

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

HOUSE BILL 207

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

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO THE INTERLOCK DEVICE FUND; CLARIFYING THAT THE TRAFFIC SAFETY BUREAU OF THE DEPARTMENT OF TRANSPORTATION OR THE PAROLE BOARD SHALL DETERMINE ELIGIBILITY FOR ASSISTANCE FROM THE FUND; PROVIDING A STANDARD FOR INDIGENCY; INCREASING THE PERCENTAGE OF THE FUND ALLOWABLE FOR ADMINISTRATIVE COSTS.

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~~] DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING [~~WHILE~~] UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--[~~PENALTY~~] PENALTIES.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this .180635.1SA

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 state.

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

6 C. It is unlawful for:

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

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

19 D. Aggravated driving [~~while~~] under the influence
20 of intoxicating liquor or drugs consists of [~~a person who~~]:

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

.180635.1SA

underscored material = new
[bracketed material] = delete

1 driving the vehicle;

2 (2) [~~has caused~~] causing bodily injury to a
3 human being as a result of the unlawful operation of a motor
4 vehicle while driving under the influence of intoxicating
5 liquor or drugs; or

6 (3) [~~refused~~] refusing to submit to chemical
7 testing, as provided for in the Implied Consent Act, and in the
8 judgment of the court, based upon evidence of intoxication
9 presented to the court, the driver was under the influence of
10 intoxicating liquor or drugs.

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

.180635.1SA

underscored material = new
[bracketed material] = delete

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

25 F. A second or third conviction pursuant to this

.180635.1SA

underscoring material = new
[bracketed material] = delete

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

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

23 (2) upon a third conviction, an offender shall
24 be sentenced to a jail term of not less than thirty consecutive
25 days, not less than ninety-six hours of community service and a

.180635.1SA

underscoring material = new
[bracketed material] = delete

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

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

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

24 I. Upon a sixth conviction pursuant to this
25 section, an offender is guilty of a third degree felony and,

.180635.1SA

underscored material = new
[bracketed material] = delete

1 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
2 shall be sentenced to a term of imprisonment of thirty months,
3 eighteen months of which shall not be suspended, deferred or
4 taken under advisement.

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

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

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

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

25 (2) not less than a ninety-day outpatient

.180635.1SA

underscored material = new
[bracketed material] = delete

1 treatment program approved by the court;

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

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

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

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

16 N. Upon a conviction pursuant to this section, an
17 offender shall be required to obtain an ignition interlock
18 license and have an ignition interlock device installed and
19 operating on all motor vehicles driven by the offender,
20 pursuant to rules adopted by the traffic safety bureau. Unless
21 determined by the ~~[sentencing court]~~ bureau or the parole board
22 to be indigent, the offender shall pay all costs associated
23 with having an ignition interlock device installed on the
24 appropriate motor vehicles. The offender shall operate only
25 those vehicles equipped with ignition interlock devices for:

.180635.1SA

underscoring material = new
[bracketed material] = delete

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

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

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

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

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

21 P. In the case of a first, second or third offense
22 under this section, the magistrate court has concurrent
23 jurisdiction with district courts to try the offender.

24 Q. A conviction pursuant to a municipal or county
25 ordinance in New Mexico or a law of any other jurisdiction,

.180635.1SA

underscoring material = new
[bracketed material] = delete

1 territory or possession of the United States or of a tribe,
2 when that ordinance or law is equivalent to New Mexico law for
3 driving while under the influence of intoxicating liquor or
4 drugs, and prescribes penalties for driving while under the
5 influence of intoxicating liquor or drugs, shall be deemed to
6 be a conviction pursuant to this section for purposes of
7 determining whether a conviction is a second or subsequent
8 conviction.

9 R. In addition to any other fine or fee that may be
10 imposed pursuant to the conviction or other disposition of the
11 offense under this section, the court may order the offender to
12 pay the costs of any court-ordered screening and treatment
13 programs.

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

21 T. As used in this section:

22 (1) "bodily injury" means an injury to a
23 person that is not likely to cause death or great bodily harm
24 to the person, but does cause painful temporary disfigurement
25 or temporary loss or impairment of the functions of any member

.180635.1SA

underscored material = new
[bracketed material] = delete

1 or organ of the person's body; and

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

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

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

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

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

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

18 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
19 CREATED.--

20 A. A fee is imposed on a person convicted of
21 driving ~~[while]~~ under the influence of intoxicating liquor or
22 drugs ~~[pursuant to]~~ in violation of Section 66-8-102 NMSA 1978
23 or adjudicated as a delinquent on the basis of Subparagraph (a)
24 of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978
25 or a person whose driver's license is revoked pursuant to the

.180635.1SA

underscored material = new
[bracketed material] = delete

1 provisions of the Implied Consent Act, in an amount determined
2 by rule of the traffic safety bureau of the department of
3 transportation not to exceed one hundred dollars (\$100) but not
4 less than fifty dollars (\$50.00) for each year the person is
5 required to operate only vehicles equipped with an ignition
6 interlock device in order to ensure the solvency of the
7 interlock device fund. The fee shall not be imposed on an
8 indigent person. The fee imposed by this subsection shall be
9 collected by the vendor who provides an ignition interlock
10 device to the person. The vendor shall remit the fees
11 collected on a quarterly basis to the traffic safety bureau of
12 the department of transportation.

13 B. The "interlock device fund" is created in the
14 state treasury. The fee imposed pursuant to Subsection A of
15 this section shall be distributed to the fund by the traffic
16 safety bureau of the department of transportation.

17 C. All money in the interlock device fund is
18 appropriated to the traffic safety bureau of the department of
19 transportation to cover part of the costs of installing, [and]
20 removing and [~~one-half of the cost of~~] leasing ignition
21 interlock devices for indigent people who are required,
22 pursuant to convictions under Section 66-8-102 NMSA 1978 or
23 adjudications on the basis of Subparagraph (a) of Paragraph (1)
24 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's
25 license revocations pursuant to the provisions of the Implied

.180635.1SA

underscored material = new
[bracketed material] = delete

1 Consent Act or as a condition of parole, to install those
2 devices in their vehicles. The traffic safety bureau shall pay
3 up to fifty dollars (\$50.00) for the cost of installation, up
4 to fifty dollars (\$50.00) for the cost of removal and up to
5 thirty dollars (\$30.00) monthly for verified active usage of
6 the interlock device.

7 D. Indigency shall be determined by the ~~[court]~~
8 traffic safety bureau or the parole board ~~[or a probation and~~
9 ~~parole officer]~~. The traffic safety bureau shall determine
10 indigency based on proof of enrollment in one or more of the
11 following types of public assistance:

12 (1) temporary assistance for needy families;

13 (2) general assistance;

14 (3) the low-income home energy assistance
15 program;

16 (4) the supplemental nutritional assistance
17 program, also known as "food stamps";

18 (5) supplemental security income; or

19 (6) the federal food distribution program on
20 Indian reservations.

21 ~~[D.]~~ E. Any balance remaining in the interlock
22 device fund shall not revert to the general fund at the end of
23 any fiscal year.

24 ~~[E.]~~ F. The interlock device fund shall be
25 administered by the traffic safety bureau of the department

.180635.1SA

underscored material = new
[bracketed material] = delete

1 of transportation. No more than [~~five~~] ten percent of the
2 money in the interlock device fund in any fiscal year shall
3 be expended by the traffic safety bureau of the department of
4 transportation for the purpose of administering the fund."

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