

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 49

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; INCREASING THE REQUIREMENTS FOR REMOVAL OF AN  
IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S  
LICENSE; PROVIDING THAT PERSONS WHO DO NOT OBTAIN AN IGNITION  
INTERLOCK DEVICE AND LICENSE SHALL BE REQUIRED TO PARTICIPATE  
IN A SOBRIETY MONITORING PROGRAM; PROVIDING ASSISTANCE FOR  
SOBRIETY MONITORING DEVICES FROM THE INTERLOCK DEVICE FUND.

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

**SECTION 1.** Section 66-5-33.1 NMSA 1978 (being Laws 1985,  
Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR  
REGISTRATION--IGNITION INTERLOCK--SOBRIETY MONITORING--FEE.--

A. Whenever a driver's license or registration is  
suspended or revoked and an application has been made for its

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1 reinstatement, compliance with all appropriate provisions of  
2 the Motor Vehicle Code and the payment of a fee of twenty-five  
3 dollars (\$25.00) is a prerequisite to the reinstatement of any  
4 license or registration.

5 B. If a driver's license was revoked for driving  
6 while under the influence of intoxicating liquor or drugs, for  
7 aggravated driving while under the influence of intoxicating  
8 liquor or drugs or pursuant to the Implied Consent Act, the  
9 following are required to reinstate the driver's license:

10 (1) an additional fee of seventy-five dollars  
11 (\$75.00);

12 (2) completion of the license revocation  
13 period;

14 (3) satisfaction of any court-ordered ignition  
15 interlock or sobriety monitoring requirements; ~~and~~

16 (4) a minimum of six months of driving with an  
17 ignition interlock license with no attempts to circumvent or  
18 tamper with the ignition interlock device or a minimum of six  
19 months of successful participation in a court-supervised  
20 sobriety monitoring program pursuant to Subsection R of Section  
21 66-8-102 NMSA 1978; and

22 (5) no more than two ignition interlock or  
23 sobriety monitoring tests at a level greater than five one  
24 hundredths alcohol concentration during the most recent six  
25 months of ignition interlock or sobriety monitoring device

1 verified active usage, as determined by the bureau, prior to  
2 reinstatement of the unrestricted driver's license.

3 C. The department may reinstate the driving  
4 privileges of an out-of-state resident without the requirement  
5 that the person obtain an ignition interlock license for a  
6 minimum of six months, if the following conditions are met:

7 (1) the license revocation period is  
8 completed;

9 (2) satisfactory proof is presented to the  
10 department that the person is no longer a resident of New  
11 Mexico; and

12 (3) the license reinstatement fee is paid.

13 D. Fees collected pursuant to Subsection B of this  
14 section are appropriated to the local governments road fund.  
15 The department shall maintain an accounting of the fees  
16 collected and shall report that amount upon request to the  
17 legislature."

18 **SECTION 2.** Section 66-8-102 NMSA 1978 (being Laws 1953,  
19 Chapter 139, Section 54, as amended) is amended to read:

20 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING  
21 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
22 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

23 A. It is unlawful for a person who is under the  
24 influence of intoxicating liquor to drive a vehicle within this  
25 state.

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1           B. It is unlawful for a person who is under the  
2 influence of any drug to a degree that renders the person  
3 incapable of safely driving a vehicle to drive a vehicle within  
4 this state.

5           C. It is unlawful for:

6                 (1) a person to drive a vehicle in this state  
7 if the person has an alcohol concentration of eight one  
8 hundredths or more in the person's blood or breath within three  
9 hours of driving the vehicle and the alcohol concentration  
10 results from alcohol consumed before or while driving the  
11 vehicle; or

12                 (2) a person to drive a commercial motor  
13 vehicle in this state if the person has an alcohol  
14 concentration of four one hundredths or more in the person's  
15 blood or breath within three hours of driving the commercial  
16 motor vehicle and the alcohol concentration results from  
17 alcohol consumed before or while driving the vehicle.

