

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILLS 3 & 5

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; INCREASING PENALTIES AND FINES FOR DWI OFFENDERS;
PROVIDING FOR DWI COMMUNITY CUSTODY PROGRAMS.

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

Section 1. A new section of Chapter 33 NMSA 1978 is
enacted to read:

"~~[NEW MATERIAL]~~ DWI COMMUNITY CUSTODY PROGRAM.--

A. The corrections department, local jails and
detention facilities may establish DWI community custody
programs pursuant to this section and in accordance with rules
promulgated by the corrections department.

B. A DWI community custody program is an
individualized form of supervised community custody for DWI
offenders that includes prescribed activities and restricted

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underscored material = new
[bracketed material] = delete

1 daily movements. Compliance shall be verified by an electronic
2 monitoring or surveillance system in place twenty-four hours a
3 day, seven days a week. In addition, an alcohol monitoring
4 component is required to determine compliance with restrictions
5 against alcohol consumption. Offenders may also be subject to
6 random drug and alcohol testing.

7 C. Offenders participating in a DWI community
8 custody program shall agree in writing to abide by the terms
9 and conditions of their individualized program, violation of
10 which shall be referred to correctional administrators for
11 corrective action that shall include the offender's return to
12 serve the mandatory minimum term of incarceration or a longer
13 term up to the remainder of the sentence in accordance with the
14 judgment of the court.

15 D. Correctional administrators shall follow the
16 orders of the sentencing judge unless resources are unavailable
17 or the offender does not meet the eligibility criteria for a
18 DWI community custody program, in which case, the alternative
19 shall be applied. Correctional administrators shall ensure
20 that the caseloads of officers involved in the DWI community
21 custody program allow for intensive monitoring and supervision
22 of the offenders.

23 E. The corrections department shall periodically
24 review and update the rules applicable to DWI community custody
25 programs and shall report to the appropriate interim

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1 legislative committee any DWI community custody program that
2 does not meet the requirements established by rule.

3 F. As used in this section, "correctional
4 administrators" means jail or detention facility administrators
5 or corrections department administrators."

6 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
7 Chapter 139, Section 54, as amended) is amended to read:

8 "66-8-102. [~~PERSONS~~] DRIVING UNDER THE INFLUENCE OF
9 INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING [~~WHILE~~] UNDER
10 THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--[~~PENALTY~~]
11 PENALTIES.--

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

15 B. It is unlawful for a person who is under the
16 influence of any drug to a degree that renders the person
17 incapable of safely driving a vehicle to drive a vehicle within
18 this state.

19 C. It is unlawful for:

20 (1) a person to drive a vehicle in this state
21 if the person has an alcohol concentration of eight one
22 hundredths or more in the person's blood or breath within three
23 hours of driving the vehicle and the alcohol concentration
24 results from alcohol consumed before or while driving the
25 vehicle; or

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1 (2) a person to drive a commercial motor
2 vehicle in this state if the person has an alcohol
3 concentration of four one hundredths or more in the person's
4 blood or breath within three hours of driving the commercial
5 motor vehicle and the alcohol concentration results from
6 alcohol consumed before or while driving the vehicle.

7 D. Aggravated driving [~~while~~] under the influence
8 of intoxicating liquor or drugs consists of [~~a person who~~]:

9 (1) [~~drives~~] driving a vehicle in this state
10 [~~and has~~] with an alcohol concentration of sixteen one
11 hundredths or more in the [~~person's~~] driver's blood or breath
12 within three hours of driving the vehicle and the alcohol
13 concentration results from alcohol consumed before or while
14 driving the vehicle;

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

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

24 E. A [~~person under~~] first conviction pursuant to
25 this section shall be punished, notwithstanding the provisions

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1 of Section 31-18-13 NMSA 1978, by imprisonment for not more
 2 than ninety days ~~[or]~~ and by a fine of ~~[not more than five~~
 3 ~~hundred dollars (\$500), or both]~~ one thousand dollars (\$1,000);
 4 provided that if the sentence is suspended in whole or in part
 5 or deferred, the period of probation may extend beyond ninety
 6 days but shall not exceed one year. ~~[Upon a first conviction~~
 7 ~~pursuant to this section]~~ In addition, an offender shall be
 8 sentenced to:

