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SENATE BILL 197

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO CRIMINAL LAW; REQUIRING AN ELECTRONIC SOBRIETY MONITORING DEVICE FOR A DWI OFFENDER WHO DOES NOT OWN A MOTOR VEHICLE AND IS UNABLE TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED; PROVIDING FOR AN ELECTRONIC SOBRIETY MONITORING DEVICE AS A CONDITION OF PROBATION OR PAROLE; PROVIDING PAYMENT ASSISTANCE FROM THE INTERLOCK DEVICE FUND; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

**SECTION 1.** Section 31-20-5.2 NMSA 1978 (being Laws 2003 (1st S.S.), Chapter 1, Section 7) is amended to read:

"31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND CONDITIONS OF PROBATION.--

A. When a district court defers imposition of a sentence for a sex offender, or suspends all or any portion of

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1 a sentence for a sex offender, the district court shall include  
2 a provision in the judgment and sentence that specifically  
3 requires the sex offender to serve an indeterminate period of  
4 supervised probation for a period of not less than five years  
5 and not in excess of twenty years. A sex offender's period of  
6 supervised probation may be for a period of less than twenty  
7 years if, at a review hearing provided for in Subsection B of  
8 this section, the state is unable to prove that the sex  
9 offender should remain on probation. Prior to placing a sex  
10 offender on probation, the district court shall conduct a  
11 hearing to determine the terms and conditions of supervised  
12 probation for the sex offender. The district court may  
13 consider any relevant factors, including:

14 (1) the nature and circumstances of the  
15 offense for which the sex offender was convicted or  
16 adjudicated;

17 (2) the nature and circumstances of a prior  
18 sex offense committed by the sex offender;

19 (3) rehabilitation efforts engaged in by the  
20 sex offender, including participation in treatment programs  
21 while incarcerated or elsewhere;

22 (4) the danger to the community posed by the  
23 sex offender; and

24 (5) a risk and needs assessment regarding the  
25 sex offender, developed by the sex offender management board of

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1 the New Mexico sentencing commission or another appropriate  
2 entity, to be used by appropriate district court personnel.

3 B. A district court shall review the terms and  
4 conditions of a sex offender's supervised probation at two and  
5 one-half year intervals. When a sex offender has served the  
6 initial five years of supervised probation, the district court  
7 shall also review the duration of the sex offender's supervised  
8 probation at two and one-half year intervals. When a sex  
9 offender has served the initial five years of supervised  
10 probation, at each review hearing the state shall bear the  
11 burden of proving to a reasonable certainty that the sex  
12 offender should remain on probation.

13 C. The district court may order a sex offender  
14 placed on probation to abide by reasonable terms and conditions  
15 of probation, including:

16 (1) being subject to intensive supervision by  
17 a probation officer of the corrections department;

18 (2) participating in an outpatient or  
19 inpatient sex offender treatment program;

20 (3) a probationary agreement by the sex  
21 offender not to use alcohol or drugs;

22 (4) a probationary agreement by the sex  
23 offender not to have contact with certain persons or classes of  
24 persons; ~~and~~

25 (5) being subject to alcohol testing, drug

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1 testing or polygraph examinations used to determine if the sex  
2 offender is in compliance with the terms and conditions of  
3 [~~his~~] the sex offender's probation; and

4 (6) obtaining and using, on a frequency  
5 specified by the court, an electronic sobriety monitoring  
6 device available in the jurisdiction and approved by the court.

7 D. The district court shall notify the sex  
8 offender's counsel of record of an upcoming probation hearing  
9 for a sex offender, and the sex offender's counsel of record  
10 shall represent the sex offender at the probation hearing.  
11 When a sex offender's counsel of record provides the court with  
12 good cause that the counsel of record should not represent the  
13 sex offender at the probation hearing and the sex offender is  
14 subsequently unable to obtain counsel, the district court shall  
15 notify the chief public defender of the upcoming probation  
16 hearing and the chief public defender shall make representation  
17 available to the sex offender at that hearing.

18 E. If the district court finds that a sex offender  
19 has violated the terms and conditions of [~~his~~] the sex  
20 offender's probation, the district court may revoke [~~his~~] the  
21 sex offender's probation or may order additional terms and  
22 conditions of probation.

