

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 238

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

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECOMPILING SECTIONS OF THE MOTOR VEHICLE CODE INTO A NEW ARTICLE OF THAT CODE; REVISING PROVISIONS RELATED TO PENALTIES AND MONITORING DEVICES; CREATING THE DRIVING UNDER THE INFLUENCE TREATMENT FUND AND PROVIDING FOR A DISTRIBUTION TO THE FUND; CLARIFYING THE DISTRIBUTION OF THE LIQUOR EXCISE TAX; MAKING APPROPRIATIONS.

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

SECTION 1. Section 66-1-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 1) is amended to read:

"66-1-1. SHORT TITLE.--Articles 1 through [8] 8A of Chapter [~~64 NMSA 1953~~] 66 NMSA 1978 may be cited as the "Motor Vehicle Code"."

SECTION 2. A new section of the Motor Vehicle Code,

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1 Section 66-8A-1 NMSA 1978, is enacted to read:

2 "66-8A-1. [NEW MATERIAL] DEFINITIONS.--As used in Chapter
3 66, Article 8A NMSA 1978:

4 A. "alcohol-monitoring ankle bracelet" means a
5 secure alcohol-monitoring device worn on a person's ankle that
6 uses transdermal alcohol monitoring and allows for continuous
7 remote monitoring of the person's alcohol concentration;

8 B. "bodily injury" means an injury to a person that
9 is not likely to cause death or great bodily harm to the person
10 but causes painful temporary disfigurement or temporary loss or
11 impairment of the functions of a member or organ of the
12 person's body;

13 C. "denied" means the division has refused to issue
14 an instruction permit, driver's license or provisional license
15 pursuant to the provisions of Subsection D or E of Section
16 66-5-5 NMSA 1978;

17 D. "ignition interlock device" means a device,
18 approved by the bureau, that prevents the operation of a motor
19 vehicle by an intoxicated or impaired person;

20 E. "ignition interlock license" means a driver's
21 license issued to a person by the department that allows that
22 person to operate a motor vehicle with an ignition interlock
23 device after that person's driving privilege or driver's
24 license has been revoked or denied. The department shall
25 clearly mark an ignition interlock license to distinguish it

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1 from other driver's licenses;

2 F. "revocation" means that the driver's license and
3 privilege to drive a motor vehicle on the public highways are
4 terminated and shall not be renewed or restored, except as
5 provided in the Driving Under the Influence Act;

6 G. "revoked" means the department has terminated a
7 person's driving privilege or driver's license for driving
8 while under the influence of intoxicating liquor or drugs
9 pursuant to the provisions of Section 66-5-29 or 66-8A-32 NMSA
10 1978; and

11 H. "suspension" means that a person's driver's
12 license and privilege to drive a motor vehicle on the public
13 highways are temporarily withdrawn."

14 SECTION 3. A new section of the Motor Vehicle Code,
15 Section 66-8A-2 NMSA 1978, is enacted to read:

16 "66-8A-2. [NEW MATERIAL] SHORT TITLE.--Sections 66-8A-2
17 through 66-8A-26 NMSA 1978 may be cited as the "Driving Under
18 the Influence Act"."

19 SECTION 4. A new section of the Motor Vehicle Code,
20 Section 66-8A-3 NMSA 1978, is enacted to read:

21 "66-8A-3. [NEW MATERIAL] DEFINITION.--As used in the
22 Driving Under the Influence Act, "commercial motor vehicle"
23 means a motor vehicle or combination of motor vehicles used in
24 commerce to transport passengers or property if the motor
25 vehicle:

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1 A. has a gross combination weight rating of more
2 than twenty-six thousand pounds, inclusive of a towed unit with
3 a gross vehicle weight rating of more than ten thousand pounds;

4 B. has a gross vehicle weight rating of more than
5 twenty-six thousand pounds;

6 C. is designed to transport sixteen or more
7 passengers, including the driver; or

8 D. is of any size and is used in the transportation
9 of hazardous materials, which requires the motor vehicle to be
10 placarded under applicable law."

11 SECTION 5. A new section of the Motor Vehicle Code,
12 Section 66-8A-4 NMSA 1978, is enacted to read:

13 "66-8A-4. [NEW MATERIAL] DRIVING UNDER THE INFLUENCE OF
14 INTOXICATING LIQUOR OR DRUGS.--

15 A. It is unlawful for a person who is under the
16 influence of intoxicating liquor to drive a vehicle within this
17 state. The presumptive levels of intoxication are those
18 provided in Sections 66-8A-5 and 66-8A-6 NMSA 1978.

19 B. It is unlawful for a person who is under the
20 influence of a drug to a degree that renders the person
21 incapable of safely driving a vehicle to drive a vehicle within
22 this state."

23 SECTION 6. A new section of the Motor Vehicle Code,
24 Section 66-8A-5 NMSA 1978, is enacted to read:

25 "66-8A-5. [NEW MATERIAL] UNLAWFUL ALCOHOL

1 CONCENTRATIONS.--It is unlawful for a person to drive:

2 A. a vehicle in this state if the person has an
3 alcohol concentration of eight one hundredths or more in the
4 person's blood or breath within three hours of driving the
5 vehicle and the alcohol concentration results from alcohol
6 consumed before or while driving the vehicle; or

7 B. a commercial motor vehicle in this state if the
8 person has an alcohol concentration of four one hundredths or
9 more in the person's blood or breath within three hours of
10 driving the commercial motor vehicle and the alcohol
11 concentration results from alcohol consumed before or while
12 driving the vehicle."

13 SECTION 7. A new section of the Motor Vehicle Code,
14 Section 66-8A-6 NMSA 1978, is enacted to read:

15 "66-8A-6. [NEW MATERIAL] AGGRAVATED DRIVING UNDER THE
16 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Aggravated driving
17 under the influence of intoxicating liquor or drugs consists
18 of:

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

24 B. causing bodily injury to a human being as a
25 result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or

2 C. refusing to submit to chemical testing, as
3 provided for in the Implied Consent Act, and in the judgment of
4 the court, based upon evidence of intoxication presented to the
5 court, the driver was under the influence of intoxicating
6 liquor or drugs."

7 SECTION 8. A new section of the Motor Vehicle Code,
8 Section 66-8A-7 NMSA 1978, is enacted to read:

9 "66-8A-7. [NEW MATERIAL] FIRST CONVICTION FOR DRIVING
10 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

11 A. A first conviction for driving under the
12 influence of intoxicating liquor or drugs shall be punished,
13 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
14 by imprisonment for not more than ninety days or by a fine of
15 not more than five hundred dollars (\$500), or both; provided
16 that if the sentence is suspended in whole or in part or
17 deferred, the period of probation may extend beyond ninety days
18 but shall not exceed one year.

