

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 164

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

FOR THE DWI OVERSIGHT TASK FORCE

AN ACT

RELATING TO DRUGS; CHANGING THE CRIMINAL STANDARD FOR DRIVING A  
VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS; AMENDING A SECTION  
OF THE MOTOR VEHICLE CODE.

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 INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF  
INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

Underscored material = new  
[bracketed material] = delete

1 ~~safely driving]~~ that impairs to the slightest degree the  
2 person's ability to safely drive a vehicle to drive any vehicle  
3 within this state.

4 C. It is unlawful for any person who has an alcohol  
5 concentration of eight one-hundredths or more in his blood or  
6 breath to drive any vehicle within this state.

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

9 (1) has an alcohol concentration of sixteen  
10 one-hundredths or more in his blood or breath while driving any  
11 vehicle within this state;

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

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

20 E. Every person under first conviction under this  
21 section shall be punished, notwithstanding the provisions of  
22 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
23 ninety days or by a fine of not more than five hundred dollars  
24 (\$500), or both; provided that if the sentence is suspended in  
25 whole or in part or deferred, the period of probation may extend

Underscored material = new  
[bracketed material] = delete

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

. 113202. 2

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

5 F. A second or third conviction under this section  
6 shall be punished, notwithstanding the provisions of Section  
7 31-18-13 NMSA 1978, by imprisonment for not more than three  
8 hundred sixty-four days or by a fine of not more than one  
9 thousand dollars (\$1,000), or both; provided that if the  
10 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 for  
13 suspension or deferment of execution of a sentence:

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

Underscored material = new  
[bracketed material] = delete

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

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

21 H. Upon any conviction under this section, an  
22 offender shall be required to participate in and complete,  
23 within a time specified by the court, an alcohol or drug abuse  
24 screening program and if necessary, a treatment program approved  
25 by the court.

. 113202. 2



# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

**January 31, 1997**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred**

**HOUSE BILL 164**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

---

**Thomas P. Foy, Chairman**

Underscored material = new  
~~[bracketed material] = delete~~

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Sanchez, Vaughn

Absent: None

M \H0164

Underscored material = new  
~~[bracketed material] = delete~~