HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROHIBITING DRIVING WITH CERTAIN AMOUNTS OF CONTROLLED SUBSTANCES OR METABOLITES IN THE BLOOD; PROVIDING THAT THE IGNITION INTERLOCK REQUIREMENT ONLY APPLIES TO OFFENDERS WITH ALCOHOL CONCENTRATION IN THEIR BLOOD OR BREATH.

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

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

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

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

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

B. It is unlawful for a person who is under the influence of any drug [~~to a degree that renders the person incapable of safely driving a vehicle~~] to drive a vehicle within this state.

C. It is unlawful for:

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

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

D. It is unlawful for a person to drive a vehicle in this state if the person has the following amount or more of a controlled substance or metabolite in the person's blood within three hours of driving the vehicle and the controlled substance or metabolite concentration results from consumption of a controlled substance before or while driving the vehicle:

(1) for amphetamine, one hundred nanograms per milliliter of blood;

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

(2) for cocaine, fifty nanograms per milliliter of blood;

(3) for cocaine metabolite, cocaethylene, fifty nanograms per milliliter of blood;

(4) for heroin, fifty nanograms per milliliter of blood;

(5) for heroin metabolite, morphine, fifty nanograms per milliliter of blood;

(6) for heroin metabolite, 6-monoacetylmorphine, ten nanograms per milliliter of blood;

(7) for the active compound in marijuana, delta-9-tetrahydrocannabinol, five nanograms per milliliter of blood;

(8) for methamphetamine, one hundred nanograms per milliliter of blood; or

(9) for 3,4-methylenedioxymethamphetamine, one hundred nanograms per milliliter of blood.

[~~D.~~] E. Aggravated driving under the influence of intoxicating liquor or drugs consists of:

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

(2) causing bodily injury to a human being as

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

a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

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

[~~E.~~] F. A first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours of community service. In addition, the offender may be required to pay a fine of three hundred dollars ($300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection [~~K~~] L of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving

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

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

[~~F.~~] G. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars ($1,000), or both; provided that if

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

the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

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

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, not less than ninety-six hours of community service and a fine of seven hundred fifty dollars ($750). In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than

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

sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

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

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

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

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

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

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

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

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

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

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

(4) any other substance abuse treatment

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

program approved by the court.

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

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

[~~N.~~] O. Upon a conviction pursuant to this section, an offender who was driving under the influence of intoxicating liquor or who had any alcohol concentration in the blood or breath within three hours of driving and the alcohol concentration resulted from alcohol consumed before or while driving the vehicle shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the [~~traffic safety~~] bureau. Unless determined by the bureau to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

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

(1) a period of one year, for a first [~~offender~~] conviction;

(2) a period of two years, for a second conviction [~~pursuant to this section~~];

(3) a period of three years, for a third conviction [~~pursuant to this section~~]; or

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

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

[~~P.~~] Q. An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the

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

time period the ignition interlock device has been in use.

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

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

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

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

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

served by the offender on probation.

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

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

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

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

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

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

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

SECTION 2. Section 66-8-110 NMSA 1978 (being Laws 1978, Chapter 35, Section 518, as amended) is amended to read:

"66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

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

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor;

(2) an alcohol concentration of at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, unless the person is driving a commercial motor vehicle; and

(b) the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor; or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

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

C. The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration [~~of:~~

~~(1) eight one hundredths or more; or~~

~~(2) four one hundredths or more if the person is driving a commercial motor vehicle~~] or a controlled substance or metabolite concentration that is unlawful pursuant to the provisions of Section 66-8-102 NMSA 1978.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. If the test performed pursuant to the Implied Consent Act is administered more than three hours after the person was driving a vehicle, the test result may be introduced as evidence of the alcohol or drug concentration in the person's blood or breath at the time of the test and the trier of fact shall determine what weight to give the test result for the purpose of determining a violation of Section 66-8-102 NMSA 1978.

F. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of

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

breath.

G. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

H. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor <u>or drugs</u>, the trial judge shall inquire into the past driving record of the person before sentence is entered in the matter."

