

SENATE FLOOR SUBSTITUTE FOR
SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 197

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO SOBRIETY MONITORING; ALLOWING THE USE OF AN
ELECTRONIC SOBRIETY MONITORING DEVICE AS A CONDITION OF
PROBATION; PROVIDING FOR ELECTRONIC SOBRIETY MONITORING AS AN
ALTERNATIVE TO THE IGNITION INTERLOCK REQUIREMENT IN CERTAIN
CIRCUMSTANCES; PROVIDING FOR PAYMENT ASSISTANCE FROM THE
INTERLOCK DEVICE FUND.

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

SECTION 1. Section 31-20-6 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
SENTENCE.--The magistrate, metropolitan or district court shall
attach to its order deferring or suspending sentence reasonable
conditions as it may deem necessary to ensure that the
defendant will observe the laws of the United States and the

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1 various states and the ordinances of any municipality. The
2 defendant upon conviction shall be required to reimburse a law
3 enforcement agency or local crime stopper program for the
4 amount of any reward paid by the agency or program for
5 information leading to the defendant's arrest, prosecution or
6 conviction, but in no event shall reimbursement to the crime
7 stopper program preempt restitution to victims pursuant to the
8 provisions of Section 31-17-1 NMSA 1978. The defendant upon
9 conviction shall be required to pay the actual costs of the
10 defendant's supervised probation service to the adult probation
11 and parole division of the corrections department or
12 appropriate responsible agency for deposit to the corrections
13 department intensive supervision fund not exceeding one
14 thousand eight hundred dollars (\$1,800) annually to be paid in
15 monthly installments of not less than twenty-five dollars
16 (\$25.00) and not more than one hundred fifty dollars (\$150), as
17 set by the appropriate district supervisor of the adult
18 probation and parole division, based upon the financial
19 circumstances of the defendant. The defendant's payment of the
20 supervised probation costs shall not be waived unless the court
21 holds an evidentiary hearing and finds that the defendant is
22 unable to pay the costs. If the court waives the defendant's
23 payment of the supervised probation costs and the defendant's
24 financial circumstances subsequently change so that the
25 defendant is able to pay the costs, the appropriate district

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1 supervisor of the adult probation and parole division shall
2 advise the court and the court shall hold an evidentiary
3 hearing to determine whether the waiver should be rescinded.
4 The court may also require the defendant to:

5 A. provide for the support of persons for whose
6 support the defendant is legally responsible;

7 B. undergo available medical or psychiatric
8 treatment and enter and remain in a specified institution when
9 required for that purpose;

10 C. be placed on probation under the supervision,
11 guidance or direction of the adult probation and parole
12 division for a term not to exceed five years;

13 D. serve a period of time in volunteer labor to be
14 known as "community service". The type of labor and period of
15 service shall be at the sole discretion of the court; provided
16 that a person receiving community service shall be immune from
17 any civil liability other than gross negligence arising out of
18 the community service, and a person who performs community
19 service pursuant to court order or a criminal diversion program
20 shall not be entitled to wages, shall not be considered an
21 employee and shall not be entitled to workers' compensation,
22 unemployment benefits or any other benefits otherwise provided
23 by law. As used in this subsection, "community service" means
24 labor that benefits the public at large or a public, charitable
25 or educational entity or institution;

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1 E. make a contribution of not less than ten dollars
2 (\$10.00) and not more than one hundred dollars (\$100), to be
3 paid in monthly installments of not less than five dollars
4 (\$5.00), to a local crime stopper program, a local domestic
5 violence prevention or treatment program or a local drug abuse
6 resistance education program that operates in the territorial
7 jurisdiction of the court; ~~and~~

8 F. obtain and use, on a frequency specified by the
9 court, an electronic sobriety monitoring device available in
10 the jurisdiction and approved by the court; and

11 ~~[F-]~~ G. satisfy any other conditions reasonably
12 related to the defendant's rehabilitation."

13 SECTION 2. Section 66-5-33.1 NMSA 1978 (being Laws 1985,
14 Chapter 47, Section 1, as amended) is amended to read:

15 "66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR
16 REGISTRATION--IGNITION INTERLOCK--FEE.--

17 A. Whenever a driver's license or registration is
18 suspended or revoked and an application has been made for its
19 reinstatement, compliance with all appropriate provisions of
20 the Motor Vehicle Code and the payment of a fee of twenty-five
21 dollars (\$25.00) is a prerequisite to the reinstatement of any
22 license or registration.

23 B. If a driver's license was revoked for driving
24 ~~[while]~~ under the influence of intoxicating liquor or drugs,
25 for aggravated driving ~~[while]~~ under the influence of

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1 intoxicating liquor or drugs or pursuant to the Implied Consent
2 Act, the following are required to reinstate the driver's
3 license:

4 (1) an additional fee of seventy-five dollars
5 (\$75.00);

6 (2) completion of the license revocation
7 period;

8 (3) satisfaction of any court-ordered ignition
9 interlock or sobriety monitoring device requirements; and

10 (4) a minimum of six months of:

11 (a) driving with an ignition interlock
12 license with no attempts to circumvent or tamper with the
13 ignition interlock device; or

14 (b) using a sobriety monitoring device
15 on a daily basis or as specified by the court with no attempts
16 to circumvent or tamper with the sobriety monitoring device.

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

21 (1) the license revocation period is
22 completed;

23 (2) satisfactory proof is presented to the
24 department that the person is no longer a resident of New
25 Mexico; and

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1 (3) the license reinstatement fee is paid.

