

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 86 & 131

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; PROVIDING FOR INCREASES IN THE TIME REQUIRED FOR A  
PERSON'S LICENSE TO BE REVOKED AND TO USE AN IGNITION INTERLOCK  
DEVICE AND OBTAIN AN IGNITION INTERLOCK LICENSE DEPENDING ON  
THE BLOOD OR BREATH ALCOHOL CONCENTRATION; PROVIDING THAT  
PERSONS WHO REFUSE TO SUBMIT TO A CHEMICAL TEST WILL BE  
CONSIDERED TO HAVE HAD A BLOOD OR BREATH ALCOHOL CONCENTRATION  
OF SIXTEEN ONE HUNDREDTHS AT TIME OF ARREST FOR PURPOSES OF  
DETERMINING THE LENGTH OF LICENSE REVOCATION AND THEIR  
INTERLOCK REQUIREMENT; INCREASING THE REQUIREMENTS TO BE MET  
FOR REMOVAL OF AN IGNITION INTERLOCK DEVICE BEFORE  
REINSTATEMENT OF A DRIVER'S LICENSE; PROVIDING THAT PERSONS WHO  
DO NOT OBTAIN AN IGNITION INTERLOCK DEVICE AND LICENSE SHALL BE  
REQUIRED TO MAINTAIN SOBRIETY; REQUIRING HOME BREATHALYZER  
DEVICES AND ALLOWING ELECTRONIC MONITORING DEVICES FOR AN

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1 OFFENDER UNDER HOUSE ARREST; PROVIDING ASSISTANCE FOR HOME  
2 BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

7 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall  
8 not issue a driver's license under the Motor Vehicle Code to  
9 any person:

10 A. who is under the age of eighteen years, except  
11 the division may, in its discretion, issue:

12 (1) an instruction permit to a person fifteen  
13 years of age or older who is enrolled in and attending or has  
14 completed a driver education course approved by the bureau that  
15 includes a DWI education and prevention component;

16 (2) a provisional license to a person fifteen  
17 years and six months of age or older:

18 (a) who has completed a driver education  
19 course approved by the bureau or offered by a public school  
20 that includes a DWI education and prevention component and has  
21 had an instruction permit for at least six months as provided  
22 in Section 66-5-8 NMSA 1978; and

23 (b) who has successfully completed a  
24 practice driving component;

25 (3) a driver's license to a person sixteen

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1 years and six months of age or older:

2 (a) who has had a provisional license  
3 for at least a twelve-month period immediately preceding the  
4 date of the application for the driver's license as provided in  
5 Section 66-5-9 NMSA 1978;

6 (b) who has complied with restrictions  
7 on that license; and

8 (c) who has not been adjudicated for an  
9 offense involving the use of alcohol or drugs during the  
10 twelve-month period immediately preceding the application for  
11 the driver's license and who has no pending adjudications  
12 alleging an offense involving the use of alcohol or drugs at  
13 the time of application; and

14 (4) to a person thirteen years of age or older  
15 who passes an examination prescribed by the division, a license  
16 restricted to the operation of a motorcycle, provided:

17 (a) the motorcycle is not in excess of  
18 one hundred cubic centimeters displacement;

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

21 (c) the director approves and certifies  
22 motorcycles as not in excess of one hundred cubic centimeters  
23 displacement and by rule provides for a method of  
24 identification of such motorcycles by all law enforcement  
25 officers;

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

6           C. who is an habitual user of narcotic drugs or  
7 alcohol or an habitual user of any drug to a degree that  
8 renders the person incapable of safely driving a motor vehicle;

9           D. who ~~[is four or more times convicted of]~~ has had  
10 that person's driving privilege or driver's license revoked for  
11 the remainder of the offender's life for driving a motor  
12 vehicle while under the influence of intoxicating liquor or  
13 narcotic drug regardless of whether the convictions are under  
14 the laws or ordinances of this state or any municipality or  
15 county of this state or under the laws or ordinances of any  
16 other state, the District of Columbia or any governmental  
17 subdivision thereof, except as provided in the Ignition  
18 Interlock Licensing Act. Five years from the date of the  
19 ~~[fourth]~~ last conviction and every five years thereafter, the  
20 person may apply to any district court of this state for  
21 restoration of the license, and the court, upon good cause  
22 being shown, may order restoration of the license applied for;  
23 provided that the person has not been subsequently convicted of  
24 driving a motor vehicle while under the influence of  
25 intoxicating liquor or drugs. Upon issuance of the order of