18           D. Aggravated driving under the influence of  
19 intoxicating liquor or drugs consists of:

20                 (1) driving a vehicle in this state with an  
21 alcohol concentration of sixteen one hundredths or more in the  
22 driver's blood or breath within three hours of driving the  
23 vehicle and the alcohol concentration results from alcohol  
24 consumed before or while driving the vehicle;

25                 (2) causing bodily injury to a human being as

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1 a result of the unlawful operation of a motor vehicle while  
2 driving under the influence of intoxicating liquor or drugs; or  
3 (3) refusing to submit to chemical testing, as  
4 provided for in the Implied Consent Act, and in the judgment of  
5 the court, based upon evidence of intoxication presented to the  
6 court, the driver was under the influence of intoxicating  
7 liquor or drugs.

8 E. A first conviction pursuant to this section  
9 shall be punished, notwithstanding the provisions of Section  
10 31-18-13 NMSA 1978, by imprisonment for not more than ninety  
11 days or by a fine of not more than five hundred dollars (\$500),  
12 or both; provided that if the sentence is suspended in whole or  
13 in part or deferred, the period of probation may extend beyond  
14 ninety days but shall not exceed one year. Upon a first  
15 conviction pursuant to this section, an offender shall be  
16 sentenced to not less than twenty-four hours of community  
17 service. In addition, the offender may be required to pay a  
18 fine of three hundred dollars (\$300). The offender shall be  
19 ordered by the court to participate in and complete a screening  
20 program described in Subsection L of this section and to attend  
21 a driver rehabilitation program for alcohol or drugs, also  
22 known as a "DWI school", approved by the bureau and also may be  
23 required to participate in other rehabilitative services as the  
24 court shall determine to be necessary. In addition to those  
25 penalties, when an offender commits aggravated driving under

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

21 F. A second or third conviction pursuant to this  
22 section shall be punished, notwithstanding the provisions of  
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
24 three hundred sixty-four days or by a fine of not more than one  
25 thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of  
2 probation may extend beyond one year but shall not exceed five  
3 years. Notwithstanding any provision of law to the contrary  
4 for suspension or deferment of execution of a sentence:

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

19 (2) upon a third conviction, an offender shall  
20 be sentenced to a jail term of not less than thirty consecutive  
21 days, not less than ninety-six hours of community service and a  
22 fine of seven hundred fifty dollars (\$750). In addition to  
23 those penalties, when an offender commits aggravated driving  
24 under the influence of intoxicating liquor or drugs, the  
25 offender shall be sentenced to a jail term of not less than

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1 sixty consecutive days. If an offender fails to complete,  
2 within a time specified by the court, any community service,  
3 screening program or treatment program ordered by the court,  
4 the offender shall be sentenced to not less than an additional  
5 sixty consecutive days in jail. A penalty imposed pursuant to  
6 this paragraph shall not be suspended or deferred or taken  
7 under advisement.

8 G. Upon a fourth conviction pursuant to this  
9 section, an offender is guilty of a fourth degree felony and,  
10 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
11 shall be sentenced to a term of imprisonment of eighteen  
12 months, six months of which shall not be suspended, deferred or  
13 taken under advisement.

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

20 I. Upon a sixth conviction pursuant to this  
21 section, an offender is guilty of a third degree felony and,  
22 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
23 shall be sentenced to a term of imprisonment of thirty months,  
24 eighteen months of which shall not be suspended, deferred or  
25 taken under advisement.



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

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

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

21           M. Upon a second or third conviction pursuant to  
22 this section, an offender shall be required to participate in  
23 and complete, within a time specified by the court:

24                   (1) not less than a twenty-eight-day  
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

4 (3) a drug court program approved by the  
5 court; or

6 (4) any other substance abuse treatment  
7 program approved by the court.

