

1 SENATE BILL 586

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Craig W. Brandt

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10 AN ACT

11 RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING
12 LIQUOR OR DRUGS; RECOMPILING CERTAIN SECTIONS OF THE MOTOR
13 VEHICLE CODE; REVISING PROVISIONS RELATED TO PENALTIES AND
14 MONITORING DEVICES; CREATING THE DRIVING UNDER THE INFLUENCE
15 CODE AND THE DUI ACT; CREATING THE DUI TREATMENT FUND AND
16 PROVIDING FOR A DISTRIBUTION TO THE FUND; CLARIFYING THE
17 DISTRIBUTION OF THE LIQUOR EXCISE TAX; RECONCILING CONFLICTING
18 AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING LAWS 2014,
19 CHAPTER 54, SECTION 1; REPEALING SECTIONS 66-5-502 AND 66-8-102
20 NMSA 1978 (BEING LAWS 2003, CHAPTER 239, SECTION 2 AND LAWS
21 1953, CHAPTER 139, SECTION 54, AS AMENDED); MAKING AN
22 APPROPRIATION.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 40 of this act may be cited as the "Driving Under the
2 Influence Code".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Driving Under the Influence Code:

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

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

14 C. "bureau" means the traffic safety bureau of the
15 department of transportation;

16 D. "combination" means any connected assemblage of
17 a motor vehicle and one or more semitrailers, trailers or
18 semitrailers converted to trailers by means of a converter
19 gear;

20 E. "commerce" means the transportation of persons,
21 property or merchandise for hire, compensation, profit or in
22 the furtherance of a commercial enterprise in this state or
23 between New Mexico and a place outside New Mexico, including a
24 place outside the United States;

25 F. "commercial motor vehicle" means "commercial

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1 motor vehicle", as defined in the Motor Vehicle Code;

2 G. "controlled substance" means a substance defined
3 in Section 30-31-2 NMSA 1978 as a controlled substance;

4 H. "conviction":

5 (1) means:

6 (a) a finding of guilt in the trial
7 court in regard to which the violator has waived or exhausted
8 all rights to appeal;

9 (b) a plea of guilty or nolo contendere
10 accepted by the court; or

11 (c) an unvacated forfeiture of bail or
12 collateral deposited to secure a person's appearance in court;
13 and

14 (2) does not include a conditional discharge
15 as provided in Section 31-20-13 NMSA 1978 or a deferred
16 sentence when the terms of the deferred sentence are met;

17 I. "denied" means the division has refused to issue
18 an instruction permit, driver's license or provisional license
19 pursuant to the provisions of Subsection D or E of Section
20 66-5-5 NMSA 1978;

21 J. "department" means the taxation and revenue
22 department, the secretary of taxation and revenue or any
23 employee of the department exercising authority lawfully
24 delegated to that employee by the secretary;

25 K. "driver" means every person who drives or is in

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1 actual physical control of a motor vehicle, including a
2 motorcycle, upon a highway, who is exercising control over or
3 steering a vehicle being towed by a motor vehicle or who
4 operates or is in actual physical control of an off-highway
5 motor vehicle;

6 L. "driver's license" means a license or a class of
7 license issued by a state or other jurisdiction to an
8 individual that authorizes the individual to drive a motor
9 vehicle;

10 M. "first offender" means a person who for the
11 first time pursuant to state or federal law or a municipal
12 ordinance or a tribal law has been adjudicated guilty of the
13 charge of driving a motor vehicle while under the influence of
14 intoxicating liquor or any other drug that renders the person
15 incapable of safely driving a motor vehicle, regardless of
16 whether the person's sentence was suspended or deferred;

17 N. "hazardous material" means a substance or
18 material in a quantity and form that may pose an unreasonable
19 risk to health, safety or property when transported in
20 commerce;

21 O. "ignition interlock device" means a device,
22 approved by the bureau, that prevents the operation of a motor
23 vehicle by an intoxicated or impaired person;

24 P. "ignition interlock license" means a driver's
25 license issued to a person by the department that allows that

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1 person to operate a motor vehicle with an ignition interlock
2 device after that person's driving privilege or driver's
3 license has been revoked or denied. The department shall
4 clearly mark an ignition interlock license to distinguish it
5 from other driver's licenses;

6 Q. "license", without modification, means any
7 license, temporary instruction permit or temporary license
8 issued or recognized under the laws of New Mexico pertaining to
9 the licensing of persons to operate motor vehicles;

10 R. "mail" means any item properly addressed with
11 postage prepaid delivered by the United States postal service
12 or any other public or private enterprise primarily engaged in
13 the transport and delivery of letters, packages and other
14 parcels;

15 S. "motor vehicle" means every vehicle that is
16 self-propelled and every vehicle that is propelled by electric
17 power obtained from batteries or from overhead trolley wires,
18 but not operated upon rails; but for the purposes of the
19 Mandatory Financial Responsibility Act, "motor vehicle" does
20 not include "special mobile equipment";

21 T. "nonresident" means every person who is not a
22 resident of this state;

23 U. "nonresident's operating privilege" means the
24 privilege conferred upon a nonresident by the laws of this
25 state pertaining to the operation by the nonresident of a motor

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1 vehicle, or the use of a motor vehicle owned by the
2 nonresident, in this state;

3 V. "police officer" means every officer authorized
4 to direct or regulate traffic or to make arrests for violations
5 of the Motor Vehicle Code or the Driving Under the Influence
6 Code;

7 W. "revocation" means that the driver's license and
8 privilege to drive a motor vehicle on the public highways are
9 terminated and shall not be renewed or restored, except as
10 provided in the Driving Under the Influence Code;

11 X. "revoked" means the department, pursuant to the
12 provisions of Section 66-5-29 NMSA 1978 or Section 33 of the
13 Driving Under the Influence Code, has terminated a person's
14 driving privilege or driver's license for driving while under
15 the influence of intoxicating liquor or drugs;

16 Y. "subsequent offender" means a person who was
17 previously a first offender and who again, under state law,
18 federal law or a municipal ordinance or a tribal law, has been
19 adjudicated guilty of the charge of driving a motor vehicle
20 while under the influence of intoxicating liquor or any drug
21 that rendered the person incapable of safely driving a motor
22 vehicle, regardless of whether the person's sentence was
23 suspended or deferred;

24 Z. "suspension" means that a person's driver's
25 license and privilege to drive a motor vehicle on the public

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1 highways are temporarily withdrawn; and

2 AA. "vehicle" means every device in, upon or by
3 which any person or property is or may be transported or drawn
4 upon a highway, including any frame, chassis, body or unitized
5 frame and body of any vehicle or motor vehicle, except devices
6 moved exclusively by human power or used exclusively upon
7 stationary rails or tracks.

