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HOUSE BILL 536

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO CRIMINAL LAW; CLARIFYING THAT A FELONY DWI
CONVICTION MAY BE USED AS A PRIOR FELONY CONVICTION FOR THE
PURPOSE OF SENTENCING A HABITUAL OFFENDER; AMENDING SECTIONS OF
THE NMSA 1978.

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

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977,
Chapter 216, Section 6, as amended by Laws 1993, Chapter 77,
Section 9 and also by Laws 1993, Chapter 283, Section 1) is
amended to read:

"31-18-17. HABITUAL OFFENDERS-- ALTERATION OF BASIC
SENTENCE. --

A. For the purposes of this section, "prior felony
conviction" means:

- (1) a conviction for a prior felony committed

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1 within New Mexico whether within the Criminal Code or not,
2 including a felony pursuant to the provisions of Section
3 66-8-102 NMSA 1978; or

4 (2) any prior felony for which the person was
5 convicted other than an offense triable by court martial if:

6 (a) the conviction was rendered by a
7 court of another state, the United States, a territory of the
8 United States or the commonwealth of Puerto Rico;

9 (b) the offense was punishable, at the
10 time of conviction, by death or a maximum term of imprisonment
11 of more than one year; or

12 (c) the offense would have been
13 classified as a felony in this state at the time of conviction.

14 B. Any person convicted of a noncapital felony in
15 this state whether within the Criminal Code or the Controlled
16 Substances Act or not who has incurred one prior felony
17 conviction [~~which~~] that was part of a separate transaction or
18 occurrence or conditional discharge under Section [~~31-20-7~~]
19 31-20-13 NMSA 1978 is a habitual offender and his basic sentence
20 shall be increased by one year, and the sentence imposed by this
21 subsection shall not be suspended or deferred.

22 C. Any person convicted of a noncapital felony in
23 this state whether within the Criminal Code or the Controlled
24 Substances Act or not who has incurred two prior felony
25 convictions [~~which~~] that were parts of separate transactions or

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1 occurrences or conditional discharge under Section ~~[31-20-7]~~
2 31-20-13 NMSA 1978 is a habitual offender and his basic sentence
3 shall be increased by four years, and the sentence imposed by
4 this subsection shall not be suspended or deferred.

5 D. Any person convicted of a noncapital felony in
6 this state whether within the Criminal Code or the Controlled
7 Substances Act or not who has incurred three or more prior
8 felony convictions ~~[which]~~ that were parts of separate
9 transactions or occurrences or conditional discharge under
10 Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender and
11 his basic sentence shall be increased by eight years, and the
12 sentence imposed by this subsection shall not be suspended or
13 deferred. "

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

16 "66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR
17 OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF
18 INTOXICATING LIQUOR OR DRUGS--PENALTY. --

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

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

25 C. It is unlawful for any person who has an alcohol

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1 concentration of eight one-hundredths or more in his blood or
2 breath to drive any vehicle within this state.

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

5 (1) has an alcohol concentration of sixteen
6 one-hundredths or more in his blood or breath while driving any
7 vehicle within this state;

8 (2) has caused bodily injury to a human being
9 as a result of the unlawful operation of a motor vehicle while
10 driving under the influence of intoxicating liquor or drugs; or

11 (3) refused to submit to chemical testing, as
12 provided for in the Implied Consent Act, and in the judgment of
13 the court, based upon evidence of intoxication presented to the
14 court, [~~the person~~] was under the influence of intoxicating
15 liquor or drugs.