.200578.3

1 restoration, a certified copy shall immediately be forwarded to  
2 the division, and if the person is otherwise qualified for the  
3 license applied for, the [~~four~~] previous convictions shall not  
4 prohibit issuance of the license;

5 E. who was convicted on or after June 17, 2005 of  
6 driving a motor vehicle while under the influence of  
7 intoxicating liquor or drugs pursuant to the laws or ordinances  
8 of any other state, the District of Columbia or any  
9 governmental subdivision thereof, unless the person obtains an  
10 ignition interlock license as provided in the Ignition  
11 Interlock Licensing Act for a period of one year for a first  
12 conviction; a period of two years for a second conviction; a  
13 period of three years for a third conviction; or the remainder  
14 of the offender's life for a fourth or subsequent conviction,  
15 subject to a five-year review as provided in Subsection D of  
16 this section. Upon presentation of proof satisfactory to the  
17 division, the division may credit time spent by a person  
18 operating a motor vehicle with an ignition interlock or  
19 comparable device, as a condition of the person's sentence for  
20 a conviction in another jurisdiction pursuant to this  
21 subsection, against the ignition interlock time requirements  
22 imposed by this subsection. The division shall promulgate  
23 rules necessary for granting credit to persons who participate  
24 in comparable out-of-state programs following a conviction for  
25 driving a motor vehicle while under the influence of

.200578.3

1 intoxicating liquor or drugs. The requirements of this  
2 subsection shall not apply to a person who applies for a  
3 driver's license ten years or more from the date of the  
4 person's last conviction, except for a person who is subject to  
5 lifetime driver's license revocation for a conviction in  
6 another jurisdiction pursuant to this subsection;

7 F. who has previously been afflicted with or who is  
8 suffering from any mental disability or disease that would  
9 render the person unable to drive a motor vehicle with safety  
10 upon the highways and who has not, at the time of application,  
11 been restored to health;

12 G. who is required by the Motor Vehicle Code to  
13 take an examination, unless the person has successfully passed  
14 the examination;

15 H. who is required under the laws of this state to  
16 deposit proof of financial responsibility and who has not  
17 deposited the proof;

18 I. when the director has good cause to believe that  
19 the operation of a motor vehicle on the highways by the person  
20 would be inimical to public safety or welfare; or

21 J. as a motorcycle driver who is less than eighteen  
22 years of age and who has not presented a certificate or other  
23 evidence of having successfully completed a motorcycle driver  
24 education program licensed or offered in conformance with rules  
25 of the bureau."

.200578.3

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

3           "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

4           A. The division shall immediately revoke the  
5 driving privilege or driver's license of a driver upon  
6 receiving a record of the driver's adjudication as a delinquent  
7 for or conviction of any of the following offenses, whether the  
8 offense is under any state law or local ordinance, when the  
9 conviction or adjudication has become final:

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

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

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

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

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

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

25                   (7) conviction or forfeiture of bail not

.200578.3

1 vacated upon three charges of reckless driving committed within  
2 a period of twelve months.

3 B. Except as provided in the Ignition Interlock  
4 Licensing Act and in Subsection C, D, E, ~~[or]~~ F or G of this  
5 section, a person whose driving privilege or driver's license  
6 has been revoked under this section shall not be entitled to  
7 apply for or receive a new license until one year from the date  
8 that the conviction is final and all rights to an appeal have  
9 been exhausted.

