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SENATE BILL 266

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

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING THAT AN OFFENDER HAVE AN IGNITION INTERLOCK DEVICE INSTALLED ON AN APPROPRIATE MOTOR VEHICLE; PROVIDING FOR INSTALLATION OF AN IGNITION INTERLOCK DEVICE AS A CONDITION OF RELEASE ON BAIL; MAKING CHANGES TO THE ADMINISTRATION OF THE INTERLOCK DEVICE FUND; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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) is amended to read:

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

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 a person who has an alcohol
7 concentration of eight one hundredths or more in his blood or
8 breath to drive a vehicle within this state.

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

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

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

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

21 E. ~~Every~~ A person under first conviction pursuant
22 to this section shall be punished, notwithstanding the
23 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
24 not more than ninety days or by a fine of not more than five
25 hundred dollars (\$500), or both; provided that if the sentence

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1 is suspended in whole or in part or deferred, the period of
2 probation may extend beyond ninety days but shall not exceed
3 one year. Upon a first conviction pursuant to this section, an
4 offender may be sentenced to not less than forty-eight hours of
5 community service or a fine of three hundred dollars (\$300).

6 The offender shall be ordered by the court to participate in
7 and complete a screening program described in Subsection H of
8 this section and to attend a driver rehabilitation program for
9 alcohol or drugs, also known as a "DWI school", approved by the
10 bureau and also may be required to participate in other
11 rehabilitative services as the court shall determine to be
12 necessary. In addition to those penalties, when an offender
13 commits aggravated driving while under the influence of
14 intoxicating liquor or drugs, the offender shall be sentenced
15 to not less than forty-eight consecutive hours in jail. If an
16 offender fails to complete, within a time specified by the
17 court, any community service, screening program, treatment
18 program or DWI school ordered by the court, the offender shall
19 be sentenced to not less than an additional forty-eight
20 consecutive hours in jail. Any jail sentence imposed pursuant
21 to this subsection for failure to complete, within a time
22 specified by the court, any community service, screening
23 program, treatment program or DWI school ordered by the court
24 or for aggravated driving while under the influence of
25 intoxicating liquor or drugs shall not be suspended, deferred

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1 or taken under advisement. On a first conviction pursuant to
2 this section, any time spent in jail for the offense prior to
3 the conviction for that offense shall be credited to any term
4 of imprisonment fixed by the court. A deferred sentence
5 pursuant to this subsection shall be considered a first
6 conviction for the purpose of determining subsequent
7 convictions.

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

17 (1) upon a second conviction, [~~each~~] an
18 offender shall be sentenced to a jail term of not less than
19 seventy-two consecutive hours, forty-eight hours of community
20 service and a fine of five hundred dollars (\$500). In addition
21 to those penalties, when an offender commits aggravated driving
22 while under the influence of intoxicating liquor or drugs, the
23 offender shall be sentenced to a jail term of not less than
24 ninety-six consecutive hours. If an offender fails to
25 complete, within a time specified by the court, any community

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1 service, screening program or treatment program ordered by the
2 court, the offender shall be sentenced to not less than an
3 additional seven consecutive days in jail. A penalty imposed
4 pursuant to this paragraph shall not be suspended or deferred
5 or taken under advisement; and

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

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

24 H. Upon any conviction pursuant to this section, an
25 offender shall be required to participate in and complete,

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

6 I. Upon a first conviction for aggravated driving
7 while under the influence of intoxicating liquor or drugs
8 pursuant to the provisions of Subsection D of this section,
9 as a condition of probation, an offender shall be required to
10 have an ignition interlock device installed and operating for a
11 period of one year on ~~[all motor vehicles driven by the~~
12 ~~offender]~~ the motor vehicle driven by the offender when he was
13 arrested for driving while under the influence of intoxicating
14 liquor or drugs, a motor vehicle owned by the offender or a
15 motor vehicle that the offender has permission to operate,
16 pursuant to rules adopted by the bureau. ~~[Unless determined by~~
17 ~~the sentencing court to be indigent]~~ The offender shall pay all
18 costs associated with having an ignition interlock device
19 installed on the appropriate motor ~~[vehicles]~~ vehicle, unless
20 he is determined to be indigent pursuant to a standard adopted
21 by the department of finance and administration. If an
22 offender drives a motor vehicle that does not have an ignition
23 interlock device installed on the motor vehicle, the offender
24 may be in violation of the terms and conditions of his
25 probation.