8 SECTION 3. A new section of the Driving Under the
9 Influence Code is enacted to read:

10 "[NEW MATERIAL] SHORT TITLE.--Sections 3 through 27 of the
11 Driving Under the Influence Code may be cited as the "DUI
12 Act"."

13 SECTION 4. A new section of the Driving Under the
14 Influence Code is enacted to read:

15 "[NEW MATERIAL] DEFINITION.--As used in the DUI Act,
16 "commercial motor vehicle" means a motor vehicle or combination
17 of motor vehicles used in commerce to transport passengers or
18 property if the motor vehicle:

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

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

24 C. is designed to transport sixteen or more
25 passengers, including the driver; or

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

4 **SECTION 5.** A new section of the Driving Under the
5 Influence Code is enacted to read:

6 "[NEW MATERIAL] DRIVING UNDER THE INFLUENCE OF
7 INTOXICATING LIQUOR OR DRUGS.--

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

11 B. It is unlawful for a person who is under the
12 influence of a drug to a degree that renders the person
13 incapable of safely driving a vehicle to drive a vehicle within
14 this state."

15 **SECTION 6.** A new section of the Driving Under the
16 Influence Code is enacted to read:

17 "[NEW MATERIAL] UNLAWFUL ALCOHOL CONCENTRATIONS.--It is
18 unlawful for a person to drive:

19 A. a vehicle in this state if the person has an
20 alcohol concentration of eight one hundredths or more in the
21 person'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; or

24 B. a commercial motor vehicle in this state if the
25 person has an alcohol concentration of four one hundredths or

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1 more in the person's blood or breath within three hours of
2 driving the commercial motor vehicle and the alcohol
3 concentration results from alcohol consumed before or while
4 driving the vehicle."

5 SECTION 7. A new section of the Driving Under the
6 Influence Code is enacted to read:

7 "[NEW MATERIAL] AGGRAVATED DRIVING UNDER THE INFLUENCE OF
8 INTOXICATING LIQUOR OR DRUGS.--Aggravated driving under the
9 influence of intoxicating liquor or drugs consists of:

10 A. driving a vehicle in this state with an alcohol
11 concentration of sixteen one hundredths or more in the driver's
12 blood or breath within three hours of driving the vehicle and
13 the alcohol concentration results from alcohol consumed before
14 or while driving the vehicle;

15 B. causing bodily injury to a human being as a
16 result of the unlawful operation of a motor vehicle while
17 driving under the influence of intoxicating liquor or drugs;

18 C. refusing to submit to chemical testing, as
19 provided for in the Implied Consent Act, and in the judgment of
20 the court, based upon evidence of intoxication presented to the
21 court, the driver was under the influence of intoxicating
22 liquor or drugs; or

23 D. driving a vehicle with an alcohol concentration
24 of eight one hundredths or more while the person's privilege to
25 drive was revoked for driving under the influence of

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1 intoxicating liquor or drugs."

2 SECTION 8. A new section of the Driving Under the
3 Influence Code is enacted to read:

4 "[NEW MATERIAL] FIRST CONVICTION FOR DRIVING UNDER THE
5 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

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

14 B. Upon a first conviction pursuant to this
15 section, an offender:

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

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

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

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

24 (2) participate in and complete a screening
25 program described in Section 15 of the Driving Under the

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1 Influence Code; and

2 (3) in accordance with the results and
3 recommendations of the screening program, participate in a
4 twenty-eight-day treatment program that is approved by the
5 court and that is an inpatient, residential, in-custody or
6 outpatient program.

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

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

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

17 E. If an offender fails to complete, within a time
18 specified by the court, any community service, screening
19 program, treatment program or DWI school ordered by the court
20 or fails to comply with any other condition of probation, the
21 offender shall be sentenced to not less than an additional
22 forty-eight consecutive hours in jail.

23 F. A jail sentence imposed pursuant to this section
24 for failure to complete, within a time specified by the court,
25 any community service, screening program, treatment program or

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1 DWI school ordered by the court or for aggravated driving under
2 the influence of intoxicating liquor or drugs shall not be
3 suspended, deferred or taken under advisement.

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

11 SECTION 9. A new section of the Driving Under the
12 Influence Code is enacted to read:

13 "[NEW MATERIAL] SECOND CONVICTION FOR DRIVING UNDER THE
14 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

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

23 B. Notwithstanding any provision of law to the
24 contrary for suspension or deferment of execution of a
25 sentence, upon a second conviction:

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- 1 (1) an offender shall be sentenced to:
- 2 (a) a jail term of not less than
- 3 ninety-six consecutive hours;
- 4 (b) not less than forty-eight hours of
- 5 community service;
- 6 (c) a fine of five hundred dollars
- 7 (\$500); and
- 8 (d) in accordance with the results and
- 9 recommendations of the screening program, participate in a
- 10 ninety-day treatment program approved by the court, twenty-
- 11 eight days of which shall be in an inpatient, residential or
- 12 in-custody program;
- 13 (2) when an offender commits aggravated
- 14 driving under the influence of intoxicating liquor or drugs
- 15 pursuant to this section, the offender shall be sentenced to:
- 16 (a) a jail term of not less than
- 17 ninety-six consecutive hours; and
- 18 (b) in accordance with the results and
- 19 recommendations of the screening program, participate in a
- 20 ninety-day inpatient, residential or in-custody treatment
- 21 program approved by the court; and
- 22 (3) if an offender fails to complete, within a
- 23 time specified by the court, any community service, screening
- 24 program or treatment program ordered by the court, the offender
- 25 shall be sentenced to not less than an additional seven

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1 consecutive days in jail.