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

20 [~~(1) one year for a first offender; or~~

21 ~~(2) for a subsequent offender:~~

22 ~~(a) two years for a second conviction;~~

23 ~~(b) three years for a third conviction;~~

24 ~~or~~

25 ~~(c) the remainder of the offender's life~~



1 ~~for a fourth or subsequent conviction, subject to a five-year~~  
2 ~~review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.]~~

3 (1) for a first offender:

4 (a) one year, if the blood or breath of  
5 the person contained an alcohol concentration below sixteen one  
6 hundredths;

7 (b) two years, if the blood or breath of  
8 the person contained an alcohol concentration from sixteen one  
9 hundredths to below twenty-four one hundredths; and

10 (c) four years, if the blood or breath  
11 of the person contained an alcohol concentration of twenty-four  
12 one hundredths or greater;

13 (2) for a second conviction:

14 (a) two years, if the blood or breath of  
15 the person contained an alcohol concentration below sixteen one  
16 hundredths;

17 (b) four years, if the blood or breath  
18 of the person contained an alcohol concentration from sixteen  
19 one hundredths to below twenty-four one hundredths; and

20 (c) the remainder of the offender's life  
21 if the blood or breath of the person contained an alcohol  
22 concentration of twenty-four one hundredths or greater, subject  
23 to a five-year review, as provided in Sections 66-5-5 and  
24 66-8-102 NMSA 1978;

25 (3) for a third conviction:

.200578.3

1                   (a) three years, if the blood or breath  
2 of the person contained an alcohol concentration below sixteen  
3 one hundredths; and

4                   (b) the remainder of the offender's life  
5 if the blood or breath of the person contained an alcohol  
6 concentration of sixteen one hundredths or greater, subject to  
7 a five-year review, as provided in Sections 66-5-5 and 66-8-102  
8 NMSA 1978; and

9                   (4) for a fourth or subsequent conviction, for  
10 the remainder of the offender's life, subject to a five-year  
11 review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

12                   D. If a person whose driving privilege or driver's  
13 license is to be revoked pursuant to Subsection C of this  
14 section did not refuse a chemical test but blood or breath  
15 alcohol concentration results are not available, the person  
16 shall be considered to have had an alcohol concentration below  
17 sixteen one hundredths for the purposes of determining the  
18 length of revocation.

19                   [~~D.~~] E. The division shall apply the license  
20 revocation provisions of [~~Subsection C~~] Subsections C and D of  
21 this section and the provisions of Subsection D of Section  
22 66-5-5 NMSA 1978 to a person who was three or more times  
23 convicted of driving a motor vehicle under the influence of  
24 intoxicating liquor or drugs and who has a driver's license  
25 revocation pursuant to the law in effect prior to June 17,

.200578.3

1 2005, upon the request of the person and if the person has had  
 2 an ignition interlock license for three years or more and has  
 3 proof from the ignition interlock vendor of no violations of  
 4 the ignition interlock device in the previous six months.

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

10 ~~[F-]~~ G. Upon receipt from a district court of a  
 11 record of conviction for the offense of shooting at or from a  
 12 motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA  
 13 1978 or of a conviction for a conspiracy or an attempt to  
 14 commit that offense, the division shall revoke the driver's  
 15 license or driving privileges of the convicted person. A  
 16 person whose driver's license or driving privilege has been  
 17 revoked pursuant to the provisions of this subsection shall not  
 18 be entitled to apply for or receive any new driver's license or  
 19 driving privilege until one year from the date that the  
 20 conviction is final and all rights to an appeal have been  
 21 exhausted."

22 **SECTION 3.** Section 66-5-33.1 NMSA 1978 (being Laws 1985,  
 23 Chapter 47, Section 1, as amended) is amended to read:

24 "66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR  
 25 REGISTRATION--IGNITION INTERLOCK--FEE.--

.200578.3

1           A. Whenever a driver's license or registration is  
2 suspended or revoked and an application has been made for its  
3 reinstatement, compliance with all appropriate provisions of  
4 the Motor Vehicle Code and the payment of a fee of twenty-five  
5 dollars (\$25.00) is a prerequisite to the reinstatement of any  
6 license or registration.

