

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 308

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; REQUIRING HOME BREATHALYZER TESTS FOR A CONVICTED  
OFFENDER WHO DOES NOT OWN A MOTOR VEHICLE AND IS UNABLE TO HAVE  
AN IGNITION INTERLOCK DEVICE INSTALLED; PROVIDING ASSISTANCE  
FOR HOME BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

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. PERSONS UNDER THE INFLUENCE OF INTOXICATING  
LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE  
OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

1           B. It is unlawful for a person who is under the  
2 influence of any drug to a degree that renders the person  
3 incapable of safely driving a vehicle to drive a vehicle within  
4 this state.

5           C. It is unlawful for:

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

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

18           D. Aggravated driving while under the influence of  
19 intoxicating liquor or drugs consists of a person who:

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

25                   (2) has caused bodily injury to a human being

underscoring material = new  
[bracketed material] = delete

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

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

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

.175265.1

underscored material = new  
[bracketed material] = delete

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

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

.175265.1

underscoring material = new  
[bracketed material] = delete

1 probation may extend beyond one year but shall not exceed five  
2 years. Notwithstanding any provision of law to the contrary  
3 for suspension or deferment of execution of a sentence:

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

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

.175265.1

underscoring material = new  
[bracketed material] = delete

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

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

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

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

25 J. Upon a seventh or subsequent conviction pursuant

.175265.1

underscored material = new  
[bracketed material] = delete

1 to this section, an offender is guilty of a third degree felony  
2 and, notwithstanding the provisions of Section 31-18-15 NMSA  
3 1978, shall be sentenced to a term of imprisonment of three  
4 years, two years of which shall not be suspended, deferred or  
5 taken under advisement.

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

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

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

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

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

24 (4) any other substance abuse treatment  
25 program approved by the court.

.175265.1

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

25                       (3) a period of three years, for a third

.175265.1

underscored material = new  
[bracketed material] = delete

1 conviction pursuant to this section; or

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

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

16 P. If an offender states under oath that the  
17 offender does not own a motor vehicle or have access to a motor  
18 vehicle and is therefore unable to have an ignition interlock  
19 device installed pursuant to Subsection N of this section, the  
20 court shall order the offender to obtain a home breathalyzer  
21 that identifies the person giving the sample and to provide  
22 morning and evening breath samples for the period of time  
23 provided in Subsections N and O of this section. Unless  
24 determined by the court to be indigent, the offender shall pay  
25 all costs associated with the home breathalyzer.

.175265.1

underscored material = new  
[bracketed material] = delete

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

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

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

19           [~~S-~~] T. With respect to this section and  
20 notwithstanding any provision of law to the contrary, if an  
21 offender's sentence was suspended or deferred in whole or in  
22 part and the offender violates any condition of probation, the  
23 court may impose any sentence that the court could have  
24 originally imposed and credit shall not be given for time  
25 served by the offender on probation.

.175265.1

underscored material = new  
[bracketed material] = delete

1                   ~~[F.]~~ U. As used in this section:

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

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

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

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

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

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

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

23                   "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND  
24 CREATED.--

25                   A. A fee is imposed on a person convicted of

.175265.1

underscoring material = new  
[bracketed material] = delete

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

19 B. The "interlock device fund" is created in the  
20 state treasury. The fee imposed pursuant to Subsection A of  
21 this section shall be distributed to the fund by the traffic  
22 safety bureau of the department of transportation.

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

.175265.1

underscored material = new  
[bracketed material] = delete

1 and one-half of the cost of leasing ignition interlock devices  
2 or home breathalyzers for indigent people who are required,  
3 pursuant to convictions under Section 66-8-102 NMSA 1978 or  
4 adjudications on the basis of Subparagraph (a) of Paragraph (1)  
5 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's  
6 license revocations pursuant to the provisions of the Implied  
7 Consent Act or as a condition of parole, to install [~~these~~]  
8 ignition interlock devices in their vehicles or use home  
9 breathalyzers. Indigency shall be determined by the court, the  
10 parole board or a probation and parole officer.

11 D. Any balance remaining in the interlock device  
12 fund shall not revert to the general fund at the end of any  
13 fiscal year.

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

20 Section 3. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2009.