9 (1) a minimum jail term of seventy-two
 10 consecutive hours or, for aggravated driving under the
 11 influence of intoxicating liquor or drugs, a minimum jail term
 12 of one hundred twenty consecutive hours. The jail term imposed
 13 pursuant to this paragraph is mandatory and shall not be
 14 suspended, deferred or taken under advisement; provided that,
 15 in lieu of the mandatory jail term, the offender may be
 16 sentenced to a minimum of thirty days in a DWI community
 17 custody program or, for aggravated driving under the influence
 18 of intoxicating liquor or drugs, a minimum of fifty days in a
 19 DWI community custody program. A violation of the conditions
 20 of the program shall result in the imposition of the mandatory
 21 minimum term of incarceration;

22 (2) not less than twenty-four hours of
 23 community service ~~[In addition, the offender may be required to~~
 24 ~~pay a fine of three hundred dollars (\$300). The offender shall~~
 25 ~~be ordered by the court to];~~

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1 (3) participate in and complete a screening
2 program described in Subsection [K] M of this section; ~~[and to]~~

3 (4) attend a driver rehabilitation program for
4 alcohol or drugs, also known as a "DWI school", approved by the
5 bureau; and ~~[also may be required to]~~

6 (5) participate in other rehabilitative
7 services as the court shall determine to be necessary. ~~[In~~
8 ~~addition to those penalties, when an offender commits~~
9 ~~aggravated driving while under the influence of intoxicating~~
10 ~~liquor or drugs, the offender shall be sentenced to not less~~
11 ~~than forty-eight consecutive hours in jail. If an offender~~
12 ~~fails to complete, within a time specified by the court, any~~
13 ~~community service, screening program, treatment program or DWI~~
14 ~~school ordered by the court or fails to comply with any other~~
15 ~~condition of probation, the offender shall be sentenced to not~~
16 ~~less than an additional forty-eight consecutive hours in jail.~~
17 ~~Any jail sentence imposed pursuant to this subsection for~~
18 ~~failure to complete, within a time specified by the court, any~~
19 ~~community service, screening program, treatment program or DWI~~
20 ~~school ordered by the court or for aggravated driving while~~
21 ~~under the influence of intoxicating liquor or drugs shall not~~
22 ~~be suspended, deferred or taken under advisement.]~~

23 F. On a first conviction pursuant to this section,
24 any time spent in jail for the offense prior to the conviction
25 for that offense shall be credited to any term of imprisonment

1 fixed by the court. A deferred sentence pursuant to Subsection
2 E of this [subsection] section shall be considered a first
3 conviction for the purpose of determining subsequent
4 convictions.

5 ~~[F.]~~ G. A second ~~[or third]~~ conviction pursuant to
6 this section shall be punished, notwithstanding the provisions
7 of Section 31-18-13 NMSA 1978, by imprisonment for not more
8 than three hundred sixty-four days ~~[or]~~ and by a fine of ~~[not~~
9 ~~more than one thousand dollars (\$1,000), or both]~~ two thousand
10 dollars (\$2,000); provided that if the sentence is suspended in
11 whole or in part, the period of probation may extend beyond one
12 year but shall not exceed five years. Notwithstanding any
13 provision of law to the contrary for suspension or deferment of
14 execution of a sentence, ~~[(+)]~~ upon a second conviction, an
15 offender shall be:

16 (1) sentenced to a minimum jail term of ~~[not~~
17 ~~less than ninety-six consecutive hours]~~ seven consecutive days
18 or, for aggravated driving under the influence of intoxicating
19 liquor or drugs, a minimum jail term of fifteen consecutive
20 days. The jail term imposed pursuant to this paragraph is
21 mandatory and shall not be suspended, deferred or taken under
22 advisement; provided that, in lieu of the mandatory jail term,
23 the offender may be sentenced to a minimum of seventy days in a
24 DWI community custody program or, for aggravated driving under
25 the influence of intoxicating liquor or drugs, a minimum of one

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1 hundred fifty days in a DWI community custody program. A
2 violation of the conditions of the program shall result in the
3 imposition of the mandatory minimum term of incarceration;

4 (2) sentenced to not less than forty-eight
5 hours of community service; and [a fine of five hundred dollars
6 (\$500). In addition to those penalties, when an offender
7 commits aggravated driving while under the influence of
8 intoxicating liquor or drugs, the offender shall be sentenced
9 to a jail term of not less than ninety-six consecutive hours.]

