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

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

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AN ACT

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RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING

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LIQUOR OR DRUGS; REQUIRING ALL OFFENDERS TO OBTAIN AN IGNITION

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INTERLOCK LICENSE AND HAVE AN IGNITION INTERLOCK DEVICE

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INSTALLED; PROVIDING FOR INCREASING PERIODS OF LICENSE

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REVOCAION UPON CONVICTION FOR REPEAT OFFENDERS; INCREASING THE

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PERIODS OF ADMINISTRATIVE REVOCAION; ALLOWING ASSISTANCE TO

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JUVENILES FROM THE INTERLOCK DEVICE FUND.

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

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Section 1. Section 66-5-5 NMSA 1978 (being Laws 1978,

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Chapter 35, Section 227, as amended) is amended to read:

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"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall

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not issue a driver's license under the Motor Vehicle Code to

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any person;

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

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the division may, in its discretion, issue:

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

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

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

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

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

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

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

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

(d) who has not been adjudicated for an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) one year for a first offender; or
- (2) for a subsequent offender:
 - (a) two years for a second conviction;
 - (b) three years for a third conviction;
- or
- (c) the remainder of the offender's life
- for a fourth or subsequent conviction, subject to a five-year

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

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

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E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's [~~licenses~~]

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license or driving privileges of the convicted person. A person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until [~~the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or]~~ one year from the date

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that the [~~revocation~~] conviction is final and [~~the person has exhausted his~~] all rights to an appeal have been exhausted."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~G.] B. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars (\$45.00), which shall be~~

~~transferred to the [state highway and] department of transportation [department]. All money collected under this~~

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

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

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

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

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

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

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

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

C. It is unlawful for:

(1) a person who has an alcohol concentration

~~of eight one hundredths or more in his blood or breath to drive~~
a vehicle within this state; or

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

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

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

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

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

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

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

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

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

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

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offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to

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

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

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

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

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

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

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K. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved

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by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under

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advisement.

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

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

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

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

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

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

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

~~underbracketed material] New delete~~ [N. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs

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

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

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

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

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

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

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

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

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

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

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

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

[F-] S. As used in this section:

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

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

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

thousand pounds;

(b) has a gross vehicle weight rating of

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more than twenty-six thousand pounds;

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

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

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

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

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

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

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

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

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

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

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

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Section 7. Section 66-8-111 NMSA 1978 (being Laws 1978, .157401.1

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

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

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

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

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

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

~~underbracketed material, new delete~~ (1) ~~[ninety days]~~ six months or until all conditions for license reinstatement are met, whichever is

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

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

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

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

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

~~underbracketed material, new delete~~ F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this

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