19 B. Upon a first conviction pursuant to this
20 section, an offender:

21 (1) shall be sentenced to not less than
22 twenty-four hours of community service; and

23 (2) may be required to pay a fine of three
24 hundred dollars (\$300).

25 C. The offender shall be ordered by the court to:

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1 (1) attend a driver rehabilitation program for
2 alcohol or drugs, also known as a "DWI school", approved by the
3 bureau;

4 (2) participate in and complete a screening
5 program described in Section 66-8A-15 NMSA 1978; and

6 (3) in accordance with the results and
7 recommendations of the screening program, participate in a
8 treatment program of up to twenty-eight days that is approved
9 by the court and that is inpatient, residential, in-custody or
10 outpatient.

11 D. When an offender commits aggravated driving
12 under the influence of intoxicating liquor or drugs as provided
13 in this section, the offender shall:

14 (1) be sentenced to not less than forty-eight
15 consecutive hours in jail; and

16 (2) in accordance with the results and
17 recommendations of the screening program, participate in a
18 ninety-day treatment program approved by the court, twenty-
19 eight days of which shall be in an inpatient, residential or
20 in-custody program.

21 E. If an offender fails to complete, within a time
22 specified by the court, any community service, screening
23 program, treatment program or DWI school ordered by the court
24 or fails to comply with any other condition of probation, the
25 offender shall be sentenced to not less than an additional

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1 forty-eight consecutive hours in jail.

2 F. A jail sentence imposed pursuant to this section
3 for failure to complete, within a time specified by the court,
4 any community service, screening program, treatment program or
5 DWI school ordered by the court or for aggravated driving under
6 the influence of intoxicating liquor or drugs shall not be
7 suspended, deferred or taken under advisement.

8 G. On a first conviction for driving under the
9 influence of intoxicating liquor or drugs, time spent in jail
10 for the offense prior to the conviction for that offense shall
11 be credited to a term of imprisonment fixed by the court. A
12 deferred sentence pursuant to this subsection shall be
13 considered a first conviction for the purpose of determining
14 subsequent convictions."

15 SECTION 9. A new section of the Motor Vehicle Code,
16 Section 66-8A-8 NMSA 1978, is enacted to read:

17 "66-8A-8. [NEW MATERIAL] SECOND CONVICTION FOR DRIVING
18 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

19 A. A second conviction for driving under the
20 influence of intoxicating liquor or drugs shall be punished,
21 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
22 by imprisonment for not more than three hundred sixty-four days
23 or by a fine of not more than one thousand dollars (\$1,000), or
24 both; provided that if the sentence is suspended in whole or in
25 part, the period of probation may extend beyond one year but

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1 shall not exceed five years.

2 B. Notwithstanding any provision of law to the
3 contrary for suspension or deferment of execution of a
4 sentence, upon a second conviction:

5 (1) an offender shall be sentenced to:

6 (a) a jail term of not less than
7 ninety-six consecutive hours;

8 (b) not less than forty-eight hours of
9 community service;

10 (c) a fine of five hundred dollars
11 (\$500); and

12 (d) in accordance with the results and
13 recommendations of the screening program, participate in a
14 ninety-day treatment program approved by the court, twenty-
15 eight days of which shall be in an inpatient, residential or
16 in-custody program;

17 (2) when the offense is aggravated driving
18 under the influence of intoxicating liquor or drugs, the
19 offender shall be sentenced to:

20 (a) a jail term of not less than
21 ninety-six consecutive hours; and

22 (b) in accordance with the results and
23 recommendations of the screening program, participate in a
24 ninety-day inpatient, residential or in-custody treatment
25 program approved by the court; and

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1 (3) if an offender fails to complete, within a
2 time specified by the court, any community service, screening
3 program or treatment program ordered by the court, the offender
4 shall be sentenced to not less than an additional seven
5 consecutive days in jail.

6 C. A penalty imposed pursuant to Subsection B of
7 this section shall not be suspended or deferred or taken under
8 advisement.

9 D. Upon a second conviction for driving under the
10 influence of intoxicating liquor or drugs, in addition to
11 inpatient treatment required pursuant to Subsection B of this
12 section, an offender shall be required to participate in and
13 complete, within a time specified by the court:

14 (1) a drug court program approved by the
15 court; or

16 (2) any other substance abuse treatment
17 program approved by the court.

18 E. The requirements imposed pursuant to Subsection
19 D of this section shall not be suspended, deferred or taken
20 under advisement."

21 SECTION 10. A new section of the Motor Vehicle Code,
22 Section 66-8A-9 NMSA 1978, is enacted to read:

23 "66-8A-9. [NEW MATERIAL] THIRD CONVICTION FOR DRIVING
24 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

25 A. A third conviction for driving under the

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

8 B. Notwithstanding any provision of law to the
9 contrary for suspension or deferment of execution of a
10 sentence, upon a third conviction:

11 (1) an offender shall be sentenced to:

12 (a) a jail term of not less than thirty
13 consecutive days;

14 (b) not less than ninety-six hours of
15 community service;

16 (c) a fine of seven hundred fifty
17 dollars (\$750); and

18 (d) in accordance with the results and
19 recommendations of the screening program, participate in a
20 ninety-day inpatient, residential or in-custody treatment
21 program approved by the court;

22 (2) when the offense is aggravated driving
23 under the influence of intoxicating liquor or drugs, the
24 offender shall be sentenced to:

25 (a) a jail term of not less than sixty

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1 consecutive days; and

2 (b) in accordance with the results and
3 recommendations of the screening program, participate in a
4 ninety-day inpatient, residential or in-custody treatment
5 program approved by the court; and

6 (3) if an offender fails to complete, within a
7 time specified by the court, any community service, screening
8 program or treatment program ordered by the court, the offender
9 shall be sentenced to not less than an additional sixty
10 consecutive days in jail.

11 C. A penalty imposed pursuant to Subsection B of
12 this section shall not be suspended or deferred or taken under
13 advisement.

14 D. Upon a third conviction for driving under the
15 influence of intoxicating liquor or drugs, in addition to
16 inpatient treatment required pursuant to Subsection B of this
17 section, an offender shall be required to participate in and
18 complete, within a time specified by the court:

19 (1) a drug court program approved by the
20 court; or

21 (2) any other substance abuse treatment
22 program approved by the court.

23 E. The requirements imposed pursuant to Subsection
24 D of this section shall not be suspended, deferred or taken
25 under advisement."

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1 SECTION 11. A new section of the Motor Vehicle Code,
2 Section 66-8A-10 NMSA 1978, is enacted to read:

3 "66-8A-10. [NEW MATERIAL] FOURTH CONVICTION FOR DRIVING
4 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
5 fourth conviction for driving under the influence of
6 intoxicating liquor or drugs, an offender is guilty of a fourth
7 degree felony and, notwithstanding the provisions of Section
8 31-18-15 NMSA 1978, shall be sentenced to a term of
9 imprisonment of eighteen months, six months of which shall not
10 be suspended, deferred or taken under advisement."

