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HOUSE BILL 142

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

R. DAVID PEDERSON

FOR THE DWI OVERSIGHT TASK FORCE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING INCREASED CRIMINAL PENALTIES FOR HABITUAL
DWI FELONY OFFENDERS; 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
[within] in New Mexico whether within the Criminal Code or

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1 not, but not including a prior felony DWI conviction pursuant
2 to the provisions of Section 66-8-102 NMSA 1978; or

3 (2) [~~any~~] a prior felony for which the person
4 was convicted other than an offense triable by court martial
5 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
14 conviction.

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

24 C. [~~Any~~] A person convicted of a noncapital felony
25 in this state whether within the Criminal Code or the

. 119931B. 2

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1 Controlled Substances Act or not who has incurred two prior
2 felony convictions [~~which~~] that were parts of separate
3 transactions or occurrences or conditional discharge [~~under~~]
4 pursuant to Section [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual
5 offender and his basic sentence shall be increased by four
6 years, and the sentence imposed by this subsection shall not
7 be suspended or deferred.

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

17 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
18 Chapter 139, Section 54, as amended by Laws 1997, Chapter 43,
19 Section 1 and also by Laws 1997, Chapter 205, Section 1) is
20 amended to read:

21 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
22 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
23 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

24 A. It is unlawful for [~~any~~] a person who is under
25 the influence of intoxicating liquor to drive [~~any~~] a vehicle

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1 ~~within~~ in this state.

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

6 C. It is unlawful for ~~any~~ a person who has an
7 alcohol concentration of eight one-hundredths or more in his
8 blood or breath to drive ~~any~~ a vehicle ~~within~~ in this
9 state.

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

12 (1) has an alcohol concentration of sixteen
13 one-hundredths or more in his blood or breath while driving
14 ~~any~~ a vehicle ~~within~~ in this state;

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

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

24 E. Every person under first conviction ~~under~~
25 pursuant to this section shall be punished, notwithstanding

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

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

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

22 (1) upon a second conviction, each offender
23 shall be sentenced to a jail term of not less than seventy-two
24 consecutive hours, forty-eight hours of community service and
25 a fine of five hundred dollars (\$500). In addition to those

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

11 (2) upon a third conviction, an offender
12 shall be sentenced to a jail term of not less than thirty
13 consecutive days and a fine of seven hundred fifty dollars
14 (\$750). In addition to those penalties, when an offender
15 commits aggravated driving while under the influence of
16 intoxicating liquor or drugs, the offender shall be sentenced
17 to a jail term of not less than sixty consecutive days. If an
18 offender fails to complete, within a time specified by the
19 court, any screening program or treatment program ordered by
20 the court, the offender shall be sentenced to not less than an
21 additional sixty consecutive days in jail. A penalty imposed
22 pursuant to this paragraph shall not be suspended or deferred
23 or taken under advisement.

24 G. Upon a fourth [~~or subsequent~~] conviction
25 [~~under~~] pursuant to this section, an offender is guilty of a

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1 fourth degree felony [~~as provided in~~] and, notwithstanding the
2 provisions of Section 31-18-15 NMSA 1978, [and] shall be
3 sentenced to a [~~jail~~] term of imprisonment of [~~not less than~~]
4 eighteen months, six months of which shall not be suspended or
5 deferred or taken under advisement.

6 H. Upon a fifth 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 two years, one
10 year of which shall not be suspended or deferred or taken
11 under advisement.

12 I. Upon a sixth 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 thirty months,
16 eighteen months of which shall not be suspended or deferred or
17 taken under advisement.

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

24 [~~H.-~~] K. Upon any conviction [under] pursuant to
25 this section, an offender shall be required to participate in

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1 and complete, within a time specified by the court, an alcohol
2 or drug abuse screening program and, if necessary, a treatment
3 program approved by the court. The penalty imposed pursuant
4 to this subsection shall not be suspended, deferred or taken
5 under advisement.

6 [~~F.~~] L. In the case of a first, second or third
7 offense [~~under~~] pursuant to this section, the magistrate court
8 has concurrent jurisdiction with district courts to try the
9 offender.

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

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

25 [~~L.~~] O. As used in this section:

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(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~~] a 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, 1998.

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3 FORTY-THIRD LEGISLATURE
4 SECOND SESSION, 1998
5
6
7

8 January 29, 1998
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11 Mr. Speaker:
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13 Your RULES AND ORDER OF BUSINESS COMMITTEE, to
14 whom has been referred
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16 HOUSE BILL 142
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18
19 has had it under consideration and finds same to be GERMANE
20 in accordance with constitutional provisions.
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22 Respectfully submitted,
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R. David Pederson, Chairman

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Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Lujan, Picraux, Sanchez, Taylor, James G., Williams,

S.M

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 9, 1998
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 HOUSE BILL 142
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 APPROPRIATIONS AND FINANCE COMMITTEE.

17 Respectfully submitted,
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21 _____
22 Thomas P. Foy, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HRC/HJC/HB 142

Page 14

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: King, Larranaga, Sanchez

13 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

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4 February 13, 1998

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 142

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

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16 Respectfully submitted,

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20 _____
21 Max Coll, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 16

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 15 For 0 Against

11 Yes: 15

12 Excused: Coll, Marquardt, Vigil

13 Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 18, 1998

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 142

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

Respectfully submitted,

Fernando R. Macias, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: McSorley

Excused: Sanchez, Tsosie

Absent: None

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Underscored material = new
[bracketed material] = delete