

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 109, 187 & 603

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING ALL OFFENDERS TO OBTAIN AN IGNITION INTERLOCK LICENSE AND HAVE AN IGNITION INTERLOCK DEVICE INSTALLED; PROVIDING FOR INCREASING PERIODS OF LICENSE REVOCATION UPON CONVICTION FOR REPEAT OFFENDERS; INCREASING THE PERIODS OF ADMINISTRATIVE REVOCATION; ALLOWING ASSISTANCE TO JUVENILES FROM THE INTERLOCK DEVICE FUND.

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

Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED. -- The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except

. 157401. 1

underscored material = new
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1 the division may, in its discretion, issue:

2 (1) an instruction permit to a person fifteen
3 years of age or over who is enrolled in and attending or has
4 completed a driver education course that includes a DWI
5 education and prevention component approved by the bureau or
6 offered by a public school;

7 (2) a provisional license to any person
8 fifteen years and six months of age or older:

9 (a) who has completed a driver education
10 course approved by the bureau or offered by a public school
11 that includes a DWI education and prevention component and has
12 had an instruction permit for at least six months; and

13 (b) who has successfully completed a
14 practice driving component;

15 (3) a driver's license to any person sixteen
16 years and six months of age or older:

17 (a) who has had a provisional license
18 for the twelve-month period immediately preceding the date of
19 the application for the driver's license;

20 (b) who has complied with restrictions
21 on that license;

22 (c) who has not been convicted of a
23 traffic violation that was committed during the ninety days
24 prior to applying for a driver's license; and

25 (d) who has not been adjudicated for an

1 offense involving the use of alcohol or drugs during that
2 period and who has no pending adjudications alleging an offense
3 involving the use of alcohol or drugs at the time of [~~his~~]
4 application; and

5 (4) to any person thirteen years of age or
6 older who passes an examination prescribed by the division, a
7 license restricted to the operation of a motorcycle, provided:

8 (a) the [~~motor~~] motorcycle is not in
9 excess of one hundred cubic centimeters displacement;

10 (b) no holder of an initial license may
11 carry any other passenger while driving a motorcycle; and

12 (c) the director approves and certifies
13 motorcycles as not in excess of one hundred cubic centimeters
14 displacement and by rule provides for a method of
15 identification of such motorcycles by all law enforcement
16 officers;

17 B. whose license or driving privilege has been
18 suspended or denied, during the period of suspension or denial,
19 or to any person whose license has been revoked, except as
20 provided in Section 66-5-32 NMSA 1978 and the Ignition
21 Interlock Licensing Act;

22 C. who is an habitual drunkard, an habitual user of
23 narcotic drugs or an habitual user of any drug to a degree that
24 renders [~~him~~] the person incapable of safely driving a motor
25 vehicle;

. 157401. 1

underscored material = new
[bracketed material] = delete

1 D. who ~~[within any ten-year period]~~ is [~~three~~] four
2 times convicted of driving a motor vehicle while under the
3 influence of intoxicating liquor or narcotic drug regardless of
4 whether the convictions are under the laws or ordinances of
5 this state or any municipality or county of this state or under
6 the laws or ordinances of any other state, the District of
7 Columbia or any governmental subdivision thereof, except as
8 provided in the Ignition Interlock Licensing Act. [~~Ten years~~
9 ~~after being so convicted for the third time~~] Five years from
10 the date of the fourth conviction and every five years
11 thereafter, the person may apply to any district court of this
12 state for restoration of the license, and the court, upon good
13 cause being shown, may order restoration of the license applied
14 for; provided that the person has not been subsequently
15 convicted of driving a motor vehicle while under the influence
16 of intoxicating liquor or drugs [~~in the ten-year period prior~~
17 ~~to his request for restoration of his license~~]. Upon issuance
18 of the order of restoration, a certified copy shall immediately
19 be forwarded to the division, and if the person is otherwise
20 qualified for the license applied for, the [~~three~~] four
21 previous convictions shall not prohibit issuance of the
22 license; [~~applied for. Should the person be subsequently once~~
23 ~~convicted of driving a motor vehicle while under the influence~~
24 ~~of intoxicating liquor or drugs, the division shall revoke his~~
25 ~~license for five years, after which time he may apply for~~