11 SECTION 12. A new section of the Motor Vehicle Code,
12 Section 66-8A-11 NMSA 1978, is enacted to read:

13 "66-8A-11. [NEW MATERIAL] FIFTH CONVICTION FOR DRIVING
14 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
15 fifth conviction for driving under the influence of
16 intoxicating liquor or drugs, an offender is guilty of a fourth
17 degree felony and, notwithstanding the provisions of Section
18 31-18-15 NMSA 1978, shall be sentenced to a term of
19 imprisonment of two years, one year of which shall not be
20 suspended, deferred or taken under advisement."

21 SECTION 13. A new section of the Motor Vehicle Code,
22 Section 66-8A-12 NMSA 1978, is enacted to read:

23 "66-8A-12. [NEW MATERIAL] SIXTH CONVICTION FOR DRIVING
24 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
25 sixth conviction for driving under the influence of

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1 intoxicating liquor or drugs, an offender is guilty of a third
2 degree felony and, notwithstanding the provisions of Section
3 31-18-15 NMSA 1978, shall be sentenced to a term of
4 imprisonment of thirty months, eighteen months of which shall
5 not be suspended, deferred or taken under advisement."

6 SECTION 14. A new section of the Motor Vehicle Code,
7 Section 66-8A-13 NMSA 1978, is enacted to read:

8 "66-8A-13. [NEW MATERIAL] SEVENTH CONVICTION FOR DRIVING
9 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a
10 seventh conviction for driving under the influence of
11 intoxicating liquor or drugs, an offender is guilty of a third
12 degree felony and, notwithstanding the provisions of Section
13 31-18-15 NMSA 1978, shall be sentenced to a term of
14 imprisonment of three years, two years of which shall not be
15 suspended, deferred or taken under advisement."

16 SECTION 15. A new section of the Motor Vehicle Code,
17 Section 66-8A-14 NMSA 1978, is enacted to read:

18 "66-8A-14. [NEW MATERIAL] EIGHTH OR SUBSEQUENT CONVICTION
19 FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR
20 DRUGS.--Upon an eighth or subsequent conviction for driving
21 under the influence of intoxicating liquor or drugs, an
22 offender is guilty of a second degree felony and,
23 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
24 shall be sentenced to a term of imprisonment of twelve years,
25 ten years of which shall not be suspended, deferred or taken

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1 under advisement."

2 SECTION 16. A new section of the Motor Vehicle Code,
3 Section 66-8A-15 NMSA 1978, is enacted to read:

4 "66-8A-15. [NEW MATERIAL] ALCOHOL OR DRUG ABUSE SCREENING
5 REQUIRED.--Upon a conviction for driving under the influence of
6 intoxicating liquor or drugs, an offender shall be required to
7 participate in and complete, within a time specified by the
8 court, an alcohol or drug abuse screening program approved by
9 the department of finance and administration and, if necessary,
10 a treatment program approved by the court. The requirement
11 imposed pursuant to this section shall not be suspended,
12 deferred or taken under advisement."

13 SECTION 17. A new section of the Motor Vehicle Code,
14 Section 66-8A-16 NMSA 1978, is enacted to read:

15 "66-8A-16. [NEW MATERIAL] SUBSTANCE ABUSE COUNSELING TO
16 BE PROVIDED BY THE CORRECTIONS DEPARTMENT UPON A FELONY
17 CONVICTION.--Upon a felony conviction for driving under the
18 influence of intoxicating liquor or drugs, the corrections
19 department shall provide substance abuse counseling and
20 treatment to the offender in its custody. While the offender
21 is on probation or parole under its supervision, the
22 corrections department shall also provide substance abuse
23 counseling and treatment to the offender or shall require the
24 offender to obtain substance abuse counseling and treatment."

25 SECTION 18. A new section of the Motor Vehicle Code,

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1 Section 66-8A-17 NMSA 1978, is enacted to read:

2 "66-8A-17. [NEW MATERIAL] SENTENCING--ALCOHOL-MONITORING
3 ANKLE BRACELET.--

4 A. A court may order an offender convicted of
5 driving under the influence of intoxicating liquor or drugs and
6 sentenced to a period of incarceration in a jail or prison to
7 serve up to fifty percent of the offender's sentence outside
8 the jail or prison while wearing an alcohol-monitoring ankle
9 bracelet.

10 B. The jail or prison to which an offender is
11 sentenced to a period of incarceration shall pay for costs
12 associated with placing, removing, monitoring and maintaining
13 an alcohol-monitoring ankle bracelet used in lieu of
14 incarceration as provided in Subsection A of this section."

15 SECTION 19. A new section of the Motor Vehicle Code,
16 Section 66-8A-18 NMSA 1978, is enacted to read:

17 "66-8A-18. [NEW MATERIAL] IGNITION INTERLOCK
18 REQUIREMENT.--

19 A. Upon a conviction for driving under the
20 influence of intoxicating liquor or drugs, an offender shall be
21 required to obtain an ignition interlock license and have an
22 ignition interlock device installed and operating on all motor
23 vehicles driven by the offender, pursuant to rules adopted by
24 the bureau.

25 B. Unless determined by the bureau to be indigent,

1 the offender shall pay all costs associated with having an
2 ignition interlock device installed on the appropriate motor
3 vehicles. The offender shall operate only those vehicles
4 equipped with ignition interlock devices for:

- 5 (1) a period of one year for a first offender;
- 6 (2) a period of two years for a second
7 conviction pursuant to the Driving Under the Influence Act;
- 8 (3) a period of three years for a third
9 conviction pursuant to the Driving Under the Influence Act; or
- 10 (4) the remainder of the offender's life for a
11 fourth or subsequent conviction pursuant to the Driving Under
12 the Influence Act.

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

25 D. An offender who obtains an ignition interlock

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1 license and installs an ignition interlock device prior to
2 conviction shall be given credit at sentencing for the time
3 period the ignition interlock device has been in use."

4 SECTION 20. A new section of the Motor Vehicle Code,
5 Section 66-8A-19 NMSA 1978, is enacted to read:

6 "66-8A-19. [NEW MATERIAL] CONVICTIONS IN OTHER
7 JURISDICTIONS.--A conviction pursuant to a municipal or county
8 ordinance in New Mexico, or a law of any other jurisdiction,
9 territory or possession of the United States or of an Indian
10 nation, tribe or pueblo, when that ordinance or law is
11 equivalent to New Mexico law for driving under the influence of
12 intoxicating liquor or drugs and prescribes penalties for
13 driving under the influence of intoxicating liquor or drugs,
14 shall be deemed to be a conviction pursuant to the Driving
15 Under the Influence Act for purposes of determining whether a
16 conviction is a second or subsequent conviction."

