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SENATE BILL 206

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

INTRODUCED BY

LINDA M LOPEZ

FOR THE DWI OVERSIGHT TASK FORCE

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

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

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

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

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

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

25 C. [~~Any~~] A person convicted of a noncapital felony

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

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

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

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

25 A. It is unlawful for [~~any~~] a person who is under

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1 the influence of intoxicating liquor to drive [~~any~~] a vehicle
2 [~~within~~] in this state.

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

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

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

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

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

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

25 E. Every person under first conviction [~~under~~]

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

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

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

23 (1) upon a second conviction, each offender
24 shall be sentenced to a jail term of not less than seventy-two
25 consecutive hours, forty-eight hours of community service and

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1 a fine of five hundred dollars (\$500). In addition to those
2 penalties, when an offender commits aggravated driving while
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
13 shall be sentenced to a jail term of not less than thirty
14 consecutive days and a fine of seven hundred fifty dollars
15 (\$750). In addition to those penalties, when an offender
16 commits aggravated driving while under the influence of
17 intoxicating liquor or drugs, the offender shall be sentenced
18 to a jail term of not less than sixty consecutive days. If an
19 offender fails to complete, within a time specified by the
20 court, any screening program or treatment program ordered by
21 the court, the offender shall be sentenced to not less than an
22 additional sixty consecutive days in jail. A penalty imposed
23 pursuant to this paragraph shall not be suspended or deferred
24 or taken under advisement.

25 G. Upon a fourth or subsequent conviction [~~under~~]

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

6 H. Upon any conviction [~~under~~] 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 and, if necessary, a treatment
10 program approved by the court. The penalty imposed pursuant
11 to this subsection shall not be suspended, deferred or taken
12 under advisement.

13 I. In the case of a first, second or third offense
14 [~~under~~] pursuant to this section, the magistrate court has
15 concurrent jurisdiction with district courts to try the
16 offender.

17 J. A conviction under a municipal or county
18 ordinance in New Mexico or a law of any other jurisdiction,
19 territory or possession of the United States that is
20 equivalent to New Mexico law for driving while under the
21 influence of intoxicating liquor or drugs, prescribing
22 penalties for driving while under the influence of
23 intoxicating liquor or drugs, shall be deemed to be a
24 conviction [~~under~~] pursuant to this section for purposes of
25 determining whether a conviction is a second or subsequent

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1 conviction.

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

7 L. 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~~] a
12 member or organ of the person's body; and

13 (2) "conviction" means an adjudication of
14 guilt and does not include imposition of a sentence."

15 Section 3. EFFECTIVE DATE. --The effective date of the
16 provisions of this act is July 1, 1998.

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 30, 1998
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8 Mr. President:
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10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 206
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14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 32, and thence referred to
16 the JUDICIARY COMMITTEE.
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19 Respectfully submitted,
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Manny M. Aragon, Chairman

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Date _____

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