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

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

18 O. Upon a conviction pursuant to this section, an  
19 offender shall be required to obtain an ignition interlock  
20 license and have an ignition interlock device installed and  
21 operating on all motor vehicles driven by the offender,  
22 pursuant to rules adopted by the bureau. Unless determined by  
23 the bureau to be indigent, the offender shall pay all costs  
24 associated with having an ignition interlock device installed  
25 on the appropriate motor vehicles. The offender shall operate

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1 only those vehicles equipped with ignition interlock devices  
2 for:

3 (1) a period of one year, for a first  
4 offender;

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

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

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

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

23 Q. An offender who obtains an ignition interlock  
24 license and installs an ignition interlock device prior to  
25 conviction shall be given credit at sentencing for the time

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1 period the ignition interlock device has been in use.

2 R. An offender who has not installed an ignition  
3 interlock device and has not obtained an ignition interlock  
4 license shall be required to participate in a bureau-approved  
5 sobriety monitoring program for the same period as the ignition  
6 interlock requirement in Subsection 0 of this section or until  
7 the end of the period of supervision by the court in the  
8 matter, whichever is shorter. The sobriety monitoring program  
9 shall include the use of a sobriety monitoring device that  
10 identifies the person giving the sample, pursuant to rules  
11 adopted by the bureau. Sobriety shall be monitored at least  
12 twice daily. Unless determined by the bureau to be indigent,  
13 the offender shall pay all costs associated with sobriety  
14 monitoring. Upon the offender installing an ignition interlock  
15 device and obtaining an ignition interlock license, the court  
16 may suspend the sobriety monitoring requirements. The time  
17 spent successfully maintaining sobriety shall be credited  
18 toward the time required in Subsection 0 of this section to  
19 have the ignition interlock device and license and shall be  
20 credited to the six-month interlock requirement pursuant to  
21 Section 66-5-33.1 NMSA 1978.

22 [~~R.~~] S. In the case of a first, second or third  
23 offense under this section, the magistrate court has concurrent  
24 jurisdiction with district courts to try the offender.

25 [~~S.~~] T. A conviction pursuant to a municipal or

1 county ordinance in New Mexico or a law of any other  
2 jurisdiction, territory or possession of the United States or  
3 of a tribe, when that ordinance or law is equivalent to New  
4 Mexico law for driving under the influence of intoxicating  
5 liquor or drugs, and prescribes penalties for driving under the  
6 influence of intoxicating liquor or drugs, shall be deemed to  
7 be a conviction pursuant to this section for purposes of  
8 determining whether a conviction is a second or subsequent  
9 conviction.

10 ~~[F.]~~ U. In addition to any other fine or fee that  
11 may be imposed pursuant to the conviction or other disposition  
12 of the offense under this section, the court may order the  
13 offender to pay the costs of any court-ordered screening and  
14 treatment programs.

15 ~~[H.]~~ V. With respect to this section and  
16 notwithstanding any provision of law to the contrary, if an  
17 offender's sentence was suspended or deferred in whole or in  
18 part and the offender violates any condition of probation, the  
19 court may impose any sentence that the court could have  
20 originally imposed and credit shall not be given for time  
21 served by the offender on probation.

22 ~~[V.]~~ W. As used in this section:

23 (1) "bodily injury" means an injury to a  
24 person that is not likely to cause death or great bodily harm  
25 to the person, but does cause painful temporary disfigurement

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1 or temporary loss or impairment of the functions of any member  
2 or organ of the person's body; and

3 (2) "commercial motor vehicle" means a motor  
4 vehicle or combination of motor vehicles used in commerce to  
5 transport passengers or property if the motor vehicle:

6 (a) has a gross combination weight  
7 rating of more than twenty-six thousand pounds inclusive of a  
8 towed unit with a gross vehicle weight rating of more than ten  
9 thousand pounds;

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

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

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

17 **SECTION 3.** Section 66-8-102.3 NMSA 1978 (being Laws 2002,  
18 Chapter 82, Section 2, as amended) is amended to read:

