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**HOUSE BILL 282**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**W. Ken Martinez**

**AN ACT**

**RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING ALL OFFENDERS TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED.**

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

**B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of**

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1 safely driving a vehicle to drive a vehicle within this state.

2 C. It is unlawful for:

3 (1) a person who has an alcohol concentration  
4 of eight one hundredths or more in his blood or breath to drive  
5 a vehicle within this state; or

6 (2) a person who has an alcohol concentration  
7 of four one hundredths or more in his blood or breath to drive  
8 a commercial motor 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. A person under first conviction pursuant to this  
22 section shall be punished, notwithstanding the provisions of  
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
24 ninety days or by a fine of not more than five hundred dollars  
25 (\$500), or both; provided that if the sentence is suspended in

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1 whole or in part or deferred, the period of probation may  
2 extend beyond ninety days but shall not exceed one year. Upon  
3 a first conviction pursuant to this section, an offender may be  
4 sentenced to not less than forty-eight hours of community  
5 service or a fine of three hundred dollars (\$300). The  
6 offender shall be ordered by the court to participate in and  
7 complete a screening program described in Subsection K of this  
8 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 or fails to comply  
19 with any other condition of probation, the offender shall be  
20 sentenced to not less than an additional forty-eight  
21 consecutive hours in jail. Notwithstanding any provision of  
22 law to the contrary, if an offender's sentence was suspended or  
23 deferred in whole or in part, and the offender violates any  
24 condition of probation, the court may impose any sentence that  
25 the court could have originally imposed and credit shall not be

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

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

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

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

25 G. Upon a fourth conviction pursuant to this

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1 section, an offender is guilty of a fourth degree felony and,  
2 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
3 shall be sentenced to a term of imprisonment of eighteen  
4 months, six months of which shall not be suspended, deferred or  
5 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, deferred or taken under  
11 advisement.

12 I. Upon a sixth conviction pursuant to this  
13 section, an offender is guilty of a third 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, deferred or  
17 taken under advisement.

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

24 K. 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 approved by the department of finance and  
3 administration and, if necessary, a treatment program approved  
4 by the court. The requirement imposed pursuant to this  
5 subsection shall not be suspended, deferred or taken under  
6 advisement.

7 L. Upon a second or third conviction pursuant to  
8 this section, an offender shall be required to participate in  
9 and complete, within a time specified by the court:

10 (1) not less than a twenty-eight-day  
11 inpatient, residential or in-custody substance abuse treatment  
12 program approved by the court;

13 (2) not less than a ninety-day outpatient  
14 treatment program approved by the court;

15 (3) a drug court program approved by the  
16 court; or

17 (4) any other substance abuse treatment  
18 program approved by the court.

19 The requirement imposed pursuant to this subsection shall  
20 not be suspended, deferred or taken under advisement.

21 M Upon a felony conviction pursuant to this  
22 section, the corrections department shall provide substance  
23 abuse counseling and treatment to the offender in its custody.  
24 While the offender is on probation or parole under its  
25 supervision, the corrections department shall also provide

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1 substance abuse counseling and treatment to the offender or  
2 shall require the offender to obtain substance abuse counseling  
3 and treatment.

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

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

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

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

19 N. Upon a conviction pursuant to this section, an  
20 offender shall be required to have an ignition interlock device  
21 installed and operating on all motor vehicles driven by the  
22 offender, pursuant to rules adopted by the bureau. Unless  
23 determined by the sentencing court to be indigent, the offender  
24 shall pay all costs associated with having an ignition  
25 interlock device installed on the appropriate motor vehicles.

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1 The offender shall operate only those vehicles equipped with  
2 ignition interlock devices for:

3 (1) a period of one year, for a first  
4 offender;

5 (2) a period of two years, for a second  
6 conviction pursuant to this section;

7 (3) a period of three years, for a third  
8 conviction pursuant to this section; or

9 (4) the remainder of the offender's life, for  
10 a fourth or subsequent conviction pursuant to this section.

11 0. Five years from the date of conviction and every  
12 five years thereafter, a fourth or subsequent offender may  
13 apply to a district court for removal of the ignition interlock  
14 device requirement provided in this section. A district court  
15 may, for good cause shown, remove the ignition interlock device  
16 requirement; provided that the offender has not been  
17 subsequently convicted of driving a motor vehicle while under  
18 the influence of intoxicating liquor or drugs.

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

22 ~~[R.]~~ Q. A conviction pursuant to a municipal or  
23 county ordinance in New Mexico or a law of any other  
24 jurisdiction, territory or possession of the United States or  
25 of a tribe, when that ordinance or law is equivalent to New

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

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

12 ~~[F.]~~ S. 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;

18 (2) "commercial motor vehicle" means a motor  
19 vehicle or combination of motor vehicles used in commerce to  
20 transport passengers or property if the motor vehicle:

21 (a) has a gross combination weight  
22 rating of more than twenty-six thousand pounds inclusive of a  
23 towed unit with a gross vehicle weight rating of more than ten  
24 thousand pounds;

25 (b) has a gross vehicle weight rating of

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1 more than twenty-six thousand pounds;

2 (c) is designed to transport sixteen or  
3 more passengers, including the driver; or

4 (d) is of any size and is used in the  
5 transportation of hazardous materials, which requires the motor  
6 vehicle to be placarded under applicable law; and

7 (3) "conviction" means an adjudication of  
8 guilt and does not include imposition of a sentence."