

1 HOUSE BILL 74

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Stephanie Garcia Richard

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9  
10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
12 OR DRUGS; PROVIDING FOR INCREASES IN THE TIME REQUIRED FOR A  
13 PERSON'S LICENSE TO BE REVOKED AND TO USE AN IGNITION INTERLOCK  
14 DEVICE AND OBTAIN AN IGNITION INTERLOCK LICENSE DEPENDING ON  
15 THE BLOOD OR BREATH ALCOHOL CONCENTRATION; PROVIDING THAT  
16 PERSONS WHO REFUSE TO SUBMIT TO A CHEMICAL TEST WILL BE  
17 CONSIDERED TO HAVE HAD A BLOOD OR BREATH ALCOHOL CONCENTRATION  
18 OF TWENTY-FOUR ONE HUNDREDTHS AT TIME OF ARREST FOR PURPOSES OF  
19 DETERMINING THE LENGTH OF LICENSE REVOCATION AND THEIR  
20 INTERLOCK REQUIREMENT; INCREASING THE REQUIREMENTS TO BE MET  
21 FOR REMOVAL OF AN IGNITION INTERLOCK DEVICE BEFORE  
22 REINSTATEMENT OF A DRIVER'S LICENSE; PROVIDING THAT PERSONS WHO  
23 DO NOT OBTAIN AN IGNITION INTERLOCK DEVICE AND LICENSE SHALL BE  
24 REQUIRED TO MAINTAIN SOBRIETY; REQUIRING HOME BREATHALYZER  
25 DEVICES AND ALLOWING ELECTRONIC MONITORING DEVICES FOR AN

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1 OFFENDER UNDER HOUSE ARREST; PROVIDING ASSISTANCE FOR HOME  
2 BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

7 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall  
8 not issue a driver's license under the Motor Vehicle Code to  
9 any person:

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

12 (1) an instruction permit to a person fifteen  
13 years of age or older who is enrolled in and attending or has  
14 completed a driver education course approved by the bureau that  
15 includes a DWI education and prevention component;

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

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

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

25 (3) a driver's license to a person sixteen

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1 years and six months of age or older:

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

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

8 (c) who has not been adjudicated for an  
9 offense involving the use of alcohol or drugs during the  
10 twelve-month period immediately preceding the application for  
11 the driver's license and who has no pending adjudications  
12 alleging an offense involving the use of alcohol or drugs at  
13 the time of application; and

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

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

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

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

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

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

9           D. who ~~[is four or more times convicted of]~~ has had  
10 that person's driving privilege or driver's license revoked for  
11 the remainder of the offender's life for driving a motor  
12 vehicle while under the influence of intoxicating liquor or  
13 narcotic drug regardless of whether the convictions are under  
14 the laws or ordinances of this state or any municipality or  
15 county of this state or under the laws or ordinances of any  
16 other state, the District of Columbia or any governmental  
17 subdivision thereof, except as provided in the Ignition  
18 Interlock Licensing Act. Five years from the date of the  
19 ~~[fourth]~~ last conviction and every five years thereafter, the  
20 person may apply to any district court of this state for  
21 restoration of the license, and the court, upon good cause  
22 being shown, may order restoration of the license applied for;  
23 provided that the person has not been subsequently convicted of  
24 driving a motor vehicle while under the influence of  
25 intoxicating liquor or drugs. Upon issuance of the order of

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1 restoration, a certified copy shall immediately be forwarded to  
2 the division, and if the person is otherwise qualified for the  
3 license applied for, the [~~four~~] previous convictions shall not  
4 prohibit issuance of the license;

