

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 117

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING PENALTIES FOR FELONY DWI OFFENDERS; PROVIDING ADDITIONAL PENALTIES FOR A DWI OFFENSE WITHIN THREE YEARS OF A PRIOR DWI CONVICTION; MANDATING TREATMENT FOR PERSONS CONVICTED A SECOND OR THIRD TIME FOR DWI; LOWERING THE PRESUMPTION OF INTOXICATION FOR CRIMINAL DWI FOR A PERSON LESS THAN TWENTY-ONE YEARS OF AGE; REQUIRING THAT THE CORRECTIONS DEPARTMENT PROVIDE SUBSTANCE ABUSE COUNSELING AND TREATMENT TO FELONY DWI OFFENDERS; COMPLYING WITH FEDERAL LAW REGARDING PROHIBITED BLOOD OR BREATH ALCOHOL CONCENTRATIONS FOR COMMERCIAL DRIVERS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977,

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underscored material = new
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1 Chapter 216, Section 6, as amended) is amended to read:

2 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC
3 SENTENCE. --

4 A. ~~Any~~ A person convicted of a noncapital felony
5 in this state whether within the Criminal Code or the
6 Controlled Substances Act or not who has incurred one prior
7 felony conviction that was part of a separate transaction or
8 occurrence or conditional discharge under Section 31-20-13 NMSA
9 1978 is a habitual offender and his basic sentence shall be
10 increased by one year. The sentence imposed pursuant to this
11 subsection shall not be suspended or deferred, unless the court
12 makes a specific finding that the prior felony conviction and
13 the instant felony conviction are both for nonviolent felony
14 offenses and that justice will not be served by imposing a
15 mandatory sentence of imprisonment and that there are
16 substantial and compelling reasons, stated on the record, for
17 departing from the sentence imposed pursuant to this
18 subsection.

19 B. ~~Any~~ A person convicted of a noncapital felony
20 in this state whether within the Criminal Code or the
21 Controlled Substances Act or not who has incurred two prior
22 felony convictions that were parts of separate transactions or
23 occurrences or conditional discharge under Section 31-20-13
24 NMSA 1978 is a habitual offender and his basic sentence shall
25 be increased by four years ~~and~~. The sentence imposed by this

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1 subsection shall not be suspended or deferred.

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

10 D. As used in this section, "prior felony
11 conviction" means:

12 (1) a conviction, when less than ten years
13 have passed prior to the instant felony conviction since the
14 person completed serving his sentence or period of probation or
15 parole for the prior felony, whichever is later, for a prior
16 felony committed within New Mexico whether within the Criminal
17 Code or not, but not including a conviction for a felony
18 pursuant to the provisions of Section 66-8-102 NMSA 1978; or

19 (2) ~~any~~ a prior felony, when less than ten
20 years have passed prior to the instant felony conviction since
21 the person completed serving his sentence or period of
22 probation or parole for the prior felony, whichever is later,
23 for which the person was convicted other than an offense
24 triable by court martial if:

25 (a) the conviction was rendered by a

1 court of another state, the United States, a territory of the
2 United States or the commonwealth of Puerto Rico;

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

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

8 E. As used in this section, "nonviolent felony
9 offense" means application of force, threatened use of force or
10 a deadly weapon was not used by the offender in the commission
11 of the offense."

12 Section 2. Section 66-5-68 NMSA 1978 (being Laws 1989,
13 Chapter 14, Section 17, as amended) is amended to read:

14 "66-5-68. DISQUALIFICATION. --

15 A. The department shall disqualify a person from
16 driving a commercial motor vehicle for a period of not less
17 than one year if the person:

18 (1) refuses to submit to a chemical test when
19 requested pursuant to the provisions of the Implied Consent
20 Act; or

21 (2) is convicted of a violation of:

22 (a) driving a commercial motor vehicle
23 under the influence of intoxicating liquor or drugs in
24 violation of [~~Section 66-5-68.1 NMSA 1978~~] Section 66-8-102
25 NMSA 1978, an ordinance of a municipality of this state or the

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1 law of another state;

2 (b) leaving the scene of an accident
3 involving a commercial motor vehicle driven by the person in
4 violation of Section 66-7-201 NMSA 1978 or an ordinance of a
5 municipality of this state or the law of another state; or

6 (c) using a commercial motor vehicle in
7 the commission of any felony.

