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SENATE BILL 312

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; ELEVATING A THIRD OFFENSE TO A FOURTH DEGREE FELONY.

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

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

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

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

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

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

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

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

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

16 or

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

22 E. Every person under first conviction under this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 ninety days or by a fine of not more than five hundred dollars

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

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1 ordered by the court or for aggravated driving while under the
2 influence of intoxicating liquor or drugs shall not be
3 suspended, deferred or taken under advisement. On a first
4 conviction under this section, any time spent in jail for the
5 offense prior to the conviction for that offense shall be
6 credited to any term of imprisonment fixed by the court. A
7 deferred sentence under this subsection shall be considered a
8 first conviction for the purpose of determining subsequent
9 convictions.

10 F. A second [~~or third~~] conviction under this
11 section shall be punished, notwithstanding the provisions of
12 Section 31-18-13 NMSA 1978, by imprisonment for not more than
13 three hundred sixty-four days or by a fine of not more than
14 one thousand dollars (\$1,000), or both; provided that if the
15 sentence is suspended in whole or in part, the period of
16 probation may extend beyond one year but shall not exceed five
17 years. Notwithstanding any provision of law to the contrary
18 for suspension or deferment of execution of a sentence, [~~(1)~~]
19 upon a second conviction, each offender shall be sentenced to
20 a jail term of not less than seventy-two consecutive hours,
21 forty-eight hours of community service and a fine of five
22 hundred dollars (\$500). In addition to those penalties, when
23 an offender commits aggravated driving while under the
24 influence of intoxicating liquor or drugs, the offender shall
25 be sentenced to a jail term of not less than ninety-six

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1 consecutive hours. If an offender fails to complete, within a
2 time specified by the court, any community service, screening
3 program or treatment program ordered by the court, the
4 offender shall be sentenced to not less than an additional
5 seven consecutive days in jail. A penalty imposed pursuant to
6 this [paragraph] subsection shall not be suspended or deferred
7 or taken under advisement [and

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

21 G. Upon a [fourth] third or subsequent conviction
22 under this section, an offender is guilty of a fourth degree
23 felony, as provided in Section 31-18-15 NMSA 1978, and shall
24 be sentenced to a jail term of not less than six months, which
25 shall not be suspended or deferred or taken under advisement.

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1 H. Upon any conviction under this section, an
2 offender shall be required to participate in and complete,
3 within a time specified by the court, an alcohol or drug abuse
4 screening program and, if necessary, a treatment program
5 approved by the court. The penalty imposed pursuant to this
6 subsection shall not be suspended, deferred or taken under
7 advisement.

8 I. In the case of a first or second [~~or third~~]
9 offense under this section, the magistrate court has
10 concurrent jurisdiction with district courts to try the
11 offender.

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

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

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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."

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 22, 1999
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8 Mr. President:
9

10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred
11

12 SENATE BILL 312
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14 has had it under consideration and reports same WITHOUT
15 RECOMMENDATION, and thence referred to the JUDICIARY
16 COMMITTEE.
17

18
19 Respectfully submitted,
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24 _____
Shannon Robinson, Chairman
25

FORTY-SECOND LEGISLATURE
SECOND SESSION

KEYBOARD(TYPE SLUGS)

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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: Garcia, Howes, Stockard, Smith

Absent: None

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