5 E. who was convicted on or after June 17, 2005 of  
6 driving a motor vehicle while under the influence of  
7 intoxicating liquor or drugs pursuant to the laws or ordinances  
8 of any other state, the District of Columbia or any  
9 governmental subdivision thereof, unless the person obtains an  
10 ignition interlock license as provided in the Ignition  
11 Interlock Licensing Act for a period of one year for a first  
12 conviction; a period of two years for a second conviction; a  
13 period of three years for a third conviction; or the remainder  
14 of the offender's life for a fourth or subsequent conviction,  
15 subject to a five-year review as provided in Subsection D of  
16 this section. Upon presentation of proof satisfactory to the  
17 division, the division may credit time spent by a person  
18 operating a motor vehicle with an ignition interlock or  
19 comparable device, as a condition of the person's sentence for  
20 a conviction in another jurisdiction pursuant to this  
21 subsection, against the ignition interlock time requirements  
22 imposed by this subsection. The division shall promulgate  
23 rules necessary for granting credit to persons who participate  
24 in comparable out-of-state programs following a conviction for  
25 driving a motor vehicle while under the influence of

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1 intoxicating liquor or drugs. The requirements of this  
2 subsection shall not apply to a person who applies for a  
3 driver's license ten years or more from the date of the  
4 person's last conviction, except for a person who is subject to  
5 lifetime driver's license revocation for a conviction in  
6 another jurisdiction pursuant to this subsection;

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

12 G. who is required by the Motor Vehicle Code to  
13 take an examination, unless the person has successfully passed  
14 the examination;

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

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

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

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

3           "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

4           A. The division shall immediately revoke the  
5 driving privilege or driver's license of a driver upon  
6 receiving a record of the driver's adjudication as a delinquent  
7 for or conviction of any of the following offenses, whether the  
8 offense is under any state law or local ordinance, when the  
9 conviction or adjudication has become final:

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

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

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

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

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

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

25                       (7) conviction or forfeiture of bail not

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1 vacated upon three charges of reckless driving committed within  
2 a period of twelve months.

3 B. Except as provided in the Ignition Interlock  
4 Licensing Act and in Subsection C, D, E, [~~or~~] F or G of this  
5 section, a person whose driving privilege or driver's license  
6 has been revoked under this section shall not be entitled to  
7 apply for or receive a new license until one year from the date  
8 that the conviction is final and all rights to an appeal have  
9 been exhausted.

10 C. A person who, upon adjudication as a delinquent  
11 for driving while under the influence of intoxicating liquor or  
12 drugs or a conviction pursuant to Section 66-8-102 NMSA 1978,  
13 is subject to revocation of the driving privilege or driver's  
14 license under this section for an offense pursuant to which the  
15 person was also subject to revocation of the driving privilege  
16 or driver's license pursuant to Section 66-8-111 NMSA 1978  
17 shall have the person's driving privilege or driver's license  
18 revoked for that offense for a combined period of time equal  
19 to:

20 [~~(1) one year for a first offender; or~~

21 ~~(2) for a subsequent offender:~~

22 ~~(a) two years for a second conviction;~~

23 ~~(b) three years for a third conviction;~~

24 ~~or~~

25 ~~(c) the remainder of the offender's life~~

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1 ~~for a fourth or subsequent conviction, subject to a five-year~~  
2 ~~review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.]~~

3 (1) for a first offender:

4 (a) one year, if the blood or breath of  
5 the person contained an alcohol concentration below twenty-four  
6 one hundredths; and

7 (b) two years, if the blood or breath of  
8 the person contained an alcohol concentration of twenty-four  
9 one hundredths or greater;

10 (2) for a second conviction:

11 (a) two years, if the blood or breath of  
12 the person contained an alcohol concentration below twenty-four  
13 one hundredths; and

14 (b) four years, if the blood or breath  
15 of the person contained an alcohol concentration of twenty-four  
16 one hundredths or greater;

17 (3) for a third conviction:

18 (a) three years, if the blood or breath  
19 of the person contained an alcohol concentration below twenty-  
20 four one hundredths; and

21 (b) the remainder of the offender's life  
22 if the blood or breath of the person contained an alcohol  
23 concentration of twenty-four one hundredths or greater, subject  
24 to a five-year review, as provided in Sections 66-5-5 and  
25 66-8-102 NMSA 1978; and

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1                   (4) for a fourth or subsequent conviction, for  
2 the remainder of the offender's life, subject to a five-year  
3 review, as provided in Sections 66-5-5 and 66-8-102 NMSA 1978.