2 C. A penalty imposed pursuant to Subsection B of
3 this section shall not be suspended or deferred or taken under
4 advisement.

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

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

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

14 E. The requirements imposed pursuant to Subsection
15 D of this section shall not be suspended, deferred or taken
16 under advisement."

17 SECTION 10. A new section of the Driving Under the
18 Influence Code is enacted to read:

19 "[NEW MATERIAL] THIRD CONVICTION FOR DRIVING UNDER THE
20 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--

21 A. A third conviction for driving under the
22 influence of intoxicating liquor or drugs shall be punished,
23 notwithstanding the provisions of Section 31-18-13 NMSA 1978,
24 by imprisonment for not more than three hundred sixty-four days
25 or by a fine of not more than one thousand dollars (\$1,000), or

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1 both; provided that if the sentence is suspended in whole or in
2 part, the period of probation may extend beyond one year but
3 shall not exceed five years.

4 B. Notwithstanding any provision of law to the
5 contrary for suspension or deferment of execution of a
6 sentence, upon a third conviction:

7 (1) an offender shall be sentenced to:

8 (a) a jail term of not less than thirty
9 consecutive days;

10 (b) not less than ninety-six hours of
11 community service;

12 (c) a fine of seven hundred fifty
13 dollars (\$750); and

14 (d) in accordance with the results and
15 recommendations of the screening program, participate in a
16 ninety-day inpatient, residential or in-custody treatment
17 program approved by the court;

18 (2) when an offender commits aggravated
19 driving under the influence of intoxicating liquor or drugs
20 pursuant to this section, the offender shall be sentenced to:

21 (a) a jail term of not less than sixty
22 consecutive days; and

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

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1 program approved by the court; and

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

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

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

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

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

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

22 SECTION 11. A new section of the Driving Under the
23 Influence Code is enacted to read:

24 "[NEW MATERIAL] FOURTH CONVICTION FOR DRIVING UNDER THE
25 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a fourth

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

7 SECTION 12. A new section of the Driving Under the
8 Influence Code is enacted to read:

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

17 SECTION 13. A new section of the Driving Under the
18 Influence Code is enacted to read:

19 "[NEW MATERIAL] SIXTH CONVICTION FOR DRIVING UNDER THE
20 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--Upon a sixth
21 conviction for driving under the influence of intoxicating
22 liquor or drugs, an offender is guilty of a third degree felony
23 and, notwithstanding the provisions of Section 31-18-15 NMSA
24 1978, shall be sentenced to a term of imprisonment of thirty
25 months, eighteen months of which shall not be suspended,

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1 deferred or taken under advisement."

2 SECTION 14. A new section of the Driving Under the
3 Influence Code is enacted to read:

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

12 SECTION 15. A new section of the Driving Under the
13 Influence Code is enacted to read:

14 "[NEW MATERIAL] ALCOHOL OR DRUG ABUSE SCREENING
15 REQUIRED.--Upon a conviction for driving under the influence of
16 intoxicating liquor or drugs, an offender shall be required to
17 participate in and complete, within a time specified by the
18 court, an alcohol or drug abuse screening program approved by
19 the department of finance and administration and, if necessary,
20 a treatment program approved by the court. The requirement
21 imposed pursuant to this section shall not be suspended,
22 deferred or taken under advisement."

23 SECTION 16. A new section of the Driving Under the
24 Influence Code is enacted to read:

25 "[NEW MATERIAL] PREVIOUS CONVICTIONS FOR DRIVING UNDER THE
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1 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PLEA AGREEMENTS.--
2 If, within the previous ten years, an offender has been
3 convicted of driving under the influence of intoxicating liquor
4 or drugs or of an offense in another jurisdiction that is
5 equivalent to driving under the influence of intoxicating
6 liquor or drugs pursuant to New Mexico law, the offender shall
7 not enter into a plea agreement and a prosecutor shall not
8 negotiate a plea agreement that includes a provision that
9 inaccurately reflects the actual number of the offender's
10 convictions for driving under the influence of intoxicating
11 liquor or drugs or an equivalent offense."

12 SECTION 17. A new section of the Driving Under the
13 Influence Code is enacted to read:

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

24 SECTION 18. A new section of the Driving Under the
25 Influence Code is enacted to read:

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1 "[NEW MATERIAL] SENTENCING--ALCOHOL-MONITORING ANKLE
2 BRACELET.--

3 A. In lieu of incarceration in a jail or prison, a
4 court may order an offender convicted of driving under the
5 influence of intoxicating liquor or drugs to wear an alcohol-
6 monitoring ankle bracelet for no more than fifty percent of the
7 length of the offender's sentence that the offender would be
8 required to spend incarcerated.

9 B. The bureau shall pay for costs associated with
10 placing, removing, monitoring and maintaining an alcohol-
11 monitoring ankle bracelet."

12 SECTION 19. A new section of the Driving Under the
13 Influence Code is enacted to read:

14 "[NEW MATERIAL] IGNITION INTERLOCK REQUIREMENT.--

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

21 B. Unless determined by the bureau to be indigent,
22 the offender shall pay all costs associated with having an
23 ignition interlock device installed on the appropriate motor
24 vehicles. The offender shall operate only those vehicles
25 equipped with ignition interlock devices for:

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

2 (2) a period of two years for a second

3 conviction pursuant to the DUI Act;

4 (3) a period of three years for a third

5 conviction pursuant to the DUI Act; or

6 (4) the remainder of the offender's life for a

7 fourth or subsequent conviction pursuant to the DUI Act.

8 C. Five years from the date of conviction and every

9 five years thereafter, a fourth or subsequent offender may

10 apply to a district court for removal of the ignition interlock

11 device requirement provided in this section and for restoration

12 of a driver's license. A district court may, for good cause

13 shown, remove the ignition interlock device requirement and

14 order restoration of the license; provided that the offender

15 has not been subsequently convicted of driving a motor vehicle

16 under the influence of intoxicating liquor or drugs. Good

17 cause may include an alcohol screening and proof from the

18 interlock vendor that the person has not had violations of the

19 interlock device.

20 D. An offender who obtains an ignition interlock

21 license and installs an ignition interlock device prior to

22 conviction shall be given credit at sentencing for the time

23 period the ignition interlock device has been in use."