17 SECTION 21. A new section of the Motor Vehicle Code,
18 Section 66-8A-20 NMSA 1978, is enacted to read:

19 "66-8A-20. [NEW MATERIAL] OFFENDER MAY BE ORDERED TO PAY
20 COSTS OF SCREENING OR TREATMENT.--In addition to any other fine
21 or fee that may be imposed pursuant to the conviction or other
22 disposition of the offense under the Driving Under the
23 Influence Act, the court may order the offender to pay the
24 costs of court-ordered screening and treatment programs."

25 SECTION 22. A new section of the Motor Vehicle Code,

1 Section 66-8A-21 NMSA 1978, is enacted to read:

2 "66-8A-21. [NEW MATERIAL] PROBATION VIOLATION--SUSPENDED
3 OR DEFERRED SENTENCE.--With respect to the Driving Under the
4 Influence Act and notwithstanding any provision of law to the
5 contrary, if an offender's sentence was suspended or deferred
6 in whole or in part and the offender violates any condition of
7 probation, the court may impose any sentence that the court
8 could have originally imposed and credit shall not be given for
9 time served by the offender on probation."

10 SECTION 23. A new section of the Motor Vehicle Code,
11 Section 66-8A-22 NMSA 1978, is enacted to read:

12 "66-8A-22. [NEW MATERIAL] MAGISTRATE COURT CONCURRENT
13 JURISDICTION.--In the case of a first, second or third offense
14 pursuant to the Driving Under the Influence Act, the magistrate
15 court has concurrent jurisdiction with district courts to try
16 the offender."

17 SECTION 24. Section 66-8-102.1 NMSA 1978 (being Laws
18 1982, Chapter 102, Section 2, as amended by Laws 2003, Chapter
19 51, Section 11 and by Laws 2003, Chapter 90, Section 4) is
20 recompiled as Section 66-8A-23 NMSA 1978 and is amended to
21 read:

22 "66-8A-23. GUILTY PLEAS--LIMITATIONS.--Where the
23 complaint or information alleges a violation of [~~Section~~
24 ~~66-8-102 NMSA 1978~~] the Driving Under the Influence Act, any
25 plea of guilty thereafter entered in satisfaction of the

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1 charges shall include at least a plea of guilty to the
2 violation of one of the [~~subsections of Section 66-8-102 NMSA~~
3 ~~1978~~] sections of the Driving Under the Influence Act, and no
4 other disposition by plea of guilty to any other charge in
5 satisfaction of the charge shall be authorized if the results
6 of a test performed pursuant to the Implied Consent Act
7 disclose that the blood or breath of the person charged
8 contains an alcohol concentration of:

9 A. eight one hundredths or more; or

10 B. four one hundredths or more if the person
11 charged is driving a commercial motor vehicle."

12 SECTION 25. Section 66-8-102.2 NMSA 1978 (being Laws
13 1993, Chapter 66, Section 16) is recompiled as Section 66-8A-24
14 NMSA 1978 and is amended to read:

15 "66-8A-24. MUNICIPAL AND COUNTY ORDINANCES--UNLAWFUL
16 ALCOHOL CONCENTRATION LEVEL FOR DRIVING WHILE UNDER THE
17 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No municipal or
18 county ordinance prohibiting driving while under the influence
19 of intoxicating liquor or drugs shall be enacted that provides
20 for an unlawful alcohol concentration level that is different
21 than the alcohol concentration levels provided in [~~Subsections~~
22 ~~C and D of Section 66-8-102 NMSA 1978~~] Sections 66-8A-5 and
23 Section 66-8A-6 NMSA 1978."

24 SECTION 26. Section 66-8-102.4 NMSA 1978 (being Laws
25 2005, Chapter 269, Section 8) is recompiled as Section 66-8A-25

1 NMSA 1978 and is amended to read:

2 "66-8A-25. UNIFORM POLICE REPORTS AND PROCEDURES FOR DWI
3 ARRESTS.--

4 A. The department of public safety, in
5 collaboration with the [~~motor vehicle~~] division [~~of the~~
6 ~~taxation and revenue department~~] and the [~~traffic safety~~]
7 bureau [~~of the department of transportation~~], shall develop and
8 periodically review and update standard arrest reports and
9 procedures to be used by law enforcement officers when making
10 an arrest for a violation of the [~~provisions of Section~~
11 ~~66-8-102 NMSA 1978~~] Driving Under the Influence Act or similar
12 municipal or county ordinances.

13 B. A law enforcement officer making an arrest for a
14 violation of the [~~provisions of Section 66-8-102 NMSA 1978~~]
15 Driving Under the Influence Act or of similar municipal or
16 county ordinances shall use the standard arrest reports and
17 procedures developed and approved by the department of public
18 safety in accordance with the provisions of Subsection A of
19 this section."

20 SECTION 27. A new section of the Motor Vehicle Code,
21 Section 66-8A-26 NMSA 1978, is enacted to read:

22 "66-8A-26. [NEW MATERIAL] BLOOD ALCOHOL TESTS DIRECTED BY
23 POLICE, JUDICIAL OR PROBATION OFFICER--PERSONS QUALIFIED TO
24 PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY--ARREST
25 OR TEST ONLY IN PERFORMANCE OF OFFICIAL DUTIES AUTHORIZED BY

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1 LAW.--

2 A. Only a physician or licensed professional, or a
3 practical nurse, laboratory technician or technologist employed
4 by a hospital or physician, shall withdraw blood from a person
5 in the performance of a blood alcohol test. No such physician,
6 nurse, technician or technologist who withdraws blood from a
7 person in the performance of a blood alcohol test that has been
8 directed by a police officer, or by a judicial or probation
9 officer, shall be held liable in a civil or criminal action for
10 assault, battery, false imprisonment or the conduct of a police
11 officer, except for negligence, nor shall a person assisting in
12 the performance of such a test, or a hospital wherein blood is
13 withdrawn in the performance of such a test, be subject to
14 civil or criminal liability for assault, battery, false
15 imprisonment or the conduct of a police officer, except for
16 negligence.

17 B. Nothing in this section is intended to authorize
18 a police officer, or a judicial or probation officer, to make
19 an arrest or to direct the performance of a blood alcohol test,
20 except in the performance of that person's official duties and
21 as otherwise authorized by law."

22 SECTION 28. Section 66-8-105 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 513) is recompiled as Section 66-8A-27 NMSA
24 1978 and is amended to read:

25 "66-8A-27. IMPLIED CONSENT ACT--SHORT TITLE.--Sections

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1 ~~[64-8-105 through 64-8-112 NMSA 1953]~~ 66-8A-27 through 66-8A-34
 2 NMSA 1978 may be cited as the "Implied Consent Act".

