

1 HOUSE BILL 231

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Gregg Schmedes and William "Bill" R. Rehm

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; AMENDING THE REQUIREMENTS FOR TESTING THE BLOOD OF A
13 PERSON SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE
14 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT
15 CERTAIN MEDICAL PROFESSIONALS ARE AUTHORIZED TO WITHDRAW BLOOD
16 IN THE PERFORMANCE OF A CHEMICAL BLOOD TEST FOR DRIVING A MOTOR
17 VEHICLE OR OPERATING A MOTORBOAT UNDER THE INFLUENCE OF
18 INTOXICATING LIQUOR OR DRUGS; CLARIFYING THAT THE CHEMICAL
19 BLOOD TEST MAY BE FOR DRUGS OR ALCOHOL.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
25 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF

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1 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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

9 C. It is unlawful for:

10 (1) a person to drive a vehicle in this state
11 if the person has 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 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. Aggravated driving under the influence of
23 intoxicating liquor or drugs consists of:

24 (1) driving a vehicle in this state with an
25 alcohol concentration of sixteen one hundredths or more in the

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1 driver's blood or breath within three hours of driving the
2 vehicle and the alcohol concentration results from alcohol
3 consumed before or while driving the vehicle;

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

7 (3) refusing to submit to chemical breath
8 testing, as provided for in the Implied Consent Act, and in the
9 judgment of the court, based upon evidence of intoxication
10 presented to the court, the driver was under the influence of
11 intoxicating liquor or drugs.

12 E. A first conviction pursuant to this section
13 shall be punished, notwithstanding the provisions of Section
14 31-18-13 NMSA 1978, by imprisonment for not more than ninety
15 days or by a fine of not more than five hundred dollars (\$500),
16 or both; provided that if the sentence is suspended in whole or
17 in part or deferred, the period of probation may extend beyond
18 ninety days but shall not exceed one year. Upon a first
19 conviction pursuant to this section, an offender shall be
20 sentenced to not less than twenty-four hours of community
21 service. In addition, the offender may be required to pay a
22 fine of three hundred dollars (\$300). The offender shall be
23 ordered by the court to participate in and complete a screening
24 program described in Subsection L of this section and to attend
25 a driver rehabilitation program for alcohol or drugs, also

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

25 F. A second or third conviction pursuant to this

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1 section shall be punished, notwithstanding the provisions of
2 Section 31-18-13 NMSA 1978, by imprisonment for not more than
3 three hundred sixty-four days or by a fine of not more than one
4 thousand dollars (\$1,000), or both; provided that if the
5 sentence is suspended in whole or in part, the period of
6 probation may extend beyond one year but shall not exceed five
7 years. Notwithstanding any provision of law to the contrary
8 for suspension or deferment of execution of a sentence:

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

23 (2) upon a third conviction, an offender shall
24 be sentenced to a jail term of not less than thirty consecutive
25 days, not less than ninety-six hours of community service and a

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

12 G. Upon a fourth 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 eighteen
16 months, six months of which shall not be suspended, deferred or
17 taken under advisement.

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

24 I. Upon a sixth conviction pursuant to this
25 section, an offender is guilty of a third degree felony and,

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

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

11 K. Upon an eighth or subsequent conviction pursuant
12 to this section, an offender is guilty of a second degree
13 felony and, notwithstanding the provisions of Section 31-18-15
14 NMSA 1978, shall be sentenced to a term of imprisonment of
15 twelve years, ten years of which shall not be suspended,
16 deferred or taken under advisement.

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

25 M. Upon a second or third conviction pursuant to

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1 this section, an offender shall be required to participate in
2 and complete, within a time specified by the court:

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

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

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

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

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

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

22 O. Upon a conviction pursuant to this section, an
23 offender shall be required to obtain an ignition interlock
24 license and have an ignition interlock device installed and
25 operating on all motor vehicles driven by the offender,

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1 pursuant to rules adopted by the bureau. Unless determined by
2 the bureau to be indigent, the offender shall pay all costs
3 associated with having an ignition interlock device installed
4 on the appropriate motor vehicles. The offender shall operate
5 only those vehicles equipped with ignition interlock devices
6 for:

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

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

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

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

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

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1 interlock device.

