

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 349, 479 & 31

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROVIDING THAT A FELONY CONVICTION FOR DRIVING UNDER
THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS SHALL BE TREATED
IN THE SAME MANNER AS ANY OTHER FELONY WHEN SENTENCING A
HABITUAL OFFENDER; INCREASING THE REQUIREMENTS TO BE MET FOR
REMOVAL OF AN IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF
A DRIVER'S LICENSE; ALLOWING HOME BREATHALYZER DEVICES FOR AN
OFFENDER UNDER HOUSE ARREST; PROVIDING ASSISTANCE FOR HOME
BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

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

SECTION 1. Section 31-18-17 NMSA 1978 (being Laws 1977,
Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC
SENTENCE.--

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underscored material = new
[bracketed material] = delete

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1 A. A person convicted of a noncapital felony in
2 this state [~~whether within the Criminal Code or the Controlled~~
3 ~~Substances Act or not~~], including a conviction for a felony
4 pursuant to Section 66-8-102 NMSA 1978, who has incurred one
5 prior felony conviction that was part of a separate transaction
6 or occurrence or conditional discharge under Section 31-20-13
7 NMSA 1978 is a habitual offender and [~~his~~] that person's basic
8 sentence shall be increased by one year. The sentence imposed
9 pursuant to this subsection shall not be suspended or deferred,
10 unless the court makes a specific finding that the prior felony
11 conviction and the instant felony conviction are both for
12 nonviolent felony offenses and that justice will not be served
13 by imposing a mandatory sentence of imprisonment and that there
14 are substantial and compelling reasons, stated on the record,
15 for departing from the sentence imposed pursuant to this
16 subsection.

17 B. A person convicted of a noncapital felony in
18 this state [~~whether within the Criminal Code or the Controlled~~
19 ~~Substances Act or not~~], including a conviction for a felony
20 pursuant to Section 66-8-102 NMSA 1978, who has incurred two
21 prior felony convictions that were parts of separate
22 transactions or occurrences or conditional discharge under
23 Section 31-20-13 NMSA 1978 is a habitual offender and [~~his~~]
24 that person's basic sentence shall be increased by four years.
25 The sentence imposed by this subsection shall not be suspended

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1 or deferred.

2 C. A person convicted of a noncapital felony in
3 this state [~~whether within the Criminal Code or the Controlled~~
4 ~~Substances Act or not~~], including a conviction for a felony
5 pursuant to Section 66-8-102 NMSA 1978, who has incurred three
6 or more prior felony convictions that were parts of separate
7 transactions or occurrences or conditional discharge under
8 Section 31-20-13 NMSA 1978 is a habitual offender and [~~his~~]
9 that person's basic sentence shall be increased by eight years.
10 The sentence imposed by this subsection shall not be suspended
11 or deferred.

12 D. As used in this section, "prior felony
13 conviction" means:

14 (1) a conviction, when less than ten years
15 have passed prior to the instant felony conviction since the
16 person completed serving [~~his~~] a sentence or period of
17 probation or parole for the prior felony, whichever is later,
18 for a prior felony committed within New Mexico [~~whether within~~
19 ~~the Criminal Code or not, but not~~], including a conviction for
20 a felony pursuant to the provisions of Section 66-8-102 NMSA
21 1978; or

22 (2) a prior felony, when less than ten years
23 have passed prior to the instant felony conviction since the
24 person completed serving [~~his~~] a sentence or period of
25 probation or parole for the prior felony, whichever is later,

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1 for which the person was convicted other than an offense
2 triable by court martial if:

3 (a) the conviction was rendered by a
4 court of another state, the United States, a territory of the
5 United States or the commonwealth of Puerto Rico;

6 (b) the offense was punishable, at the
7 time of conviction, by death or a maximum term of imprisonment
8 of more than one year; or

9 (c) the offense would have been
10 classified as a felony in this state at the time of conviction.

11 E. As used in this section, "nonviolent felony
12 offense" means application of force, threatened use of force or
13 a deadly weapon was not used by the offender in the commission
14 of the offense."

