

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 197

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

AN ACT

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

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
various states and the ordinances of any municipality. The
defendant upon conviction shall be required to reimburse a law

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

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1 hearing to determine whether the waiver should be rescinded.

2 The court may also require the defendant to:

3 A. provide for the support of persons for whose
4 support the defendant is legally responsible;

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

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

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

24 E. make a contribution of not less than ten dollars
25 (\$10.00) and not more than one hundred dollars (\$100), to be

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1 paid in monthly installments of not less than five dollars
2 (\$5.00), to a local crime stopper program, a local domestic
3 violence prevention or treatment program or a local drug abuse
4 resistance education program that operates in the territorial
5 jurisdiction of the court; [~~and~~]

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

9 [~~F.~~] G. satisfy any other conditions reasonably
10 related to the defendant's rehabilitation."

11 SECTION 2. Section 66-8-102 NMSA 1978 (being Laws 1953,
12 Chapter 139, Section 54, as amended) is amended to read:

13 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
14 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
15 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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

23 C. It is unlawful for:

24 (1) a person to drive a vehicle in this state
25 if the person has an alcohol concentration of eight one

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

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

11 D. Aggravated driving under the influence of
12 intoxicating liquor or drugs consists of:

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

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

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

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1 E. A first conviction pursuant to this section
2 shall be punished, notwithstanding the provisions of Section
3 31-18-13 NMSA 1978, by imprisonment for not more than ninety
4 days or by a fine of not more than five hundred dollars (\$500),
5 or both; provided that if the sentence is suspended in whole or
6 in part or deferred, the period of probation may extend beyond
7 ninety days but shall not exceed one year. Upon a first
8 conviction pursuant to this section, an offender shall be
9 sentenced to not less than twenty-four hours of community
10 service. In addition, the offender may be required to pay a
11 fine of three hundred dollars (\$300). The offender shall be
12 ordered by the court to participate in and complete a screening
13 program described in Subsection K of this section and to attend
14 a driver rehabilitation program for alcohol or drugs, also
15 known as a "DWI school", approved by the bureau and also may be
16 required to participate in other rehabilitative services as the
17 court shall determine to be necessary. In addition to those
18 penalties, when an offender commits aggravated driving under
19 the influence of intoxicating liquor or drugs, the offender
20 shall be sentenced to not less than forty-eight consecutive
21 hours in jail. If an offender fails to complete, within a time
22 specified by the court, any community service, screening
23 program, treatment program or DWI school ordered by the court
24 or fails to comply with any other condition of probation, the
25 offender shall be sentenced to not less than an additional

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1 forty-eight consecutive hours in jail. Any jail sentence
2 imposed pursuant to this subsection for failure to complete,
3 within a time specified by the court, any community service,
4 screening program, treatment program or DWI school ordered by
5 the court or for aggravated driving under the influence of
6 intoxicating liquor or drugs shall not be suspended, deferred
7 or taken under advisement. On a first conviction pursuant to
8 this section, any time spent in jail for the offense prior to
9 the conviction for that offense shall be credited to any term
10 of imprisonment fixed by the court. A deferred sentence
11 pursuant to this subsection shall be considered a first
12 conviction for the purpose of determining subsequent
13 convictions.

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

23 (1) upon a second conviction, an offender
24 shall be sentenced to a jail term of not less than ninety-six
25 consecutive hours, not less than forty-eight hours of community

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1 service and a fine of five hundred dollars (\$500). In addition
2 to those penalties, when an offender commits aggravated driving
3 under the influence of intoxicating liquor or drugs, the
4 offender shall be sentenced to a jail term of not less than
5 ninety-six consecutive hours. If an offender fails to
6 complete, within a time specified by the court, any community
7 service, screening program or treatment program ordered by the
8 court, the offender shall be sentenced to not less than an
9 additional seven consecutive days in jail. A penalty imposed
10 pursuant to this paragraph shall not be suspended or deferred
11 or taken under advisement; and

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

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

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

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

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

25 K. Upon any conviction pursuant to this section, an

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1 offender shall be required to participate in and complete,
2 within a time specified by the court, an alcohol or drug abuse
3 screening program approved by the department of finance and
4 administration and, if necessary, a treatment program approved
5 by the court. The requirement imposed pursuant to this
6 subsection shall not be suspended, deferred or taken under
7 advisement.