2 Q. An offender who obtains an ignition interlock
3 license and installs an ignition interlock device prior to
4 conviction shall be given credit at sentencing for the time
5 period the ignition interlock device has been in use.

6 R. In the case of a first, second or third offense
7 under this section, the magistrate court has concurrent
8 jurisdiction with district courts to try the offender.

9 S. A conviction pursuant to a municipal or county
10 ordinance in New Mexico or a law of any other jurisdiction,
11 territory or possession of the United States or of a tribe,
12 when that ordinance or law is equivalent to New Mexico law for
13 driving under the influence of intoxicating liquor or drugs,
14 and prescribes penalties for driving under the influence of
15 intoxicating liquor or drugs, shall be deemed to be a
16 conviction pursuant to this section for purposes of determining
17 whether a conviction is a second or subsequent conviction.

18 T. In addition to any other fine or fee that may be
19 imposed pursuant to the conviction or other disposition of the
20 offense under this section, the court may order the offender to
21 pay the costs of any court-ordered screening and treatment
22 programs.

23 U. With respect to this section and notwithstanding
24 any provision of law to the contrary, if an offender's sentence
25 was suspended or deferred in whole or in part and the offender

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1 violates any condition of probation, the court may impose any
2 sentence that the court could have originally imposed and
3 credit shall not be given for time served by the offender on
4 probation.

5 V. As used in this section:

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

11 (2) "commercial motor vehicle" means a motor
12 vehicle or combination of motor vehicles used in commerce to
13 transport passengers or property if the motor vehicle:

14 (a) has a gross combination weight
15 rating of more than twenty-six thousand pounds inclusive of a
16 towed unit with a gross vehicle weight rating of more than ten
17 thousand pounds;

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

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

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

25 SECTION 2. Section 66-8-103 NMSA 1978 (being Laws 1967,
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1 Chapter 160, Section 1) is amended to read:

2 "66-8-103. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO
3 TEST--RELIEF FROM LIABILITY.--Only a physician, licensed
4 professional or practical nurse, [~~or laboratory technician~~]
5 emergency medical technician or certified phlebotomist or a
6 technologist employed by a hospital or physician shall withdraw
7 blood from [~~any~~] a person in the performance of a [~~blood-~~
8 ~~alcohol~~] chemical blood test. No such physician, nurse,
9 technician, phlebotomist or technologist who withdraws blood
10 from any person in the performance of a [~~blood-alcohol~~]
11 chemical blood test that has been directed by [~~any~~] a police
12 officer or by [~~any~~] a judicial or probation officer shall be
13 held liable in any civil or criminal action for assault,
14 battery, false imprisonment or any conduct of [~~any~~] a police
15 officer except for negligence, nor shall [~~any~~] a person
16 assisting in the performance of [~~such a~~] the test or [~~any~~] a
17 hospital wherein blood is withdrawn in the performance of [~~such~~
18 ~~a~~] the test be subject to civil or criminal liability for
19 assault, battery, false imprisonment or any conduct of [~~any~~] a
20 police officer except for negligence."

21 SECTION 3. Section 66-8-104 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 512) is amended to read:

23 "66-8-104. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--[~~POLICE,~~
24 ~~JUDICIAL OR PROBATION~~] OFFICER UNAUTHORIZED TO MAKE ARREST OR
25 DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES

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1 ~~[AUTHORIZED BY LAW]~~.--Nothing in ~~[Sections 64-8-103 or 64-8-104~~
2 ~~NMSA 1953]~~ Section 66-8-103 or 66-8-104 NMSA 1978 is intended
3 to authorize ~~[any]~~ a police officer or ~~[any]~~ a judicial or
4 probation officer to make ~~[any]~~ an arrest or to direct the
5 performance of a ~~[blood-alcohol]~~ chemical blood test except in
6 the performance of ~~[his]~~ that person's official duties and as
7 otherwise authorized by law."

