars
8 (\$500), or both; provided that if the sentence is suspended
9 in whole or in part or deferred, the period of probation may
10 extend beyond ninety days but shall not exceed one year.

11 Upon a first conviction pursuant to this section, an offender
12 shall be sentenced to not less than twenty-four hours of
13 community service. In addition, the offender may be required
14 to pay a fine of three hundred dollars (\$300). The offender
15 shall be ordered by the court to participate in and complete
16 a screening program described in Subsection L of this section
17 and to attend a driver rehabilitation program for alcohol or
18 drugs, also known as a "DWI school", approved by the bureau
19 and also may be required to participate in other
20 rehabilitative services as the court shall determine to be
21 necessary. In addition to those penalties, when an offender
22 commits aggravated driving under the influence of
23 intoxicating liquor or drugs, the offender shall be sentenced
24 to not less than forty-eight consecutive hours in jail. If
25 an offender fails to complete, within a time specified by the

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

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

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

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

1 community service, screening program or treatment program
2 ordered by the court, the offender shall be sentenced to not
3 less than an additional sixty consecutive days in jail. A
4 penalty imposed pursuant to this paragraph shall not be
5 suspended or deferred or taken 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
11 or 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,
16 one year of which shall not be suspended, deferred or taken
17 under 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
22 months, eighteen months of which shall not be suspended,
23 deferred or taken under advisement.

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

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

5 K. Upon an eighth or subsequent conviction
6 pursuant to this section, an offender is guilty of a second
7 degree felony and, notwithstanding the provisions of Section
8 31-18-15 NMSA 1978, shall be sentenced to a term of
9 imprisonment of twelve years, ten years of which shall not be
10 suspended, deferred or taken under advisement.

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

19 M. Upon a second or third conviction pursuant to
20 this section, an offender shall be required to participate in
21 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
24 treatment program approved by the court;

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

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
7 shall not be suspended, deferred or taken under advisement.

8 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
11 custody. While the offender is on probation or parole under
12 its supervision, the corrections department shall also
13 provide substance abuse counseling and treatment to the
14 offender or shall require the offender to obtain substance
15 abuse counseling and treatment.

16 O. Upon a conviction pursuant to this section, an
17 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
21 by the bureau 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:

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,
8 for a fourth or subsequent conviction pursuant to this
9 section.

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

22 Q. An offender who obtains an ignition interlock
23 license and installs an ignition interlock device prior to
24 conviction shall be given credit at sentencing for the time
25 period the ignition interlock device has been in use.

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

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

14 T. In addition to any other fine or fee that may
15 be imposed pursuant to the conviction or other disposition of
16 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 U. 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,
23 the 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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V. As used in this section:

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

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

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

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

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

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

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016. _____