

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 151

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

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; CLARIFYING THE STANDARD FOR DRIVING UNDER THE
INFLUENCE OF INTOXICATING LIQUOR; REMOVING THE SLIGHTEST
IMPAIRMENT STANDARD; PROHIBITING DRIVING UNDER THE INFLUENCE OF
A COMBINATION OF INTOXICATING LIQUOR AND DRUGS; PROVIDING A
DEFINITION.

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~~] DRIVING UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING [~~WHILE~~] UNDER
THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--[~~PENALTY~~]
PENALTIES.--

~~[A. It is unlawful for a person who is under the~~

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

3 ~~B.]~~ A. It is unlawful for a person [~~who~~] to drive a
4 vehicle when the person is under the influence of [~~any drug~~
5 intoxicating liquor, one or more drugs or a combination of
6 intoxicating liquor and one or more drugs to a degree that
7 renders the person incapable of safely driving a vehicle. [~~to~~
8 ~~drive a vehicle within this state.~~

9 ~~C.]~~ B. It is unlawful for:

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

16 (2) a person to drive a commercial motor
17 vehicle in this state [~~if the person has~~] with an alcohol
18 concentration of four one hundredths or more in the person's
19 blood or breath within three hours of driving the commercial
20 motor vehicle and the alcohol concentration results from
21 alcohol consumed before or while driving the vehicle.

22 [~~D.]~~ C. Aggravated driving [~~while~~] under the
23 influence of intoxicating liquor or drugs consists of [~~a person~~
24 ~~who~~]:

25 (1) [~~drives~~] driving a vehicle in this state

1 ~~[and has]~~ with an alcohol concentration of sixteen one
2 hundredths or more in the ~~[person's]~~ driver's blood or breath
3 within three hours of driving the vehicle and the alcohol
4 concentration results from alcohol consumed before or while
5 driving the vehicle;

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

10 (3) ~~[refused]~~ refusing to submit to chemical
11 testing, as provided for in the Implied Consent Act, and in the
12 judgment of the court, based upon evidence of intoxication
13 presented to the court, the driver was under the influence of
14 intoxicating liquor or drugs to a degree that rendered the
15 driver incapable of safely driving a vehicle.

16 [E.] D. A ~~[person under]~~ first conviction pursuant
17 to this section shall be punished, notwithstanding the
18 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
19 not more than ninety days or by a fine of not more than five
20 hundred dollars (\$500), or both; provided that if the sentence
21 is suspended in whole or in part or deferred, the period of
22 probation may extend beyond ninety days but shall not exceed
23 one year. Upon a first conviction pursuant to this section, an
24 offender shall be sentenced to not less than twenty-four hours
25 of community service. In addition, the offender may be

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1 required to pay a fine of three hundred dollars (\$300). The
2 offender shall be ordered by the court to participate in and
3 complete a screening program described in Subsection [K] J of
4 this section and to attend a driver rehabilitation program for
5 alcohol or drugs, also known as a "DWI school", approved by the
6 bureau and also may be required to participate in other
7 rehabilitative services as the court shall determine to be
8 necessary. In addition to those penalties, when an offender
9 commits aggravated driving while under the influence of
10 intoxicating liquor or drugs, the offender shall be sentenced
11 to not less than forty-eight consecutive hours in jail. If an
12 offender fails to complete, within a time specified by the
13 court, any community service, screening program, treatment
14 program or DWI school ordered by the court or fails to comply
15 with any other condition of probation, the offender shall be
16 sentenced to not less than an additional forty-eight
17 consecutive hours in jail. Any jail sentence imposed pursuant
18 to this subsection for failure to complete, within a time
19 specified by the court, any community service, screening
20 program, treatment program or DWI school ordered by the court
21 or for aggravated driving while under the influence of
22 intoxicating liquor or drugs shall not be suspended, deferred
23 or taken under advisement. On a first conviction pursuant to
24 this section, any time spent in jail for the offense prior to
25 the conviction for that offense shall be credited to any term

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

5 ~~[F.]~~ E. 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 by a fine of not more
9 than one thousand dollars (\$1,000), or both; provided that if
10 the sentence is suspended in whole or in part, the period of
11 probation may extend beyond one year but shall not exceed five
12 years. Notwithstanding any provision of law to the contrary
13 for suspension or deferment of execution of a sentence:

14 (1) upon a second conviction, an offender
15 shall be sentenced to a jail term of not less than ninety-six
16 consecutive hours, not less than forty-eight hours of community
17 service and a fine of five hundred dollars (\$500). In addition
18 to those penalties, when an offender commits aggravated driving
19 while under the influence of intoxicating liquor or drugs, the
20 offender shall be sentenced to a jail term of not less than
21 ninety-six consecutive hours. If an offender fails to
22 complete, within a time specified by the court, any community
23 service, screening program or treatment program ordered by the
24 court, the offender shall be sentenced to not less than an
25 additional seven consecutive days in jail. A penalty imposed

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1 pursuant to this paragraph shall not be suspended or deferred
2 or taken under advisement; and

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

17 [~~G.~~] F. Upon a fourth conviction pursuant to this
18 section, an offender is guilty of a fourth degree felony and,
19 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
20 shall be sentenced to a term of imprisonment of eighteen
21 months, six months of which shall not be suspended, deferred or
22 taken under advisement.