8 B. The department shall disqualify a person from
9 driving a commercial motor vehicle for a period of not less
10 than three years if any of the violations specified in
11 Subsection A of this section occur while transporting a
12 hazardous material required to be placarded.

13 C. The department shall disqualify a person from
14 driving a commercial motor vehicle for life if convicted of two
15 or more violations of any of the offenses specified in
16 Subsection A of this section, or any combination of those
17 offenses, arising from two or more separate incidents, but the
18 secretary may issue regulations establishing guidelines,
19 including conditions, under which a disqualification for life
20 under this subsection may be reduced to a period of not less
21 than ten years. This subsection applies only to those offenses
22 committed after July 1, 1989.

23 D. The department shall disqualify a person from
24 driving a commercial motor vehicle for life if the person uses
25 a commercial motor vehicle in the commission of any felony

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1 involving the manufacture, distribution or dispensing of a
2 controlled substance or the possession with intent to
3 manufacture, distribute or dispense a controlled substance.

4 E. The department shall disqualify a person from
5 driving a commercial motor vehicle for a period of not less
6 than sixty days if convicted of two serious traffic violations
7 or one hundred twenty days if convicted of three serious
8 traffic violations, if the violations were committed while
9 driving a commercial motor vehicle, arising from separate
10 incidents occurring within a three-year period.

11 F. The department shall disqualify a person from
12 driving a commercial motor vehicle for a period of not less
13 than one hundred eighty days nor more than two years if the
14 person is convicted of a first violation of an out-of-service
15 order while transporting hazardous materials required to be
16 placarded pursuant to the federal Hazardous Materials
17 Transportation Act or while operating a motor vehicle designed
18 to transport more than fifteen passengers, including the
19 driver. The department shall disqualify a person from driving
20 a commercial motor vehicle for a period of not less than three
21 years nor more than five years if, during any
22 ten-year period, the person is convicted of any subsequent
23 violations of out-of-service orders, in separate incidents,
24 while transporting hazardous materials required to be placarded
25 pursuant to that act or while operating a motor vehicle

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1 designed to transport more than fifteen passengers, including
2 the driver.

3 G. When a person is disqualified from driving a
4 commercial motor vehicle, any commercial driver's license held
5 by that person is invalidated without separate proceeding of
6 any kind and the driver is not eligible to apply for a
7 commercial driver's license until the period of time for which
8 the driver was disqualified has elapsed.

9 H. After disqualifying, suspending, revoking or
10 canceling a commercial driver's license, the department shall,
11 within ten days, update its records to reflect that action.
12 After disqualifying, suspending, revoking or canceling a
13 nonresident commercial driver's privileges, the department
14 shall, within ten days, notify the licensing authority of the
15 state that issued the commercial driver's license.

16 I. For purposes of this section, the term
17 "convicted" includes a license revocation pursuant to the
18 Implied Consent Act or the implied consent act of another
19 state. "

20 Section 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
21 Chapter 139, Section 54, as amended) is 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 a person who is under the

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1 influence of intoxicating liquor to drive a vehicle within this
2 state.

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

6 C. It is unlawful for:

7 (1) a person twenty-one years of age or older
8 who has an alcohol concentration of eight one hundredths or
9 more in his blood or breath to drive a vehicle within this
10 state;

11 (2) a person who has an alcohol concentration
12 of four one hundredths or more in his blood or breath to drive
13 a commercial motor vehicle within this state; and

14 (3) a person less than twenty-one years of age
15 who has an alcohol concentration of two one hundredths or more
16 in his blood or breath to drive a motor vehicle within this
17 state.

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

20 (1) has an alcohol concentration of sixteen
21 one hundredths or more in his blood or breath while driving a
22 vehicle within this state;

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

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

5 E. ~~Every~~ A person under first conviction pursuant
6 to this section shall be punished, notwithstanding the
7 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
8 not more than ninety days or by a fine of not more than five
9 hundred dollars (\$500), or both; provided that if the sentence
10 is suspended in whole or in part or deferred, the period of
11 probation may extend beyond ninety days but shall not exceed
12 one year. Upon a first conviction pursuant to this section, an
13 offender may be sentenced to not less than forty-eight hours of
14 community service or a fine of three hundred dollars (\$300).

