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HOUSE BILL 365

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 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING COURTS WITH DISCRETION TO SENTENCE A DWI
OFFENDER TO A TREATMENT PROGRAM AS AN ALTERNATIVE TO A
MANDATORY TERM OF IMPRISONMENT; REQUIRING COURTS TO PROVIDE AN
OFFENDER WITH CREDIT FROM HIS TERM OF IMPRISONMENT FOR TIME
SPENT IN A TREATMENT PROGRAM PRIOR TO HIS DWI CONVICTION;
AMENDING A SECTION OF THE NMSA 1978.**

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 by Laws 1997, Chapter 43,
Section 1 and also by Laws 1997, Chapter 205, Section 1) is
amended to read:**

**"66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE**

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1 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

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

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

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

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

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

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E. Every person under first conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction under 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 the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the traffic safety bureau of the state highway and transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an

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

14 F. A second or third conviction under this section
15 shall be punished, notwithstanding the provisions of Section
16 31-18-13 NMSA 1978, by imprisonment for not more than three
17 hundred sixty-four days or by a fine of not more than one
18 thousand dollars (\$1,000), or both; provided that if the
19 sentence is suspended in whole or in part, the period of
20 probation may extend beyond one year but shall not exceed five
21 years. Notwithstanding any provision of law to the contrary
22 for suspension or deferment of execution of a sentence:

23 (1) upon a second conviction, each offender
24 shall be sentenced to a jail term of not less than seventy-two
25 consecutive hours, forty-eight hours of community service and

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

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

25 G. Upon a fourth or subsequent conviction under

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1 this section, an offender is guilty of a fourth degree felony,
2 as provided in Section 31-18-15 NMSA 1978, and shall be
3 sentenced to a jail term of not less than six months, which
4 shall not be suspended or deferred or taken under advisement.

5 H. Upon any conviction under 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 and, if necessary, a treatment program
9 approved by the court. The penalty imposed pursuant to this
10 subsection shall not be suspended, deferred or taken under
11 advisement.

12 I. In the case of a first, second or third offense
13 under this section, the magistrate court has concurrent
14 jurisdiction with district courts to try the offender.

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

24 K. In addition to any other fine or fee which may
25 be imposed pursuant to the conviction or other disposition of

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1 the offense under this section, the court may order the
2 offender to pay the costs of any court-ordered screening and
3 treatment programs.

4 L. The sentencing court may sentence an offender
5 to a court-approved inpatient alcohol or drug treatment
6 program as an alternative to a mandatory term of imprisonment
7 imposed pursuant to the provisions of this section. The
8 sentencing court shall sentence the offender to the treatment
9 program for a period of time that is at least twice as long as
10 the mandatory term of imprisonment that would otherwise be
11 imposed.

12 M The sentencing court shall provide an offender
13 with credit from his term of imprisonment for time spent by
14 the offender in a court-approved inpatient alcohol or drug
15 treatment program prior to his conviction.

16 [E.] N. As used in this section:

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

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

24 Section 2. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 22, 1999
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 HOUSE BILL 365
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 APPROPRIATIONS AND FINANCE COMMITTEE.

17 Respectfully submitted,
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21 _____
22 R. David Pederson, Chairman
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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 2 Against

Yes: 9

No: Mallory, Vaughn

Excused: Luna

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 February 25, 1999

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6
7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 365

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

15
16 Respectfully submitted,

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20 _____
21 Max Coll, Chair man

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Abeyta, Coll, Garcia, M.H., Heaton, Larrañaga, Picraux,
Salazar

Absent: None

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