23 [~~H.~~] G. Upon a fifth conviction pursuant to this
24 section, an offender is guilty of a fourth degree felony and,
25 notwithstanding the provisions of Section 31-18-15 NMSA 1978,

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1 shall be sentenced to a term of imprisonment of two years, one
2 year of which shall not be suspended, deferred or taken under
3 advisement.

4 ~~[F.]~~ H. Upon a sixth conviction pursuant to this
5 section, an offender is guilty of a third degree felony and,
6 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
7 shall be sentenced to a term of imprisonment of thirty months,
8 eighteen months of which shall not be suspended, deferred or
9 taken under advisement.

10 ~~[J.]~~ I. Upon a seventh or subsequent conviction
11 pursuant to this section, an offender is guilty of a third
12 degree felony and, notwithstanding the provisions of Section
13 31-18-15 NMSA 1978, shall be sentenced to a term of
14 imprisonment of three years, two years of which shall not be
15 suspended, deferred or taken under advisement.

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

24 ~~[L.]~~ K. Upon a second or third conviction pursuant
25 to this section, an offender shall be required to participate

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1 in and complete, within a time specified by the court:

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

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

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

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

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

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

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

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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. The offender
4 shall operate only those vehicles equipped with ignition
5 interlock devices for:

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

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

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

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

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

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

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

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

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

1 ~~[F.]~~ S. As used in this section:

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

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

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

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

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

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

21 (3) "to drive" or "driving" means a person is
22 behind the steering wheel of a motor vehicle and causing the
23 motor vehicle to move or exercising control over the movement
24 of the vehicle. Exercising control over a motor vehicle alone,
25 without any movement of the vehicle and with no immediate

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1 intent to move the vehicle, does not constitute driving."

2 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,
3 Chapter 35, Section 518, as amended) is amended to read:

4 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
5 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

6 A. The results of a test performed pursuant to the
7 Implied Consent Act may be introduced into evidence in any
8 civil action or criminal action arising out of the acts alleged
9 to have been committed by the person tested for driving a motor
10 vehicle while under the influence of intoxicating liquor or
11 drugs.

12 B. When the blood or breath of the person tested
13 contains:

14 (1) an alcohol concentration of less than four
15 one hundredths, it shall be presumed that the person was not
16 under the influence of intoxicating liquor;

17 (2) an alcohol concentration of at least four
18 one hundredths but less than eight one hundredths:

19 (a) no presumption shall be made that
20 the person either was or was not under the influence of
21 intoxicating liquor, unless the person is driving a commercial
22 motor vehicle; and

23 (b) the amount of alcohol or drugs in
24 the person's blood or breath may be considered with other
25 competent evidence in determining whether the person was under

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1 the influence of intoxicating liquor or drugs to a degree that
2 rendered the person incapable of safely driving a vehicle; or

3 (3) an alcohol concentration of four one
4 hundredths or more and the person is driving a commercial
5 vehicle, it shall be presumed that the person is under the
6 influence of intoxicating liquor.

7 C. The arresting officer shall charge the person
8 tested with a violation of Section 66-8-102 NMSA 1978 when the
9 blood or breath of the person contains an alcohol concentration
10 of:

11 (1) eight one hundredths or more; or

12 (2) four one hundredths or more if the person
13 is driving a commercial motor vehicle.

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

19 E. If the test performed pursuant to the Implied
20 Consent Act is administered more than three hours after the
21 person was driving a vehicle, the test result may be introduced
22 as evidence of the alcohol concentration in the person's blood
23 or breath at the time of the test and the trier of fact shall
24 determine what weight to give the test result for the purpose
25 of determining a violation of Section 66-8-102 NMSA 1978.

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1 F. The determination of alcohol concentration shall
2 be based on the grams of alcohol in one hundred milliliters of
3 blood or the grams of alcohol in two hundred ten liters of
4 breath.

5 G. The presumptions in Subsection B of this section
6 do not limit the introduction of other competent evidence
7 concerning whether the person was under the influence of
8 intoxicating liquor.

9 H. If a person is convicted of driving a motor
10 vehicle while under the influence of intoxicating liquor, the
11 trial judge shall inquire into the past driving record of the
12 person before sentence is entered in the matter."

13 Section 3. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2010.