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

12                   (1) an additional fee of seventy-five dollars  
13 (\$75.00);

14                   (2) completion of the license revocation  
15 period;

16                   (3) satisfaction of any court-ordered ignition  
17 interlock requirements; ~~and~~

18                   (4) a minimum of six months of driving with an  
19 ignition interlock license with no attempts to circumvent or  
20 tamper with the ignition interlock device;

21                   (5) evidence that the ignition interlock  
22 device has recorded no more than two tests at a level greater  
23 than five one hundredths alcohol concentration during the six  
24 months prior to reinstatement of the unrestricted driver's  
25 license; and

1                   (6) evidence of at least twenty-two ignition  
 2 interlock tests during those six months, administered at least  
 3 one week apart. The department may exempt a person from one or  
 4 more of the twenty-two tests upon proof being provided to the  
 5 department that either the person to be tested or the vehicle  
 6 with the ignition interlock device to be tested is not  
 7 available for a test.

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

12                   (1) the license revocation period is  
 13 completed;

14                   (2) satisfactory proof is presented to the  
 15 department that the person is no longer a resident of New  
 16 Mexico; and

17                   (3) the license reinstatement fee is paid.

18                   D. Fees collected pursuant to Subsection B of this  
 19 section are appropriated to the local governments road fund.  
 20 The department shall maintain an accounting of the fees  
 21 collected and shall report that amount upon request to the  
 22 legislature."

23                   **SECTION 4.** Section 66-8-102 NMSA 1978 (being Laws 1953,  
 24 Chapter 139, Section 54, as amended) is amended to read:

25                   "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING

.200578.3

1 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
2 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

6 B. It is unlawful for a person who is under the  
7 influence of any drug to a degree that renders the person  
8 incapable of safely driving a vehicle to drive a vehicle within  
9 this state.

10 C. It is unlawful for:

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

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

23 D. Aggravated driving under the influence of  
24 intoxicating liquor or drugs consists of:

25 (1) driving a vehicle in this state with an

1 alcohol concentration of sixteen one hundredths or more in the  
2 driver's blood or breath within three hours of driving the  
3 vehicle and the alcohol concentration results from alcohol  
4 consumed before or while driving the vehicle;

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

8 (3) refusing to submit to chemical testing, as  
9 provided for in the Implied Consent Act, and in the judgment of  
10 the court, based upon evidence of intoxication presented to the  
11 court, the driver was under the influence of intoxicating  
12 liquor or drugs.

13 E. A first conviction pursuant to this section  
14 shall be punished, notwithstanding the provisions of Section  
15 31-18-13 NMSA 1978, by imprisonment for not more than ninety  
16 days or by a fine of not more than five hundred dollars (\$500),  
17 or both; provided that if the sentence is suspended in whole or  
18 in part or deferred, the period of probation may extend beyond  
19 ninety days but shall not exceed one year. Upon a first  
20 conviction pursuant to this section, an offender shall be  
21 sentenced to not less than twenty-four hours of community  
22 service. In addition, the offender may be required to pay a  
23 fine of three hundred dollars (\$300). The offender shall be  
24 ordered by the court to participate in and complete a screening  
25 program described in Subsection K of this section and to attend

.200578.3

1 a driver rehabilitation program for alcohol or drugs, also  
2 known as a "DWI school", approved by the bureau and also may be  
3 required to participate in other rehabilitative services as the  
4 court shall determine to be necessary. In addition to those  
5 penalties, when an offender commits aggravated driving under  
6 the influence of intoxicating liquor or drugs, the offender  
7 shall be sentenced to not less than forty-eight consecutive  
8 hours in jail. If an offender fails to complete, within a time  
9 specified by the court, any community service, screening  
10 program, treatment program or DWI school ordered by the court  
11 or fails to comply with any other condition of probation, the  
12 offender shall be sentenced to not less than an additional  
13 forty-eight consecutive hours in jail. Any jail sentence  
14 imposed pursuant to this subsection for failure to complete,  
15 within a time specified by the court, any community service,  
16 screening program, treatment program or DWI school ordered by  
17 the court or for aggravated driving under the influence of  
18 intoxicating liquor or drugs shall not be suspended, deferred  
19 or taken under advisement. On a first conviction pursuant to  
20 this section, any time spent in jail for the offense prior to  
21 the conviction for that offense shall be credited to any term  
22 of imprisonment fixed by the court. A deferred sentence  
23 pursuant to this subsection shall be considered a first  
24 conviction for the purpose of determining subsequent  
25 convictions.