15 SECTION 2. Section 66-5-33.1 NMSA 1978 (being Laws 1985,
16 Chapter 47, Section 1, as amended) is amended to read:

17 "66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR
18 REGISTRATION--IGNITION INTERLOCK--FEE.--

19 A. Whenever a driver's license or registration is
20 suspended or revoked and an application has been made for its
21 reinstatement, compliance with all appropriate provisions of
22 the Motor Vehicle Code and the payment of a fee of twenty-five
23 dollars (\$25.00) is a prerequisite to the reinstatement of any
24 license or registration.

25 B. If a driver's license was revoked for driving

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1 while under the influence of intoxicating liquor or drugs, for
2 aggravated driving while under the influence of intoxicating
3 liquor or drugs or pursuant to the Implied Consent Act, the
4 following are required to reinstate the driver's license:

5 (1) an additional fee of seventy-five dollars
6 (\$75.00);

7 (2) completion of the license revocation
8 period;

9 (3) satisfaction of any court-ordered ignition
10 interlock requirements; ~~and~~

11 (4) a minimum of six months of driving with an
12 ignition interlock [~~license~~] with no attempts to circumvent or
13 tamper with the ignition interlock device;

14 (5) evidence that the ignition interlock
15 device has recorded no more than two tests at a level greater
16 than five one hundredths alcohol concentration during the six
17 months prior to reinstatement of the unrestricted driver's
18 license; and

19 (6) evidence of at least one ignition
20 interlock test during each of twenty-four weeks during the six
21 months.

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

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1 (1) the license revocation period is
2 completed;

3 (2) satisfactory proof is presented to the
4 department that the person is no longer a resident of New
5 Mexico; and

6 (3) the license reinstatement fee is paid.

7 D. Fees collected pursuant to Subsection B of this
8 section are appropriated to the local governments road fund.
9 The department shall maintain an accounting of the fees
10 collected and shall report that amount upon request to the
11 legislature."

12 SECTION 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
13 Chapter 139, Section 54, as amended) is amended to read:

14 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
15 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
16 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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

24 C. It is unlawful for:

25 (1) a person to drive a vehicle in this state

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

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

12 D. Aggravated driving under the influence of
13 intoxicating liquor or drugs consists of:

14 (1) driving a vehicle in this state with an
15 alcohol concentration of sixteen one hundredths or more in the
16 driver's blood or breath within three hours of driving the
17 vehicle and the alcohol concentration results from alcohol
18 consumed before or while driving the vehicle;

19 (2) causing bodily injury to a human being as
20 a result of the unlawful operation of a motor vehicle while
21 driving under the influence of intoxicating liquor or drugs; or

22 (3) refusing to submit to chemical testing, as
23 provided for in the Implied Consent Act, and in the judgment of
24 the court, based upon evidence of intoxication presented to the
25 court, the driver was under the influence of intoxicating

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1 liquor or drugs.

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

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

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

24 (1) upon a second conviction, an offender
25 shall be sentenced to a jail term of not less than ninety-six

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

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

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1 under advisement.

2 G. Upon a fourth conviction pursuant to this
3 section, an offender is guilty of a fourth degree felony and,
4 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
5 shall be sentenced to a term of imprisonment of eighteen
6 months, six months of which shall not be suspended, deferred or
7 taken under advisement.

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

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

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

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1 K. Upon any conviction pursuant to this section, an
2 offender shall be required to participate in and complete,
3 within a time specified by the court, an alcohol or drug abuse
4 screening program approved by the department of finance and
5 administration and, if necessary, a treatment program approved
6 by the court. The requirement imposed pursuant to this
7 subsection shall not be suspended, deferred or taken under
8 advisement.

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

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

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

17 (3) a drug court program approved by the
18 court; or

19 (4) any other substance abuse treatment
20 program approved by the court.

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

23 M. Upon a felony conviction pursuant to this
24 section, the corrections department shall provide substance
25 abuse counseling and treatment to the offender in its custody.