23 F. As used in this section, "sex offender" means a  
24 person who is convicted of, pleads guilty to or pleads nolo  
25 contendere to any one of the following offenses:

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1                   (1) kidnapping, as provided in Section 30-4-1  
2 NMSA 1978, when committed with intent to inflict a sexual  
3 offense upon the victim;

4                   (2) criminal sexual penetration in the first,  
5 second or third degree, as provided in Section 30-9-11 NMSA  
6 1978;

7                   (3) criminal sexual contact of a minor in the  
8 second or third degree, as provided in Section 30-9-13 NMSA  
9 1978;

10                   (4) sexual exploitation of children in the  
11 second degree, as provided in Section 30-6A-3 NMSA 1978; or

12                   (5) sexual exploitation of children by  
13 prostitution in the first or second degree, as provided in  
14 Section 30-6A-4 NMSA 1978."

15           **SECTION 2.** Section 31-20-6 NMSA 1978 (being Laws 1963,  
16 Chapter 303, Section 29-18, as amended) is amended to read:

17           "31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING  
18 SENTENCE.--The magistrate, metropolitan or district court shall  
19 attach to its order deferring or suspending sentence reasonable  
20 conditions as it may deem necessary to ensure that the  
21 defendant will observe the laws of the United States and the  
22 various states and the ordinances of any municipality. The  
23 defendant upon conviction shall be required to reimburse a law  
24 enforcement agency or local crime stopper program for the  
25 amount of any reward paid by the agency or program for

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1 information leading to the defendant's arrest, prosecution or  
2 conviction, but in no event shall reimbursement to the crime  
3 stopper program preempt restitution to victims pursuant to the  
4 provisions of Section 31-17-1 NMSA 1978. The defendant upon  
5 conviction shall be required to pay the actual costs of the  
6 defendant's supervised probation service to the adult probation  
7 and parole division of the corrections department or  
8 appropriate responsible agency for deposit to the corrections  
9 department intensive supervision fund not exceeding one  
10 thousand eight hundred dollars (\$1,800) annually to be paid in  
11 monthly installments of not less than twenty-five dollars  
12 (\$25.00) and not more than one hundred fifty dollars (\$150), as  
13 set by the appropriate district supervisor of the adult  
14 probation and parole division, based upon the financial  
15 circumstances of the defendant. The defendant's payment of the  
16 supervised probation costs shall not be waived unless the court  
17 holds an evidentiary hearing and finds that the defendant is  
18 unable to pay the costs. If the court waives the defendant's  
19 payment of the supervised probation costs and the defendant's  
20 financial circumstances subsequently change so that the  
21 defendant is able to pay the costs, the appropriate district  
22 supervisor of the adult probation and parole division shall  
23 advise the court and the court shall hold an evidentiary  
24 hearing to determine whether the waiver should be rescinded.  
25 The court may also require the defendant to:

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1           A. provide for the support of persons for whose  
2 support the defendant is legally responsible;

3           B. undergo available medical or psychiatric  
4 treatment and enter and remain in a specified institution when  
5 required for that purpose;

6           C. be placed on probation under the supervision,  
7 guidance or direction of the adult probation and parole  
8 division for a term not to exceed five years;

9           D. serve a period of time in volunteer labor to be  
10 known as "community service". The type of labor and period of  
11 service shall be at the sole discretion of the court; provided  
12 that a person receiving community service shall be immune from  
13 any civil liability other than gross negligence arising out of  
14 the community service, and a person who performs community  
15 service pursuant to court order or a criminal diversion program  
16 shall not be entitled to wages, shall not be considered an  
17 employee and shall not be entitled to workers' compensation,  
18 unemployment benefits or any other benefits otherwise provided  
19 by law. As used in this subsection, "community service" means  
20 labor that benefits the public at large or a public, charitable  
21 or educational entity or institution;

22           E. make a contribution of not less than ten dollars  
23 (\$10.00) and not more than one hundred dollars (\$100), to be  
24 paid in monthly installments of not less than five dollars  
25 (\$5.00), to a local crime stopper program, a local domestic

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1 violence prevention or treatment program or a local drug abuse  
2 resistance education program that operates in the territorial  
3 jurisdiction of the court; ~~and~~

4 F. obtain and use, on a frequency specified by the  
5 court, an electronic sobriety monitoring device available in  
6 the jurisdiction and approved by the court; and

7 ~~[F.]~~ G. satisfy any other conditions reasonably  
8 related to the defendant's rehabilitation."