3 SECTION 29. Section 66-8-107 NMSA 1978 (being Laws 1978,
 4 Chapter 35, Section 515, as amended) is recompiled as Section
 5 66-8A-28 NMSA 1978 and is amended to read:

6 "66-8A-28. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

7 A. Any person who operates a motor vehicle within
 8 this state shall be deemed to have given consent, subject to
 9 the provisions of the Implied Consent Act:

10 (1) to chemical tests of ~~[his]~~ that person's
 11 breath or blood or both that are approved by the scientific
 12 laboratory division of the department of health pursuant to the
 13 provisions of Section 24-1-22 NMSA 1978 as determined by a law
 14 enforcement officer; or

15 (2) for the purpose of determining the drug or
 16 alcohol content of ~~[his]~~ the person's blood if the person is
 17 arrested for any offense arising out of the acts alleged to
 18 have been committed while the person was driving a motor
 19 vehicle while under the influence of an intoxicating liquor or
 20 drug.

21 B. A test of blood or breath or both, approved by
 22 the scientific laboratory division of the department of health
 23 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
 24 be administered at the direction of a law enforcement officer
 25 having reasonable grounds to believe the person to have been

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1 driving a motor vehicle within this state while under the
2 influence of intoxicating liquor or drug."

3 SECTION 30. Section 66-8-108 NMSA 1978 (being Laws 1978,
4 Chapter 35, Section 516) is recompiled as Section 66-8A-29 NMSA
5 1978 and is amended to read:

6 "66-8A-29. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT
7 WITHDRAWN.--Any person who is dead, unconscious or otherwise in
8 a condition rendering [~~him~~] the person incapable of refusal
9 shall be deemed not to have withdrawn the consent provided by
10 Section [~~64-8-107 NMSA 1953~~] 66-8A-28 NMSA 1978, and the test
11 or tests designated by the law enforcement officer may be
12 administered."

13 SECTION 31. Section 66-8-109 NMSA 1978 (being Laws 1978,
14 Chapter 35, Section 517, as amended) is recompiled as Section
15 66-8A-30 NMSA 1978 and is amended to read:

16 "66-8A-30. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF
17 COSTS--ADDITIONAL TESTS.--

18 A. Only the persons authorized by Section
19 [~~66-8-103~~] 66-8A-26 NMSA 1978 shall withdraw blood from any
20 person for the purpose of determining its alcohol or drug
21 content. This limitation does not apply to the taking of
22 samples of breath.

23 B. The person tested shall be advised by the law
24 enforcement officer of the person's right to be given an
25 opportunity to arrange for a physician, licensed professional

1 or practical nurse or laboratory technician or technologist who
 2 is employed by a hospital or physician of [~~his~~] the person's
 3 own choosing to perform a chemical test in addition to any test
 4 performed at the direction of a law enforcement officer.

5 C. Upon the request of the person tested, full
 6 information concerning the test performed at the direction of
 7 the law enforcement officer shall be made available to [~~him~~]
 8 the person as soon as it is available from the person
 9 performing the test.

10 D. The law enforcement agency represented by the
 11 law enforcement officer at whose direction the chemical test is
 12 performed shall pay for the chemical test.

13 E. If a person exercises [~~his~~] the person's right
 14 under Subsection B of this section to have a chemical test
 15 performed upon [~~him~~] the person by [~~a person~~] someone of [~~his~~]
 16 the person's own choosing, the cost of that test shall be paid
 17 by the law enforcement agency represented by the law
 18 enforcement officer at whose direction a chemical test was
 19 administered [~~under Section 66-8-107~~] pursuant to Section
 20 66-8A-28 NMSA 1978."

21 SECTION 32. Section 66-8-110 NMSA 1978 (being Laws 1978,
 22 Chapter 35, Section 518, as amended) is recompiled as Section
 23 66-8A-31 NMSA 1978 and is amended to read:

24 "66-8A-31. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
 25 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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1 A. The results of a test performed pursuant to the
2 Implied Consent Act may be introduced into evidence in any
3 civil action or criminal action arising out of the acts alleged
4 to have been committed by the person tested for driving a motor
5 vehicle while under the influence of intoxicating liquor or
6 drugs.

7 B. When the blood or breath of the person tested
8 contains:

9 (1) an alcohol concentration of less than four
10 one hundredths, it shall be presumed that the person was not
11 under the influence of intoxicating liquor;

12 (2) an alcohol concentration of at least four
13 one hundredths but less than eight one hundredths:

14 (a) no presumption shall be made that
15 the person either was or was not under the influence of
16 intoxicating liquor, unless the person is driving a commercial
17 motor vehicle; and

18 (b) the amount of alcohol in the
19 person's blood or breath may be considered with other competent
20 evidence in determining whether the person was under the
21 influence of intoxicating liquor; or

22 (3) an alcohol concentration of four one
23 hundredths or more and the person is driving a commercial
24 vehicle, it shall be presumed that the person is under the
25 influence of intoxicating liquor.

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1 C. The arresting officer shall charge the person
2 tested with a violation of [~~Section 66-8-102 NMSA 1978~~] the
3 Driving Under the Influence Act when the blood or breath of the
4 person contains an alcohol concentration of:

5 (1) eight one hundredths or more; or

6 (2) four one hundredths or more if the person
7 is driving a commercial motor vehicle.

8 D. When a person is less than twenty-one years of
9 age and the blood or breath of the person contains an alcohol
10 concentration of two one hundredths or more, the person's
11 driving privileges shall be revoked pursuant to the provisions
12 of the Implied Consent Act.

13 E. If the test performed pursuant to the Implied
14 Consent Act is administered more than three hours after the
15 person was driving a vehicle, the test result may be introduced
16 as evidence of the alcohol concentration in the person's blood
17 or breath at the time of the test and the trier of fact shall
18 determine what weight to give the test result for the purpose
19 of determining a violation of [~~Section 66-8-102 NMSA 1978~~] the
20 Driving Under the Influence Act.

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

25 G. The presumptions in Subsection B of this section

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1 do not limit the introduction of other competent evidence
2 concerning whether the person was under the influence of
3 intoxicating liquor.

4 H. If a person is convicted of driving a motor
5 vehicle while under the influence of intoxicating liquor, the
6 trial judge shall inquire into the past driving record of the
7 person before sentence is entered in the matter."