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1 While the offender is on probation or parole under its
2 supervision, the corrections department shall also provide
3 substance abuse counseling and treatment to the offender or
4 shall require the offender to obtain substance abuse counseling
5 and treatment.

6 N. Upon a conviction pursuant to this section, an
7 offender shall be required to obtain an ignition interlock
8 license and have an ignition interlock device installed and
9 operating on all motor vehicles driven by the offender,
10 pursuant to rules adopted by the traffic safety bureau. Unless
11 determined by the bureau to be indigent, the offender shall pay
12 all costs associated with having an ignition interlock device
13 installed on the appropriate motor vehicles. The offender
14 shall operate only those vehicles equipped with ignition
15 interlock devices for:

16 (1) a period of one year, for a first
17 offender;

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

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

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

24 O. Five years from the date of conviction and every
25 five years thereafter, a fourth or subsequent offender may

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1 apply to a district court for removal of the ignition interlock
2 device requirement provided in this section and for restoration
3 of a driver's license. A district court may, for good cause
4 shown, remove the ignition interlock device requirement and
5 order restoration of the license; provided that the offender
6 has not been subsequently convicted of driving a motor vehicle
7 under the influence of intoxicating liquor or drugs. Good
8 cause may include an alcohol screening and proof from the
9 interlock vendor that the person has not had violations of the
10 interlock device.

11 P. If an offender receives a sentence of
12 incarceration for driving under the influence of intoxicating
13 liquor or drugs and is ordered to serve the sentence under
14 house arrest, the court may order the offender to obtain a home
15 breathalyzer device that identifies the person giving the
16 sample and to provide morning and evening breath samples for
17 the duration of the house arrest, pursuant to rules adopted by
18 the traffic safety bureau. The offender shall pay costs
19 associated with the home breathalyzer device, unless determined
20 to be indigent by the bureau.

21 [P.] Q. An offender who obtains an ignition
22 interlock license and installs an ignition interlock device
23 prior to conviction shall be given credit at sentencing for the
24 time period the ignition interlock device has been in use.

25 [Q.] R. In the case of a first, second or third

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1 offense under this section, the magistrate court has concurrent
2 jurisdiction with district courts to try the offender.

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

13 [S.] T. In addition to any other fine or fee that
14 may be imposed pursuant to the conviction or other disposition
15 of the offense under this section, the court may order the
16 offender to pay the costs of any court-ordered screening and
17 treatment programs.

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

25 [U.] V. As used in this section:

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

6 (2) "commercial motor vehicle" means a motor
7 vehicle or combination of motor vehicles used in commerce to
8 transport passengers or property if the motor vehicle:

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

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

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

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

20 SECTION 4. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
21 Chapter 82, Section 2, as amended) is amended to read:

22 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
23 CREATED.--

24 A. A fee is imposed on a person convicted of
25 driving under the influence of intoxicating liquor or drugs in

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1 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
2 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
3 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
4 driver's license is revoked pursuant to the provisions of the
5 Implied Consent Act, in an amount determined by rule of the
6 traffic safety bureau of the department of transportation not
7 to exceed one hundred dollars (\$100) but not less than fifty
8 dollars (\$50.00) for each year the person is required to
9 operate only vehicles equipped with an ignition interlock
10 device or to use a home breathalyzer device in order to ensure
11 the solvency of the interlock device fund. The fee shall not
12 be imposed on an indigent person.

13 B. The "interlock device fund" is created in the
14 state treasury. The fee imposed pursuant to Subsection A of
15 this section shall be collected by the motor vehicle division
16 of the taxation and revenue department and deposited in the
17 interlock device fund.

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

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

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

11 (2) up to thirty dollars (\$30.00) monthly
12 toward the lease and use of a home breathalyzer device.

13 D. The traffic safety bureau shall not pay any
14 amount above what an offender would be required to pay for the
15 installation, removal or usage of an interlock device or for
16 the lease of a home breathalyzer device.

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

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

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1 Indian reservations; or

2 (6) other criteria approved by the traffic
3 safety bureau.

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

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

13 SECTION 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2013.

underscored material = new
[bracketed material] = delete