15 The offender shall be ordered by the court to participate in
16 and complete a screening program described in Subsection ~~[H]~~ L
17 of this section and to attend a driver rehabilitation program
18 for alcohol or drugs, also known as a "DWI school", approved by
19 the bureau 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 while 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 an
25 offender fails to complete, within a time specified by the

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

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

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

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

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1 this paragraph shall not be suspended or deferred or taken
2 under advisement.

3 G. Upon a fourth [~~or subsequent~~] conviction
4 pursuant to this section, an offender is guilty of a fourth
5 degree felony [~~as provided in~~] and notwithstanding the
6 provisions of Section 31-18-15 NMSA 1978, [and] shall be
7 sentenced to a [~~jail term of not less than six months~~] term of
8 imprisonment of eighteen months, six months of which shall not
9 be suspended or deferred or taken under advisement.

10 H. Upon a fifth conviction pursuant to this
11 section, an offender is guilty of a fourth degree felony and,
12 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
13 shall be sentenced to a term of imprisonment of two years, one
14 year of which shall not be suspended, deferred or taken under
15 advisement.

16 I. Upon a sixth conviction pursuant to this
17 section, an offender is guilty of a third degree felony and,
18 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
19 shall be sentenced to a term of imprisonment of thirty months,
20 eighteen months of which shall not be suspended, deferred or
21 taken under advisement.

22 J. Upon a seventh or subsequent conviction pursuant
23 to this section, an offender is guilty of a third degree felony
24 and, notwithstanding the provisions of Section 31-18-15 NMSA
25 1978, shall be sentenced to a term of imprisonment of three

1 years, two years of which shall not be suspended, deferred or
2 taken under advisement.

3 K. In addition to any other penalty provided
4 pursuant to the provisions of this section, an offender who
5 violates the provisions of Subsection A, B, C or D of this
6 section within three years of a prior conviction pursuant to
7 this section shall, upon conviction for the instant offense, be
8 sentenced to a term of imprisonment of thirty days. The
9 sentence imposed pursuant to this subsection shall not be
10 suspended, deferred or taken under advisement.

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

18 M Upon a second or third conviction pursuant to
19 this section, an offender shall be required to participate in
20 and complete, within a time specified by the court, not less
21 than a thirty-day inpatient substance abuse treatment program
22 approved by the court, not less than a ninety-day outpatient
23 treatment program approved by the court or a drug court program
24 approved by the court. The requirement imposed pursuant to
25 this subsection shall not be suspended, deferred or taken under

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1 advisement.

2 N. Upon a felony conviction pursuant to this
3 section, the corrections department shall provide substance
4 abuse counseling and treatment to the offender.

5 [~~I.~~] O. Upon a first conviction for aggravated
6 driving while under the influence of intoxicating liquor or
7 drugs pursuant to the provisions of Subsection D of this
8 section, as a condition of probation, an offender shall be
9 required to have an ignition interlock device installed and
10 operating for a period of one year on all motor vehicles driven
11 by the offender, pursuant to rules adopted by the bureau.
12 Unless determined by the sentencing court to be indigent, the
13 offender shall pay all costs associated with having an ignition
14 interlock device installed on the appropriate motor vehicles.
15 If an offender drives a motor vehicle that does not have an
16 ignition interlock device installed on the motor vehicle, the
17 offender may be in violation of the terms and conditions of his
18 probation.

19 [~~J.~~] P. Upon a first conviction for driving while
20 under the influence of intoxicating liquor or drugs pursuant to
21 the provisions of Subsection A, B or C of this section, as a
22 condition of probation, an offender may be required to have an
23 ignition interlock device installed and operating for a period
24 of one year on all motor vehicles driven by the offender,
25 pursuant to rules adopted by the bureau. Unless determined by

1 the sentencing court to be indigent, the offender shall pay all
2 costs associated with having an ignition interlock device
3 installed on the appropriate motor vehicles. If an offender
4 drives a motor vehicle that does not have an ignition interlock
5 device installed on the motor vehicle, the offender may be in
6 violation of the terms and conditions of his probation.

