

Section 15-14-16. – Driving under the influence of Intoxicant.

A. Definitions:

For purposes of this Section:

(1) "Conviction" means an adjudication or plea of guilty, and does not include imposition of sentence.

(2) "Intoxicant" means any substance defined under § 15-15-2 (Narcotics and Dangerous Drugs Definitions), any substance controlled by §15-15-3 (Schedule of Controlled Substances), any substance producing a toxic vapor and prohibited by § 15-14-15 (Intoxication by Inhaling Toxic Vapors), and any substance defined as Liquor and regulated by Chapter 3 of Title XII (Liquor Control).

(3) "Operate" means to control the direction and/or speed of a motor vehicle with the intent to drive the vehicle.

B. Offense. It shall be unlawful for any person who:

(1) Has an alcohol concentration of eight one-hundredths (.08) or more in his blood or breath and operates any vehicle within the exterior boundaries of the Reservation.

(2) Is under the influence of any Intoxicant to a degree that renders the person incapable of safely operating a vehicle within the exterior boundaries of the Reservation.

C. Sentence. Any person convicted under Subsection B shall be sentenced as follows:

(1) *First offense.*

(a) A jail term not to exceed ninety (90) days, and a fine not to exceed five hundred dollars (\$500.00), provided that if the sentence is suspended in whole or in part or is deferred, the period of probation may extend beyond ninety (90) days but shall not exceed one (1) year;

(b) May be required to perform not less than fifty (50) hours of community service;

(c) Attend a driver rehabilitation program for alcohol and/or drugs, also known as "DWI school"; and

(d) Participate in other rehabilitative services as the court shall determine necessary.

(2) *Second offense.*

(a) A jail term of not less than seventy-two (72) consecutive hours and not more than six (6) months, and a fine not to exceed one thousand dollars (\$1,000.00), provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond six (6) months but shall not extend beyond one (1) year;

(b) May be required to perform up to one hundred fifty (150) hours of community service; and

(c) Participate in other rehabilitative services as the court shall determine necessary.

D. *Offense.* Unlawful aggravated operating while under the influence of any Intoxicant is committed when a person:

- (1) Has an alcohol concentration of sixteen one-hundredths (.16) or more in his blood or breath while driving any vehicle within the exterior boundaries of the Reservation; or
- (2) Has caused bodily injury to a human being, both terms as defined in section 15-6-1, as a result of the unlawful operation of a motor vehicle while driving under the influence of any Intoxicant; or
- (3) Refused to submit to testing, as provided for in section 15-14-17 below (Implied consent), and in the judgment of the court, based upon evidence of intoxication presented to the court, the person was under the influence of any Intoxicant.

E. *Sentence.* Any person convicted for aggravated operating while under the influence under Subsection D shall be sentenced as follows:

(1) *First Offense:*

- (a) A jail term not less than forty-eight (48) consecutive hours and up to ninety (90) days, jail or probation, and a fine not to exceed five hundred dollars (\$500.00), provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond ninety (90) days but shall not extend beyond one (1) year;
- (b) May be required to perform up to one hundred (100) hours of community service;
- (c) Attend a driver rehabilitation program for alcohol and/or drugs, also known as "DWI school"; and
- (d) Participate in other rehabilitative services as the court shall determine necessary.

(2) *Second offense.*

- (a) A jail term of not less than ninety-six (96) consecutive hours and not more than six (6) months, and be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), provided that if the sentence is suspended in whole or in part, the period of probation may not extend beyond one (1) year.
- (b) May be required to perform up to two hundred fifty (250) hours of community service, and
- (c) Participate in other rehabilitative services as the court shall determine necessary.

F. *Third or subsequent offense of Subsections B, D, or H.*

Any person convicted for the third or subsequent offense of any combination of Subsections B, D, or H shall be sentenced as follows:

- (1) A jail term of not less than one hundred eighty-two (182) consecutive days, and not more than three hundred sixty-four (364) days, and be ordered to pay a fine not to exceed two

thousand five hundred dollars (\$2,500.00), provided that the sentence may be suspended in whole or part conditioned upon the completion of inpatient treatment or Wellness Court in accordance with Subsection F(4). Any remaining period of probation may not extend beyond a combined total of one (1) year.

(2) May be required to perform two hundred fifty (250) hours of community service; and

(3) Participate in other rehabilitative services as the court shall determine necessary; or

(4) An offender may receive day-for-day credit toward the mandatory minimum jail sentence of one hundred eighty-two (182) consecutive days for participating in an in-patient substance abuse treatment program and/or the Wellness Court Program upon a clinical recommendation from certified substance abuse treatment provider and approval of the Pueblo Court Prosecutor and the Court; provided that failure to complete in-patient substance abuse treatment and/or the Wellness Court Program may result in the reinstatement of the original mandatory minimum sentence with no confinement credit earned.

G. A deferred sentence under this Section shall be considered a first conviction for purposes of subsequent convictions.

H. A conviction under Tribal or state law or county ordinance prescribing penalties for driving or operating a vehicle while under the influence of any Intoxicant shall be deemed to be a conviction under this Section for purposes of determining whether a conviction is a second or subsequent conviction.

I. Failure to complete, within a time specified by the court, any community service, screening program, or treatment program ordered by the court, shall be a probation violation under § 15-14-23.

J. Any fines or fees which may be imposed pursuant to the conviction or other disposition of the offense under this chapter may be withheld from the offender's per capita distribution.

K. If a person is convicted of operating a motor vehicle while under the influence of any Intoxicant, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter.

L. Upon conviction under this Section, an offender shall be required to participate in and complete, within the time specified by the court, an alcohol or drug abuse screening program and, if necessary, a treatment program approved by the court. The court may order the offender to pay the costs of any court-ordered screening and treatment programs.

(Res. No. 108-16, Effective 1/1/2017)