

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 460

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS;
MANDATING LIFETIME USE OF INTERLOCK LICENSE UPON FOURTH AND
SUBSEQUENT CONVICTIONS.

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

SECTION 1. Section 66-5-5 NMSA 1978 (being Laws 1978,
Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall
not issue a driver's license under the Motor Vehicle Code to
any person:

A. who is under the age of eighteen years, except
the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen
years of age or older who is enrolled in and attending or has
completed a driver education course approved by the bureau that

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1 includes a DWI education and prevention component;

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

4 (a) who has completed a driver education
5 course approved by the bureau or offered by a public school
6 that includes a DWI education and prevention component and has
7 had an instruction permit for at least six months as provided
8 in Section 66-5-8 NMSA 1978; and

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

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

13 (a) who has had a provisional license
14 for at least a twelve-month period immediately preceding the
15 date of the application for the driver's license as provided in
16 Section 66-5-9 NMSA 1978;

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

19 (c) who has not been adjudicated for an
20 offense involving the use of alcohol or drugs during the
21 twelve-month period immediately preceding the application for
22 the driver's license and who has no pending adjudications
23 alleging an offense involving the use of alcohol or drugs at
24 the time of application; and

25 (4) to a person thirteen years of age or older

1 who passes an examination prescribed by the division, a license
2 restricted to the operation of a motorcycle, provided:

3 (a) the motorcycle is not in excess of
4 one hundred cubic centimeters displacement;

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

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

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

17 C. who is an habitual user of narcotic drugs or
18 alcohol or an habitual user of any drug to a degree that
19 renders the person incapable of safely driving a motor vehicle;

20 D. who is four or more times convicted of driving a
21 motor vehicle while under the influence of intoxicating liquor
22 or narcotic drug regardless of whether the convictions are
23 under the laws or ordinances of this state or any municipality
24 or county of this state or under the laws or ordinances of any
25 other state, the District of Columbia or any governmental

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1 subdivision thereof, except as provided in the Ignition
2 Interlock Licensing Act [~~Five years from the date of the fourth~~
3 ~~conviction and every five years thereafter, the person may~~
4 ~~apply to any district court of this state for restoration of~~
5 ~~the license, and the court, upon good cause being shown, may~~
6 ~~order restoration of the license applied for; provided that the~~
7 ~~person has not been subsequently convicted of driving a motor~~
8 ~~vehicle while under the influence of intoxicating liquor or~~
9 ~~drugs. Upon issuance of the order of restoration, a certified~~
10 ~~copy shall immediately be forwarded to the division, and if the~~
11 ~~person is otherwise qualified for the license applied for, the~~
12 ~~four previous convictions shall not prohibit issuance of the~~
13 ~~license];~~

14 E. who was convicted on or after June 17, 2005 of
15 driving a motor vehicle while under the influence of
16 intoxicating liquor or drugs pursuant to the laws or ordinances
17 of any other state, the District of Columbia or any
18 governmental subdivision thereof, unless the person obtains an
19 ignition interlock license as provided in the Ignition
20 Interlock Licensing Act for a period of one year for a first
21 conviction; a period of two years for a second conviction; a
22 period of three years for a third conviction; or the remainder
23 of the offender's life for a fourth or subsequent conviction
24 [~~subject to a five-year review as provided in Subsection D of~~
25 ~~this section]. Upon presentation of proof satisfactory to the~~

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1 division, the division may credit time spent by a person
2 operating a motor vehicle with an ignition interlock or
3 comparable device, as a condition of the person's sentence for
4 a conviction in another jurisdiction pursuant to this
5 subsection, against the ignition interlock time requirements
6 imposed by this subsection. The division shall promulgate
7 rules necessary for granting credit to persons who participate
8 in comparable out-of-state programs following a conviction for
9 driving a motor vehicle while under the influence of
10 intoxicating liquor or drugs. The requirements of this
11 subsection shall not apply to a person who applies for a
12 driver's license ten years or more from the date of the
13 person's last conviction, except for a person who is subject to
14 lifetime driver's license revocation for a conviction in
15 another jurisdiction pursuant to this subsection;

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

21 G. who is required by the Motor Vehicle Code to
22 take an examination, unless the person has successfully passed
23 the examination;

24 H. who is required under the laws of this state to
25 deposit proof of financial responsibility and who has not

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1 deposited the proof;

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

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

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

12 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

13 A. The division shall immediately revoke the
14 driving privilege or driver's license of a driver upon
15 receiving a record of the driver's adjudication as a delinquent
16 for or conviction of any of the following offenses, whether the
17 offense is under any state law or local ordinance, when the
18 conviction or adjudication has become final:

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

21 (2) any offense rendering a person a "first
22 offender" as defined in the Motor Vehicle Code;

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

25 (4) any felony in the commission of which a

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1 motor vehicle is used;

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

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

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

12 B. Except as provided in the Ignition Interlock
13 Licensing Act and in Subsection C, D, E or F of this section, a
14 person whose driving privilege or driver's license has been
15 revoked under this section shall not be entitled to apply for
16 or receive a new license until one year from the date that the
17 conviction is final and all rights to an appeal have been
18 exhausted.