.200578.3



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

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

24                   (2) upon a third conviction, an offender shall  
25 be sentenced to a jail term of not less than thirty consecutive

.200578.3

1 days, not less than ninety-six hours of community service and a  
2 fine of seven hundred fifty dollars (\$750). In addition to  
3 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 sixty consecutive days. If an offender fails to complete,  
7 within a time specified by the court, any community service,  
8 screening program or treatment program ordered by the court,  
9 the offender shall be sentenced to not less than an additional  
10 sixty consecutive days in jail. A penalty imposed pursuant to  
11 this paragraph shall not be suspended or deferred or taken  
12 under advisement.

13 G. Upon a fourth 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 eighteen  
17 months, six months of which shall not be suspended, deferred or  
18 taken under advisement.

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

25 I. Upon a sixth conviction pursuant to this

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

6 J. Upon a seventh or subsequent conviction pursuant  
7 to this section, an offender is guilty of a third degree felony  
8 and, notwithstanding the provisions of Section 31-18-15 NMSA  
9 1978, shall be sentenced to a term of imprisonment of three  
10 years, two years of which shall not be suspended, deferred or  
11 taken under advisement.

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

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

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

.200578.3

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

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

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

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

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

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

1 ignition interlock devices for:

2 ~~[(1) a period of one year, for a first~~  
3 ~~offender;~~

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

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

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

10 (1) if a first offender:

11 (a) one year, if the blood or breath of  
12 the person contained an alcohol concentration below sixteen one  
13 hundredths;

14 (b) two years, if the blood or breath of  
15 the person contained an alcohol concentration from sixteen one  
16 hundredths to below twenty-four one hundredths; and

17 (c) four years, if the blood or breath  
18 of the person contained an alcohol concentration of twenty-four  
19 one hundredths or greater;

20 (2) upon a second conviction pursuant to this  
21 section:

22 (a) two years, if the blood or breath of  
23 the person contained an alcohol concentration below sixteen one  
24 hundredths;

25 (b) four years, if the blood or breath

1 of the person contained an alcohol concentration from sixteen  
2 one hundredths to below twenty-four one hundredths; and

3 (c) the remainder of the offender's life  
4 if the blood or breath of the person contained an alcohol  
5 concentration of twenty-four one hundredths or greater, subject  
6 to a five-year review, as provided in Section 66-5-5 NMSA 1978  
7 and Subsection Q of this section;

8 (3) upon a third conviction pursuant to this  
9 section:

10 (a) three years, if the blood or breath  
11 of the person contained an alcohol concentration below sixteen  
12 one hundredths; and

13 (b) the remainder of the offender's life  
14 if the blood or breath of the person contained an alcohol  
15 concentration of sixteen one hundredths or greater, subject to  
16 a five-year review, as provided in Section 66-5-5 NMSA 1978 and  
17 Subsection Q of this section; and

18 (4) upon a fourth or subsequent conviction  
19 pursuant to this section, for the remainder of the offender's  
20 life, subject to a five-year review, as provided in Section  
21 66-5-5 NMSA 1978 and Subsection Q of this section.

22 0. An offender who refuses to submit to chemical  
23 testing at time of arrest under the Implied Consent Act shall  
24 be considered to have had a blood or breath alcohol  
25 concentration of sixteen one hundredths for the purposes of

1 establishing an ignition interlock requirement period under  
2 Subsection N of this section.

3 P. If a person required to operate only those  
4 vehicles equipped with ignition interlock devices pursuant to  
5 Subsection N of this section did not refuse a chemical test but  
6 blood or breath alcohol concentration results are not  
7 available, the person shall be considered to have had an  
8 alcohol concentration below sixteen one hundredths for the  
9 purposes of determining the length of time required for use of  
10 an ignition interlock device.