. 157401. 1

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[bracketed material] = delete

1 ~~restoration of his license as provided in this subsection]~~

2 E. who has previously been afflicted with or who is
3 suffering from any mental disability or disease that would
4 render him unable to drive a motor vehicle with safety upon the
5 highways and who has not, at the time of application, been
6 restored to health;

7 F. who is required by the Motor Vehicle Code to
8 take an examination, unless [he] the person has successfully
9 passed the examination;

10 G. who is required under the laws of this state to
11 deposit proof of financial responsibility and who has not
12 deposited the proof;

13 H. when the director has good cause to believe that
14 the operation of a motor vehicle on the highways by the person
15 would be inimical to public safety or welfare; or

16 I. as a motorcycle driver who is less than eighteen
17 years of age and who has not presented a certificate or other
18 evidence of having successfully completed a motorcycle driver
19 education program licensed or offered in conformance with rules
20 of the bureau. "

21 Section 2. Section 66-5-29 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 251, as amended) is amended to read:

23 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION. --

24 A. The division shall immediately revoke the
25 instruction permit, driver's license or provisional license of
. 157401. 1

1 a driver upon receiving a record of the driver's adjudication
2 as a delinquent for or conviction of any of the following
3 offenses, whether the offense is under any state law or local
4 ordinance, when the conviction or adjudication has become
5 final:

6 (1) manslaughter or negligent homicide
7 resulting from the operation of a motor vehicle;

8 (2) any offense rendering a person a "first
9 offender" as defined in the Motor Vehicle Code [~~if that person~~
10 ~~does not attend a driver rehabilitation program pursuant to~~
11 ~~Subsection E of Section 66-8-102 NMSA 1978~~];

12 (3) any offense rendering a person a
13 "subsequent offender" as defined in the Motor Vehicle Code;

14 (4) any felony in the commission of which a
15 motor vehicle is used;

16 (5) failure to stop and render aid as required
17 under the laws of this state in the event of a motor vehicle
18 accident resulting in the death or personal injury of another;

19 (6) perjury or the making of a false affidavit
20 or statement under oath to the division under the Motor Vehicle
21 Code or under any other law relating to the ownership or
22 operation of motor vehicles; or

23 (7) conviction or forfeiture of bail not
24 vacated upon three charges of reckless driving committed within
25 a period of twelve months.

1 B. Except as provided in the Ignition Interlock
 2 Licensing Act and in Subsection C, D or E of this section, a
 3 person whose license has been revoked under this section
 4 [~~except as provided in Subsection C, D or E of this section~~]
 5 shall not be entitled to apply for or receive a new license
 6 until [~~the expiration of one year from the date of the last~~
 7 ~~application on which the revoked license was surrendered to and~~
 8 ~~received by the division, if no appeal is filed, or~~] one year
 9 from the date that the [~~revocation~~] conviction is final and [~~he~~
 10 ~~has exhausted his~~] all rights to an appeal have been exhausted.

11 C. A person who upon adjudication as a delinquent
 12 for driving while under the influence of intoxicating liquor or
 13 drugs or conviction pursuant to Section 66-8-102 NMSA 1978 is
 14 subject to license revocation under this section for an offense
 15 pursuant to which [~~he~~] the person was also subject to license
 16 revocation pursuant to Section 66-8-111 NMSA 1978 shall have
 17 his license revoked for that offense for a combined period of
 18 time equal to:

19 (1) one year for a first offender; or

20 (2) for a subsequent offender:

21 (a) two years for a second conviction;

22 (b) three years for a third conviction;

23 or

24 (c) the remainder of the offender's life

25 for a fourth or subsequent conviction, subject to a five-year

. 157401. 1

1 review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

2 D. Upon receipt of an order from a court pursuant
3 to Section 32A-2-19 NMSA 1978 or Subsection G of Section
4 32A-2-22 NMSA 1978, the division shall revoke the driver's
5 license or driving privileges for a period of time in
6 accordance with these provisions.