8 SECTION 4. Section 66-8-111 NMSA 1978 (being Laws 1978,
9 Chapter 35, Section 519, as amended) is amended to read:

10 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
11 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

12 A. If a person under arrest for violation of an
13 offense enumerated in the Motor Vehicle Code refuses upon
14 request of a law enforcement officer to submit to chemical
15 tests designated by the law enforcement agency as provided in
16 Section 66-8-107 NMSA 1978, none shall be administered except
17 when a municipal judge, magistrate or district judge issues a
18 search warrant authorizing chemical tests as provided in
19 Section 66-8-107 NMSA 1978 upon finding in a law enforcement
20 officer's written affidavit that there is probable cause to
21 believe that the person has driven a motor vehicle while under
22 the influence of alcohol or a controlled substance ~~[thereby~~
23 ~~causing the death or great bodily injury of another person, or~~
24 ~~there is probable cause to believe that the person has~~
25 ~~committed a felony while under the influence of alcohol or a~~

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1 ~~controlled substance and that chemical tests as provided in~~
2 ~~Section 66-8-107 NMSA 1978 will produce material evidence in a~~
3 ~~felony prosecution].~~

4 B. The department, upon receipt of a statement
5 signed under penalty of perjury from a law enforcement officer
6 stating the officer's reasonable grounds to believe the
7 arrested person had been driving a motor vehicle within this
8 state while under the influence of intoxicating liquor or drugs
9 and that, upon request, the person refused to submit to a
10 chemical test after being advised that failure to submit could
11 result in revocation of the person's privilege to drive, shall
12 revoke the person's New Mexico driver's license or any
13 nonresident operating privilege for a period of one year or
14 until all conditions for license reinstatement are met,
15 whichever is later.

16 C. The department, upon receipt of a statement
17 signed under penalty of perjury from a law enforcement officer
18 stating the officer's reasonable grounds to believe the
19 arrested person had been driving a motor vehicle within this
20 state while under the influence of intoxicating liquor and that
21 the person submitted to chemical testing pursuant to Section
22 66-8-107 NMSA 1978 and the test results indicated an alcohol
23 concentration in the person's blood or breath of eight one
24 hundredths or more if the person is twenty-one years of age or
25 older, four one hundredths or more if the person is driving a

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1 commercial motor vehicle or two one hundredths or more if the
2 person is less than twenty-one years of age, shall revoke the
3 person's license or permit to drive or ~~[his]~~ the person's
4 nonresident operating privilege for a period of:

5 (1) six months or until all conditions for
6 license reinstatement are met, whichever is later, if the
7 person is twenty-one years of age or older;

8 (2) one year or until all conditions for
9 license reinstatement are met, whichever is later, if the
10 person was less than twenty-one years of age at the time of the
11 arrest, notwithstanding any provision of the Children's Code;
12 or

13 (3) one year or until all conditions for
14 license reinstatement are met, whichever is later, if the
15 ~~[person has previously had his]~~ person's license has been
16 revoked previously pursuant to the provisions of this section,
17 notwithstanding the provisions of Paragraph (1) of this
18 subsection.

19 D. The determination of alcohol concentration shall
20 be based on the grams of alcohol in one hundred milliliters of
21 blood or the grams of alcohol in two hundred ten liters of
22 breath.

23 E. If the person subject to the revocation
24 provisions of this section is a resident or will become a
25 resident within one year and is without a license to operate a

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1 motor vehicle in this state, the department shall deny the
2 issuance of a license to [~~him~~] the person for the appropriate
3 period of time as provided in Subsections B and C of this
4 section.