4                   D. If a person whose driving privilege or driver's  
5 license is to be revoked pursuant to Subsection C of this  
6 section did not refuse a chemical test but blood or breath  
7 alcohol concentration results are not available, the person  
8 shall be considered to have had an alcohol concentration below  
9 sixteen one hundredths for the purposes of determining the  
10 length of revocation.

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

22                   ~~[E-]~~ F. Upon receipt of an order from a court  
23 pursuant to Section 32A-2-19 NMSA 1978 or Subsection G of  
24 Section 32A-2-22 NMSA 1978, the division shall revoke the  
25 driver's license or driving privileges for a period of time in

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1 accordance with these provisions.

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

14           **SECTION 3.** Section 66-5-33.1 NMSA 1978 (being Laws 1985,  
15 Chapter 47, Section 1, as amended) is amended to read:

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

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

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

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1 aggravated driving while under the influence of intoxicating  
2 liquor or drugs or pursuant to the Implied Consent Act, the  
3 following are required to reinstate the driver's 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 requirements; ~~and~~

10 (4) a minimum of six months of driving with an  
11 ignition interlock license with no attempts to circumvent or  
12 tamper with the ignition interlock device;

13 (5) evidence that the ignition interlock  
14 device has recorded no more than two tests at a level greater  
15 than five one hundredths alcohol concentration during the six  
16 months prior to reinstatement of the unrestricted driver's  
17 license; and

18 (6) evidence of at least twenty-two ignition  
19 interlock tests during those six months, administered at least  
20 one week apart. The department may exempt a person from one or  
21 more of the twenty-two tests upon proof being provided to the  
22 department that either the person to be tested or the vehicle  
23 with the ignition interlock device to be tested is not  
24 available for a test.

25 C. The department may reinstate the driving

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1 privileges of an out-of-state resident without the requirement  
2 that the person obtain an ignition interlock license for a  
3 minimum of six months, if the following conditions are met:

4 (1) the license revocation period is  
5 completed;

6 (2) satisfactory proof is presented to the  
7 department that the person is no longer a resident of New  
8 Mexico; and

9 (3) the license reinstatement fee is paid.

10 D. Fees collected pursuant to Subsection B of this  
11 section are appropriated to the local governments road fund.  
12 The department shall maintain an accounting of the fees  
13 collected and shall report that amount upon request to the  
14 legislature."

15 SECTION 4. Section 66-8-102 NMSA 1978 (being Laws 1953,  
16 Chapter 139, Section 54, as amended) is amended to read:

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

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

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

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1 this state.

2 C. It is unlawful for:

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

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

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

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

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

25 (3) refusing to submit to chemical testing, as

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1 provided for in the Implied Consent Act, and in the judgment of  
2 the court, based upon evidence of intoxication presented to the  
3 court, the driver was under the influence of intoxicating  
4 liquor or drugs.

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

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

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

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1 for suspension or deferment of execution of a sentence:

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

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

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1 the offender shall be sentenced to not less than an additional  
2 sixty consecutive days in jail. A penalty imposed pursuant to  
3 this paragraph shall not be suspended or deferred or taken  
4 under advisement.

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

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

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

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

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1 1978, shall be sentenced to a term of imprisonment of three  
2 years, two years of which shall not be suspended, deferred or  
3 taken under advisement.