7 E. Upon receipt from a district court of a record
8 of conviction for the offense of shooting at or from a motor
9 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or
10 of a conviction for a conspiracy or an attempt to commit that
11 offense, the division shall revoke the driver's [~~licenses~~]
12 license or driving privileges of the convicted person. A
13 person whose license or privilege has been revoked pursuant to
14 the provisions of this subsection shall not be entitled to
15 apply for or receive any new license or privilege until [~~the~~
16 ~~expiration of one year from the date of the last application on~~
17 ~~which the revoked license was surrendered to and received by~~
18 ~~the division, if no appeal is filed, or]~~ one year from the date
19 that the [~~revocation~~] conviction is final and [~~the person has~~
20 ~~exhausted his~~] all rights to an appeal have been exhausted."

21 Section 3. Section 66-5-32 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 254, as amended) is amended to read:

23 "66-5-32. PERIOD OF SUSPENSION OR REVOCATION. --

24 A. The division shall not suspend a driver's
25 license or privilege to drive a motor vehicle on the public

1 highways for a period of more than one year except as permitted
 2 under Subsection C of this section and Sections 66-5-5 and
 3 66-5-39 NMSA 1978.

4 B. Except as provided in the Ignition Interlock
 5 Licensing Act, a person whose license or privilege to drive a
 6 motor vehicle on the public highways has been revoked shall not
 7 be entitled to have the license or privilege renewed or
 8 restored unless the revocation was for a cause that has been
 9 removed, except that after the expiration of the ~~[period]~~
 10 periods specified in ~~[Subsection]~~ Subsections B and C of
 11 Section 66-5-29 NMSA 1978 from the date on which the revoked
 12 license was surrendered to and received by the division, the
 13 person may make application for a new license as provided by
 14 law.

15 C. The suspension period for failure to appear or
 16 failure to remit the penalty assessment shall, at the
 17 discretion of the director, be extended indefinitely subject to
 18 the provisions of Subsection B of Section 66-5-30 NMSA 1978."

19 Section 4. Section 66-5-35 NMSA 1978 (being Laws 1978,
 20 Chapter 35, Section 257, as amended) is amended to read:

21 "66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR
 22 REVOCATION-- HEARING-- REVIEW. --

23 A. Upon suspension or revocation of a person's
 24 driver's license following conviction or adjudication as a
 25 delinquent under any law, ordinance or rule relating to motor

. 157401. 1

1 vehicles, a person may apply to the department for a license or
2 permit to drive, limited to use allowing ~~him~~ the person to
3 engage in gainful employment, to attend school or to attend a
4 court-ordered treatment program, except that the person shall
5 not be eligible to apply:

6 (1) for a limited commercial driver's license
7 or an ignition interlock license in lieu of a revoked or
8 suspended commercial driver's license;

9 (2) for a limited license when the person's
10 driver's license was revoked pursuant to the provisions of the
11 Implied Consent Act, except as provided in ~~[Subsection B of~~
12 ~~this section or]~~ the Ignition Interlock Licensing Act;

13 (3) for a limited license when the person's
14 driver's license was revoked pursuant to the provisions of
15 Section 66-8-102 NMSA 1978, except as provided in the Ignition
16 Interlock Licensing Act;

17 (4) for a limited license when the person's
18 driver's license is denied pursuant to the provisions of
19 Subsection D of Section 66-5-5 NMSA 1978, except as provided in
20 the Ignition Interlock Licensing Act; or

21 (5) for a limited license when the person's
22 driver's license was revoked pursuant to a conviction for
23 committing homicide by vehicle or great bodily injury by
24 vehicle, as provided in Section 66-8-101 NMSA 1978.