7 ~~[K.]~~ Q. Upon any subsequent conviction pursuant to
8 this section, as a condition of probation, a subsequent
9 offender shall be required to have an ignition interlock device
10 installed and operating for a period of at least one year on
11 all motor vehicles driven by the subsequent offender, pursuant
12 to rules adopted by the bureau. Unless determined by the
13 sentencing court to be indigent, the subsequent offender shall
14 pay all costs associated with having an ignition interlock
15 device installed on the appropriate motor vehicles. If a
16 subsequent offender drives a motor vehicle that does not have
17 an ignition interlock device installed on the motor vehicle,
18 the subsequent offender may be in violation of the terms and
19 conditions of his probation.

20 ~~[L.]~~ R. In the case of a first, second or third
21 offense under this section, the magistrate court has concurrent
22 jurisdiction with district courts to try the offender.

23 ~~[M.]~~ S. A conviction pursuant to a municipal or
24 county ordinance in New Mexico or a law of any other
25 jurisdiction, territory or possession of the United States that

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1 is equivalent to New Mexico law for driving while under the
2 influence of intoxicating liquor or drugs, and that prescribes
3 penalties for driving while under the influence of intoxicating
4 liquor or drugs, shall be deemed to be a conviction pursuant to
5 this section for purposes of determining whether a conviction
6 is a second or subsequent conviction.

7 ~~[N-]~~ T. In addition to any other fine or fee
8 ~~[which]~~ that may be imposed pursuant to the conviction or other
9 disposition of the offense under this section, the court may
10 order the offender to pay the costs of any court-ordered
11 screening and treatment programs.

12 ~~[0-]~~ U. As used in this section:

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

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

20 Section 4. Section 66-8-102.1 NMSA 1978 (being Laws 1982,
21 Chapter 102, Section 2, as amended) is amended to read:

22 "66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the
23 complaint or information alleges a violation of Section
24 66-8-102 NMSA 1978, any plea of guilty thereafter entered in
25 satisfaction of the charges shall include at least a plea of

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1 guilty to the violation of one of the subsections of Section
2 66-8-102 NMSA 1978, and no other disposition by plea of guilty
3 to any other charge in satisfaction of the charge shall be
4 authorized if the results of a test performed pursuant to the
5 Implied Consent Act disclose that the blood or breath of the
6 person charged contains an alcohol concentration of:

7 A. eight one hundredths or more if the person
8 charged is twenty-one years of age or older;

9 B. four one hundredths or more if the person
10 charged is driving a commercial motor vehicle; or

11 C. two one hundredths or more if the person charged
12 is less than twenty-one years of age. "

13 Section 5. Section 66-8-110 NMSA 1978 (being Laws 1978,
14 Chapter 35, Section 518, as amended) is amended to read:

15 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
16 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

17 A. The results of a test performed pursuant to the
18 Implied Consent Act may be introduced into evidence in any
19 civil action or criminal action arising out of the acts alleged
20 to have been committed by the person tested for driving a motor
21 vehicle while under the influence of intoxicating liquor or
22 drugs.

23 B. When the blood or breath of the person tested
24 contains:

25 (1) an alcohol concentration of [~~five one-~~

underscored material = new
[bracketed material] = delete

1 ~~hundredths or~~] less than four one hundredths, it shall be
2 presumed that the person was not under the influence of
3 intoxicating liquor [~~or~~] if the person is at least twenty-one
4 years of age;

5 (2) an alcohol concentration of [~~more than~~
6 ~~five one hundredths~~] at least four one hundredths but less than
7 eight one hundredths:

8 (a) no presumption shall be made that
9 the person either was or was not under the influence of
10 intoxicating liquor, [~~However~~] unless the person is driving a
11 commercial motor vehicle or is under twenty-one years of age;
12 and

13 (b) the amount of alcohol in the
14 person's blood may be considered with other competent evidence
15 in determining whether the person was under the influence of
16 intoxicating liquor;

17 (3) an alcohol concentration of four one
18 hundredths or more and the person is driving a commercial
19 vehicle, it shall be presumed that the person is under the
20 influence of intoxicating liquor; or

21 (4) an alcohol concentration of two one
22 hundredths or more and the person is under twenty-one years of
23 age, it shall be presumed that the person is under the
24 influence of intoxicating liquor.