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

24 R. If an offender receives a sentence of  
25 incarceration for driving under the influence of intoxicating

.200578.3

1 liquor or drugs and is ordered to serve the sentence under  
2 house arrest, where house arrest is available, the court shall  
3 order the offender to obtain a home breathalyzer device that  
4 identifies the person giving the sample, or a more intensive  
5 sobriety monitoring device or system, and to provide morning  
6 and evening breath samples for the duration of the house  
7 arrest, pursuant to rules adopted by the bureau.

8 S. As a condition of house arrest, the court may  
9 also require an offender to be monitored by an electronic  
10 monitoring device, as approved by the bureau, placed on the  
11 offender's person. The offender shall pay any costs associated  
12 with the house arrest program as ordered by the court, unless  
13 determined to be indigent by the bureau.

14 ~~[P.]~~ T. An offender who obtains an ignition  
15 interlock license and installs an ignition interlock device  
16 prior to conviction shall be given credit at sentencing for the  
17 time period the ignition interlock device has been in use.

18 U. An offender who has not installed an ignition  
19 interlock device and has not obtained an ignition interlock  
20 license shall be required to maintain sobriety and to  
21 participate in a court-approved sobriety monitoring program for  
22 the same period as the ignition interlock requirement in  
23 Subsection N or P of this section or until the end of the  
24 period of supervision by the court in the matter, whichever is  
25 shorter. The court-approved sobriety monitoring program may



1 include the use of a home breathalyzer device that identifies  
2 the person giving the sample, pursuant to rules adopted by the  
3 bureau. Sobriety shall be monitored at least twice daily.  
4 After twelve months of monitored sobriety, the court may reduce  
5 the frequency of monitoring. Failure to maintain sobriety or  
6 to comply with the monitoring program shall result in a jail  
7 term of forty-eight hours for each failure to maintain sobriety  
8 or to comply with the monitoring program. The jail term may  
9 not be served on a community release or an electronic  
10 monitoring program. A jail term imposed under this subsection  
11 is not limited by the maximum imprisonment terms specified in  
12 Subsection E or F of this section. Unless determined by the  
13 bureau to be indigent, the offender shall pay all costs  
14 associated with sobriety monitoring. Upon the offender  
15 installing an ignition interlock device and obtaining an  
16 ignition interlock license, the court may suspend the sobriety  
17 maintenance and monitoring requirements. The time spent  
18 successfully maintaining sobriety shall be credited toward the  
19 time required in Subsection N, O or P of this section to have  
20 the ignition interlock device and license, and shall be  
21 credited to the six-month interlock requirement pursuant to  
22 Section 66-5-33.1 NMSA 1978.

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

.200578.3

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

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

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

23           [~~U~~] Z. As used in this section:

24                   (1) "bodily injury" means an injury to a  
25 person that is not likely to cause death or great bodily harm

1 to the person, but does cause painful temporary disfigurement  
2 or temporary loss or impairment of the functions of any member  
3 or organ of the person's body; [~~and~~]

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

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

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

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

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

18 (3) "electronic monitoring device" means an  
19 active or passive global-positioning-system-enabled device  
20 capable of recording and transmitting an offender's location at  
21 all times or at designated intervals or a radio frequency  
22 device capable of monitoring an offender's location."

23 SECTION 5. Section 66-8-102.3 NMSA 1978 (being Laws 2002,  
24 Chapter 82, Section 2, as amended) is amended to read:

25 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND

.200578.3

1 CREATED.--

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

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

21 C. All money in the interlock device fund is  
22 appropriated to the [~~traffic safety~~] bureau [~~of the department~~  
23 ~~of transportation~~] to cover part of the costs of installing,  
24 removing and leasing ignition interlock devices or leasing home  
25 breathalyzer devices for indigent people who are required,

.200578.3

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

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

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

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

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

- 23 (1) temporary assistance for needy families;
- 24 (2) general assistance;
- 25 (3) the supplemental [~~nutritional~~] nutrition

1 assistance program, also known as "food stamps";

2 (4) supplemental security income;

3 (5) the federal food distribution program on  
4 Indian reservations; or

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

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

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

16 SECTION 6. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2015.