19 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND  
20 CREATED.--

21 A. A fee is imposed on a person convicted of  
22 driving under the influence of intoxicating liquor or drugs in  
23 violation of Section 66-8-102 NMSA 1978 or adjudicated as a  
24 delinquent on the basis of Subparagraph (a) of Paragraph (1) of  
25 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose

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1 driver's license is revoked pursuant to the provisions of the  
 2 Implied Consent Act, in an amount determined by rule of the  
 3 [~~traffic safety~~] bureau [~~of the department of transportation~~]  
 4 not to exceed one hundred dollars (\$100) but not less than  
 5 fifty dollars (\$50.00) for each year the person is required to  
 6 operate only vehicles equipped with an ignition interlock  
 7 device or to use a sobriety monitoring device in order to  
 8 ensure the solvency of the interlock device fund. The fee  
 9 shall not be imposed on an indigent person.

10 B. The "interlock device fund" is created in the  
 11 state treasury. The ignition interlock device fee imposed  
 12 pursuant to Subsection A of this section shall be collected by  
 13 the motor vehicle division of the [~~taxation and revenue~~]  
 14 department and deposited in the interlock device fund. The  
 15 sobriety monitoring device fee imposed pursuant to Subsection A  
 16 of this section shall be collected by the courts and deposited  
 17 in the interlock device fund.

18 C. All money in the interlock device fund is  
 19 appropriated to the [~~traffic safety~~] bureau [~~of the department~~  
 20 ~~of transportation~~] to cover part of the costs of installing,  
 21 removing and leasing ignition interlock devices or leasing  
 22 sobriety monitoring devices for indigent people who are  
 23 required, pursuant to convictions under Section 66-8-102 NMSA  
 24 1978 or adjudications on the basis of Subparagraph (a) of  
 25 Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or

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1 driver's license revocations pursuant to the provisions of the  
2 Implied Consent Act or as a condition of parole, to install  
3 ~~[those]~~ ignition interlock devices in their vehicles or to use  
4 a sobriety monitoring device. Provided that money is available  
5 in the interlock device fund, the ~~[traffic safety]~~ bureau shall  
6 pay:

7 (1) for one vehicle per offender, up to fifty  
8 dollars (\$50.00) for the cost of installation, up to fifty  
9 dollars (\$50.00) for the cost of removal and up to thirty  
10 dollars (\$30.00) monthly for verified active usage of the  
11 interlock device; or

12 (2) up to thirty dollars (\$30.00) monthly  
13 toward the lease and use of a sobriety monitoring device.

14 D. The ~~[traffic safety]~~ bureau shall not pay any  
15 amount above what an offender would be required to pay for the  
16 installation, removal or usage of an interlock device or for  
17 the lease of a sobriety monitoring device.

18 ~~[D.]~~ E. Indigency shall be determined by the  
19 ~~[traffic safety]~~ bureau based on proof of enrollment in one or  
20 more of the following types of public assistance:

- 21 (1) temporary assistance for needy families;  
22 (2) general assistance;  
23 (3) the supplemental ~~[nutritional]~~ nutrition  
24 assistance program, also known as "food stamps";  
25 (4) supplemental security income;



1 (5) the federal food distribution program on  
2 Indian reservations; or

3 (6) other criteria approved by the [~~traffic~~  
4 ~~safety~~] bureau.

5 [~~E.~~] F. Any balance remaining in the interlock  
6 device fund shall not revert to the general fund at the end of  
7 any fiscal year.

8 [~~F.~~] G. The interlock device fund shall be  
9 administered by the [~~traffic safety~~] bureau [~~of the department~~  
10 ~~of transportation~~]. No more than ten percent of the money in  
11 the interlock device fund in any fiscal year shall be expended  
12 by the [~~traffic safety~~] bureau [~~of the department of~~  
13 ~~transportation~~] for the purpose of administering the fund."

14 SECTION 4. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2017.

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