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HOUSE BILL 139

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO SENTENCING; REMOVING THE LIFETIME CONSEQUENCES OF A FOURTH DEGREE FELONY CONVICTION FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING FOR EXPUNGEMENT OF SOME RECORDS AND CONVICTIONS; PROVIDING FOR REINSTATEMENT OF A DRIVER'S LICENSE IN SOME CASES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005 AND IN LAWS 2007.

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

Section 1. [NEW MATERIAL] EXPUNGEMENT OF A RECORD RELATED TO A FOURTH DEGREE FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS OFFENSE.--

A. The record of a person convicted of a fourth degree felony based on an offense of driving while under the influence of intoxicating liquor or drugs shall be expunged:

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1 (1) upon request of the person convicted;
2 provided that the person has not been convicted for driving
3 while under the influence of intoxicating liquor or drugs for
4 seven years between the last day of serving a sentence,
5 including probation or parole, and the date the person requests
6 an expungement; and

7 (2) upon a check of law enforcement records
8 that confirms that no subsequent charges of driving while under
9 the influence of intoxicating liquor or drugs are pending and
10 that seven years have passed.

11 B. As used in this section, "expunge" means that,
12 for a fourth degree felony conviction for driving while under
13 the influence of intoxicating liquor or drugs:

14 (1) the state police shall delete the record
15 of the convicted person's arrest from the state police
16 database, including the state police tracking number assigned
17 to the case, fingerprints, photographs and other personal data
18 included for law enforcement purposes related to the
19 conviction;

20 (2) the state police shall request that the
21 federal bureau of investigation in Washington, D.C., expunge
22 its records created on the basis of the state law enforcement
23 duplicate records and photographs regarding the incidents that
24 led to conviction;

25 (3) the administrative office of the courts

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1 shall permanently delete the court record, including the trial
2 and appellate court records, if any;

3 (4) the corrections department shall purge the
4 record or records of the convicted person's time served; and

5 (5) the state police, the administrative
6 office of the courts and the administrative office of the
7 district attorneys shall seal any other records or files
8 related to the conviction that are not expressly covered by
9 this section.

10 C. A person whose record is expunged pursuant to
11 this section shall be able to answer truthfully that the person
12 has not previously been convicted of the felony of driving
13 while under the influence of intoxicating liquor or drugs.

14 Section 2. Section 29-3-8.1 NMSA 1978 (being Laws 2002,
15 Chapter 46, Section 2) is amended to read:

16 "29-3-8.1. PETITION TO EXPUNGE ARREST INFORMATION.--

17 A. A person may petition the department to expunge
18 arrest information on the person's state record or federal
19 bureau of investigation record if the arrest was for a
20 misdemeanor or petty misdemeanor offense and the arrest was not
21 for a crime of moral turpitude. If the department cannot
22 locate a final disposition after contacting the arresting law
23 enforcement agency, the administrative office of the courts and
24 the administrative office of the district attorneys, the
25 department shall expunge the arrest information.

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1 B. The record of conviction and prosecution of a
2 person convicted of driving while under the influence of
3 intoxicating liquor or drugs shall be expunged upon request of
4 the person convicted; provided that:

5 (1) seven years have passed between the last
6 day of the convicted person's sentence, including probation or
7 parole, and the date of requesting the expungement; and

8 (2) a check of law enforcement and court
9 records confirms that no subsequent charges of driving while
10 under the influence of intoxicating liquor or drugs are pending
11 and that seven years have passed.

12 [~~B.~~] C. As used in this section:

13 (1) "expunge" means to remove a notation of an
14 arrest placed on a person's state record or federal bureau of
15 investigation record; and

16 (2) "final disposition" means a final outcome
17 following arrest, including nolle prosequi, a dismissal, a
18 decision to not file charges, a referral to a pre-prosecution
19 diversion program, placement on probation or imposition of a
20 fine."