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1 J. Upon a first conviction for driving while under
2 the influence of intoxicating liquor or drugs pursuant to the
3 provisions of Subsection A, B or C of this section, as a
4 condition of probation, an offender may be required to have an
5 ignition interlock device installed and operating for a period
6 of one year on ~~[all motor vehicles driven by the offender]~~ the
7 motor vehicle driven by the offender when he was arrested for
8 driving while under the influence of intoxicating liquor or
9 drugs, a motor vehicle owned by the offender or a motor vehicle
10 that the offender has permission to operate, pursuant to rules
11 adopted by the bureau. ~~[Unless determined by the sentencing~~
12 ~~court to be indigent]~~ The offender shall pay all costs
13 associated with having an ignition interlock device installed
14 on the appropriate motor ~~[vehicles]~~ vehicle, unless he is
15 determined to be indigent pursuant to a standard adopted by the
16 department of finance and administration. If an offender
17 drives a motor vehicle that does not have an ignition interlock
18 device installed on the motor vehicle, the offender may be in
19 violation of the terms and conditions of his probation.

20 K. Upon any subsequent conviction pursuant to this
21 section, as a condition of probation, a subsequent offender
22 shall be required to have an ignition interlock device
23 installed and operating for a period of at least one year on
24 ~~[all motor vehicles driven by the subsequent offender]~~ the
25 motor vehicle driven by the offender when he was arrested for

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1 driving while under the influence of intoxicating liquor or
2 drugs, a motor vehicle owned by the offender or a motor vehicle
3 that the offender has permission to operate, pursuant to rules
4 adopted by the bureau. [~~Unless determined by the sentencing~~
5 ~~court to be indigent~~] The subsequent offender shall pay all
6 costs associated with having an ignition interlock device
7 installed on the appropriate motor [~~vehicles~~] vehicle, unless
8 he is determined to be indigent pursuant to a standard adopted
9 by the department of finance and administration. If a
10 subsequent offender drives a motor vehicle that does not have
11 an ignition interlock device installed on the motor vehicle,
12 the subsequent offender may be in violation of the terms and
13 conditions of his probation.

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

17 M A conviction pursuant to 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 equivalent
20 to New Mexico law for driving while under the influence of
21 intoxicating liquor or drugs, and that prescribes penalties for
22 driving while under the influence of intoxicating liquor or
23 drugs, shall be deemed to be a conviction pursuant to this
24 section for purposes of determining whether a conviction is a
25 second or subsequent conviction.

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

6 0. As a condition of release on bail following a
7 person's arrest for driving while under the influence of
8 intoxicating liquor or drugs, the presiding court may require
9 the person to have an ignition interlock device installed on
10 the motor vehicle driven by the person when he was arrested or
11 on another motor vehicle driven more frequently by the person.

12 [~~0.-~~] P. 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 2. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
21 Chapter 82, Section 2) is amended to read:

22 "66-8-102.3. IMPOSING A FEE--CREATING A FUND.--

23 A. A fee is imposed on all persons who provide
24 ignition interlock devices to persons convicted of driving
25 while under the influence of intoxicating liquor or drugs

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1 pursuant to Section 66-8-102 NMSA 1978 in the amount of ten
2 percent of the amount charged to lease, install, service and
3 remove each ignition interlock device [~~to~~] for a person
4 convicted pursuant to that section and shall be paid monthly to
5 the local government division of the department of finance and
6 administration.

7 B. The "interlock device fund" is created in the
8 state treasury. The fee imposed pursuant to Subsection A of
9 this section shall be distributed to the fund by the local
10 government division of the department of finance and
11 administration.

12 C. All money in the interlock device fund is
13 appropriated to the local government division of the department
14 of finance and administration to cover the costs of installing
15 and [~~leasing~~] removing ignition interlock devices [to] for
16 indigent people who are required, pursuant to convictions under
17 Section 66-8-102 NMSA 1978, to install those devices in their
18 vehicles. [~~Indigency shall be determined by the sentencing~~
19 ~~court.~~]

20 D. Any balance remaining in the interlock device
21 fund shall not revert to the general fund at the end of any
22 fiscal year.

23 E. The interlock device fund shall be administered
24 by the local government division of the department of finance
25 and administration. The department of finance and

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1 administration shall establish a standard for determining
2 indigency. The standard shall not be less than one hundred
3 thirty percent of the eligibility standard for public
4 assistance. "

5 Section 3. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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