9 SECTION 3. Section 31-21-10.1 NMSA 1978 (being Laws 2003  
10 (1st S.S.), Chapter 1, Section 9, as amended by Laws 2007,  
11 Chapter 68, Section 4 and by Laws 2007, Chapter 69, Section 4)  
12 is amended to read:

13 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND  
14 CONDITIONS OF PAROLE.--

15 A. If the district court sentences a sex offender  
16 to a term of incarceration in a facility designated by the  
17 corrections department, the district court shall include a  
18 provision in the judgment and sentence that specifically  
19 requires the sex offender to serve an indeterminate period of  
20 supervised parole for a period of:

21 (1) not less than five years and not in excess  
22 of twenty years for the offense of kidnapping when committed  
23 with intent to inflict a sexual offense upon the victim,  
24 criminal sexual penetration in the third degree, criminal  
25 sexual contact of a minor in the fourth degree, ~~[or]~~ sexual

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1 exploitation of children in the second degree or child  
2 solicitation by electronic communication device; or

3 (2) not less than five years and up to the  
4 natural life of the sex offender for the offense of aggravated  
5 criminal sexual penetration, criminal sexual penetration in the  
6 first or second degree, criminal sexual contact of a minor in  
7 the second or third degree or sexual exploitation of children  
8 by prostitution in the first or second degree.

9 A sex offender's period of supervised parole may be for a  
10 period of less than the maximum if, at a review hearing  
11 provided for in Subsection C of this section, the state is  
12 unable to prove that the sex offender should remain on parole.

13 B. Prior to placing a sex offender on parole, the  
14 board shall conduct a hearing to determine the terms and  
15 conditions of supervised parole for the sex offender. The  
16 board may consider any relevant factors, including:

17 (1) the nature and circumstances of the  
18 offense for which the sex offender was incarcerated;

19 (2) the nature and circumstances of a prior  
20 sex offense committed by the sex offender;

21 (3) rehabilitation efforts engaged in by the  
22 sex offender, including participation in treatment programs  
23 while incarcerated or elsewhere;

24 (4) the danger to the community posed by the  
25 sex offender; and

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1 (5) a risk and needs assessment regarding the  
2 sex offender, developed by the sex offender management board of  
3 the New Mexico sentencing commission or another appropriate  
4 entity, to be used by appropriate parole board personnel.

5 C. When a sex offender has served the initial five  
6 years of supervised parole, and at two and one-half year  
7 intervals thereafter, the board shall review the duration of  
8 the sex offender's supervised parole. At each review hearing,  
9 the attorney general shall bear the burden of proving by clear  
10 and convincing evidence that the sex offender should remain on  
11 parole.

12 D. The board may order a sex offender released on  
13 parole to abide by reasonable terms and conditions of parole,  
14 including:

15 (1) being subject to intensive supervision by  
16 a parole officer of the corrections department;

17 (2) participating in an outpatient or  
18 inpatient sex offender treatment program;

19 (3) a parole agreement by the sex offender not  
20 to use alcohol or drugs;

21 (4) a parole agreement by the sex offender not  
22 to have contact with certain persons or classes of persons;

23 [~~and~~]

24 (5) being subject to alcohol testing, drug  
25 testing or polygraph examinations used to determine if the sex

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1 offender is in compliance with the terms and conditions of the  
2 sex offender's parole; and

3 (6) obtaining and using, on a frequency  
4 specified by the board, an electronic sobriety monitoring  
5 device available in the jurisdiction and approved by the court.

6 E. The board shall require electronic real-time  
7 monitoring of every sex offender released on parole for the  
8 entire time the sex offender is on parole. The electronic  
9 monitoring shall use global positioning system monitoring  
10 technology or any successor technology that would give  
11 continuous information on the sex offender's whereabouts and  
12 enable law enforcement and the corrections department to  
13 determine the real-time position of a sex offender to a high  
14 level of accuracy.