25 ~~[B. A person whose driver's license is revoked for~~

1 ~~the first time pursuant to the provisions of Paragraph (1) or~~
 2 ~~(2) of Subsection C of Section 66-8-111 NMSA 1978 may apply for~~
 3 ~~and shall receive a limited license, permit or an ignition~~
 4 ~~interlock license thirty days after suspension or revocation of~~
 5 ~~his license if the person pays every fee, meets the criteria~~
 6 ~~for limited driving privileges established in rules by the~~
 7 ~~department and provides the department with documentation of~~
 8 ~~the following:~~

9 ~~(1) that the person is enrolled in a DWI~~
 10 ~~school approved by the traffic safety bureau and an approved~~
 11 ~~alcohol screening program; and~~

12 ~~(2) proof of financial responsibility pursuant~~
 13 ~~to the provisions of the Mandatory Financial Responsibility~~
 14 ~~Act.~~

15 ~~C.]~~ B. Upon receipt of a fully completed
 16 application that complies with statutes and rules for a limited
 17 license or an ignition interlock license and payment of the fee
 18 specified in this subsection, the department shall issue a
 19 limited license, ignition interlock license or permit to the
 20 applicant showing the limitations specified in the approved
 21 application. For each limited license, ignition interlock
 22 license or permit to drive, the applicant shall pay to the
 23 department a fee of forty-five dollars (\$45.00), which shall be
 24 transferred to the ~~[state highway and]~~ department of
 25 transportation ~~[department]~~. All money collected under this

. 157401. 1

1 subsection shall be used for DWI prevention and education
2 programs for elementary and secondary school students. The
3 [~~state highway and~~] department of transportation [~~department~~]
4 shall coordinate with the department of health to ensure that
5 there is no program duplication. The limited license or permit
6 to drive may be suspended as provided in Section 66-5-30 NMSA
7 1978.

8 [~~D.~~] C. The department, within twenty days of
9 denial of an application for a limited driver's license or
10 permit pursuant to this section, shall afford the applicant a
11 hearing in the county in which the applicant resides, unless
12 the department and the licensee agree that the hearing may be
13 held in some other county. The department may extend the
14 twenty-day period, provided that the extension is in writing
15 and made no later than fifteen days after receipt of an
16 application. Upon hearing, the hearing officer designated by
17 the department may administer oaths and may issue subpoenas for
18 the attendance of witnesses and the production of relevant
19 books and papers. The hearing officer shall make specific
20 findings as to whether the applicant has shown proof of
21 financial responsibility for the future and enrollment in an
22 approved DWI school and an approved alcohol screening program
23 and meets established uniform criteria for limited driving
24 privileges adopted by rule of the department. The hearing
25 officer shall enter an order either approving or denying the

. 157401. 1

1 applicant's request for a limited license or permit to drive.
2 If any of the specific findings set forth in this subsection
3 are not found by the hearing officer, the applicant's request
4 for a limited license or permit shall not be approved.

5 ~~[E.]~~ D. A person adversely affected by an order of
6 the hearing officer may seek review within thirty days in the
7 district court in the county in which ~~[he]~~ the person resides.
8 On review, it is for the court to determine only whether the
9 applicant met the requirements in this section for issuance of
10 a limited license or permit to drive. "

11 Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953,
12 Chapter 139, Section 54, as amended) is amended to read:

13 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
14 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
15 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

16 A. It is unlawful for a person who is under the
17 influence of intoxicating liquor to drive a vehicle within this
18 state.

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

22 C. It is unlawful for:

23 (1) a person who has an alcohol concentration
24 of eight one hundredths or more in his blood or breath to drive
25 a vehicle within this state; or

. 157401. 1

1 (2) a person who has an alcohol concentration
2 of four one hundredths or more in his blood or breath to drive
3 a commercial motor vehicle within this state.

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

6 (1) has an alcohol concentration of sixteen
7 one hundredths or more in his blood or breath while driving a
8 vehicle within this state;

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

12 (3) refused to submit to chemical testing, as
13 provided for in the Implied Consent Act, and in the judgment of
14 the court, based upon evidence of intoxication presented to the
15 court, was under the influence of intoxicating liquor or drugs.