5 F. A statement signed by a law enforcement officer,
6 pursuant to the provisions of Subsection B or C of this
7 section, shall be sworn to by the officer or shall contain a
8 declaration substantially to the effect: "I hereby declare
9 under penalty of perjury that the information given in this
10 statement is true and correct to the best of my knowledge."
11 The statement may be signed and submitted electronically in a
12 manner and form approved by the department A law enforcement
13 officer who signs a statement knowing that the statement is
14 untrue in any material issue or matter is guilty of perjury as
15 provided in Section 66-5-38 NMSA 1978."

16 SECTION 5. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
17 Chapter 72, Section 7, as amended) is amended to read:

18 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
19 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
20 HEARING.--

21 A. On behalf of the department, a law enforcement
22 officer requesting a chemical test or directing the
23 administration of a chemical test pursuant to [~~Section~~]
24 Sections 66-8-107 and 66-8-111 NMSA 1978 shall serve immediate
25 written notice of revocation and of right to a hearing before

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1 the administrative hearings office pursuant to the Implied
2 Consent Act on a person who:

3 (1) refuses to permit chemical testing; or
4 (2) submits to a chemical test the results of
5 which indicate an alcohol concentration in the person's blood
6 or breath of:

7 (a) eight one hundredths or more if the
8 person is twenty-one years of age or older;

9 (b) four one hundredths or more if the
10 person is driving a commercial motor vehicle; or

11 (c) two one hundredths or more if the
12 person is less than twenty-one years of age.

13 B. The written notice of revocation and of a right
14 to a hearing served on the driver shall be a temporary license
15 valid for twenty days or, if the driver requests a hearing
16 pursuant to Section 66-8-112 NMSA 1978, valid until the date
17 the administrative hearings office issues the order following
18 that hearing; provided that a written notice of revocation and
19 right to a hearing shall not be a temporary license for a
20 driver without any otherwise valid driving privileges in this
21 state.

22 C. The law enforcement officer shall send to the
23 department the signed statement required pursuant to Section
24 66-8-111 NMSA 1978."

25 SECTION 6. Section 66-13-1 NMSA 1978 (being Laws 2003,
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1 Chapter 241, Section 1) is amended to read:

2 "66-13-1. SHORT TITLE.--~~[Sections 1 through 13 of this~~
3 ~~act]~~ Chapter 66, Article 13 NMSA 1978 may be cited as the
4 "Boating While Intoxicated Act"."

5 SECTION 7. Section 66-13-6 NMSA 1978 (being Laws 2003,
6 Chapter 241, Section 6) is amended to read:

7 "66-13-6. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--PERSONS
8 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL
9 LIABILITY.--Only a physician, licensed professional or
10 practical nurse, [~~or laboratory technician~~] emergency medical
11 technician or certified phlebotomist or a technologist employed
12 by a hospital or physician shall withdraw blood from a person
13 in the performance of a [~~blood-alcohol or drug~~] chemical blood
14 test. A physician, nurse, technician, phlebotomist or
15 technologist who withdraws blood from a person in the
16 performance of a [~~blood-alcohol or drug~~] chemical blood test
17 that has been directed by a law enforcement officer, or by a
18 judicial or probation officer, shall not be held liable in a
19 civil or criminal action for assault, battery, false
20 imprisonment or any conduct of a law enforcement officer,
21 except for negligence, nor shall a person assisting in the
22 performance of the test, or a hospital wherein blood is
23 withdrawn in the performance of the test, be subject to civil
24 or criminal liability for assault, battery, false imprisonment
25 or any conduct of a law enforcement officer, except for

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negligence."

SECTION 8. Section 66-13-7 NMSA 1978 (being Laws 2003, Chapter 241, Section 7) is amended to read:

"66-13-7. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TEST--~~[LAW ENFORCEMENT, JUDICIAL OR PROBATION]~~ OFFICER UNAUTHORIZED TO MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES [~~AUTHORIZED BY LAW~~].--Nothing in the Boating While Intoxicated Act is intended to authorize a law enforcement officer, or a judicial or probation officer, to make an arrest or direct the performance of a [~~blood-alcohol-or-drug~~] chemical blood test, except in the performance of [~~his~~] that officer's official duties or as otherwise authorized by law."

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.