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

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

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

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

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

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

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

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

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

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

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1 ~~a fourth or subsequent conviction pursuant to this section.]~~

2 (1) if a first offender:

3 (a) one year, if the blood or breath of  
4 the person contained an alcohol concentration below twenty-four  
5 one hundredths; and

6 (b) two years, if the blood or breath of  
7 the person contained an alcohol concentration of twenty-four  
8 one hundredths or greater;

9 (2) upon a second conviction pursuant to this  
10 section:

11 (a) two years, if the blood or breath of  
12 the person contained an alcohol concentration below twenty-four  
13 one hundredths; and

14 (b) four years, if the blood or breath  
15 of the person contained an alcohol concentration of twenty-four  
16 one hundredths or greater;

17 (3) upon a third conviction pursuant to this  
18 section:

19 (a) three years, if the blood or breath  
20 of the person contained an alcohol concentration below twenty-  
21 four one hundredths; and

22 (b) the remainder of the offender's life  
23 if the blood or breath of the person contained an alcohol  
24 concentration of twenty-four one hundredths or greater, subject  
25 to a five-year review, as provided in Section 66-5-5 NMSA 1978

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1 and Subsection Q of this section; and

2 (4) upon a fourth or subsequent conviction  
3 pursuant to this section, for the remainder of the offender's  
4 life, subject to a five-year review, as provided in Section  
5 66-5-5 NMSA 1978 and Subsection Q of this section.

6 O. An offender who refuses to submit to chemical  
7 testing at time of arrest under the Implied Consent Act shall  
8 be considered to have had a blood or breath alcohol  
9 concentration of twenty-four one hundredths for the purposes of  
10 establishing an ignition interlock requirement period under  
11 Subsection N of this section.

12 P. If a person required to operate only those  
13 vehicles equipped with ignition interlock devices pursuant to  
14 Subsection N of this section did not refuse a chemical test but  
15 blood or breath alcohol concentration results are not  
16 available, the person shall be considered to have had an  
17 alcohol concentration below twenty-four one hundredths for the  
18 purposes of determining the length of time required for use of  
19 an ignition interlock device.

20 ~~[O-]~~ Q. Five years from the date of conviction and  
21 every five years thereafter, ~~[a fourth or subsequent offender]~~  
22 an offender with a lifetime interlock device requirement may  
23 apply to a district court for removal of the ignition interlock  
24 device requirement provided in this section and for restoration  
25 of a driver's license. A district court may, for good cause

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1 shown, remove the ignition interlock device requirement and  
2 order restoration of the license; provided that the offender  
3 has not been subsequently convicted of driving a motor vehicle  
4 under the influence of intoxicating liquor or drugs. Good  
5 cause may include an alcohol screening and proof from the  
6 interlock vendor that the person has not had violations of the  
7 interlock device.

8 R. If an offender receives a sentence of  
9 incarceration for driving under the influence of intoxicating  
10 liquor or drugs and is ordered to serve the sentence under  
11 house arrest, where house arrest is available, the court shall  
12 order the offender to obtain a home breathalyzer device that  
13 identifies the person giving the sample, or a more intensive  
14 sobriety monitoring device or system, and to provide morning  
15 and evening breath samples for the duration of the house  
16 arrest, pursuant to rules adopted by the bureau.

17 S. As a condition of house arrest, the court may  
18 also require an offender to be monitored by an electronic  
19 monitoring device, as approved by the bureau, placed on the  
20 offender's person. The offender shall pay any costs associated  
21 with the house arrest program as ordered by the court, unless  
22 determined to be indigent by the bureau.

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

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1 time period the ignition interlock device has been in use.

2 U. An offender who has not installed an ignition  
3 interlock device and has not obtained an ignition interlock  
4 license shall be required to maintain sobriety and to  
5 participate in a court-approved sobriety monitoring program for  
6 the same period as the ignition interlock requirement in  
7 Subsection N or P of this section or until the end of the  
8 period of supervision by the court in the matter, whichever is  
9 shorter. The court-approved sobriety monitoring program may  
10 include the use of a home breathalyzer device that identifies  
11 the person giving the sample, pursuant to rules adopted by the  
12 bureau. Sobriety shall be monitored at least twice daily.  
13 After twelve months of monitored sobriety, the court may reduce  
14 the frequency of monitoring. Failure to maintain sobriety or  
15 to comply with the monitoring program shall result in a jail  
16 term of forty-eight hours for each failure to maintain sobriety  
17 or to comply with the monitoring program. The jail term may  
18 not be served on a community release or an electronic  
19 monitoring program. A jail term imposed under this subsection  
20 is not limited by the maximum imprisonment terms specified in  
21 Subsection E or F of this section. Unless determined by the  
22 bureau to be indigent, the offender shall pay all costs  
23 associated with sobriety monitoring. Upon the offender  
24 installing an ignition interlock device and obtaining an  
25 ignition interlock license, the court may suspend the sobriety