24 SECTION 20. A new section of the Driving Under the

25 Influence Code is enacted to read:

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

11 **SECTION 21.** A new section of the Driving Under the
12 Influence Code is enacted to read:

13 "[NEW MATERIAL] OFFENDER MAY BE ORDERED TO PAY COSTS OF
14 SCREENING OR TREATMENT.--In addition to any other fine or fee
15 that may be imposed pursuant to the conviction or other
16 disposition of the offense under the Driving Under the
17 Influence Code, the court may order the offender to pay the
18 costs of a court-ordered screening and treatment programs."

19 **SECTION 22.** A new section of the Driving Under the
20 Influence Code is enacted to read:

21 "[NEW MATERIAL] COURT MAY IMPOSE ORIGINAL SENTENCE AND NOT
22 GIVE CREDIT FOR TIME ON PROBATION.--With respect to the Driving
23 Under the Influence Code and notwithstanding any provision of
24 law to the contrary, if an offender's sentence was suspended or
25 deferred in whole or in part and the offender violates any

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1 condition of probation, the court may impose any sentence that
2 the court could have originally imposed and credit shall not be
3 given for time served by the offender on probation."

4 SECTION 23. A new section of the Driving Under the
5 Influence Code is enacted to read:

6 "[NEW MATERIAL] MAGISTRATE COURT CONCURRENT
7 JURISDICTION.--In the case of a first, second or third offense
8 pursuant to the DUI Act, the magistrate court has concurrent
9 jurisdiction with district courts to try the offender."

10 SECTION 24. Section 66-8-102.1 NMSA 1978 (being Laws
11 1982, Chapter 102, Section 2, as amended by Laws 2003, Chapter
12 51, Section 11 and by Laws 2003, Chapter 90, Section 4) is
13 recompiled in the Driving Under the Influence Code and is
14 amended to read:

15 "GUILTY PLEAS--LIMITATIONS.--Where the complaint or
16 information alleges a violation of [~~Section 66-8-102 NMSA 1978~~]
17 the DUI Act, any plea of guilty thereafter entered in
18 satisfaction of the charges shall include at least a plea of
19 guilty to the violation [~~of one~~] of the [~~subsections of Section~~
20 ~~66-8-102 NMSA 1978~~] sections of the DUI Act, and no other
21 disposition by plea of guilty to any other charge in
22 satisfaction of the charge shall be authorized if the results
23 of a test performed pursuant to the Implied Consent Act
24 disclose that the blood or breath of the person charged
25 contains an alcohol concentration of:

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1 A. eight one hundredths or more; or

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

4 SECTION 25. Section 66-8-102.2 NMSA 1978 (being Laws
5 1993, Chapter 66, Section 16) is recompiled in the Driving
6 Under the Influence Code and is amended to read:

7 "MUNICIPAL AND COUNTY ORDINANCES--UNLAWFUL ALCOHOL
8 CONCENTRATION LEVEL FOR DRIVING WHILE UNDER THE INFLUENCE OF
9 INTOXICATING LIQUOR OR DRUGS.--No municipal or county ordinance
10 prohibiting driving while under the influence of intoxicating
11 liquor or drugs shall be enacted that provides for an unlawful
12 alcohol concentration level that is different than the alcohol
13 concentration levels provided in [~~Subsections C and D of~~
14 ~~Section 66-8-102 NMSA 1978~~] Sections 6 and 7 of the Driving
15 Under the Influence Code."

16 SECTION 26. Section 66-8-102.4 NMSA 1978 (being Laws
17 2005, Chapter 269, Section 8) is recompiled in the Driving
18 Under the Influence Code and is amended to read:

19 "UNIFORM POLICE REPORTS AND PROCEDURES FOR DWI ARRESTS.--

20 A. The department of public safety, in
21 collaboration with the [~~motor vehicle~~] division [~~of the~~
22 ~~taxation and revenue department~~] and the [~~traffic safety~~]
23 bureau [~~of the department of transportation~~], shall develop and
24 periodically review and update standard arrest reports and
25 procedures to be used by law enforcement officers when making

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1 an arrest for a violation of the [~~provisions of Section~~
2 ~~66-8-102 NMSA 1978~~] DUI Act or similar municipal or county
3 ordinances.

4 B. A law enforcement officer making an arrest for a
5 violation of the [~~provisions of Section 66-8-102 NMSA 1978~~] DUI
6 Act or of similar municipal or county ordinances shall use the
7 standard arrest reports and procedures developed and approved
8 by the department of public safety in accordance with the
9 provisions of Subsection A of this section."

10 SECTION 27. A new section of the Driving Under the
11 Influence Code is enacted to read:

12 "[NEW MATERIAL] BLOOD ALCOHOL TESTS DIRECTED BY POLICE,
13 JUDICIAL OR PROBATION OFFICER--PERSONS QUALIFIED TO PERFORM
14 TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY--ARREST OR TEST
15 ONLY IN PERFORMANCE OF OFFICIAL DUTIES AUTHORIZED BY LAW.--

16 A. Only a physician or licensed professional, or a
17 practical nurse, laboratory technician or technologist employed
18 by a hospital or physician, shall withdraw blood from a person
19 in the performance of a blood alcohol test. No such physician,
20 nurse, technician or technologist who withdraws blood from a
21 person in the performance of a blood alcohol test that has been
22 directed by a police officer, or by a judicial or probation
23 officer, shall be held liable in a civil or criminal action for
24 assault, battery, false imprisonment or the conduct of a police
25 officer, except for negligence, nor shall a person assisting in

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1 the performance of such a test, or a hospital wherein blood is
2 withdrawn in the performance of such a test, be subject to
3 civil or criminal liability for assault, battery, false
4 imprisonment or the conduct of a police officer, except for
5 negligence.

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

11 SECTION 28. Section 66-8-105 NMSA 1978 (being Laws 1978,
12 Chapter 35, Section 513) is recompiled in the Driving Under the
13 Influence Code and is amended to read:

14 "IMPLIED CONSENT ACT--SHORT TITLE.--Sections [~~64-8-105~~
15 ~~through 64-8-112 NMSA 1953~~] 28 through 35 of the Driving Under
16 the Influence Code may be cited as the "Implied Consent Act".

