

1 HOUSE BILL 330

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Tim D. Lewis

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; INCREASING PENALTIES AND MANDATORY PERIODS OF
13 INCARCERATION FOR FOURTH AND SUBSEQUENT OFFENSES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 66-8-102 NMSA 1978 (being Laws 1953,
17 Chapter 139, Section 54, as amended) is amended to read:

18 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
19 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
20 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

21 A. It is unlawful for a person who is under the
22 influence of intoxicating liquor to drive a vehicle within this
23 state.

24 B. It is unlawful for a person who is under the
25 influence of any drug to a degree that renders the person

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1 incapable of safely driving a vehicle to drive a vehicle within
2 this state.

3 C. It is unlawful for:

4 (1) a person to drive a vehicle in this state
5 if the person has an alcohol concentration of eight one
6 hundredths or more in the person's blood or breath within three
7 hours of driving the vehicle and the alcohol concentration
8 results from alcohol consumed before or while driving the
9 vehicle; or

10 (2) a person to drive a commercial motor
11 vehicle in this state if the person has an alcohol
12 concentration of four one hundredths or more in the person's
13 blood or breath within three hours of driving the commercial
14 motor vehicle and the alcohol concentration results from
15 alcohol consumed before or while driving the vehicle.

16 D. Aggravated driving under the influence of
17 intoxicating liquor or drugs consists of:

18 (1) driving a vehicle in this state with an
19 alcohol concentration of sixteen one hundredths or more in the
20 driver's blood or breath within three hours of driving the
21 vehicle and the alcohol concentration results from alcohol
22 consumed before or while driving the vehicle;

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

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1 (3) refusing 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, the driver was under the influence of intoxicating
5 liquor or drugs.

6 E. A first conviction pursuant to this section
7 shall be punished, notwithstanding the provisions of Section
8 31-18-13 NMSA 1978, by imprisonment for not more than ninety
9 days or by a fine of not more than five hundred dollars (\$500),
10 or both; provided that if the sentence is suspended in whole or
11 in part or deferred, the period of probation may extend beyond
12 ninety days but shall not exceed one year. Upon a first
13 conviction pursuant to this section, an offender shall be
14 sentenced to not less than twenty-four hours of community
15 service. In addition, the offender may be required to pay a
16 fine of three hundred dollars (\$300). The offender shall be
17 ordered by the court to participate in and complete a screening
18 program described in Subsection K of this section and to attend
19 a driver rehabilitation program for alcohol or drugs, also
20 known as a "DWI school", approved by the bureau and also may be
21 required to participate in other rehabilitative services as the
22 court shall determine to be necessary. In addition to those
23 penalties, when an offender commits aggravated driving under
24 the influence of intoxicating liquor or drugs, the offender
25 shall be sentenced to not less than forty-eight consecutive

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

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

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1 years. Notwithstanding any provision of law to the contrary
2 for suspension or deferment of execution of a sentence:

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

17 (2) upon a third conviction, an offender shall
18 be sentenced to a jail term of not less than thirty consecutive
19 days, not less than ninety-six hours of community service and a
20 fine of seven hundred fifty dollars (\$750). In addition to
21 those penalties, when an offender commits aggravated driving
22 under the influence of intoxicating liquor or drugs, the
23 offender shall be sentenced to a jail term of not less than
24 sixty consecutive days. If an offender fails to complete,
25 within a time specified by the court, any community service,

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

6 G. Upon a fourth 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 [~~eighteen~~
10 thirty months, [~~six~~] eighteen months of which shall not be
11 suspended, deferred or taken under advisement.

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

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

24 J. Upon a seventh or subsequent conviction pursuant
25 to this section, an offender is guilty of a third degree felony

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1 and, notwithstanding the provisions of Section 31-18-15 NMSA
2 1978, shall be sentenced to a term of imprisonment of [~~three~~]
3 four years, [~~two~~] three years of which shall not be suspended,
4 deferred or taken under advisement.

5 K. Upon any conviction pursuant to this section, an
6 offender shall be required to participate in and complete,
7 within a time specified by the court, an alcohol or drug abuse
8 screening program approved by the department of finance and
9 administration and, if necessary, a treatment program approved
10 by the court. The requirement imposed pursuant to this
11 subsection shall not be suspended, deferred or taken under
12 advisement.

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

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

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

21 (3) a drug court program approved by the
22 court; or

23 (4) any other substance abuse treatment
24 program approved by the court.

25 The requirement imposed pursuant to this subsection shall

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1 not be suspended, deferred or taken under advisement.

2 M. Upon a felony conviction pursuant to this
3 section, the corrections department shall provide substance
4 abuse counseling and treatment to the offender in its custody.
5 While the offender is on probation or parole under its
6 supervision, the corrections department shall also provide
7 substance abuse counseling and treatment to the offender or
8 shall require the offender to obtain substance abuse counseling
9 and treatment.

10 N. Upon a conviction pursuant to this section, an
11 offender shall be required to obtain an ignition interlock
12 license and have an ignition interlock device installed and
13 operating on all motor vehicles driven by the offender,
14 pursuant to rules adopted by the [~~traffic safety~~] bureau.
15 Unless determined by the bureau to be indigent, the offender
16 shall pay all costs associated with having an ignition
17 interlock device installed on the appropriate motor vehicles.
18 The offender shall operate only those vehicles equipped with
19 ignition interlock devices for:

20 (1) a period of one year, for a first
21 offender;

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

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

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

3 O. Five years from the date of conviction and every
4 five years thereafter, a fourth or subsequent offender may
5 apply to a district court for removal of the ignition interlock
6 device requirement provided in this section and for restoration
7 of a driver's license. A district court may, for good cause
8 shown, remove the ignition interlock device requirement and
9 order restoration of the license; provided that the offender
10 has not been subsequently convicted of driving a motor vehicle
11 under the influence of intoxicating liquor or drugs. Good
12 cause may include an alcohol screening and proof from the
13 interlock vendor that the person has not had violations of the
14 interlock device.

15 P. An offender who obtains an ignition interlock
16 license and installs an ignition interlock device prior to
17 conviction shall be given credit at sentencing for the time
18 period the ignition interlock device has been in use.

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

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

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

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

11 T. With respect to this section and notwithstanding
12 any provision of law to the contrary, if an offender's sentence
13 was suspended or deferred in whole or in part and the offender
14 violates any condition of probation, the court may impose any
15 sentence that the court could have originally imposed and
16 credit shall not be given for time served by the offender on
17 probation.

18 U. As used in this section:

19 (1) "bodily injury" means an injury to a
20 person that is not likely to cause death or great bodily harm
21 to the person, but does cause painful temporary disfigurement
22 or temporary loss or impairment of the functions of any member
23 or organ of the person's body; and

24 (2) "commercial motor vehicle" means a motor
25 vehicle or combination of motor vehicles used in commerce to

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1 transport passengers or property if the motor vehicle:

2 (a) has a gross combination weight
3 rating of more than twenty-six thousand pounds inclusive of a
4 towed unit with a gross vehicle weight rating of more than ten
5 thousand pounds;

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

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

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

13 SECTION 2. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2011.

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