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1 maintenance and monitoring requirements. The time spent  
2 successfully maintaining sobriety shall be credited toward the  
3 time required in Subsection N, O or P of this section to have  
4 the ignition interlock device and license, and shall be  
5 credited to the six-month interlock requirement pursuant to  
6 Section 66-5-33.1 NMSA 1978.

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

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

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

25           ~~[T-]~~ Y. With respect to this section and

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1 notwithstanding any provision of law to the contrary, if an  
2 offender's sentence was suspended or deferred in whole or in  
3 part and the offender violates any condition of probation, the  
4 court may impose any sentence that the court could have  
5 originally imposed and credit shall not be given for time  
6 served by the offender on probation.

7 ~~[U.]~~ Z. As used in this section:

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

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

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

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

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

24 (d) is of any size and is used in the  
25 transportation of hazardous materials, which requires the motor

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1 vehicle to be placarded under applicable law; and  
2 (3) "electronic monitoring device" means an  
3 active or passive global-positioning-system-enabled device  
4 capable of recording and transmitting an offender's location at  
5 all times or at designated intervals or a radio frequency  
6 device capable of monitoring an offender's location."

7 SECTION 5. Section 66-8-102.3 NMSA 1978 (being Laws 2002,  
8 Chapter 82, Section 2, as amended) is amended to read:

9 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND  
10 CREATED.--

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

25 B. The "interlock device fund" is created in the

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1 state treasury. The fee imposed pursuant to Subsection A of  
2 this section shall be collected by the motor vehicle division  
3 of the [~~taxation and revenue~~] department and deposited in the  
4 interlock device fund.

5 C. All money in the interlock device fund is  
6 appropriated to the [~~traffic safety~~] bureau [~~of the department~~  
7 ~~of transportation~~] to cover part of the costs of installing,  
8 removing and leasing ignition interlock devices or leasing home  
9 breathalyzer devices for indigent people who are required,  
10 pursuant to convictions under Section 66-8-102 NMSA 1978 or  
11 adjudications on the basis of Subparagraph (a) of Paragraph (1)  
12 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's  
13 license revocations pursuant to the provisions of the Implied  
14 Consent Act or as a condition of parole, to install [~~these~~]  
15 ignition interlock devices in their vehicles or to use a home  
16 breathalyzer device. Provided that money is available in the  
17 interlock device fund, the [~~traffic safety~~] bureau shall pay:

18 (1) for one vehicle per offender, up to fifty  
19 dollars (\$50.00) for the cost of installation, up to fifty  
20 dollars (\$50.00) for the cost of removal and up to thirty  
21 dollars (\$30.00) monthly for verified active usage of the  
22 interlock device; or

23 (2) up to thirty dollars (\$30.00) monthly  
24 toward the lease and use of a home breathalyzer device.

25 D. The [~~traffic safety~~] bureau shall not pay any

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1 amount above what an offender would be required to pay for the  
2 installation, removal or usage of an interlock device or for  
3 the lease of a home breathalyzer device.

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

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

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

19 ~~[F.]~~ G. The interlock device fund shall be  
20 administered by the ~~[traffic safety]~~ bureau ~~[of the department~~  
21 ~~of transportation]~~. No more than ten percent of the money in  
22 the interlock device fund in any fiscal year shall be expended  
23 by the ~~[traffic safety]~~ bureau ~~[of the department of~~  
24 ~~transportation]~~ for the purpose of administering the fund."

25 SECTION 6. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2016.

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