17 SECTION 29. Section 66-8-107 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 515, as amended) is recompiled in the
19 Driving Under the Influence Code and is amended to read:

20 "IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

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

24 (1) to chemical tests of [~~his~~] that person's
25 breath or blood or both that are approved by the scientific

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1 laboratory division of the department of health pursuant to the
2 provisions of Section 24-1-22 NMSA 1978 as determined by a law
3 enforcement officer; or

4 (2) for the purpose of determining the drug or
5 alcohol content of ~~[his]~~ the person's blood if the person is
6 arrested for any offense arising out of the acts alleged to
7 have been committed while the person was driving a motor
8 vehicle while under the influence of an intoxicating liquor or
9 drug.

10 B. A test of blood or breath or both, approved by
11 the scientific laboratory division of the department of health
12 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
13 be administered at the direction of a law enforcement officer
14 having reasonable grounds to believe the person to have been
15 driving a motor vehicle within this state while under the
16 influence of intoxicating liquor or drug."

17 SECTION 30. Section 66-8-108 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 516) is recompiled in the Driving Under the
19 Influence Code and is amended to read:

20 "CONSENT OF PERSON INCAPABLE OF REFUSAL NOT WITHDRAWN.--
21 Any person who is dead, unconscious or otherwise in a condition
22 rendering ~~[him]~~ the person incapable of refusal shall be deemed
23 not to have withdrawn the consent provided by Section ~~[64-8-107~~
24 ~~NMSA-1953]~~ 29 of the Driving Under the Influence Code, and the
25 test or tests designated by the law enforcement officer may be

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1 administered."

2 SECTION 31. Section 66-8-109 NMSA 1978 (being Laws 1978,
3 Chapter 35, Section 517, as amended) is recompiled in the
4 Driving Under the Influence Code and is amended to read:

5 "ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF COSTS--
6 ADDITIONAL TESTS.--

7 A. Only the persons authorized by Section
8 [~~66-8-103 NMSA 1978~~] 27 of the Driving Under the Influence Code
9 shall withdraw blood from any person for the purpose of
10 determining its alcohol or drug content. This limitation does
11 not apply to the taking of samples of breath.

12 B. The person tested shall be advised by the law
13 enforcement officer of the person's right to be given an
14 opportunity to arrange for a physician, licensed professional
15 or practical nurse or laboratory technician or technologist who
16 is employed by a hospital or physician of [~~his~~] the person's
17 own choosing to perform a chemical test in addition to any test
18 performed at the direction of a law enforcement officer.

19 C. Upon the request of the person tested, full
20 information concerning the test performed at the direction of
21 the law enforcement officer shall be made available to [~~him~~]
22 the person as soon as it is available from the person
23 performing the test.

24 D. The law enforcement agency represented by the
25 law enforcement officer at whose direction the chemical test is

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1 performed shall pay for the chemical test.

2 E. If a person exercises [~~his~~] the person's right
3 under Subsection B of this section to have a chemical test
4 performed upon [~~him~~] the person by a person of [~~his~~] the
5 person's own choosing, the cost of that test shall be paid by
6 the law enforcement agency represented by the law enforcement
7 officer at whose direction a chemical test was administered
8 under Section [~~66-8-107 NMSA 1978~~] 29 of the Driving Under the
9 Influence Code."

10 SECTION 32. Section 66-8-110 NMSA 1978 (being Laws 1978,
11 Chapter 35, Section 518, as amended) is recompiled in the
12 Driving Under the Influence Code and is amended to read:

13 "USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--LEVELS
14 OF INTOXICATION--MANDATORY CHARGING.--

15 A. The results of a test performed pursuant to the
16 Implied Consent Act may be introduced into evidence in any
17 civil action or criminal action arising out of the acts alleged
18 to have been committed by the person tested for driving a motor
19 vehicle while under the influence of intoxicating liquor or
20 drugs.

21 B. When the blood or breath of the person tested
22 contains:

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

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

3 (a) no presumption shall be made that
4 the person either was or was not under the influence of
5 intoxicating liquor, unless the person is driving a commercial
6 motor vehicle; and

7 (b) the amount of alcohol in the
8 person's blood or breath may be considered with other competent
9 evidence in determining whether the person was under the
10 influence of intoxicating liquor; or

11 (3) an alcohol concentration of four one
12 hundredths or more and the person is driving a commercial
13 vehicle, it shall be presumed that the person is under the
14 influence of intoxicating liquor.

15 C. The arresting officer shall charge the person
16 tested with a violation of [~~Section 66-8-102 NMSA 1978~~] the DUI
17 Act when the blood or breath of the person contains an alcohol
18 concentration of:

19 (1) eight one hundredths or more; or

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

22 D. When a person is less than twenty-one years of
23 age and the blood or breath of the person contains an alcohol
24 concentration of two one hundredths or more, the person's
25 driving privileges shall be revoked pursuant to the provisions

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1 of the Implied Consent Act.

2 E. If the test performed pursuant to the Implied
3 Consent Act is administered more than three hours after the
4 person was driving a vehicle, the test result may be introduced
5 as evidence of the alcohol concentration in the person's blood
6 or breath at the time of the test and the trier of fact shall
7 determine what weight to give the test result for the purpose
8 of determining a violation of [~~Section 66-8-102 NMSA 1978~~] the
9 DUI Act.

10 F. The determination of alcohol concentration shall
11 be based on the grams of alcohol in one hundred milliliters of
12 blood or the grams of alcohol in two hundred ten liters of
13 breath.

14 G. The presumptions in Subsection B of this section
15 do not limit the introduction of other competent evidence
16 concerning whether the person was under the influence of
17 intoxicating liquor.

18 H. If a person is convicted of driving a motor
19 vehicle while under the influence of intoxicating liquor, the
20 trial judge shall inquire into the past driving record of the
21 person before sentence is entered in the matter."