8 SECTION 33. Section 66-8-111 NMSA 1978 (being Laws 1978,
9 Chapter 35, Section 519, as amended) is recompiled as Section
10 66-8A-32 NMSA 1978 and is amended to read:

11 "66-8A-32. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
12 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

13 A. If a person under arrest for violation of an
14 offense enumerated in the Motor Vehicle Code or the Driving
15 Under the Influence Act refuses upon request of a law
16 enforcement officer to submit to chemical tests designated by
17 the law enforcement agency as provided in Section [~~66-8-107~~]
18 66-8A-28 NMSA 1978, none shall be administered except when a
19 municipal judge, magistrate or district judge issues a search
20 warrant authorizing chemical tests as provided in Section
21 [~~66-8-107~~] 66-8A-28 NMSA 1978 upon finding in a law enforcement
22 officer's written affidavit that there is probable cause to
23 believe that the person has driven a motor vehicle while under
24 the influence of alcohol or a controlled substance, thereby
25 causing the death or great bodily injury of another person, or

underscored material = new
[bracketed material] = delete

1 there is probable cause to believe that the person has
2 committed a felony while under the influence of alcohol or a
3 controlled substance and that chemical tests as provided in
4 Section [~~66-8-107~~] 66-8A-28 NMSA 1978 will produce material
5 evidence in a felony prosecution.

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

18 C. The department, upon receipt of a statement
19 signed under penalty of perjury from a law enforcement officer
20 stating the officer's reasonable grounds to believe the
21 arrested person had been driving a motor vehicle within this
22 state while under the influence of intoxicating liquor and that
23 the person submitted to chemical testing pursuant to Section
24 [~~66-8-107~~] 66-8A-28 NMSA 1978 and the test results indicated an
25 alcohol concentration in the person's blood or breath of eight

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

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

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

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

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

25 E. If the person subject to the revocation

1 provisions of this section is a resident or will become a
2 resident within one year and is without a license to operate a
3 motor vehicle in this state, the department shall deny the
4 issuance of a license to [~~him~~] the person for the appropriate
5 period of time as provided in Subsections B and C of this
6 section.

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

18 SECTION 34. Section 66-8-111.1 NMSA 1978 (being Laws
19 1984, Chapter 72, Section 7, as amended) is recompiled as
20 Section 66-8A-33 NMSA 1978 and is amended to read:

21 "66-8A-33. LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--
22 WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING.--On behalf
23 of the department, a law enforcement officer requesting a
24 chemical test or directing the administration of a chemical
25 test pursuant to Section [~~66-8-107~~] 66-8A-28 NMSA 1978 shall

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1 serve immediate written notice of revocation and of right to a
2 hearing before the administrative hearings office pursuant to
3 the Implied Consent Act on a person who refuses to permit
4 chemical testing or on a person who submits to a chemical test
5 the results of which indicate an alcohol concentration in the
6 person's blood or breath of eight one hundredths or more if the
7 person is twenty-one years of age or older, four one hundredths
8 or more if the person is driving a commercial motor vehicle or
9 two one hundredths or more if the person is [~~less~~] younger than
10 twenty-one years of age. Upon serving notice of revocation,
11 the law enforcement officer shall take the license or permit of
12 the driver, if any, and issue a temporary license valid for
13 twenty days or, if the driver requests a hearing pursuant to
14 Section [~~66-8-112~~] 66-8A-34 NMSA 1978, valid until the date the
15 administrative hearings office issues the order following that
16 hearing; provided that a temporary license shall not be issued
17 to a driver without a valid license or permit. The law
18 enforcement officer shall send the person's driver's license to
19 the department along with the signed statement required
20 pursuant to Section [~~66-8-111~~] 66-8A-32 NMSA 1978."

21 SECTION 35. Section 66-8-112 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 520, as amended) is recompiled as Section
23 66-8A-34 NMSA 1978 and is amended to read:

24 "66-8A-34. REVOCATION OF LICENSE OR PRIVILEGE TO
25 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--

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1 REVIEW.--

2 A. The effective date of revocation pursuant to
3 Section [~~66-8-111~~] 66-8A-32 NMSA 1978 is twenty days after
4 notice of revocation or, if the person whose driver's license
5 or privilege to drive is being revoked or denied requests a
6 hearing pursuant to the Administrative Hearings Office Act, the
7 date that the administrative hearings office issues the order
8 following that hearing. The date of notice of revocation is:

9 (1) the date the law enforcement officer
10 serves written notice of revocation and of right to a hearing
11 pursuant to Section [~~66-8-111.1~~] 66-8A-33 NMSA 1978; or

12 (2) in the event the results of a chemical
13 test cannot be obtained immediately, the date notice of
14 revocation is served by mail by the department. This notice of
15 revocation and of right to a hearing shall be sent by certified
16 mail and shall be deemed to have been served on the date borne
17 by the return receipt showing delivery, refusal of the
18 addressee to accept delivery or attempted delivery of the
19 notice at the address obtained by the arresting law enforcement
20 officer or on file with the department.

21 B. Within ten days after receipt of notice of
22 revocation pursuant to Subsection A of this section, a person
23 whose license or privilege to drive is revoked or denied or the
24 person's agent may request a hearing. The hearing request
25 shall be made in writing and shall be accompanied by a payment

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1 of twenty-five dollars (\$25.00) or a sworn statement of
2 indigency on a form provided by the department. A standard for
3 indigency shall be established pursuant to rules adopted by the
4 department. Failure to request a hearing within ten days shall
5 result in forfeiture of the person's right to a hearing. Any
6 person less than eighteen years of age who fails to request a
7 hearing within ten days shall have notice of revocation sent to
8 the person's parent, guardian or custodian by the department.
9 A date for the hearing shall be set by the administrative
10 hearings office, if practical, within thirty days after receipt
11 of notice of revocation. The hearing shall be held in the
12 county in which the offense for which the person was arrested
13 took place.

14 C. The administrative hearings office may postpone
15 or continue any hearing on its own motion or upon application
16 from the person and for good cause shown for a period not to
17 exceed ninety days from the date of notice of revocation and,
18 provided that, upon a continuance, the department shall extend
19 the validity of the temporary license for the period of the
20 postponement or continuation.

21 D. At the hearing, the administrative hearings
22 office may administer oaths and may issue subpoenas for the
23 attendance of witnesses and the production of relevant books
24 and papers.

25 E. The hearing shall be limited to the following

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underscoring material = new
~~[bracketed material] = delete~~

1 issues:

2 (1) whether the law enforcement officer had
3 reasonable grounds to believe that the person had been driving
4 a motor vehicle within this state while under the influence of
5 intoxicating liquor or drugs;

6 (2) whether the person was arrested;

7 (3) whether this hearing is held no later than
8 ninety days after notice of revocation; and either

9 (4) whether:

10 (a) the person refused to submit to a
11 test upon request of the law enforcement officer; and

12 (b) the law enforcement officer advised
13 that the failure to submit to a test could result in revocation
14 of the person's privilege to drive; or

15 (5) whether:

16 (a) the chemical test was administered
17 pursuant to the provisions of the Implied Consent Act; and

18 (b) the test results indicated an
19 alcohol concentration in the person's blood or breath of eight
20 one hundredths or more if the person is twenty-one years of age
21 or older, four one hundredths or more if the person is driving
22 a commercial motor vehicle or two one hundredths or more if the
23 person is [~~less~~] younger than twenty-one years of age.