SECTION 3. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or

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

there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of the person's privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor <u>or drugs</u> and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol, <u>a controlled substance or a metabolite</u> concentration

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

that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of [~~eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or~~] two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or [~~his~~] nonresident operating privilege for a period of:

(1) six months or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) one year or until all conditions for license reinstatement are met, whichever is later, if the person was less than twenty-one years of age at the time of the arrest, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the [~~person has previously had his~~] person's license has been revoked previously pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) of this subsection.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of

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

breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to [~~him~~] the person for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge.". The statement may be signed and submitted electronically in a manner and form approved by the department. A law enforcement officer who signs a statement knowing that the statement is untrue in any material issue or matter is guilty of perjury as provided in Section 66-5-38 NMSA 1978."

SECTION 4. Section 66-8-111.1 NMSA 1978 (being Laws 1984, Chapter 72, Section 7, as amended) is amended to read:

"66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING.--On behalf of the department, a law enforcement officer requesting a chemical test or directing the

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

administration of a chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing before the administrative hearings office pursuant to the Implied Consent Act on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol, a controlled substance or a metabolite concentration that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of [~~eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or~~] two one hundredths or more if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the administrative hearings office issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section 66-8-111 NMSA 1978."

SECTION 5. Section 66-8-112 NMSA 1978 (being Laws 1978, Chapter 35, Section 520, as amended) is amended to read:

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

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to the Administrative Hearings Office Act, the date that the administrative hearings office issues the order following that hearing. The date of notice of revocation is:

(1) the date the law enforcement officer serves written notice of revocation and of right to a hearing pursuant to Section 66-8-111.1 NMSA 1978; or

(2) in the event the results of a chemical test cannot be obtained immediately, the date notice of revocation is served by mail by the department. This notice of revocation and of right to a hearing shall be sent by certified mail and shall be deemed to have been served on the date borne by the return receipt showing delivery, refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the department.

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the

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

person's agent may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars ($25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to rules adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to the person's parent, guardian or custodian by the department. A date for the hearing shall be set by the administrative hearings office, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

C. The administrative hearings office may postpone or continue any hearing on its own motion or upon application from the person and for good cause shown for a period not to exceed ninety days from the date of notice of revocation and, provided that, upon a continuance, the department shall extend the validity of the temporary license for the period of the postponement or continuation.

D. At the hearing, the administrative hearings office may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books

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

and papers.

E. The hearing shall be limited to the following issues:

(1) whether the law enforcement officer had reasonable grounds to believe that the person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs;

(2) whether the person was arrested;

(3) whether this hearing is held no later than ninety days after notice of revocation; and either

(4) whether:

(a) the person refused to submit to a test upon request of the law enforcement officer; and

(b) the law enforcement officer advised that the failure to submit to a test could result in revocation of the person's privilege to drive; or

(5) whether:

(a) the chemical test was administered pursuant to the provisions of the Implied Consent Act; and

(b) the test results indicated an alcohol, a controlled substance or a metabolite concentration that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of [~~eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving~~

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

~~a commercial motor vehicle or~~] two one hundredths or more if the person is less than twenty-one years of age.

F. The administrative hearings office shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the hearing officer from the administrative hearings office finds that:

(1) the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drugs;

(2) the person was arrested;

(3) this hearing is held no later than ninety days after notice of revocation; and

(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised the person that the person's failure to submit to the test could result in the revocation of the person's privilege to drive; or

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol, <u>a controlled substance or a metabolite</u> concentration <u>that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration</u> in the person's blood or breath of [~~eight one hundredths or more if the person is twenty-one years of age or~~

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

~~older, four one hundredths or more if the person is driving a commercial motor vehicle or~~] two one hundredths or more if the person is less than twenty-one years of age.

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the hearing officer, the person's license shall not be revoked.

H. A person adversely affected by an order of the administrative hearings office may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. The district court, upon thirty days' written notice to the department, shall hear the case. On review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the person's license or privilege to drive based on the record of the administrative proceeding.

I. Any person less than eighteen years of age shall have results of the person's hearing forwarded by the administrative hearings office to the person's parent, guardian or custodian."

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.

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