10 (3) required to participate in and complete,
11 which requirement shall not be suspended, deferred or taken
12 under advisement, within a time specified by the court:

13 (a) not less than a twenty-eight-day
14 inpatient, residential or in-custody substance abuse treatment
15 program approved by the court;

16 (b) not less than a ninety-day
17 outpatient treatment program approved by the court;

18 (c) a drug court program approved by the
19 court; or

20 (d) any other substance abuse treatment
21 program approved by the court.

22 H. If an offender with a first or second conviction
23 fails to complete, within a time specified by the court, any
24 community service, screening program, [or] treatment program or
25 DWI school ordered by the court, the offender shall be

1 sentenced to the following mandatory jail terms that shall not
2 be suspended, deferred or taken under advisement:

3 (1) for a first conviction, not less than an
4 additional forty-eight consecutive hours in jail; and

5 (2) for a second conviction, not less than an
6 additional seven consecutive days in jail. [A penalty imposed
7 pursuant to this paragraph shall not be suspended or deferred
8 or taken under advisement; and

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

23 ~~G.]~~ I. Upon a ~~[fourth]~~ third conviction pursuant to
24 this section, an offender is guilty of a fourth degree felony
25 and, notwithstanding the provisions of Section 31-18-15 NMSA

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1 1978, shall be ~~[sentenced to]~~ punished by a fine of five
2 thousand dollars (\$5,000) and a term of imprisonment of
3 eighteen months, six months of which are mandatory and shall
4 not be suspended, deferred or taken under advisement; provided
5 that, three months of the mandatory incarceration may be spent
6 in a DWI community custody program. A violation of the
7 conditions of the program shall result in the imposition of the
8 entire mandatory term of incarceration.

9 [H.] J. Upon a ~~[fifth]~~ fourth conviction pursuant
10 to this section, an offender is guilty of a fourth degree
11 felony and, notwithstanding the provisions of Section 31-18-15
12 NMSA 1978, shall be ~~[sentenced to]~~ punished by a fine of five
13 thousand dollars (\$5,000) and a term of imprisonment of two
14 years, one year of which is mandatory and shall not be
15 suspended, deferred or taken under advisement; provided that,
16 six months of the mandatory incarceration may be spent in a DWI
17 community custody program. A violation of the conditions of
18 the program shall result in the imposition of the entire
19 mandatory term of incarceration.

20 [I.] K. Upon a ~~[sixth]~~ fifth conviction pursuant to
21 this section, an offender is guilty of a third degree felony
22 and, notwithstanding the provisions of Section 31-18-15 NMSA
23 1978, shall be ~~[sentenced to]~~ punished by a fine of five
24 thousand dollars (\$5,000) and a term of imprisonment of thirty
25 months, eighteen months of which are mandatory and shall not be

1 suspended, deferred or taken under advisement; provided that,
2 nine months of the mandatory incarceration may be spent in a
3 DWI community custody program. A violation of the conditions
4 of the program shall result in the imposition of the entire
5 mandatory term of incarceration.

6 ~~[J.]~~ L. Upon a ~~[seventh]~~ sixth or subsequent
7 conviction pursuant to this section, an offender is guilty of a
8 third degree felony and, notwithstanding the provisions of
9 Section 31-18-15 NMSA 1978, shall be ~~[sentenced to]~~ punished by
10 a fine of five thousand dollars (\$5,000) and a term of
11 imprisonment of three years, two years of which are mandatory
12 and shall not be suspended, deferred or taken under advisement;
13 provided that, one year of the mandatory incarceration may be
14 spent in a DWI community custody program. A violation of the
15 conditions of the program shall result in the imposition of the
16 entire mandatory term of incarceration.

17 ~~[K.]~~ M. Upon any conviction pursuant to this
18 section, an offender shall be required to participate in and
19 complete, within a time specified by the court, an alcohol or
20 drug abuse screening program approved by the department of
21 finance and administration and, if necessary, a treatment
22 program approved by the court. The requirement imposed
23 pursuant to this subsection shall not be suspended, deferred or
24 taken under advisement.

25 ~~[L. Upon a second or third conviction pursuant to~~

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1 ~~this section, an offender shall be required to participate in~~
2 ~~and complete, within a time specified by the court:~~

3 ~~(1) not less than a twenty-eight-day~~
4 ~~inpatient, residential or in-custody substance abuse treatment~~
5 ~~program approved by the court;~~

6 ~~(2) not less than a ninety-day outpatient~~
7 ~~treatment program approved by the court;~~

8 ~~(3) a drug court program approved by the~~
9 ~~court; or~~

10 ~~(4) any other substance abuse treatment~~
11 ~~program approved by the court.~~

12 ~~The requirement imposed pursuant to this subsection shall~~
13 ~~not be suspended, deferred or taken under advisement.~~

14 ~~M.]~~ N. Upon a felony conviction pursuant to this
15 section, the corrections department shall provide substance
16 abuse counseling and treatment to the offender in its custody.
17 While the offender is on probation or parole under its
18 supervision, the corrections department shall also provide
19 substance abuse counseling and treatment to the offender or
20 shall require the offender to obtain substance abuse counseling
21 and treatment.

