

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 207

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO THE INTERLOCK DEVICE FUND; PROVIDING THAT THE  
TRAFFIC SAFETY BUREAU OF THE DEPARTMENT OF TRANSPORTATION SHALL  
DETERMINE ELIGIBILITY FOR ASSISTANCE FROM THE FUND; PROVIDING A  
STANDARD FOR INDIGENCY; MODIFYING THE ASSISTANCE PROVIDED FROM  
THE FUND; REQUIRING CREDIT AT SENTENCING FOR USE OF INTERLOCK  
DEVICE; INCREASING THE PERCENTAGE OF THE FUND ALLOWABLE FOR  
ADMINISTRATIVE COSTS.

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

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953,  
Chapter 139, Section 54, as amended) is amended to read:

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

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underscored material = new  
[bracketed material] = delete

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

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

8           C. It is unlawful for:

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

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

21           D. Aggravated driving [~~while~~] under the influence  
22 of intoxicating liquor or drugs consists of [~~a person who~~]:

23                 (1) [~~drives~~] driving a vehicle in this state  
24 [~~and has an~~] with an alcohol concentration of sixteen one  
25 hundredths or more in the [~~person's~~] driver's blood or breath

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1 within three hours of driving the vehicle and the alcohol  
2 concentration results from alcohol consumed before or while  
3 driving the vehicle;

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

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

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

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

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1 convictions.

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

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

25 (2) upon a third conviction, an offender shall

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1 be sentenced to a jail term of not less than thirty consecutive  
2 days, not less than ninety-six hours of community service and a  
3 fine of seven hundred fifty dollars (\$750). In addition to  
4 those penalties, when an offender commits aggravated driving  
5 [while] under the influence of intoxicating liquor or drugs,  
6 the offender shall be sentenced to a jail term of not less than  
7 sixty consecutive days. If an offender fails to complete,  
8 within a time specified by the court, any community service,  
9 screening program or treatment program ordered by the court,  
10 the offender shall be sentenced to not less than an additional  
11 sixty consecutive days in jail. A penalty imposed pursuant to  
12 this paragraph shall not be suspended or deferred or taken  
13 under advisement.

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

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

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

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

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

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

24 (1) not less than a twenty-eight-day  
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

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

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

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

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

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

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

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1 The offender shall operate only those vehicles equipped with  
2 ignition interlock devices for:

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

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

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

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

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

23 P. An offender who obtains an ignition interlock  
24 license and installs an ignition interlock device prior to  
25 conviction shall be given credit at sentencing for the time

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1 period the ignition interlock device has been in use.

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

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

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

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

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1 served by the offender on probation.

2 [~~F-~~] U. As used in this section:

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

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

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

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

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

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

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

24 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND  
25 CREATED.--

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

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

25           C. All money in the interlock device fund is

1 appropriated to the traffic safety bureau of the department of  
 2 transportation to cover part of the costs of installing, ~~[and]~~  
 3 removing and ~~[one-half of the cost of]~~ leasing ignition  
 4 interlock devices for indigent people who are required,  
 5 pursuant to convictions under Section 66-8-102 NMSA 1978 or  
 6 adjudications on the basis of Subparagraph (a) of Paragraph (1)  
 7 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's  
 8 license revocations pursuant to the provisions of the Implied  
 9 Consent Act or as a condition of parole, to install those  
 10 devices in their vehicles. Provided that money is available in  
 11 the interlock device fund, the traffic safety bureau shall pay,  
 12 for one vehicle per offender, up to fifty dollars (\$50.00) for  
 13 the cost of installation, up to fifty dollars (\$50.00) for the  
 14 cost of removal and up to thirty dollars (\$30.00) monthly for  
 15 verified active usage of the interlock device. The traffic  
 16 safety bureau shall not pay any amount above what an offender  
 17 would be required to pay for the installation, removal or usage  
 18 of an interlock device.

19 D. Indigency shall be determined by the [court, the  
 20 parole board or a probation and parole officer] traffic safety  
 21 bureau based on proof of enrollment in one or more of the  
 22 following types of public assistance:

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

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1 program, also known as "food stamps";

2 (4) supplemental security income;

3 (5) the federal food distribution program on

4 Indian reservations; or

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

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

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

16 Section 3. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2010.