19 C. A person who upon adjudication as a delinquent
20 for driving while under the influence of intoxicating liquor or
21 drugs or a conviction pursuant to Section 66-8-102 NMSA 1978 is
22 subject to revocation of the driving privilege or driver's
23 license under this section for an offense pursuant to which the
24 person was also subject to revocation of the driving privilege
25 or driver's license pursuant to Section 66-8-111 NMSA 1978

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1 shall have the person's driving privilege or driver's license
2 revoked for that offense for a combined period of time equal
3 to:

4 (1) one year for a first offender; or

5 (2) for a subsequent offender:

6 (a) two years for a second conviction;

7 (b) three years for a third conviction;

8 or

9 (c) the remainder of the offender's life
10 for a fourth or subsequent conviction [~~subject to a five-year~~
11 ~~review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978~~].

12 D. The division shall apply the license revocation
13 provisions of Subsection C of this section and the provisions
14 of Subsection D of Section 66-5-5 NMSA 1978 to a person who was
15 three or more times convicted of driving a motor vehicle under
16 the influence of intoxicating liquor or drugs and who has a
17 driver's license revocation pursuant to the law in effect prior
18 to June 17, 2005, upon the request of the person and if the
19 person has had an ignition interlock license for three years or
20 more and has proof from the ignition interlock vendor of no
21 violations of the ignition interlock device in the previous six
22 months.

23 E. Upon receipt of an order from a court pursuant
24 to Section 32A-2-19 NMSA 1978 or Subsection G of Section
25 32A-2-22 NMSA 1978, the division shall revoke the driver's

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1 license or driving privileges for a period of time in
2 accordance with these provisions.

3 F. Upon receipt from a district court of a record
4 of conviction for the offense of shooting at or from a motor
5 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or
6 of a conviction for a conspiracy or an attempt to commit that
7 offense, the division shall revoke the driver's license or
8 driving privileges of the convicted person. A person whose
9 driver's license or driving privilege has been revoked pursuant
10 to the provisions of this subsection shall not be entitled to
11 apply for or receive any new driver's license or driving
12 privilege until one year from the date that the conviction is
13 final and all rights to an appeal have been exhausted."

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

16 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
17 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
18 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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

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1 C. It is unlawful for:

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

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

14 D. Aggravated driving under the influence of
15 intoxicating liquor or drugs consists of:

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

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

24 (3) refusing to submit to chemical testing, as
25 provided for in the Implied Consent Act, and in the judgment of

1 the court, based upon evidence of intoxication presented to the
2 court, the driver was under the influence of intoxicating
3 liquor or drugs.

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

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

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

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

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

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1 sixty consecutive days in jail. A penalty imposed pursuant to
2 this paragraph shall not be suspended or deferred or taken
3 under advisement.

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

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

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

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

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1 years, two years of which shall not be suspended, deferred or
2 taken under advisement.

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

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

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

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

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

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

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

25 M. Upon a felony conviction pursuant to this

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1 section, the corrections department shall provide substance
2 abuse counseling and treatment to the offender in its custody.
3 While the offender is on probation or parole under its
4 supervision, the corrections department shall also provide
5 substance abuse counseling and treatment to the offender or
6 shall require the offender to obtain substance abuse counseling
7 and treatment.

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

- 18 (1) a period of one year, for a first
19 offender;
20 (2) a period of two years, for a second
21 conviction pursuant to this section;
22 (3) a period of three years, for a third
23 conviction pursuant to this section; or
24 (4) the remainder of the offender's life, for
25 a fourth or subsequent conviction pursuant to this section.

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

13 P.] Q. An offender who obtains an ignition
14 interlock license and installs an ignition interlock device
15 prior to conviction shall be given credit at sentencing for the
16 time period the ignition interlock device has been in use.

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

20 ~~[R.]~~ Q. A conviction pursuant to a municipal or
21 county ordinance in New Mexico or a law of any other
22 jurisdiction, territory or possession of the United States or
23 of a tribe, when that ordinance or law is equivalent to New
24 Mexico law for driving under the influence of intoxicating
25 liquor or drugs, and prescribes penalties for driving under the

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1 influence of intoxicating liquor or drugs, shall be deemed to
2 be a conviction pursuant to this section for purposes of
3 determining whether a conviction is a second or subsequent
4 conviction.

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

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

17 ~~[U.]~~ T. As used in this section:

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

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

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

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

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

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

12 SECTION 4. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2013.

underscoring material = new
~~[bracketed material]~~ = delete