15 F. The board shall notify the chief public defender  
16 of an upcoming parole hearing for a sex offender pursuant to  
17 Subsection C of this section, and the chief public defender  
18 shall make representation available to the sex offender at the  
19 parole hearing.

20 G. If the board finds that a sex offender has  
21 violated the terms and conditions of the sex offender's parole,  
22 the board may revoke the sex offender's parole or may modify  
23 the terms and conditions of parole.

24 H. The provisions of this section shall apply to  
25 all sex offenders, except geriatric, permanently incapacitated

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1 and terminally ill inmates eligible for the medical and  
2 geriatric parole program as provided by the Parole Board Act.

3 I. As used in this section, "sex offender" means a  
4 person who is convicted of, pleads guilty to or pleads nolo  
5 contendere to any one of the following offenses:

6 (1) kidnapping, as provided in  
7 Section 30-4-1 NMSA 1978, when committed with intent to inflict  
8 a sexual offense upon the victim;

9 (2) aggravated criminal sexual penetration or  
10 criminal sexual penetration in the first, second or third  
11 degree, as provided in Section 30-9-11 NMSA 1978;

12 (3) criminal sexual contact of a minor in the  
13 second, third or fourth degree, as provided in Section  
14 30-9-13 NMSA 1978;

15 (4) sexual exploitation of children in the  
16 second degree, as provided in Section 30-6A-3 NMSA 1978;

17 (5) sexual exploitation of children by  
18 prostitution in the first or second degree, as provided in  
19 Section 30-6A-4 NMSA 1978; or

20 (6) child solicitation by electronic  
21 communication device, as provided in Section 30-37-3.2 NMSA  
22 1978."

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

25 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING

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1 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
2 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

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

10 C. It is unlawful for:

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

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

23 D. Aggravated driving under the influence of  
24 intoxicating liquor or drugs consists of:

25 (1) driving a vehicle in this state with an

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1 alcohol concentration of sixteen one hundredths or more in the  
2 driver's blood or breath within three hours of driving the  
3 vehicle and the alcohol concentration results from alcohol  
4 consumed before or while driving the vehicle;

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

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

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

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

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

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

24 (2) upon a third conviction, an offender shall  
25 be sentenced to a jail term of not less than thirty consecutive

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

13 G. Upon a fourth 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 eighteen  
17 months, six months of which shall not be suspended, deferred or  
18 taken under advisement.

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

25 I. Upon a sixth conviction pursuant to this

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

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

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

20 L. Upon any conviction pursuant to this section,  
21 the court may, as a condition of probation, require an offender  
22 to obtain and use, on a frequency specified by the court, an  
23 electronic sobriety monitoring device available in the  
24 jurisdiction and approved by the court. Unless determined by  
25 the bureau to be indigent, the offender shall pay all costs

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1 associated with the sobriety monitoring device.

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

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

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

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

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

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

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

24 ~~[N.]~~ O. Upon a conviction pursuant to this section,  
25 an offender shall be required to obtain an ignition interlock

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1 license and have an ignition interlock device installed and  
2 operating on all motor vehicles driven by the offender,  
3 pursuant to rules adopted by the traffic safety bureau. Unless  
4 determined by the bureau to be indigent, the offender shall pay  
5 all costs associated with having an ignition interlock device  
6 installed on the appropriate motor vehicles. The offender  
7 shall operate only those vehicles equipped with ignition  
8 interlock devices for:

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

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

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

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

17 [~~0-~~] P. Five years from the date of conviction and  
18 every five years thereafter, a fourth or subsequent offender  
19 may apply to a district court for removal of the ignition  
20 interlock device requirement provided in this section and for  
21 restoration of a driver's license. A district court may, for  
22 good cause shown, remove the ignition interlock device  
23 requirement and order restoration of the license; provided that  
24 the offender has not been subsequently convicted of driving a  
25 motor vehicle under the influence of intoxicating liquor or

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1 drugs. Good cause may include an alcohol screening and proof  
2 from the interlock vendor that the person has not had  
3 violations of the interlock device.