25 C. [~~When the blood or breath of the person tested~~

1 ~~contains an alcohol concentration of eight one hundredths or~~
2 ~~more]~~ The arresting officer shall charge ~~[him]~~ the person
3 tested with a violation of Section 66-8-102 NMSA 1978 when the
4 blood or breath of the person contains an alcohol concentration
5 of:

6 (1) eight one hundredths or more if the person
7 is twenty-one years of age or older;

8 (2) four one hundredths or more if the person
9 is driving a commercial motor vehicle; or

10 (3) two one hundredths or more if the person
11 is less than twenty-one years of age.

12 D. When a person is less than twenty-one years of
13 age and the blood or breath of the person contains an alcohol
14 concentration of two one hundredths or more, the person's
15 driving privileges shall be revoked pursuant to the provisions
16 of the Implied Consent Act.

17 E. The determination of alcohol concentration shall
18 be based on the grams of alcohol in one hundred milliliters of
19 blood or the grams of alcohol in two hundred ten liters of
20 breath.

21 F. A breath test machine certified by the
22 scientific laboratory division of the department of health is
23 presumed to measure the breath sample based on the grams of
24 alcohol in two hundred ten liters of breath.

25 ~~[F.]~~ G. The presumptions in Subsection B of this

1 section do not limit the introduction of other competent
2 evidence concerning whether the person was under the influence
3 of intoxicating liquor.

4 [~~G.~~] H. If a person is convicted of driving a motor
5 vehicle while under the influence of intoxicating liquor, the
6 trial judge shall be required to inquire into the past driving
7 record of the person before sentence is entered in the matter."

8 Section 6. Section 66-8-111 NMSA 1978 (being Laws 1978,
9 Chapter 35, Section 519, as amended) is amended to read:

10 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
11 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --

12 A. If a person under arrest for violation of an
13 offense enumerated in the Motor Vehicle Code refuses upon
14 request of a law enforcement officer to submit to chemical
15 tests designated by the law enforcement agency as provided in
16 Section 66-8-107 NMSA 1978, none shall be administered except
17 when a municipal judge, magistrate or district judge issues a
18 search warrant authorizing chemical tests as provided in
19 Section 66-8-107 NMSA 1978 upon his finding in a law
20 enforcement officer's written affidavit that there is probable
21 cause to believe that the person has driven a motor vehicle
22 while under the influence of alcohol or a controlled substance,
23 thereby causing the death or great bodily injury of another
24 person, or there is probable cause to believe that the person
25 has committed a felony while under the influence of alcohol or

1 a controlled substance and that chemical tests as provided in
 2 Section 66-8-107 NMSA 1978 will produce material evidence in a
 3 felony prosecution.

4 B. The department, upon receipt of a statement
 5 signed under penalty of perjury from a law enforcement officer
 6 stating the officer's reasonable grounds to believe the
 7 arrested person had been driving a motor vehicle within this
 8 state while under the influence of intoxicating liquor or
 9 [~~drug~~] drugs and that, upon his request, the person refused to
 10 submit to a chemical test after being advised that failure to
 11 submit could result in revocation of his privilege to drive,
 12 shall revoke the person's New Mexico driver's license or any
 13 nonresident operating privilege for a period of one year or
 14 until all conditions for license reinstatement are met,
 15 whichever is later.

16 C. The department, upon receipt of a statement
 17 signed under penalty of perjury from a law enforcement officer
 18 stating the officer's reasonable grounds to believe the
 19 arrested person had been driving a motor vehicle within this
 20 state while under the influence of intoxicating liquor and that
 21 the person submitted to chemical testing pursuant to Section
 22 66-8-107 NMSA 1978 and the test results indicated an alcohol
 23 concentration in the person's blood or breath of eight one
 24 hundredths or more [~~in the person's blood or breath~~] if the
 25 person is twenty-one years of age or older, four one hundredths

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1 or more if the person is driving a commercial motor vehicle or
2 [~~an alcohol concentration of~~] two one hundredths or more [~~in~~
3 ~~the person's blood or breath~~] if the person is less than
4 twenty-one years of age, shall revoke the person's license or
5 permit to drive or his nonresident operating privilege for a
6 period of:

7 (1) ninety days or until all conditions for
8 license reinstatement are met, whichever is later, if the
9 person is twenty-one years of age or older;

10 (2) six months or until all conditions for
11 license reinstatement are met, whichever is later, if the
12 person is less than twenty-one years of age and has not
13 previously had his license revoked pursuant to the provisions
14 of this section, notwithstanding any provision of the
15 Children's Code; or

16 (3) one year or until all conditions for
17 license reinstatement are met, whichever is later, if the
18 person has previously had his license revoked pursuant to the
19 provisions of this section, notwithstanding the provisions of
20 Paragraph (1) or (2) of this subsection or any provision of the
21 Children's Code.