21 Section 3. Section 66-5-5 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 227, as amended by Laws 2007, Chapter 316,
23 Section 1 and by Laws 2007, Chapter 317, Section 1) is amended
24 to read:

25 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall
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1 not issue a driver's license under the Motor Vehicle Code to
2 any person:

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

5 (1) an instruction permit to a person fifteen
6 years of age or over who is enrolled in and attending or has
7 completed a driver education course that includes a DWI
8 education and prevention component approved by the bureau or
9 offered by a public school;

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

12 (a) who has completed a driver education
13 course approved by the bureau or offered by a public school
14 that includes a DWI education and prevention component and has
15 had an instruction permit for at least six months; and

16 (b) who has successfully completed a
17 practice driving component;

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

20 (a) who has had a provisional license
21 for the twelve-month period immediately preceding the date of
22 the application for the driver's license;

23 (b) who has complied with restrictions
24 on that license;

25 (c) who has not been convicted of a

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1 traffic violation that was committed during the ninety days
2 prior to applying for a driver's license; and

3 (d) who has not been adjudicated for an
4 offense involving the use of alcohol or drugs during that
5 period and who has no pending adjudications alleging an offense
6 involving the use of alcohol or drugs at the time of
7 application; and

8 (4) to any person thirteen years of age or
9 older who passes an examination prescribed by the division, a
10 license restricted to the operation of a motorcycle, provided:

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

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

15 (c) the director approves and certifies
16 motorcycles as not in excess of one hundred cubic centimeters
17 displacement and by rule provides for a method of
18 identification of such motorcycles by all law enforcement
19 officers;

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

25 C. who is an habitual user of narcotic drugs or

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1 alcohol or an habitual user of any drug to a degree that
2 renders the person incapable of safely driving a motor vehicle;

3 D. who is four or more times convicted of driving a
4 motor vehicle while under the influence of intoxicating liquor
5 or narcotic drug regardless of whether the convictions are
6 under the laws or ordinances of this state or any municipality
7 or county of this state or under the laws or ordinances of any
8 other state, the District of Columbia or any governmental
9 subdivision thereof, except as provided in the Ignition
10 Interlock Licensing Act. Five years from the date of the
11 fourth or subsequent conviction, [~~and every five years~~
12 ~~thereafter, the person may apply to any district court of this~~
13 ~~state for restoration of the license, and the court, upon good~~
14 ~~cause being shown, may order restoration of the license applied~~
15 ~~for]~~ the person's license shall be restored; provided that the
16 person has not been subsequently convicted of driving a motor
17 vehicle while under the influence of intoxicating liquor or
18 drugs and meets all other conditions for reinstatement. Upon
19 issuance of the order of restoration, a certified copy shall
20 immediately be forwarded to the division, and if the person is
21 otherwise qualified for the license applied for, [~~the four~~
22 ~~previous convictions shall not prohibit issuance of the~~
23 ~~license]~~ the division shall reinstate the license;

24 E. who was convicted on or after June 17, 2005 of
25 driving a motor vehicle while under the influence of

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1 intoxicating liquor or drugs pursuant to the laws or ordinances
2 of any other state, the District of Columbia or any
3 governmental subdivision thereof, unless the person obtains an
4 ignition interlock license as provided in the Ignition
5 Interlock Licensing Act for a period of one year for a first
6 conviction; a period of two years for a second conviction; a
7 period of three years for a third conviction; or ~~[the remainder~~
8 ~~of the offender's life]~~ a period of five years for a fourth or
9 subsequent conviction ~~[subject to a five-year review as~~
10 ~~provided in Subsection D of this section]~~. Upon presentation
11 of proof satisfactory to the division, the division may credit
12 time spent by a person operating a motor vehicle with an
13 ignition interlock or comparable device, as a condition of the
14 person's sentence for a conviction in another jurisdiction
15 pursuant to this subsection, against the ignition interlock
16 time requirements imposed by this subsection. The division
17 shall promulgate rules necessary for granting credit to persons
18 who participate in comparable out-of-state programs following a
19 conviction for driving a motor vehicle while under the
20 influence of intoxicating liquor or drugs. The requirements of
21 this subsection shall not apply to a person who applies for a
22 driver's license ten years or more from the date of the
23 person's last conviction ~~[except for a person who is subject to~~
24 ~~lifetime driver's license revocation for a conviction in~~
25 ~~another jurisdiction pursuant to this subsection]~~ in another

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1 state;

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

7 G. who is required by the Motor Vehicle Code to
8 take an examination, unless the person has successfully passed
9 the examination;

10 H. who is required under the laws of this state to
11 deposit proof of financial responsibility and who has not
12 deposited the proof;

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

16 J. as a motorcycle driver who is less than eighteen
17 years of age and who has not presented a certificate or other
18 evidence of having successfully completed a motorcycle driver
19 education program licensed or offered in conformance with rules
20 of the bureau."