4 Q. If an offender states under oath that the  
5 offender does not own a motor vehicle or have access to a motor  
6 vehicle and is therefore unable to have an ignition interlock  
7 device installed pursuant to Subsection O of this section, the  
8 court shall order the offender to obtain and use, on a  
9 frequency specified by the court, an electronic sobriety  
10 monitoring device available in the jurisdiction and approved by  
11 the court. Use of the electronic sobriety monitoring device  
12 shall be for the periods of time specified in Subsections O and  
13 P of this section or until the offender obtains an ignition  
14 interlock license and has an ignition interlock device  
15 installed and operating on all motor vehicles driven by the  
16 offender; provided that the total time of the use of a sobriety  
17 monitoring device and an ignition interlock device is in  
18 accordance with the time periods specified in Subsections O and  
19 P of this section. The offender shall pay all costs associated  
20 with the electronic sobriety monitoring device, unless  
21 determined to be indigent by the bureau.

22 [P-] R. An offender who obtains an ignition  
23 interlock license and installs an ignition interlock device  
24 prior to conviction shall be given credit at sentencing for the  
25 time period the ignition interlock device has been in use.

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1           [Q-] S. 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           [R-] T. 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 under the influence of intoxicating  
9 liquor or drugs, and prescribes penalties for driving under the  
10 influence of intoxicating liquor or drugs, shall be deemed to  
11 be a conviction pursuant to this section for purposes of  
12 determining whether a conviction is a second or subsequent  
13 conviction.

14           [S-] U. 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           [T-] V. 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.

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1                   [~~U-~~] W. 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 5.** 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

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1 driving under the influence of intoxicating liquor or drugs in  
2 violation of Section 66-8-102 NMSA 1978 or adjudicated as a  
3 delinquent on the basis of Subparagraph (a) of Paragraph (1) of  
4 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 an electronic sobriety monitoring device in  
12 order to ensure the solvency of the interlock device fund. The  
13 fee shall not be imposed on an indigent person.

14 B. The "interlock device fund" is created in the  
15 state treasury. The fee imposed pursuant to Subsection A of  
16 this section shall be collected by the motor vehicle division  
17 of the taxation and revenue department and deposited in the  
18 interlock device fund.

19 C. All money in the interlock device fund is  
20 appropriated to the traffic safety bureau of the department of  
21 transportation to cover part of the costs of installing,  
22 removing and leasing ignition interlock devices or leasing  
23 electronic sobriety monitoring devices for indigent people who  
24 are required, pursuant to convictions under Section 66-8-102  
25 NMSA 1978 or adjudications on the basis of Subparagraph (a) of

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1 Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or  
2 driver's license revocations pursuant to the provisions of the  
3 Implied Consent Act or as a condition of parole, to install  
4 [~~these~~] ignition interlock devices in their vehicles or to use  
5 electronic sobriety monitoring devices. Provided that money is  
6 available in the interlock device fund, the traffic safety  
7 bureau shall pay:

8 (1) for one vehicle per offender, up to fifty  
9 dollars (\$50.00) for the cost of installation, up to fifty  
10 dollars (\$50.00) for the cost of removal and up to thirty  
11 dollars (\$30.00) monthly for verified active usage of the  
12 interlock device; or

13 (2) up to thirty dollars (\$30.00) monthly  
14 toward the lease and use of an electronic sobriety monitoring  
15 device.

16 D. The traffic safety bureau shall not pay any  
17 amount above what an offender would be required to pay for the  
18 installation, removal or usage of an interlock device or for  
19 the lease of an electronic sobriety monitoring device.

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

- 23 (1) temporary assistance for needy families;  
24 (2) general assistance;  
25 (3) the supplemental nutritional assistance

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- 1 program, also known as "food stamps";
- 2 (4) supplemental security income;
- 3 (5) the federal food distribution program on
- 4 Indian reservations; or
- 5 (6) other criteria approved by the traffic
- 6 safety bureau.

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

10 ~~[F.]~~ G. The interlock device fund shall be  
11 administered by the traffic safety bureau of the department of  
12 transportation. No more than ten percent of the money in the  
13 interlock device fund in any fiscal year shall be expended by  
14 the traffic safety bureau of the department of transportation  
15 for the purpose of administering the fund."

16 **SECTION 6. EFFECTIVE DATE.**--The effective date of the  
17 provisions of this act is July 1, 2011.