22 **SECTION 33.** Section 66-8-111 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 519, as amended) is recompiled in the
24 Driving Under the Influence Code and is amended to read:

25 "REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--GROUNDS FOR
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1 REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

2 A. If a person under arrest for violation of an
3 offense enumerated in the Motor Vehicle Code or the Driving
4 Under the Influence Code refuses upon request of a law
5 enforcement officer to submit to chemical tests designated by
6 the law enforcement agency as provided in Section [~~66-8-107~~
7 ~~NMSA-1978~~] 29 of the Driving Under the Influence Code, none
8 shall be administered except when a municipal judge, magistrate
9 or district judge issues a search warrant authorizing chemical
10 tests as provided in Section [~~66-8-107~~ ~~NMSA-1978~~] 29 of the
11 Driving Under the Influence Code upon finding in a law
12 enforcement officer's written affidavit that there is probable
13 cause to believe that the person has driven a motor vehicle
14 while under the influence of alcohol or a controlled substance,
15 thereby causing the death or great bodily injury of another
16 person, or there is probable cause to believe that the person
17 has committed a felony while under the influence of alcohol or
18 a controlled substance and that chemical tests as provided in
19 Section [~~66-8-107~~ ~~NMSA-1978~~] 29 of the Driving Under the
20 Influence Code will produce material evidence in a felony
21 prosecution.

22 B. The department, upon receipt of a statement
23 signed under penalty of perjury from a law enforcement officer
24 stating the officer's reasonable grounds to believe the
25 arrested person had been driving a motor vehicle within this

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

9 C. The department, upon receipt of a statement
10 signed under penalty of perjury from a law enforcement officer
11 stating the officer's reasonable grounds to believe the
12 arrested person had been driving a motor vehicle within this
13 state while under the influence of intoxicating liquor and that
14 the person submitted to chemical testing pursuant to Section
15 [~~66-8-107 NMSA 1978~~] 29 of the Driving Under the Influence Code
16 and the test results indicated an alcohol concentration in the
17 person's blood or breath of eight one hundredths or more if the
18 person is twenty-one years of age or older, four one hundredths
19 or more if the person is driving a commercial motor vehicle or
20 two one hundredths or more if the person is less than twenty-
21 one years of age, shall revoke the person's license or permit
22 to drive or [~~his~~] the person's nonresident operating privilege
23 for a period of:

24 (1) six months or until all conditions for
25 license reinstatement are met, whichever is later, if the

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1 person is twenty-one years of age or older;

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

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

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

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

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

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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."
5 The statement may be signed and submitted electronically in a
6 manner and form approved by the department. A law enforcement
7 officer who signs a statement knowing that the statement is
8 untrue in any material issue or matter is guilty of perjury as
9 provided in Section 66-5-38 NMSA 1978."

10 SECTION 34. Section 66-8-111.1 NMSA 1978 (being Laws
11 1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter
12 51, Section 14 and by Laws 2003, Chapter 90, Section 7) is
13 recompiled in the Driving Under the Influence Code and is
14 amended to read:

15 "LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--WRITTEN
16 NOTICE OF REVOCATION AND RIGHT TO HEARING.--On behalf of the
17 department, a law enforcement officer requesting a chemical
18 test or directing the administration of a chemical test
19 pursuant to Section [~~66-8-107 NMSA 1978~~] 29 of the Driving
20 Under the Influence Code shall serve immediate written notice
21 of revocation and of right to a hearing on a person who refuses
22 to permit chemical testing or on a person who submits to a
23 chemical test the results of which indicate an alcohol
24 concentration in the person's blood or breath of eight one
25 hundredths or more if the person is twenty-one years of age or

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1 older, four one hundredths or more if the person is driving a
2 commercial motor vehicle or two one hundredths or more if the
3 person is less than twenty-one years of age. Upon serving
4 notice of revocation, the law enforcement officer shall take
5 the license or permit of the driver, if any, and issue a
6 temporary license valid for twenty days or, if the driver
7 requests a hearing pursuant to Section [~~66-8-112 NMSA 1978~~] 35
8 of the Driving Under the Influence Code, valid until the date
9 the department issues the order following that hearing;
10 provided that a temporary license shall not be issued to a
11 driver without a valid license or permit. The law enforcement
12 officer shall send the person's driver's license to the
13 department along with the signed statement required pursuant to
14 Section [~~66-8-111 NMSA 1978~~] 33 of the Driving Under the
15 Influence Code."

16 SECTION 35. Section 66-8-112 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,
18 Section 15 and by Laws 2003, Chapter 90, Section 8) is
19 recompiled in the Driving Under the Influence Code and is
20 amended to read:

21 "REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--NOTICE--
22 EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

23 A. The effective date of revocation pursuant to
24 Section [~~66-8-111 NMSA 1978~~] 33 of the Driving Under the
25 Influence Code is twenty days after notice of revocation or, if

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1 the person whose driver's license or privilege to drive is
2 being revoked or denied requests a hearing pursuant to this
3 section, the date that the department issues the order
4 following that hearing. The date of notice of revocation is:

5 (1) the date the law enforcement officer
6 serves written notice of revocation and of right to a hearing
7 pursuant to Section [~~66-8-111.1 MSA 1978~~] 34 of the Driving
8 Under the Influence Code; or

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

18 B. Within ten days after receipt of notice of
19 revocation pursuant to Subsection A of this section, a person
20 whose license or privilege to drive is revoked or denied or the
21 person's agent may request a hearing. The hearing request
22 shall be made in writing and shall be accompanied by a payment
23 of twenty-five dollars (\$25.00) or a sworn statement of
24 indigency on a form provided by the department. A standard for
25 indigency shall be established pursuant to regulations adopted

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1 by the department. Failure to request a hearing within ten
2 days shall result in forfeiture of the person's right to a
3 hearing. Any person less than eighteen years of age who fails
4 to request a hearing within ten days shall have notice of
5 revocation sent to [~~his~~] the person's parent, guardian or
6 custodian by the department. A date for the hearing shall be
7 set by the department, if practical, within thirty days after
8 receipt of notice of revocation. The hearing shall be held in
9 the county in which the offense for which the person was
10 arrested took place.

11 C. The department may postpone or continue any
12 hearing on its own motion or upon application from the person
13 and for good cause shown for a period not to exceed ninety days
14 from the date of notice of revocation and provided that the
15 department extends the validity of the temporary license for
16 the period of the postponement or continuation.

17 D. At the hearing, the department or its agent may
18 administer oaths and may issue subpoenas for the attendance of
19 witnesses and the production of relevant books and papers.