24 F. The administrative hearings office shall enter
25 an order sustaining the revocation or denial of the person's

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1 license or privilege to drive if the hearing officer from the
2 administrative hearings office finds that:

3 (1) the law enforcement officer had reasonable
4 grounds to believe the driver was driving a motor vehicle while
5 under the influence of intoxicating liquor or drugs;

6 (2) the person was arrested;

7 (3) this hearing is held no later than ninety
8 days after notice of revocation; and

9 (4) either:

10 (a) the person refused to submit to the
11 test upon request of the law enforcement officer after the law
12 enforcement officer advised the person that the person's
13 failure to submit to the test could result in the revocation of
14 the person's privilege to drive; or

15 (b) that a chemical test was
16 administered pursuant to the provisions of the Implied Consent
17 Act and the test results indicated an alcohol concentration in
18 the person's blood or breath of eight one hundredths or more if
19 the person is twenty-one years of age or older, four one
20 hundredths or more if the person is driving a commercial motor
21 vehicle or two one hundredths or more if the person is [~~less~~
22 younger] than twenty-one years of age.

23 G. If one or more of the elements set forth in
24 Paragraphs (1) through (4) of Subsection F of this section are
25 not found by the hearing officer, the person's license shall

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1 not be revoked.

2 H. A person adversely affected by an order of the
3 administrative hearings office may seek review within thirty
4 days in the district court in the county in which the offense
5 for which the person was arrested took place. The district
6 court, upon thirty days' written notice to the department,
7 shall hear the case. On review, it is for the court to
8 determine only whether reasonable grounds exist for revocation
9 or denial of the person's license or privilege to drive based
10 on the record of the administrative proceeding.

11 I. Any person [~~less~~] younger than eighteen years of
12 age shall have results of the person's hearing forwarded by the
13 administrative hearings office to the person's parent, guardian
14 or custodian."

15 SECTION 36. Section 66-5-501 NMSA 1978 (being Laws 2003,
16 Chapter 239, Section 1) is recompiled as Section 66-8A-35 NMSA
17 1978 and is amended to read:

18 "66-8A-35. SHORT TITLE.--Sections [~~1 through 4 of this~~
19 ~~act~~] 66-8A-35 through 66-8A-38 NMSA 1978 may be cited as the
20 "Ignition Interlock Licensing Act"."

21 SECTION 37. Section 66-5-503 NMSA 1978 (being Laws 2003,
22 Chapter 239, Section 3, as amended) is recompiled as Section
23 66-8A-36 NMSA 1978 and is amended to read:

24 "66-8A-36. IGNITION INTERLOCK LICENSE--REQUIREMENTS.--

25 A. A person whose driving privilege or driver's

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1 license has been revoked or denied or who has not met the
2 ignition interlock license requirement as a condition of
3 reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply
4 for an ignition interlock license from the [~~division~~]
5 department.

6 B. An applicant for an ignition interlock license
7 shall:

8 (1) provide proof of installation of the
9 ignition interlock device by [~~a traffic safety bureau approved~~]
10 an ignition interlock installer approved by the bureau on any
11 vehicle the applicant drives; and

12 (2) sign an affidavit acknowledging that:

13 (a) operation by the applicant of any
14 vehicle that is not equipped with an ignition interlock device
15 is subject to penalties for driving with a revoked license;

16 (b) tampering or interfering with the
17 proper and intended operation of an ignition interlock device
18 may subject the applicant to penalties for driving with a
19 license that was revoked for driving under the influence of
20 intoxicating liquor or drugs or a violation of the Implied
21 Consent Act; and

22 (c) the applicant shall maintain the
23 ignition interlock device and keep up-to-date records in the
24 motor vehicle showing required service and calibrations and be
25 able to provide the records upon request.

1 C. A person who has been convicted of homicide by
2 vehicle or great bodily harm by vehicle while under the
3 influence of intoxicating liquor or drugs, as provided in
4 Section 66-8-101 NMSA 1978, shall not be issued an ignition
5 interlock license unless the person has completed serving the
6 sentence for that crime, including any period of probation and
7 parole."

8 **SECTION 38.** Section 66-5-504 NMSA 1978 (being Laws 2003,
9 Chapter 239, Section 4, as amended) is recompiled as Section
10 66-8A-37 NMSA 1978 and is amended to read:

11 "66-8A-37. PENALTIES.--

12 A. A person who is issued an ignition interlock
13 license and operates a vehicle that is not equipped with an
14 ignition interlock device is driving with a license that was
15 revoked for driving under the influence of intoxicating liquor
16 or drugs or a violation of the Implied Consent Act and may be
17 subject to the penalties provided in Section 66-5-39 NMSA 1978.

18 B. A person who is issued an ignition interlock
19 license and who knowingly and deliberately tampers or
20 interferes with or causes another to tamper or interfere with
21 the proper and intended operation of an ignition interlock
22 device may be subject to the penalties for driving with a
23 license that was revoked for driving under the influence of
24 intoxicating liquor or drugs or a violation of the Implied
25 Consent Act as provided in Section 66-5-39 NMSA 1978."

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1 SECTION 39. Section 66-8-102.3 NMSA 1978 (being Laws
2 2002, Chapter 82, Section 2, as amended) is recompiled as
3 Section 66-8A-38 NMSA 1978 and is amended to read:

4 "66-8A-38. IMPOSING A FEE--INTERLOCK DEVICE FUND
5 CREATED.--

6 A. A fee is imposed on a person convicted of
7 driving under the influence of intoxicating liquor or drugs in
8 violation of [~~Section 66-8-102 NMSA 1978~~] the Driving Under the
9 Influence Act or adjudicated as a delinquent on the basis of
10 Subparagraph (a) of Paragraph (1) of Subsection A of Section
11 32A-2-3 NMSA 1978 or a person whose driver's license is revoked
12 pursuant to the provisions of the Implied Consent Act, in an
13 amount determined by rule of the [~~traffic safety~~] bureau [~~of~~
14 ~~the department of transportation~~] not to exceed one hundred
15 dollars (\$100) but not less than fifty dollars (\$50.00) for
16 each year the person is required to operate only vehicles
17 equipped with an ignition interlock device in order to ensure
18 the solvency of the interlock device fund. The fee shall not
19 be imposed on an indigent person.

20 B. The "interlock device fund" is created in the
21 state treasury. The fee imposed pursuant to Subsection A of
22 this section shall be collected by the [~~motor vehicle division~~
23 ~~of the taxation and revenue~~] department and deposited in the
24 interlock device fund.

