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HOUSE BILL 283

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL LAW; INCREASING CRIMINAL PENALTIES FOR
HABITUAL DWI FELONY OFFENDERS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6,
as amended by Laws 1993, Chapter 77, Section 9 and also by Laws 1993, Chapter 283, Section
1) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE.--

A. For the purposes of this section, "prior felony conviction" means:

(1) a conviction for a prior felony committed ~~within~~ in New Mexico
whether within the Criminal Code or not, but not including a prior felony DWI conviction
pursuant to the provisions of Section 66-8-102 NMSA 1978; or

(2) ~~any~~ a prior felony for which the person was convicted other than
an offense triable by court martial if:

(a) the conviction was rendered by a court of another state, the
United States, a territory of the United States or the commonwealth of Puerto Rico;

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1 (b) the offense was punishable, at the time of conviction, by
2 death or a maximum term of imprisonment of more than one year; or

3 (c) the offense would have been classified as a felony in this
4 state at the time of conviction.

5 B. ~~Any~~ A person convicted of a noncapital felony in this state whether within
6 the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony
7 conviction ~~which~~ that was part of a separate transaction or occurrence or conditional
8 discharge ~~under~~ pursuant to Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender
9 and his basic sentence shall be increased by one year, and the sentence imposed by this
10 subsection shall not be suspended or deferred.

11 C. ~~Any~~ A person convicted of a noncapital felony in this state whether within
12 the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony
13 convictions ~~which~~ that were parts of separate transactions or occurrences or conditional
14 discharge ~~under~~ pursuant to Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender
15 and his basic sentence shall be increased by four years, and the sentence imposed by this
16 subsection shall not be suspended or deferred.

17 D. ~~Any~~ A person convicted of a noncapital felony in this state whether within
18 the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior
19 felony convictions ~~which~~ that were parts of separate transactions or occurrences or conditional
20 discharge ~~under~~ pursuant to Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender
21 and his basic sentence shall be increased by eight years, and the sentence imposed by this
22 subsection shall not be suspended or deferred."

23 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54,
24 as amended by Laws 1997, Chapter 43, Section 1 and also by Laws 1997, Chapter 205, Section
25 1) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR

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

3 A. It is unlawful for [~~any~~] a person who is under the influence of intoxicating
4 liquor to drive [~~any~~] a vehicle [~~within~~] in this state.

5 B. It is unlawful for [~~any~~] a person who is under the influence of [~~any~~] a drug
6 to a degree that renders him incapable of safely driving a vehicle to drive [~~any~~] a vehicle
7 [~~within~~] in this state.

8 C. It is unlawful for [~~any~~] a person who has an alcohol concentration of eight
9 one-hundredths or more in his blood or breath to drive [~~any~~] a vehicle [~~within~~] in this state.

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

12 (1) has an alcohol concentration of sixteen one-hundredths or more in
13 his blood or breath while driving [~~any~~] a vehicle [~~within~~] in this state;

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

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

20 E. Every person under first conviction [~~under~~] pursuant to this section shall be
21 punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment
22 for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both;
23 provided that if the sentence is suspended in whole or in part or deferred, the period of probation
24 may extend beyond ninety days but shall not exceed one year. Upon a first conviction [~~under~~]
25 pursuant to this section, an offender may be sentenced to not less than forty-eight hours of
community service or a fine of three hundred dollars (\$300). The offender shall be ordered by

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1 the court to participate in and complete a screening program described in Subsection ~~[H]~~ K of
2 this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a
3 "DWI school", approved by the traffic safety bureau of the state highway and transportation
4 department and also may be required to participate in other rehabilitative services as the court
5 shall determine to be necessary. In addition to those penalties, when an offender commits
6 aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall
7 be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to
8 complete, within a time specified by the court, any community service, screening program,
9 treatment program or DWI school ordered by the court, the offender shall be sentenced to not
10 less than an additional forty-eight consecutive hours in jail. ~~[Any]~~ A jail sentence imposed
11 ~~[under]~~ pursuant to this subsection for failure to complete, within a time specified by the court,
12 any community service, screening program, treatment program or DWI school ordered by the
13 court or for aggravated driving while under the influence of intoxicating liquor or drugs shall
14 not be suspended, deferred or taken under advisement. On a first conviction ~~[under]~~ pursuant to
15 this section, any time spent in jail for the offense prior to the conviction for that offense shall be
16 credited to any term of imprisonment fixed by the court. A deferred sentence ~~[under]~~ pursuant
17 to this subsection shall be considered a first conviction for the purpose of determining
18 subsequent convictions.

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

24 Notwithstanding any provision of law to the contrary for suspension or deferment of execution
25 of a sentence:

- (1) upon a second conviction, each offender shall be sentenced to a jail

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

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

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

22 H. Upon a fifth conviction pursuant to this section, an offender is guilty of a
23 fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978,
24 shall be sentenced to a term of imprisonment of two years, one year of which shall not be
25 suspended, deferred or taken under advisement.

I. Upon a sixth conviction pursuant to this section, an offender is guilty of a

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1 fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978,
2 shall be sentenced to a term of imprisonment of thirty months, eighteen months of which shall
3 not be suspended, deferred or taken under advisement.

4 J. Upon a seventh or subsequent conviction pursuant to this section, an
5 offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-
6 15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of
7 which shall not be suspended, deferred or taken under advisement.

8 [~~H.~~] K. Upon any conviction [~~under~~] pursuant to this section, an offender shall
9 be required to participate in and complete, within a time specified by the court, an alcohol or
10 drug abuse screening program and, if necessary, a treatment program approved by the court.
11 The penalty imposed pursuant to this subsection shall not be suspended, deferred or taken under
12 advisement.

13 [~~H.~~] L. In the case of a first, second or third offense [~~under~~] pursuant to this
14 section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

15 [~~F.~~] M. A conviction under a municipal or county ordinance in New Mexico or
16 a law of any other jurisdiction, territory or possession of the United States that is equivalent to
17 New Mexico law for driving while under the influence of intoxicating liquor or drugs,
18 [~~prescribing~~] and prescribes penalties for driving while under the influence of intoxicating liquor
19 or drugs, shall be deemed to be a conviction [~~under~~] pursuant to this section for purposes of
20 determining whether a conviction is a second or subsequent conviction.

21 [~~K.~~] N. In addition to any other fine or fee [~~which~~] that may be imposed
22 pursuant to the conviction or other disposition of the offense [~~under~~] pursuant to this section, the
23 court may order the offender to pay the costs of [~~any~~] court-ordered screening and treatment
24 programs.

25 [~~E.~~] O. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to

1 cause death or great bodily harm to the person, but does cause painful temporary disfigurement
2 or temporary loss or impairment of the functions of ~~[any]~~ a member or organ of the person's
3 body; and

4 (2) "conviction" means an adjudication of guilt and does not include
5 imposition of a sentence."

6 Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July
7 1, 1999.

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 24, 1999
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9 Mr. Speaker:

10 Your **APPROPRIATIONS AND FINANCE COMMITTEE**, to
11 whom has been referred
12

13 **HOUSE BILL 283**
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15 has had it under consideration and reports same with recommendation that it **DO PASS**.
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17 Respectfully submitted,
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22 **Max Coll, Chairman**
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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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5 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: Abeyta, Buffett, Larrañaga, Pearce, Saavedra, Salazar, Watchman

13 Absent: None

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