22 D. The determination of alcohol concentration shall
23 be based on the grams of alcohol in one hundred milliliters of
24 blood or the grams of alcohol in two hundred ten liters of
25 breath.

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1 E. If the person subject to the revocation
2 provisions of this section is a resident or will become a
3 resident within one year and is without a license to operate a
4 motor vehicle in this state, the department shall deny the
5 issuance of a license to him for the appropriate period of time
6 as provided in Subsections B and C of this section.

7 F. A statement signed by a law enforcement officer,
8 pursuant to the provisions of Subsection B or C of this
9 section, shall be sworn to by the officer or shall contain a
10 declaration substantially to the effect: "I hereby declare
11 under penalty of perjury that the information given in this
12 statement is true and correct to the best of my knowledge.". A
13 law enforcement officer who signs a statement, knowing that the
14 statement is untrue in any material issue or matter, is guilty
15 of perjury as provided in Section 66-5-38 NMSA 1978."

16 Section 7. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
17 Chapter 72, Section 7, as amended) is amended to read:

18 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
19 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
20 HEARING.--On behalf of the department, a law enforcement
21 officer requesting a chemical test or directing the
22 administration of a chemical test pursuant to Section 66-8-107
23 NMSA 1978 shall serve immediate written notice of revocation
24 and of right to a hearing on a person who refuses to permit
25 chemical testing or on a person who submits to a chemical test

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1 the results of which indicate an alcohol concentration in the
2 person's blood or breath of eight one hundredths or more [~~in~~
3 ~~the person's blood or breath~~] if the person is twenty-one years
4 of age or older, four one hundredths or more if the person is
5 driving a commercial motor vehicle or [~~an alcohol concentration~~
6 ~~of~~] two one hundredths or more [~~in the person's blood or~~
7 ~~breath~~] if the person is less than twenty-one years of age.
8 Upon serving notice of revocation, the law enforcement officer
9 shall take the license or permit of the driver, if any, and
10 issue a temporary license valid for twenty days or, if the
11 driver requests a hearing pursuant to Section 66-8-112 NMSA
12 1978, valid until the date the department issues the order
13 following that hearing; provided that [~~no~~] a temporary license
14 shall not be issued to a driver without a valid license or
15 permit. The law enforcement officer shall send the person's
16 driver's license to the department along with the signed
17 statement required pursuant to Section 66-8-111 NMSA 1978. "

18 Section 8. Section 66-8-112 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 520, as amended) is amended to read:

20 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
21 NOTICE-- EFFECTIVE DATE-- HEARING-- HEARING COSTS-- REVIEW. --

22 A. The effective date of revocation pursuant to
23 Section 66-8-111 NMSA 1978 is twenty days after notice of
24 revocation or, if the person whose driver's license or
25 privilege to drive is being revoked or denied requests a

1 hearing pursuant to this section, the date that the department
2 issues the order following that hearing. The date of notice of
3 revocation is:

4 (1) the date the law enforcement officer
5 serves written notice of revocation and of right to a hearing
6 pursuant to Section 66-8-111.1 NMSA 1978; or

7 (2) in the event the results of a chemical
8 test cannot be obtained immediately, the date notice of
9 revocation is served by mail by the department. This notice of
10 revocation and of right to a hearing shall be sent by certified
11 mail and shall be deemed to have been served on the date borne
12 by the return receipt showing delivery, refusal of the
13 addressee to accept delivery or attempted delivery of the
14 notice at the address obtained by the arresting law enforcement
15 officer or on file with the department.