20 E. The hearing shall be limited to the following
21 issues:

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

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- 1 (2) whether the person was arrested;
- 2 (3) whether this hearing is held no later than
3 ninety days after notice of revocation; and either
- 4 (4) whether:
- 5 (a) the person refused to submit to a
6 test upon request of the law enforcement officer; and
- 7 (b) the law enforcement officer advised
8 that the failure to submit to a test could result in revocation
9 of the person's privilege to drive; or
- 10 (5) whether:
- 11 (a) the chemical test was administered
12 pursuant to the provisions of the Implied Consent Act; and
- 13 (b) the test results indicated an
14 alcohol concentration in the person's blood or breath of eight
15 one hundredths or more if the person is twenty-one years of age
16 or older, four one hundredths or more if the person is driving
17 a commercial motor vehicle or two one hundredths or more if the
18 person is less than twenty-one years of age.
- 19 F. The department shall enter an order sustaining
20 the revocation or denial of the person's license or privilege
21 to drive if the department finds that:
- 22 (1) the law enforcement officer had reasonable
23 grounds to believe the driver was driving a motor vehicle while
24 under the influence of intoxicating liquor or drugs;
- 25 (2) the person was arrested;

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

3 (4) either:

4 (a) the person refused to submit to the
5 test upon request of the law enforcement officer after the law
6 enforcement officer advised [~~him~~] the person that [~~his~~] the
7 person's failure to submit to the test could result in the
8 revocation of [~~his~~] the person's privilege to drive; or

9 (b) that a chemical test was
10 administered pursuant to the provisions of the Implied Consent
11 Act and the test results indicated an alcohol concentration in
12 the person's blood or breath of eight one hundredths or more if
13 the person is twenty-one years of age or older, four one
14 hundredths or more if the person is driving a commercial motor
15 vehicle or two one hundredths or more if the person is less
16 than twenty-one years of age.

17 G. If one or more of the elements set forth in
18 Paragraphs (1) through (4) of Subsection F of this section are
19 not found by the department, the person's license shall not be
20 revoked.

21 H. A person adversely affected by an order of the
22 department may seek review within thirty days in the district
23 court in the county in which the offense for which the person
24 was arrested took place. The district court, upon thirty days'
25 written notice to the department, shall hear the case. On

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1 review, it is for the court to determine only whether
2 reasonable grounds exist for revocation or denial of the
3 person's license or privilege to drive based on the record of
4 the administrative proceeding.

5 I. Any person less than eighteen years of age shall
6 have results of [~~his~~] the person's hearing forwarded by the
7 department to [~~his~~] the person's parent, guardian or
8 custodian."

9 SECTION 36. Section 66-5-501 NMSA 1978 (being Laws 2003,
10 Chapter 239, Section 1) is recompiled in the Driving Under the
11 Influence Code and is amended to read:

12 "SHORT TITLE.--Sections [~~1 through 4~~] 36 through 39 of
13 [~~this act~~] the Driving Under the Influence Code may be cited as
14 the "Ignition Interlock Licensing Act"."

15 SECTION 37. Section 66-5-503 NMSA 1978 (being Laws 2003,
16 Chapter 239, Section 3, as amended) is recompiled in the
17 Driving Under the Influence Code and is amended to read:

18 "IGNITION INTERLOCK LICENSE--REQUIREMENTS.--

19 A. A person whose driving privilege or driver's
20 license has been revoked or denied or who has not met the
21 ignition interlock license requirement as a condition of
22 reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply
23 for an ignition interlock license from the [~~division~~]
24 department.

25 B. An applicant for an ignition interlock license

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1 shall:

2 (1) provide proof of installation of the
3 ignition interlock device by [~~a traffic safety bureau approved~~]
4 an ignition interlock installer approved by the bureau on any
5 vehicle the applicant drives; and

6 (2) sign an affidavit acknowledging that:

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

10 (b) tampering or interfering with the
11 proper and intended operation of an ignition interlock device
12 may subject the applicant to penalties for driving with a
13 license that was revoked for driving under the influence of
14 intoxicating liquor or drugs or a violation of the Implied
15 Consent Act; and

16 (c) the applicant shall maintain the
17 ignition interlock device and keep up-to-date records in the
18 motor vehicle showing required service and calibrations and be
19 able to provide the records upon request.

20 C. A person who has been convicted of homicide by
21 vehicle or great bodily harm by vehicle while under the
22 influence of intoxicating liquor or drugs, as provided in
23 Section 66-8-101 NMSA 1978, shall not be issued an ignition
24 interlock license unless the person has completed serving the
25 sentence for that crime, including any period of probation and

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1 parole."

2 SECTION 38. Section 66-5-504 NMSA 1978 (being Laws 2003,
3 Chapter 239, Section 4, as amended) is recompiled in the
4 Driving Under the Influence Code and is amended to read:

5 "PENALTIES.--

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

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

20 SECTION 39. Section 66-8-102.3 NMSA 1978 (being Laws
21 2002, Chapter 82, Section 2, as amended) is recompiled in the
22 Driving Under the Influence Code and is amended to read:

23 "IMPOSING A FEE--INTERLOCK DEVICE FUND 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~~] the DUI Act or
2 adjudicated as a delinquent on the basis of Subparagraph (a) of
3 Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or a
4 person whose driver's license is revoked pursuant to the
5 provisions of the Implied Consent Act, in an amount determined
6 by rule of the [~~traffic safety~~] bureau [~~of the department of~~
7 ~~transportation~~] not to exceed one hundred dollars (\$100) but
8 not less than fifty dollars (\$50.00) for each year the person
9 is required to operate only vehicles equipped with an ignition
10 interlock device in order to ensure the solvency of the
11 interlock device fund. The fee shall not be imposed on an
12 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~~
20 ~~of transportation~~] to cover part of the costs of installing,
21 removing and leasing ignition interlock devices for indigent
22 people who are required, pursuant to convictions [~~under Section~~
23 ~~66-8-102 NMSA 1978~~] for violations of the DUI Act 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 devices in their vehicles. Provided that money is available in
4 the interlock device fund, the [~~traffic safety~~] bureau shall
5 pay, for one vehicle per offender, up to fifty dollars (\$50.00)
6 for the cost of installation, up to fifty dollars (\$50.00) for
7 the cost of removal and up to thirty dollars (\$30.00) monthly
8 for verified active usage of the interlock device. The
9 [~~traffic safety~~] bureau shall not pay any amount above what an
10 offender would be required to pay for the installation, removal
11 or usage of an interlock device.