22 ~~[N.]~~ O. Upon a conviction pursuant to this section,
23 an offender shall be required to obtain an ignition interlock
24 license and have an ignition interlock device installed and
25 operating on all motor vehicles driven by the offender,

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1 pursuant to rules adopted by the bureau. Unless determined by
2 the sentencing court to be indigent, the offender shall pay all
3 costs associated with having an ignition interlock device
4 installed on the appropriate motor vehicles. The offender
5 shall operate only those vehicles equipped with ignition
6 interlock devices for:

7 (1) a period of one year, for a first
8 offender;

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

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

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

15 ~~[0.]~~ P. Five years from the date of conviction and
16 every five years thereafter, a fourth or subsequent offender
17 may apply to a district court for removal of the ignition
18 interlock device requirement provided in this section and for
19 restoration of a driver's license. A district court may, for
20 good cause shown, remove the ignition interlock device
21 requirement and order restoration of the license; provided that
22 the offender has not been subsequently convicted of driving a
23 motor vehicle while under the influence of intoxicating liquor
24 or drugs. Good cause may include an alcohol screening and
25 proof from the interlock vendor that the person has not had

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1 violations of the interlock device.

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

5 [Q-] R. A conviction pursuant to a municipal or
6 county ordinance in New Mexico or a law of any other
7 jurisdiction, territory or possession of the United States or
8 of a tribe, when that ordinance or law is equivalent to New
9 Mexico law for driving [~~while~~] under the influence of
10 intoxicating liquor or drugs, and prescribes penalties for
11 driving [~~while~~] under the influence of intoxicating liquor or
12 drugs, shall be deemed to be a conviction pursuant to this
13 section for purposes of determining whether a conviction is a
14 second or subsequent conviction.

15 [R-] S. In addition to any other fine or fee that
16 may be imposed pursuant to the conviction or other disposition
17 of the offense under this section, the court may order the
18 offender to pay the costs of any court-ordered screening and
19 treatment programs.

20 [S-] T. With respect to this section and
21 notwithstanding any provision of law to the contrary, if an
22 offender's sentence was suspended or deferred in whole or in
23 part and the offender violates any condition of probation, the
24 court may impose any sentence that the court could have
25 originally imposed and credit shall not be given for time

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1 served by the offender on probation.

2 ~~[F-]~~ U. As used in this section:

3 (1) "bodily injury" means an injury to a
 4 person that is not likely to cause death or great bodily harm
 5 to the person, but does cause painful temporary disfigurement
 6 or temporary loss or impairment of the functions of any member
 7 or organ of the person's body; and

8 (2) "commercial motor vehicle" means a motor
 9 vehicle or combination of motor vehicles used in commerce to
 10 transport passengers or property if the motor vehicle:

11 (a) has a gross combination weight
 12 rating of more than twenty-six thousand pounds inclusive of a
 13 towed unit with a gross vehicle weight rating of more than ten
 14 thousand pounds;

15 (b) has a gross vehicle weight rating of
 16 more than twenty-six thousand pounds;

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

19 (d) is of any size and is used in the
 20 transportation of hazardous materials, which requires the motor
 21 vehicle to be placarded under applicable law."

22 Section 3. TEMPORARY PROVISION--TASK FORCE--RULES FOR DWI
 23 COMMUNITY CUSTODY PROGRAMS.--The corrections department shall
 24 assemble and convene a task force that includes the governor's
 25 DWI czar and representatives from the judiciary, the counties

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underscored material = new
 [bracketed material] = delete

1 and any interested municipalities to promulgate rules for DWI
2 community custody programs. The rules shall include
3 eligibility and participation criteria, levels of supervision,
4 uniform procedures for electronic and alcohol monitoring,
5 substance abuse treatment and reintegration programs and
6 screening and tracking programs. The rules may also include
7 curfew restrictions, funding plans, restitution to the victims
8 and other criteria.

9 Section 4. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2010.