2 D. Fees collected pursuant to Subsection B of this
3 section are appropriated to the local governments road fund.
4 The department shall maintain an accounting of the fees
5 collected and shall report that amount upon request to the
6 legislature."

7 SECTION 3. Section 66-8-102 NMSA 1978 (being Laws 1953,
8 Chapter 139, Section 54, as amended) is amended to read:

9 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
10 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
11 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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

19 C. It is unlawful for:

20 (1) a person to drive a vehicle in this state
21 if the person has an alcohol concentration of eight one
22 hundredths or more in the person's blood or breath within three
23 hours of driving the vehicle and the alcohol concentration
24 results from alcohol consumed before or while driving the
25 vehicle; or

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1 (2) a person to drive a commercial motor
2 vehicle in this state if the person has an alcohol
3 concentration of four one hundredths or more in the person's
4 blood or breath within three hours of driving the commercial
5 motor vehicle and the alcohol concentration results from
6 alcohol consumed before or while driving the vehicle.

7 D. Aggravated driving under the influence of
8 intoxicating liquor or drugs consists of:

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

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

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

22 E. A first conviction pursuant to this section
23 shall be punished, notwithstanding the provisions of Section
24 31-18-13 NMSA 1978, by imprisonment for not more than ninety
25 days or by a fine of not more than five hundred dollars (\$500),

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1 or both; provided that if the sentence is suspended in whole or
2 in part or deferred, the period of probation may extend beyond
3 ninety days but shall not exceed one year. Upon a first
4 conviction pursuant to this section, an offender shall be
5 sentenced to not less than twenty-four hours of community
6 service. In addition, the offender may be required to pay a
7 fine of three hundred dollars (\$300). The offender shall be
8 ordered by the court to participate in and complete a screening
9 program described in Subsection K of this section and to attend
10 a driver rehabilitation program for alcohol or drugs, also
11 known as a "DWI school", approved by the bureau and also may be
12 required to participate in other rehabilitative services as the
13 court shall determine to be necessary. In addition to those
14 penalties, when an offender commits aggravated driving under
15 the influence of intoxicating liquor or drugs, the offender
16 shall be sentenced to not less than forty-eight consecutive
17 hours in jail. 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. Any jail sentence
23 imposed pursuant to this subsection for failure to complete,
24 within a time specified by the court, any community service,
25 screening program, treatment program or DWI school ordered by

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

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

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

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

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

22 G. Upon a fourth conviction pursuant to this
23 section, an offender is guilty of a fourth degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of eighteen

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1 months, six months of which shall not be suspended, deferred or
2 taken under advisement.

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

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

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

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

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

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

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

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

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

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

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

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

1 N. Upon a conviction pursuant to this section, an
2 offender shall be required to obtain an ignition interlock
3 license and have an ignition interlock device installed and
4 operating on all motor vehicles driven by the offender,
5 pursuant to rules adopted by the traffic safety bureau. Unless
6 determined by the bureau to be indigent, the offender shall pay
7 all costs associated with having an ignition interlock device
8 installed on the appropriate motor vehicles. The offender
9 shall operate only those vehicles equipped with ignition
10 interlock devices for:

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

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

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

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

19 O. Five years from the date of conviction and every
20 five years thereafter, a fourth or subsequent offender may
21 apply to a district court for removal of the ignition interlock
22 device requirement provided in this section and for restoration
23 of a driver's license. A district court may, for good cause
24 shown, remove the ignition interlock device requirement and
25 order restoration of the license; provided that the offender

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1 has not been subsequently convicted of driving a motor vehicle
2 under the influence of intoxicating liquor or drugs. Good
3 cause may include an alcohol screening and proof from the
4 interlock vendor that the person has not had violations of the
5 interlock device.

6 P. For a first or second conviction pursuant to
7 this section, if an offender states under oath that the
8 offender does not own a motor vehicle or have access to a motor
9 vehicle and is therefore unable to have an ignition interlock
10 device installed pursuant to Subsection N of this section, the
11 court shall order the offender to obtain and use, on a
12 frequency specified by the court, an electronic sobriety
13 monitoring device available in the jurisdiction and approved by
14 the court. Use of the electronic sobriety monitoring device
15 shall be for the applicable time period specified in Subsection
16 N of this section or until the offender obtains an ignition
17 interlock license and has an ignition interlock device
18 installed and operating on all motor vehicles driven by the
19 offender; provided that the total time of the use of an
20 electronic sobriety monitoring device and an ignition interlock
21 device is in accordance with the applicable time period
22 specified in Subsection N of this section. The offender shall
23 pay all costs associated with the electronic sobriety
24 monitoring device, unless determined to be indigent by the
25 bureau.

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

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

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

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

23 [~~T.~~] U. With respect to this section and
24 notwithstanding any provision of law to the contrary, if an
25 offender's sentence was suspended or deferred in whole or in

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

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

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

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

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

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

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

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

25 SECTION 4. Section 66-8-102.3 NMSA 1978 (being Laws 2002,

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1 Chapter 82, Section 2, as amended) is amended to read:

2 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
3 CREATED.--

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

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

23 C. All money in the interlock device fund is
24 appropriated to the traffic safety bureau of the department of
25 transportation to cover part of the costs of installing,

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

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

17 (2) up to thirty dollars (\$30.00) monthly
18 toward the lease and use of an electronic sobriety monitoring
19 device.

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

24 [~~D.~~] E. Indigency shall be determined by the
25 traffic safety bureau based on proof of enrollment in one or

1 more of the following types of public assistance:

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

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

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

20 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2011.