8 L. Upon any conviction pursuant to this section,
9 the court may, as a condition of probation, require an offender
10 to obtain and use, on a frequency specified by the court, an
11 electronic sobriety monitoring device available in the
12 jurisdiction and approved by the court. Unless determined by
13 the bureau to be indigent, the offender shall pay all costs
14 associated with the sobriety monitoring device.

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

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

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

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

25 (4) any other substance abuse treatment

1 program approved by the court.

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

4 ~~[M.]~~ N. Upon a felony conviction pursuant to this
5 section, the corrections department shall provide substance
6 abuse counseling and treatment to the offender in its custody.
7 While the offender is on probation or parole under its
8 supervision, the corrections department shall also provide
9 substance abuse counseling and treatment to the offender or
10 shall require the offender to obtain substance abuse counseling
11 and treatment.

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

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

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

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

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

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

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

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

24 [~~R.~~] S. A conviction pursuant to a municipal or
25 county ordinance in New Mexico or a law of any other

1 jurisdiction, territory or possession of the United States or
2 of a tribe, when that ordinance or law is equivalent to New
3 Mexico law for driving under the influence of intoxicating
4 liquor or drugs, and prescribes penalties for driving under the
5 influence of intoxicating liquor or drugs, shall be deemed to
6 be a conviction pursuant to this section for purposes of
7 determining whether a conviction is a second or subsequent
8 conviction.

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

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

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

22 (1) "bodily injury" means an injury to a
23 person that is not likely to cause death or great bodily harm
24 to the person, but does cause painful temporary disfigurement
25 or temporary loss or impairment of the functions of any member

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1 or organ of the person's body; and

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

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

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

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

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

16 SECTION 3. Section 66-8-102.3 NMSA 1978 (being Laws 2002,
17 Chapter 82, Section 2, as amended) is amended to read:

18 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
19 CREATED.--

20 A. A fee is imposed on a person convicted of
21 driving under the influence of intoxicating liquor or drugs in
22 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
23 delinquent on the basis of Subparagraph (a) of Paragraph (1) of
24 Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
25 driver's license is revoked pursuant to the provisions of the

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1 Implied Consent Act, in an amount determined by rule of the
2 traffic safety bureau of the department of transportation not
3 to exceed one hundred dollars (\$100) but not less than fifty
4 dollars (\$50.00) for each year the person is required to
5 operate only vehicles equipped with an ignition interlock
6 device or to use an electronic sobriety monitoring device in
7 order to ensure the solvency of the interlock device fund. The
8 fee shall not be imposed on an indigent person.

9 B. The "interlock device fund" is created in the
10 state treasury. The fee imposed pursuant to Subsection A of
11 this section shall be collected by the motor vehicle division
12 of the taxation and revenue department and deposited in the
13 interlock device fund.

14 C. All money in the interlock device fund is
15 appropriated to the traffic safety bureau of the department of
16 transportation to cover part of the costs of installing,
17 removing and leasing ignition interlock devices or leasing
18 electronic sobriety monitoring devices for indigent people who
19 are required, pursuant to convictions under Section 66-8-102
20 NMSA 1978 or adjudications on the basis of Subparagraph (a) of
21 Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or
22 driver's license revocations pursuant to the provisions of the
23 Implied Consent Act or as a condition of parole, to install
24 [~~those~~] ignition interlock devices in their vehicles or to use
25 electronic sobriety monitoring devices. Provided that money is

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1 available in the interlock device fund, the traffic safety
2 bureau shall pay:

3 (1) for one vehicle per offender, up to fifty
4 dollars (\$50.00) for the cost of installation, up to fifty
5 dollars (\$50.00) for the cost of removal and up to thirty
6 dollars (\$30.00) monthly for verified active usage of the
7 interlock device; or

8 (2) up to thirty dollars (\$30.00) monthly
9 toward the lease and use of an electronic sobriety monitoring
10 device.

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

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

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

1 safety bureau.

2 [E-] F. Any balance remaining in the interlock
3 device fund shall not revert to the general fund at the end of
4 any fiscal year.

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

11 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
12 provisions of this act is July 1, 2011.

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