

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 133

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; PROVIDING FOR THE INSTALLATION OF AN IGNITION  
INTERLOCK DEVICE ON MOTOR VEHICLES DRIVEN BY A FIRST-TIME  
OFFENDER; PROVIDING FOR PLACEMENT OF AN IGNITION INTERLOCK  
DEVICE ON MOTOR VEHICLES DRIVEN BY SUBSEQUENT OFFENDERS;  
IMPOSING A FEE; CREATING A FUND; AMENDING AND ENACTING  
SECTIONS 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) is amended to read:

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

A. It is unlawful for [~~any~~] a person who is under

.141107.2

underscored material = new  
[bracketed material] = delete

1 the influence of intoxicating liquor to drive [~~any~~] a vehicle  
2 within this state.

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

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

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

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

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

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

24 E. Every person under first conviction [~~under~~]  
25 pursuant to this section shall be punished, notwithstanding

1 the provisions of Section 31-18-13 NMSA 1978, by imprisonment  
2 for not more than ninety days or by a fine of not more than  
3 five hundred dollars (\$500), or both; provided that if the  
4 sentence is suspended in whole or in part or deferred, the  
5 period of probation may extend beyond ninety days but shall  
6 not exceed one year. Upon a first conviction [~~under~~] pursuant  
7 to this section, an offender may be sentenced to not less than  
8 forty-eight hours of community service or a fine of three  
9 hundred dollars (\$300). The offender shall be ordered by the  
10 court to participate in and complete a screening program  
11 described in Subsection H of this section and to attend a  
12 driver rehabilitation program for alcohol or drugs, also known  
13 as a "DWI school", approved by the [~~traffic safety~~] bureau [~~of~~  
14 ~~the state highway and transportation department~~] and also may  
15 be required to participate in other rehabilitative services as  
16 the court shall determine to be necessary. In addition to  
17 those penalties, when an offender commits aggravated driving  
18 while under the influence of intoxicating liquor or drugs, the  
19 offender shall be sentenced to not less than forty-eight  
20 consecutive hours in jail. If an offender fails to complete,  
21 within a time specified by the court, any community service,  
22 screening program, treatment program or DWI school ordered by  
23 the court, the offender shall be sentenced to not less than an  
24 additional forty-eight consecutive hours in jail. Any jail  
25 sentence imposed [~~under~~] pursuant to this subsection for

.141107.2

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

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

22 (1) upon a second conviction, each offender  
23 shall be sentenced to a jail term of not less than seventy-two  
24 consecutive hours, forty-eight hours of community service and  
25 a fine of five hundred dollars (\$500). In addition to those

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

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

24 G. Upon a fourth or subsequent conviction [~~under~~]  
25 pursuant to this section, an offender is guilty of a fourth

.141107.2

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

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

12 I. Upon [~~any subsequent misdemeanor~~] a first  
13 conviction [~~under~~] for aggravated driving while under the  
14 influence of intoxicating liquor or drugs pursuant to the  
15 provisions of Subsection D of this section [~~prior to July 1,~~  
16 2003], as a condition of probation, an offender [~~may~~] shall be  
17 required to have an ignition interlock device installed and  
18 operating [~~on all motor vehicles owned by the offender or~~  
19 ~~available for the offender's personal use, pursuant to rules~~  
20 ~~adopted by the traffic safety bureau~~] for a period of one year  
21 on all motor vehicles driven by the offender, pursuant to  
22 rules adopted by the bureau. Unless determined by the  
23 sentencing court to be indigent, the offender shall pay all  
24 costs associated with having an ignition interlock device  
25 installed on the appropriate motor vehicles. If an offender

1 drives a motor vehicle that does not have an ignition  
2 interlock device installed on the motor vehicle, the offender  
3 may be in violation of the terms and conditions of his  
4 probation.

5 J. Upon a first conviction for driving while under  
6 the influence of intoxicating liquor or drugs pursuant to the  
7 provisions of Subsection A, B or C of this section, as a  
8 condition of probation, an offender may be required to have an  
9 ignition interlock device installed and operating for a period  
10 of one year on all motor vehicles driven by the offender,  
11 pursuant to rules adopted by the bureau. Unless determined by  
12 the sentencing court to be indigent, the offender shall pay  
13 all costs associated with having an ignition interlock device  
14 installed on the appropriate motor vehicles. If an offender  
15 drives a motor vehicle that does not have an ignition  
16 interlock device installed on the motor vehicle, the offender  
17 may be in violation of the terms and conditions of his  
18 probation.

19 K. Upon any subsequent conviction pursuant to this  
20 section, as a condition of probation, a subsequent offender  
21 shall be required to have an ignition interlock device  
22 installed and operating for a period of at least one year on  
23 all motor vehicles driven by the subsequent offender, pursuant  
24 to rules adopted by the bureau. Unless determined by the  
25 sentencing court to be indigent, the subsequent offender shall

.141107.2

1 pay all costs associated with having an ignition interlock  
2 device installed on the appropriate motor vehicles. If a  
3 subsequent offender drives a motor vehicle that does not have  
4 an ignition interlock device installed on the motor vehicle,  
5 the subsequent offender may be in violation of the terms and  
6 conditions of his probation.

7           ~~[J.]~~ L. In the case of a first, second or third  
8 offense under this section, the magistrate court has  
9 concurrent jurisdiction with district courts to try the  
10 offender.

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

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



1           ~~[M-]~~ O. As used in this section:

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

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

9           Section 2. [NEW MATERIAL] IMPOSING A FEE--CREATING A  
10 FUND.--

11                   A. A fee is imposed on all persons who provide  
12 ignition interlock devices to persons convicted of driving  
13 while under the influence of intoxicating liquor or drugs  
14 pursuant to Section 66-8-102 NMSA 1978 in the amount of ten  
15 percent of the amount charged to lease each ignition interlock  
16 device to a person convicted pursuant to that section and  
17 shall be paid monthly to the local government division of the  
18 department of finance and administration.

19                   B. The "interlock device fund" is created in the  
20 state treasury. The fee imposed pursuant to Subsection A of  
21 this section shall be distributed to the fund by the local  
22 government division of the department of finance and  
23 administration.

24                   C. All money in the interlock device fund is  
25 appropriated to the local government division of the

.141107.2

1 department of finance and administration to cover the costs of  
2 installing and leasing ignition interlock devices to indigent  
3 people who are required, pursuant to convictions under Section  
4 66-8-102 NMSA 1978, to install those devices in their  
5 vehicles. Indigency shall be determined by the sentencing  
6 court.

7 D. Any balance remaining in the interlock device  
8 fund shall not revert to the general fund at the end of any  
9 fiscal year.

10 E. The interlock device fund shall be administered  
11 by the local government division of the department of finance  
12 and administration.

13 Section 3. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is January 1, 2003.