21 Section 4. Section 66-5-29 NMSA 1978 (being Laws 1978,
22 Chapter 35, Section 251, as amended) is amended to read:

23 "66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

24 A. The division shall immediately revoke the
25 driving privilege or driver's license of a driver upon

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1 receiving a record of the driver's adjudication as a delinquent
2 for or conviction of any of the following offenses, whether the
3 offense is under any state law or local ordinance, when the
4 conviction or adjudication has become final:

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

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

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

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

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

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

20 (7) conviction or forfeiture of bail not
21 vacated upon three charges of reckless driving committed within
22 a period of twelve months.

23 B. Except as provided in the Ignition Interlock
24 Licensing Act and in Subsection C, D, E or F of this section, a
25 person whose driving privilege or driver's license has been

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1 revoked under this section shall ~~[not]~~ be entitled to apply for
2 ~~[or]~~ and receive a new license ~~[until one year from the date~~
3 ~~that]~~ when the conviction is final and all rights to an appeal
4 have been exhausted.

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

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

16 (2) for a subsequent offender:

17 (a) two years for a second conviction;

18 (b) three years for a third conviction;

19 or

20 (c) ~~[the remainder of the offender's~~
21 ~~life]~~ five years for a fourth or subsequent conviction ~~[subject~~
22 ~~to a five-year review, as provided in Sections 66-5-5 and~~
23 ~~66-8-102 NMSA 1978]~~.

24 D. The division shall apply the license revocation
25 provisions of Subsection C of this section and the provisions

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1 of Subsection D of Section 66-5-5 NMSA 1978 to a person who was
2 three or more times convicted of driving a motor vehicle under
3 the influence of intoxicating liquor or drugs and who has a
4 driver's license revocation pursuant to the law in effect prior
5 to June 17, 2005, upon the request of the person and if the
6 person has had an ignition interlock license for three years or
7 more and has proof from the ignition interlock vendor of no
8 violations of the ignition interlock device in the previous six
9 months.

10 E. Upon receipt of an order from a court pursuant
11 to Section 32A-2-19 NMSA 1978 or Subsection G of Section
12 32A-2-22 NMSA 1978, the division shall revoke the driver's
13 license or driving privileges for a period of time in
14 accordance with these provisions.

15 F. Upon receipt from a district court of a record
16 of conviction for the offense of shooting at or from a motor
17 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or
18 of a conviction for a conspiracy or an attempt to commit that
19 offense, the division shall revoke the driver's license or
20 driving privileges of the convicted person. A person whose
21 driver's license or driving privilege has been revoked pursuant
22 to the provisions of this subsection shall not be entitled to
23 apply for or receive any new driver's license or driving
24 privilege until one year from the date that the conviction is
25 final and all rights to an appeal have been exhausted."

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1 Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953,
2 Chapter 139, Section 54, as amended) is amended to read:

3 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
4 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
5 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

9 B. It is unlawful for a person who is under the
10 influence of any drug to a degree that renders the person
11 incapable of safely driving a vehicle to drive a vehicle within
12 this state.

13 C. It is unlawful for:

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

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

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

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

8 (2) has caused bodily injury to a human being
9 as a result of the unlawful operation of a motor vehicle while
10 driving under the influence of intoxicating liquor or drugs; or

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

15 E. A person under first conviction pursuant to this
16 section shall be punished, notwithstanding the provisions of
17 Section 31-18-13 NMSA 1978, by imprisonment for not more than
18 ninety days or by a fine of not more than five hundred dollars
19 (\$500), or both; provided that if the sentence is suspended in
20 whole or in part or deferred, the period of probation may
21 extend beyond ninety days but shall not exceed one year. Upon
22 a first conviction pursuant to this section, an offender shall
23 be sentenced to not less than twenty-four hours of community
24 service. In addition, the offender may be required to pay a
25 fine of three hundred dollars (\$300). The offender shall be