16 E. Every person under first conviction under this
17 section shall be punished, notwithstanding the provisions of
18 Section 31-18-13 NMSA 1978, by imprisonment for not more than
19 ninety days or by a fine of not more than five hundred dollars
20 (\$500), or both; provided that if the sentence is suspended in
21 whole or in part or deferred, the period of probation may extend
22 beyond ninety days but shall not exceed one year. Upon a first
23 conviction under this section, an offender may be sentenced to
24 not less than forty-eight hours of community service or a fine
25 of three hundred dollars (\$300). The offender shall be ordered

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1 by the court to attend a driver rehabilitation program for
2 alcohol or drugs, also known as a "DWI school", approved by the
3 traffic safety bureau of the state highway and transportation
4 department and also may be required to participate in other
5 rehabilitative services as the court shall determine to be
6 necessary. In addition to those penalties, when an offender
7 commits aggravated driving while under the influence of
8 intoxicating liquor or drugs, the offender shall be sentenced to
9 not less than forty-eight consecutive hours in jail. If an
10 offender fails to complete, within a time specified by the
11 court, any community service, screening program, treatment
12 program or DWI school ordered by the court, the offender shall
13 be sentenced to not less than an additional forty-eight
14 consecutive hours in jail. Any jail sentence imposed under this
15 subsection for failure to complete, within a time specified by
16 the court, any community service, screening program, treatment
17 program or DWI school ordered by the court or for aggravated
18 driving while under the influence of intoxicating liquor or
19 drugs shall not be suspended, deferred or taken under
20 advisement. On a first conviction under this section, any time
21 spent in jail for the offense prior to the conviction for that
22 offense shall be credited to any term of imprisonment fixed by
23 the court. A deferred sentence under this subsection shall be
24 considered a first conviction for the purpose of determining
25 subsequent convictions.

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1 F. A second or third conviction under this section
2 shall be punished, notwithstanding the provisions of Section
3 31-18-13 NMSA 1978, by imprisonment for not more than three
4 hundred sixty-four days or by a fine of not more than one
5 thousand dollars (\$1,000), or both; provided that if the
6 sentence is suspended in whole or in part, the period of
7 probation may extend beyond one year but shall not exceed five
8 years. Notwithstanding any provision of law to the contrary for
9 suspension or deferment of execution of a sentence:

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

24 (2) upon a third conviction, an offender shall
25 be sentenced to a jail term of not less than thirty consecutive

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1 days and a fine of seven hundred fifty dollars (\$750). In
2 addition to those penalties, when an offender commits aggravated
3 driving while under the influence of intoxicating liquor or
4 drugs, the offender shall be sentenced to a jail term of not
5 less than sixty consecutive days. If an offender fails to
6 complete, within a time specified by the court, any screening
7 program or treatment program ordered by the court, the offender
8 shall be sentenced to not less than an additional sixty
9 consecutive days in jail. A penalty imposed pursuant to this
10 paragraph shall not be suspended or deferred or taken under
11 advisement.

12 G. Upon a fourth or subsequent conviction under this
13 section, an offender is guilty of a fourth degree felony, as
14 provided in Section 31-18-15 NMSA 1978, and shall be sentenced
15 to a [~~jail~~] term of imprisonment of not less than six months,
16 which shall not be suspended or deferred or taken under
17 advisement.

18 H. Upon any conviction under this section, an
19 offender shall be required to participate in and complete,
20 within a time specified by the court, an alcohol or drug abuse
21 screening program and, if necessary, a treatment program
22 approved by the court.

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

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J. A conviction under a municipal or county ordinance prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction under this section for purposes of determining whether a conviction is a second or subsequent conviction.

K. In addition to any other fine or fee ~~which~~ that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

L. 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) "conviction" means an adjudication of guilt and does not include imposition of a sentence. "

Section 3. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1997.

**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 536

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 1 Against

Yes: 8

No: Pederson

Excused: Carpenter, Luna, Rios, Sanchez

Absent: None

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 1, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 536

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

**Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Buffett, Garcia, M H. , Knowles, Marquardt, Pi craux,
Saavedra, Varela

Absent: None

M \H0536

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

HOUSE BILL 536

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Adair, Ingle, Rodarte, Smith

Absent: None

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Underscored material = new
[bracketed material] = delete