16 B. Within ten days after receipt of notice of
17 revocation pursuant to Subsection A of this section, a person
18 whose license or privilege to drive is revoked or denied or the
19 person's agent may request a hearing. The hearing request
20 shall be made in writing and shall be accompanied by a payment
21 of twenty-five dollars (\$25.00) or a sworn statement of
22 indigency on a form provided by the department. A standard for
23 indigency shall be established pursuant to regulations adopted
24 by the department. Failure to request a hearing within ten
25 days shall result in forfeiture of the person's right to a

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1 hearing. Any person less than eighteen years of age who fails
2 to request a hearing within ten days shall have notice of
3 revocation sent to his parent, guardian or custodian by the
4 department. A date for the hearing shall be set by the
5 department, if practical, within thirty days after receipt of
6 notice of revocation. The hearing shall be held in the county
7 in which the offense for which the person was arrested took
8 place.

9 C. The department may postpone or continue any
10 hearing on its own motion or upon application from the person
11 and for good cause shown for a period not to exceed ninety days
12 from the date of notice of revocation and provided that the
13 department extends the validity of the temporary license for
14 the period of the postponement or continuation.

15 D. At the hearing, the department or its agent may
16 administer oaths and may issue subpoenas for the attendance of
17 witnesses and the production of relevant books and papers.

18 E. The hearing shall be limited to the issues:

19 (1) whether the law enforcement officer had
20 reasonable grounds to believe that the person had been driving
21 a motor vehicle within this state while under the influence of
22 intoxicating liquor or drugs;

23 (2) whether the person was arrested;

24 (3) whether this hearing is held no later than
25 ninety days after notice of revocation; and either

1 (4) whether:

2 (a) [~~whether~~] the person refused to
3 submit to a test upon request of the law enforcement officer;
4 and

5 (b) [~~whether~~] the law enforcement
6 officer advised that the failure to submit to a test could
7 result in revocation of the person's privilege to drive; or

8 (5) whether:

9 (a) [~~whether~~] the chemical test was
10 administered pursuant to the provisions of the Implied Consent
11 Act; and

12 (b) the test results indicated an
13 alcohol concentration in the person's blood or breath of eight
14 one hundredths or more [~~in the person's blood or breath~~] if the
15 person is twenty-one years of age or older, four one hundredths
16 or more if the person is driving a commercial motor vehicle or
17 [~~an alcohol concentration of~~] two one hundredths or more [~~in~~
18 ~~the person's blood or breath~~] if the person is less than
19 twenty-one years of age.

20 F. The department shall enter an order sustaining
21 the revocation or denial of the person's license or privilege
22 to drive if the department finds that:

23 (1) the law enforcement officer had reasonable
24 grounds to believe the driver was driving a motor vehicle while
25 under the influence of intoxicating liquor or [~~drug~~] drugs;

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underscored material = new
[bracketed material] = delete

1 (2) the person was arrested;

2 (3) this hearing is held no later than ninety
3 days after notice of revocation; and

4 (4) either:

5 (a) the person [~~either~~] refused to
6 submit to the test upon request of the law enforcement officer
7 after the law enforcement officer advised him that his failure
8 to submit to the test could result in the revocation of his
9 privilege to drive; or

10 (b) that a chemical test was
11 administered pursuant to the provisions of the Implied Consent
12 Act and the test results indicated an alcohol concentration in
13 the person's blood or breath of eight one hundredths or more if
14 the person is twenty-one years of age or older, four one
15 hundredths or more if the person is driving a commercial motor
16 vehicle or [~~an alcohol concentration of~~] two one hundredths or
17 more if the person is less than twenty-one years of age.

18 G. If one or more of the elements set forth in
19 Paragraphs (1) through (4) of [~~this~~] Subsection F of this
20 section are not found by the department, the person's license
21 shall not be revoked.

22 [~~G.~~] H. A person adversely affected by an order of
23 the department may seek review within thirty days in the
24 district court in the county in which the offense for which the
25 person was arrested took place. The district court, upon

1 thirty days' written notice to the department, shall hear the
2 case. On review, it is for the court to determine only whether
3 reasonable grounds exist for revocation or denial of the
4 person's license or privilege to drive based on the record of
5 the administrative proceeding.

6 [H-] I. Any person less than eighteen years of age
7 shall have results of his hearing forwarded by the department
8 to his parent, guardian or custodian. "

9 Section 9. REPEAL. --Section 66-5-68.1 NMSA 1978 (being
10 Laws 1992, Chapter 13, Section 9) is repealed.

11 Section 10. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect immediately.