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1 ordered by the court to participate in and complete a screening
2 program described in Subsection K of this section and to attend
3 a driver rehabilitation program for alcohol or drugs, also
4 known as a "DWI school", approved by the bureau and also may be
5 required to participate in other rehabilitative services as the
6 court shall determine to be necessary. In addition to those
7 penalties, when an offender commits aggravated driving while
8 under the influence of intoxicating liquor or drugs, the
9 offender shall be sentenced to not less than forty-eight
10 consecutive hours in jail. If an offender fails to complete,
11 within a time specified by the court, any community service,
12 screening program, treatment program or DWI school ordered by
13 the court or fails to comply with any other condition of
14 probation, the offender shall be sentenced to not less than an
15 additional forty-eight consecutive hours in jail. Any jail
16 sentence imposed pursuant to this subsection for failure to
17 complete, within a time specified by the court, any community
18 service, screening program, treatment program or DWI school
19 ordered by the court or for aggravated driving while under the
20 influence of intoxicating liquor or drugs shall not be
21 suspended, deferred or taken under advisement. On a first
22 conviction pursuant to this section, any time spent in jail for
23 the offense prior to the conviction for that offense shall be
24 credited to any term of imprisonment fixed by the court. A
25 deferred sentence pursuant to this subsection shall be

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1 considered a first conviction for the purpose of determining
2 subsequent convictions.

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

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

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1 (2) upon a third conviction, an offender shall
2 be sentenced to a jail term of not less than thirty consecutive
3 days, not less than ninety-six hours of community service and a
4 fine of seven hundred fifty dollars (\$750). In addition to
5 those penalties, when an offender commits aggravated driving
6 while under the influence of intoxicating liquor or drugs, the
7 offender shall be sentenced to a jail term of not less than
8 sixty consecutive days. If an offender fails to complete,
9 within a time specified by the court, any community service,
10 screening program or treatment program ordered by the court,
11 the offender shall be sentenced to not less than an additional
12 sixty consecutive days in jail. A penalty imposed pursuant to
13 this paragraph shall not be suspended or deferred or taken
14 under advisement.

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

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

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1 advisement.

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

8 J. Upon a seventh or subsequent conviction pursuant
9 to this section, an offender is guilty of a third degree felony
10 and, notwithstanding the provisions of Section 31-18-15 NMSA
11 1978, shall be sentenced to a term of imprisonment of three
12 years, two years of which shall not be suspended, deferred or
13 taken under advisement.

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

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

- 25 (1) not less than a twenty-eight-day

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1 inpatient, residential or in-custody substance abuse treatment
2 program approved by the court;

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

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

7 (4) any other substance abuse treatment
8 program approved by the court.

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

11 M. Upon a felony conviction pursuant to this
12 section, the corrections department shall provide substance
13 abuse counseling and treatment to the offender in its custody.
14 While the offender is on probation or parole under its
15 supervision, the corrections department shall also provide
16 substance abuse counseling and treatment to the offender or
17 shall require the offender to obtain substance abuse counseling
18 and treatment.

19 N. Upon a conviction pursuant to this section, an
20 offender shall be required to obtain an ignition interlock
21 license and have an ignition interlock device installed and
22 operating on all motor vehicles driven by the offender,
23 pursuant to rules adopted by the bureau. Unless determined by
24 the sentencing court to be indigent, the offender shall pay all
25 costs associated with having an ignition interlock device

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1 installed on the appropriate motor vehicles. The offender
2 shall operate only those vehicles equipped with ignition
3 interlock devices for:

4 (1) a period of one year, for a first
5 offender;

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

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

10 (4) ~~[the remainder of the offender's life]~~ a
11 period to five years, for a fourth or subsequent conviction
12 pursuant to this section.

13 ~~[0. Five years from the date of conviction and~~
14 ~~every five years thereafter, a fourth or subsequent offender~~
15 ~~may apply to a district court for removal of the ignition~~
16 ~~interlock device requirement provided in this section and for~~
17 ~~restoration of a driver's license. A district court may, for~~
18 ~~good cause shown, remove the ignition interlock device~~
19 ~~requirement and order restoration of the license; provided that~~
20 ~~the offender has not been subsequently convicted of driving a~~
21 ~~motor vehicle while under the influence of intoxicating liquor~~
22 ~~or drugs. Good cause may include an alcohol screening and~~
23 ~~proof from the interlock vendor that the person has not had~~
24 ~~violations of the interlock device.~~

25 P.] 0. In the case of a first, second or third

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1 offense under this section, the magistrate court has concurrent
2 jurisdiction with district courts to try the offender.

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

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

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

25 [T-] S. As used in this section:

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

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

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

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

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

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