16 E. A person under first conviction pursuant to this
17 section shall be punished, notwithstanding the provisions of
18 Section 31-18-13 NMSA 1978, by imprisonment for not more than
19 ninety days or by a fine of not more than five hundred dollars
20 (\$500), or both; provided that if the sentence is suspended in
21 whole or in part or deferred, the period of probation may
22 extend beyond ninety days but shall not exceed one year. Upon
23 a first conviction pursuant to this section, an offender may be
24 sentenced to not less than forty-eight hours of community
25 service or a fine of three hundred dollars (\$300). The

1 offender shall be ordered by the court to participate in and
2 complete a screening program described in Subsection K of this
3 section and to attend a driver rehabilitation program for
4 alcohol or drugs, also known as a "DWI school", approved by the
5 bureau and also may be required to participate in other
6 rehabilitative services as the court shall determine to be
7 necessary. In addition to those penalties, when an offender
8 commits aggravated driving while under the influence of
9 intoxicating liquor or drugs, the offender shall be sentenced
10 to not less than forty-eight consecutive hours in jail. If an
11 offender fails to complete, within a time specified by the
12 court, any community service, screening program, treatment
13 program or DWI school ordered by the court or fails to comply
14 with any other condition of probation, the offender shall be
15 sentenced to not less than an additional forty-eight
16 consecutive hours in jail. Notwithstanding any provision of
17 law to the contrary, if an offender's sentence was suspended or
18 deferred in whole or in part, and the offender violates any
19 condition of probation, the court may impose any sentence that
20 the court could have originally imposed and credit shall not be
21 given for time served by the offender on probation. Any jail
22 sentence imposed pursuant to this subsection for failure to
23 complete, within a time specified by the court, any community
24 service, screening program, treatment program or DWI school
25 ordered by the court or for aggravated driving while under the

. 157401. 1

1 influence of intoxicating liquor or drugs shall not be
2 suspended, deferred or taken under advisement. On a first
3 conviction pursuant to this section, any time spent in jail for
4 the offense prior to the conviction for that offense shall be
5 credited to any term of imprisonment fixed by the court. A
6 deferred sentence pursuant to this subsection shall be
7 considered a first conviction for the purpose of determining
8 subsequent convictions.

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

18 (1) upon a second conviction, an offender
19 shall be sentenced to a jail term of not less than ninety-six
20 consecutive hours, forty-eight hours of community service and a
21 fine of five hundred dollars (\$500). In addition to those
22 penalties, when an offender commits aggravated driving while
23 under the influence of intoxicating liquor or drugs, the
24 offender shall be sentenced to a jail term of not less than
25 ninety-six consecutive hours. If an offender fails to

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

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

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

. 157401. 1

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

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

13 J. Upon a seventh or subsequent conviction pursuant
14 to this section, an offender is guilty of a third degree felony
15 and, notwithstanding the provisions of Section 31-18-15 NMSA
16 1978, shall be sentenced to a term of imprisonment of three
17 years, two years of which shall not be suspended, deferred or
18 taken under advisement.

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

1 advisement.

2 L. Upon a second or third conviction pursuant to
3 this section, an offender shall be required to participate in
4 and complete, within a time specified by the court:

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

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

10 (3) a drug court program approved by the
11 court; or

12 (4) any other substance abuse treatment
13 program approved by the court.

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

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

24 ~~[N. Upon a first conviction for aggravated driving~~
25 ~~while under the influence of intoxicating liquor or drugs~~

. 157401. 1

1 ~~pursuant to the provisions of Subsection D of this section, as~~
2 ~~a condition of probation, an offender shall be required to have~~
3 ~~an ignition interlock device installed and operating for a~~
4 ~~period of one year on all motor vehicles driven by the~~
5 ~~offender, pursuant to rules adopted by the bureau. Unless~~
6 ~~determined by the sentencing court to be indigent, the offender~~
7 ~~shall pay all costs associated with having an ignition~~
8 ~~interlock device installed on the appropriate motor vehicles.~~
9 ~~If an offender drives a motor vehicle that does not have an~~
10 ~~ignition interlock device installed on the motor vehicle, the~~
11 ~~offender may be in violation of the terms and conditions of his~~
12 ~~probation.~~

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

1 ~~P. Upon any subsequent conviction pursuant to this~~
 2 ~~section, as a condition of probation, a subsequent offender~~
 3 ~~shall be required to have an ignition interlock device~~
 4 ~~installed and operating for a period of at least one year on~~
 5 ~~all motor vehicles driven by the subsequent offender, pursuant~~
 6 ~~to rules adopted by the bureau. Unless determined by the~~
 7 ~~sentencing court to be indigent, the subsequent offender shall~~
 8 ~~pay all costs associated with having an ignition interlock~~
 9 ~~device installed on the appropriate motor vehicles. If a~~
 10 ~~subsequent offender drives a motor vehicle that does not have~~
 11 ~~an ignition interlock device installed on the motor vehicle,~~
 12 ~~the subsequent offender may be in violation of the terms and~~
 13 ~~conditions of his probation.]~~