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

- 15 (1) temporary assistance for needy families;
16 (2) general assistance;
17 (3) the supplemental nutritional assistance
18 program, also known as "food stamps";
19 (4) supplemental security income;
20 (5) the federal food distribution program on
21 Indian reservations; or
22 (6) other criteria approved by the [~~traffic~~
23 ~~safety~~] bureau.

24 E. Any balance remaining in the interlock device
25 fund shall not revert to the general fund at the end of any

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1 fiscal year.

2 F. The interlock device fund shall be administered
3 by the [~~traffic safety~~] bureau [~~of the department of~~
4 ~~transportation~~]. No more than ten percent of the money in the
5 interlock device fund in any fiscal year shall be expended by
6 the [~~traffic safety~~] bureau [~~of the department of~~
7 ~~transportation~~] for the purpose of administering the fund."

8 SECTION 40. A new section of the Driving Under the
9 Influence Code is enacted to read:

10 "[NEW MATERIAL] DUI TREATMENT FUND CREATED.--The "DUI
11 treatment fund" is created as a nonreverting fund in the state
12 treasury. The fund consists of appropriations, distributions
13 and money otherwise accruing to the fund. Money in the fund is
14 appropriated to the administrative office of the courts to
15 provide for treatment programs provided for in the Driving
16 Under the Influence Code. Money in the fund shall be disbursed
17 on warrants signed by the secretary of finance and
18 administration pursuant to vouchers signed by the director of
19 the administrative office of the courts or the director's
20 authorized representative."

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

23 "66-5-39.1. DRIVING WHILE LICENSE REVOKED--PENALTIES.--

24 A. A person who drives a motor vehicle on a public
25 highway of this state at a time when the person's privilege to

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

14 B. Notwithstanding any other provision of law for
15 suspension or deferment of execution of a sentence, if the
16 person's privilege to drive was revoked for driving under the
17 influence of intoxicating liquor or drugs or a violation of the
18 Implied Consent Act, upon conviction pursuant to this section,
19 the person shall be punished by imprisonment for not less than
20 [~~seven~~] thirty consecutive days and shall be fined not less
21 than three hundred dollars (\$300) and not more than one
22 thousand dollars (\$1,000) and the fine and imprisonment shall
23 not be suspended, deferred or taken under advisement. No other
24 disposition by plea of guilty to any other charge in
25 satisfaction of a charge under this section shall be authorized

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1 if the person's privilege to drive was revoked for driving
2 under the influence of intoxicating liquor or drugs or a
3 violation of the Implied Consent Act. Any municipal ordinance
4 prohibiting driving with a revoked license shall provide
5 penalties no less stringent than provided in this section.

6 C. In addition to any other penalties imposed
7 pursuant to this section, when a person is convicted pursuant
8 to the provisions of this section or a municipal ordinance that
9 prohibits driving on a revoked license, the motor vehicle the
10 person was driving shall be immobilized by an immobilization
11 device for thirty days, unless immobilization of the motor
12 vehicle poses an imminent danger to the health, safety or
13 employment of the convicted person's immediate family or the
14 family of the owner of the motor vehicle. The convicted person
15 shall bear the cost of immobilizing the motor vehicle.

16 D. The division, upon receiving a record of the
17 conviction of any person under this section, shall not issue a
18 new license for an additional period of one year from the date
19 the person would otherwise have been entitled to apply for a
20 new license."

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

23 "7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--LOCAL DWI
24 GRANT FUND--CERTAIN MUNICIPALITIES--LOTTERY TUITION FUND--DUI
25 TREATMENT FUND.--

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1 A. A distribution pursuant to Section 7-1-6.1
2 NMSA 1978 shall be made to the local DWI grant fund in an
3 amount equal to [~~forty-one and fifty hundredths percent~~] the
4 following percentages of the net receipts attributable to the
5 liquor excise tax:

6 (1) prior to July 1, 2015, forty-one and one-
7 half percent;

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

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

12 B. A distribution pursuant to Section 7-1-6.1
13 NMSA 1978 of twenty thousand seven hundred fifty dollars
14 (\$20,750) monthly from the net receipts attributable to the
15 liquor excise tax shall be made to a municipality that is
16 located in a class A county and that has a population according
17 to the most recent federal decennial census of more than thirty
18 thousand but less than sixty thousand. The distribution
19 pursuant to this subsection shall be used by the municipality
20 only for the provision of alcohol treatment and rehabilitation
21 services for street inebriates.

22 C. From July 1, 2015 [~~to July 1~~] through June 30,
23 2017, a distribution pursuant to Section 7-1-6.1 NMSA 1978 of
24 thirty-nine percent of the net receipts attributable to the
25 liquor excise tax shall be made to the lottery tuition fund.

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1 D. Beginning July 1, 2017, a distribution pursuant
2 to Section 7-1-6.1 NMSA 1978 of thirty-nine percent of the net
3 receipts attributable to the liquor excise tax shall be made to
4 the DUI treatment fund."

5 **SECTION 43. APPROPRIATION.**--One million five hundred
6 thousand dollars (\$1,500,000) is appropriated from the general
7 fund to the DUI treatment fund for expenditure in fiscal year
8 2016 and subsequent fiscal years to establish administrative
9 procedures and treatment programs to which offenders are
10 sentenced pursuant to the Driving Under the Influence Code.
11 Any unexpended or unencumbered balance remaining at the end of
12 a fiscal year shall not revert to the general fund.

13 **SECTION 44. REPEAL.**--Laws 2014, Chapter 54, Section 1 is
14 repealed.

15 **SECTION 45. REPEAL.**--Sections 66-5-502 and 66-8-102 NMSA
16 1978 (being Laws 2003, Chapter 239, Section 2 and Laws 1953,
17 Chapter 139, Section 54, as amended) are repealed.

18 **SECTION 46. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is July 1, 2015.