25 C. All money in the interlock device fund is

1 appropriated to the [~~traffic safety~~] bureau [~~of the department~~
2 ~~of transportation~~] to cover part of the costs of installing,
3 removing and leasing ignition interlock devices for indigent
4 people who are required, pursuant to convictions [~~under Section~~
5 ~~66-8-102 NMSA 1978~~] for violations of the Driving Under the
6 Influence Act or adjudications on the basis of Subparagraph (a)
7 of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978
8 or driver's license revocations pursuant to the provisions of
9 the Implied Consent Act or as a condition of parole, to install
10 those devices in their vehicles. Provided that money is
11 available in the interlock device fund, the [~~traffic safety~~]
12 bureau shall pay, for one vehicle per offender, up to fifty
13 dollars (\$50.00) for the cost of installation, up to fifty
14 dollars (\$50.00) for the cost of removal and up to thirty
15 dollars (\$30.00) monthly for verified active usage of the
16 interlock device. The [~~traffic safety~~] bureau shall not pay
17 any amount above what an offender would be required to pay for
18 the installation, removal or usage of an interlock device.

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

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

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- 1 (4) supplemental security income;
- 2 (5) the federal food distribution program on
- 3 Indian reservations; or
- 4 (6) other criteria approved by the [~~traffic~~
- 5 ~~safety~~] bureau.

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

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

15 SECTION 40. A new section of Motor Vehicle Code, Section
16 66-8A-39 NMSA 1978, is enacted to read:

17 "66-8A-39. [NEW MATERIAL] DRIVING UNDER THE INFLUENCE
18 TREATMENT FUND CREATED.--The "driving under the influence
19 treatment fund" is created as a nonreverting fund in the state
20 treasury. The fund consists of appropriations, distributions
21 and money otherwise accruing to the fund. Money in the fund is
22 appropriated to the department of health to provide for
23 treatment programs provided for in the Driving Under the
24 Influence Act. Money in the fund shall be disbursed on
25 warrants signed by the secretary of finance and administration

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1 pursuant to vouchers signed by the secretary of health or the
2 secretary's authorized representative."

3 SECTION 41. Section 66-5-39.1 NMSA 1978 (being Laws 2013,
4 Chapter 163, Section 3) is amended to read:

5 "66-5-39.1. DRIVING WHILE LICENSE REVOKED--PENALTIES.--

6 A. A person who drives a motor vehicle on a public
7 highway of this state at a time when the person's privilege to
8 do so is revoked and who knows or should have known that the
9 person's license was revoked is guilty of a misdemeanor and
10 shall be charged with a violation of this section. Upon
11 conviction, the person shall be punished, notwithstanding the
12 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
13 not less than four days or more than three hundred sixty-four
14 days or by participation for an equivalent period of time in a
15 certified alternative sentencing program, and there may be
16 imposed in addition a fine of not more than one thousand
17 dollars (\$1,000). When a person pays any or all of the cost of
18 participating in a certified alternative sentencing program,
19 the court may apply that payment as a deduction to any fine
20 imposed by the court.

21 B. Notwithstanding any other provision of law for
22 suspension or deferment of execution of a sentence, if the
23 person's privilege to drive was revoked for driving under the
24 influence of intoxicating liquor or drugs or a violation of the
25 Implied Consent Act, upon conviction pursuant to this section,

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1 the person shall be punished by imprisonment or monitored house
2 arrest for not less than [~~seven consecutive~~] thirty days and
3 shall be fined not less than three hundred dollars (\$300) and
4 not more than one thousand dollars (\$1,000) and the fine and
5 imprisonment shall not be suspended, deferred or taken under
6 advisement. No other disposition by plea of guilty to any
7 other charge in satisfaction of a charge under this section
8 shall be authorized if the person's privilege to drive was
9 revoked for driving under the influence of intoxicating liquor
10 or drugs or a violation of the Implied Consent Act. Any
11 municipal ordinance prohibiting driving with a revoked license
12 shall provide penalties no less stringent than provided in this
13 section.

14 C. In addition to any other penalties imposed
15 pursuant to this section, when a person is convicted pursuant
16 to the provisions of this section or a municipal ordinance that
17 prohibits driving on a revoked license, the motor vehicle the
18 person was driving [~~shall~~] may be immobilized by an
19 immobilization device for thirty days, unless immobilization of
20 the motor vehicle poses an imminent danger to the health,
21 safety or employment of the convicted person's immediate family
22 or the family of the owner of the motor vehicle. The convicted
23 person shall bear the cost of immobilizing the motor vehicle.

24 D. The division, upon receiving a record of the
25 conviction of any person under this section, shall not issue a

1 new license for an additional period of one year from the date
 2 the person would otherwise have been entitled to apply for a
 3 new license."

4 SECTION 42. Section 7-1-6.40 NMSA 1978 (being Laws 1997,
 5 Chapter 182, Section 1, as amended) is amended to read:

6 "7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--LOCAL DWI
 7 GRANT FUND--CERTAIN MUNICIPALITIES--LOTTERY TUITION
 8 FUND--DRIVING UNDER THE INFLUENCE TREATMENT FUND.--

9 A. A distribution pursuant to Section 7-1-6.1
 10 NMSA 1978 shall be made to the local DWI grant fund in an
 11 amount equal to the following percentages of the net receipts
 12 attributable to the liquor excise tax:

13 (1) prior to July 1, 2015, forty-one and one-
 14 half percent;

15 (2) from July 1, 2015 through June 30, 2018,
 16 forty-six percent; and

17 (3) on and after July 1, 2018, forty-one and
 18 one-half percent.

19 B. A distribution pursuant to Section 7-1-6.1
 20 NMSA 1978 of twenty thousand seven hundred fifty dollars
 21 (\$20,750) monthly from the net receipts attributable to the
 22 liquor excise tax shall be made to a municipality that is
 23 located in a class A county and that has a population according
 24 to the most recent federal decennial census of more than thirty
 25 thousand but less than sixty thousand. The distribution

.207988.4

1 pursuant to this subsection shall be used by the municipality
2 only for the provision of alcohol treatment and rehabilitation
3 services for street inebriates.

4 C. ~~[From]~~ Beginning July 1, ~~[2015 through June 30]~~
5 2017, a distribution pursuant to Section 7-1-6.1 NMSA 1978 ~~[of~~
6 ~~thirty-nine percent of the net receipts attributable to the~~
7 ~~liquor excise tax]~~ shall be made to the ~~[lottery tuition]~~
8 driving under the influence treatment fund in an amount equal
9 to thirty-nine percent of the net receipts attributable to the
10 liquor excise tax."

11 SECTION 43. REPEAL.--Sections 66-5-502, 66-8-102,
12 66-8-103 and 66-8-104 NMSA 1978 (being Laws 2003, Chapter 239,
13 Section 2, Laws 1953, Chapter 139, Section 54, Laws 1967,
14 Chapter 160, Section 1 and Laws 1978, Chapter 35, Section 512,
15 as amended) are repealed.

16 SECTION 44. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2017.

underscoring material = new
~~[bracketed material] = delete~~