14 N. Upon a conviction pursuant to this section, an
 15 offender shall be required to obtain an ignition interlock
 16 license and have an ignition interlock device installed and
 17 operating on all motor vehicles driven by the offender,
 18 pursuant to rules adopted by the bureau. Unless determined by
 19 the sentencing court to be indigent, the offender shall pay all
 20 costs associated with having an ignition interlock device
 21 installed on the appropriate motor vehicles. The offender
 22 shall operate only those vehicles equipped with ignition
 23 interlock devices for:

24 (1) a period of one year, for a first
 25 offender;

. 157401. 1

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

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

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

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

19 ~~[0.]~~ P. In the case of a first, second or third
20 offense under this section, the magistrate court has concurrent
21 jurisdiction with district courts to try the offender.

22 ~~[R.]~~ Q. A conviction pursuant to a municipal or
23 county ordinance in New Mexico or a law of any other
24 jurisdiction, territory or possession of the United States or
25 of a tribe, when that ordinance or law is equivalent to New

1 Mexico law for driving while under the influence of
2 intoxicating liquor or drugs, and prescribes penalties for
3 driving while under the influence of intoxicating liquor or
4 drugs, shall be deemed to be a conviction pursuant to this
5 section for purposes of determining whether a conviction is a
6 second or subsequent conviction.

7 ~~[S.]~~ R. In addition to any other fine or fee that
8 may be imposed pursuant to the conviction or other disposition
9 of the offense under this section, the court may order the
10 offender to pay the costs of any court-ordered screening and
11 treatment programs.

12 ~~[F.]~~ S. As used in this section:

13 (1) "bodily injury" means an injury to a
14 person that is not likely to cause death or great bodily harm
15 to the person, but does cause painful temporary disfigurement
16 or temporary loss or impairment of the functions of any member
17 or organ of the person's body;

18 (2) "commercial motor vehicle" means a motor
19 vehicle or combination of motor vehicles used in commerce to
20 transport passengers or property if the motor vehicle:

21 (a) has a gross combination weight
22 rating of more than twenty-six thousand pounds inclusive of a
23 towed unit with a gross vehicle weight rating of more than ten
24 thousand pounds;

25 (b) has a gross vehicle weight rating of

1 more than twenty-six thousand pounds;

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

4 (d) is of any size and is used in the
5 transportation of hazardous materials, which requires the motor
6 vehicle to be placarded under applicable law; and

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

9 Section 6. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
10 Chapter 82, Section 2, as amended) is amended to read:

11 "66-8-102.3. IMPOSING A FEE--CREATING A FUND.--

12 A. A fee is imposed on all persons who provide
13 ignition interlock devices to a person convicted of driving
14 while under the influence of intoxicating liquor or drugs
15 pursuant to Section 66-8-102 NMSA 1978 or adjudicated as a
16 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
17 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
18 driver's license is revoked pursuant to the provisions of the
19 Implied Consent Act, in the amount of ten percent of the amount
20 charged to lease, install, service and remove each ignition
21 interlock device for a person convicted pursuant to Section
22 66-8-102 NMSA 1978 or adjudicated as a delinquent on the basis
23 of Subparagraph (a) of Paragraph (1) of Subsection A of Section
24 32A-2-3 NMSA 1978 or whose driver's license is revoked pursuant
25 to the provisions of the Implied Consent Act and shall be paid

. 157401. 1

1 monthly to the local government division of the department of
2 finance and administration.

3 B. The "interlock device fund" is created in the
4 state treasury. The fee imposed pursuant to Subsection A of
5 this section shall be distributed to the fund by the local
6 government division of the department of finance and
7 administration.

