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HOUSE BILL 479

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

INTRODUCED BY

Stephanie Garcia Richard

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; 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 66-8-102 NMSA 1978 (being Laws 1953,  
Chapter 139, Section 54, as amended) is amended to read:

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

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

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders the person  
2 incapable of safely driving a vehicle to drive a vehicle within  
3 this state.

4 C. It is unlawful for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 J. Upon a seventh or subsequent conviction pursuant

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

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

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

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

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

22 (3) a drug court program approved by the  
23 court; or

24 (4) any other substance abuse treatment  
25 program approved by the court.

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

3           M. Upon a felony conviction pursuant to this  
4 section, the corrections department shall provide substance  
5 abuse counseling and treatment to the offender in its custody.  
6 While the offender is on probation or parole under its  
7 supervision, the corrections department shall also provide  
8 substance abuse counseling and treatment to the offender or  
9 shall require the offender to obtain substance abuse counseling  
10 and treatment.

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

21                   (1) a period of one year, for a first  
22 offender;

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

25                   (3) a period of three years, for a third

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1 conviction pursuant to this section; or

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

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

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

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1 bureau.

2 [P-] Q. An offender who obtains an ignition  
3 interlock license and installs an ignition interlock device  
4 prior to conviction shall be given credit at sentencing for the  
5 time period the ignition interlock device has been in use.

6 [Q-] R. In the case of a first, second or third  
7 offense under this section, the magistrate court has concurrent  
8 jurisdiction with district courts to try the offender.

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

19 [S-] T. In addition to any other fine or fee that  
20 may be imposed pursuant to the conviction or other disposition  
21 of the offense under this section, the court may order the  
22 offender to pay the costs of any court-ordered screening and  
23 treatment programs.

24 [T-] U. With respect to this section and  
25 notwithstanding any provision of law to the contrary, if an

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1 offender's sentence was suspended or deferred in whole or in  
2 part and the offender violates any condition of probation, the  
3 court may impose any sentence that the court could have  
4 originally imposed and credit shall not be given for time  
5 served by the offender on probation.

6 ~~[U-]~~ V. As used in this section:

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

12 (2) "commercial motor vehicle" means a motor  
13 vehicle or combination of motor vehicles used in commerce to  
14 transport passengers or property if the motor vehicle:

15 (a) has a gross combination weight  
16 rating of more than twenty-six thousand pounds inclusive of a  
17 towed unit with a gross vehicle weight rating of more than ten  
18 thousand pounds;

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

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

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

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

3           "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND  
4 CREATED.--

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

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

24           C. All money in the interlock device fund is  
25 appropriated to the traffic safety bureau of the department of

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1 transportation to cover part of the costs of installing,  
2 removing and leasing ignition interlock devices or leasing home  
3 breathalyzer devices for indigent people who are required,  
4 pursuant to convictions under Section 66-8-102 NMSA 1978 or  
5 adjudications on the basis of Subparagraph (a) of Paragraph (1)  
6 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's  
7 license revocations pursuant to the provisions of the Implied  
8 Consent Act or as a condition of parole, to install [~~these~~]  
9 ignition interlock devices in their vehicles or to use a home  
10 breathalyzer device. Provided that money is available in the  
11 interlock device fund, the traffic safety bureau shall pay:

12 (1) 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; or

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

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

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

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- 1 (1) temporary assistance for needy families;
- 2 (2) general assistance;
- 3 (3) the supplemental [~~nutritional~~] nutrition
- 4 assistance program, also known as "food stamps";
- 5 (4) supplemental security income;
- 6 (5) the federal food distribution program on
- 7 Indian reservations; or
- 8 (6) other criteria approved by the traffic
- 9 safety bureau.

10 [~~F.~~] F. Any balance remaining in the interlock  
11 device fund shall not revert to the general fund at the end of  
12 any fiscal year.

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

19 **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
20 provisions of this act is July 1, 2013.