8 C. All money in the interlock device fund is
9 appropriated to the local government division of the department
10 of finance and administration to cover the costs of installing,
11 leasing for the initial four months and removing ignition
12 interlock devices for indigent people who are required,
13 pursuant to convictions under Section 66-8-102 NMSA 1978 or
14 adjudications on the basis of Subparagraph (a) of Paragraph (1)
15 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's
16 license revocations pursuant to the provisions of the Implied
17 Consent Act, to install those devices in their vehicles.
18 Indigency shall be determined by the sentencing court.

19 D. Any balance remaining in the interlock device
20 fund shall not revert to the general fund at the end of any
21 fiscal year.

22 E. The interlock device fund shall be administered
23 by the local government division of the department of finance
24 and administration. "

25 Section 7. Section 66-8-111 NMSA 1978 (being Laws 1978,

. 157401. 1

1 Chapter 35, Section 519, as amended by Laws 2003, Chapter 51,
2 Section 13 and by Laws 2003, Chapter 90, Section 6) is amended
3 to read:

4 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
5 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --

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

23 B. The department, upon receipt of a statement
24 signed under penalty of perjury from a law enforcement officer
25 stating the officer's reasonable grounds to believe the

1 arrested person had been driving a motor vehicle within this
 2 state while under the influence of intoxicating liquor or drugs
 3 and that, upon [~~his~~] request, the person refused to submit to a
 4 chemical test after being advised that failure to submit could
 5 result in revocation of [~~his~~] the person's privilege to drive,
 6 shall revoke the person's New Mexico driver's license or any
 7 nonresident operating privilege for a period of one year or
 8 until all conditions for license reinstatement are met,
 9 whichever is later.

10 C. The department, upon receipt of a statement
 11 signed under penalty of perjury from a law enforcement officer
 12 stating the officer's reasonable grounds to believe the
 13 arrested person had been driving a motor vehicle within this
 14 state while under the influence of intoxicating liquor and that
 15 the person submitted to chemical testing pursuant to Section
 16 66-8-107 NMSA 1978 and the test results indicated an alcohol
 17 concentration in the person's blood or breath of eight one
 18 hundredths or more if the person is twenty-one years of age or
 19 older, four one hundredths or more if the person is driving a
 20 commercial motor vehicle or two one hundredths or more if the
 21 person is less than twenty-one years of age, shall revoke the
 22 person's license or permit to drive or his nonresident
 23 operating privilege for a period of:

24 (1) [~~ninety days~~] six months or until all
 25 conditions for license reinstatement are met, whichever is

. 157401. 1

1 later, if the person is twenty-one years of age or older;

2 (2) [~~six months~~] one year or until all
3 conditions for license reinstatement are met, whichever is
4 later, if the person [~~is~~] was less than twenty-one years of age
5 [~~and has not previously had his license revoked pursuant to the~~
6 ~~provisions of this section~~] at the time of the arrest,
7 notwithstanding any provision of the Children's Code; or

8 (3) one year or until all conditions for
9 license reinstatement are met, whichever is later, if the
10 person has previously had his license revoked pursuant to the
11 provisions of this section, notwithstanding the provisions of
12 Paragraph (1) [~~or (2)~~] of this subsection [~~or any provision of~~
13 ~~the Children's Code~~].

14 D. The determination of alcohol concentration shall
15 be based on the grams of alcohol in one hundred milliliters of
16 blood or the grams of alcohol in two hundred ten liters of
17 breath.

18 E. If the person subject to the revocation
19 provisions of this section is a resident or will become a
20 resident within one year and is without a license to operate a
21 motor vehicle in this state, the department shall deny the
22 issuance of a license to him for the appropriate period of time
23 as provided in Subsections B and C of this section.

24 F. A statement signed by a law enforcement officer,
25 pursuant to the provisions of Subsection B or C of this

1 section, shall be sworn to by the officer or shall contain a
2 declaration substantially to the effect: "I hereby declare
3 under penalty of perjury that the information given in this
4 statement is true and correct to the best of my knowledge.". A
5 law enforcement officer who signs a statement, knowing that the
6 statement is untrue in any material issue or matter, is guilty
7 of perjury as provided in Section 66-5-38 NMSA 1978. "

underscored material = new
[bracketed material] = delete