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HOUSE BILL 49

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Stephanie Garcia Richard

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; INCREASING THE REQUIREMENTS FOR REMOVAL OF AN  
IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S  
LICENSE; PROVIDING THAT PERSONS WHO DO NOT OBTAIN AN IGNITION  
INTERLOCK DEVICE AND LICENSE SHALL BE REQUIRED TO MAINTAIN  
SOBRIETY; REQUIRING BREATHALYZER DEVICES; PROVIDING ASSISTANCE  
FOR BREATHALYZER DEVICES FROM THE INTERLOCK DEVICE FUND.

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

**SECTION 1.** Section 66-5-33.1 NMSA 1978 (being Laws 1985,  
Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR  
REGISTRATION--IGNITION INTERLOCK--SOBRIETY MONITORING--FEE.--

A. Whenever a driver's license or registration is  
suspended or revoked and an application has been made for its

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1 reinstatement, compliance with all appropriate provisions of  
2 the Motor Vehicle Code and the payment of a fee of twenty-five  
3 dollars (\$25.00) is a prerequisite to the reinstatement of any  
4 license or registration.

5 B. If a driver's license was revoked for driving  
6 while under the influence of intoxicating liquor or drugs, for  
7 aggravated driving while under the influence of intoxicating  
8 liquor or drugs or pursuant to the Implied Consent Act, the  
9 following are required to reinstate the driver's license:

10 (1) an additional fee of seventy-five dollars  
11 (\$75.00);

12 (2) completion of the license revocation  
13 period;

14 (3) satisfaction of any court-ordered ignition  
15 interlock or sobriety monitoring requirements; [~~and~~]

16 (4) a minimum of six months of driving with an  
17 ignition interlock license with no attempts to circumvent or  
18 tamper with the ignition interlock device or a minimum of six  
19 months of successful participation in a court-ordered sobriety  
20 monitoring program;

21 (5) evidence that the ignition interlock or  
22 sobriety monitoring device has recorded no more than two tests  
23 at a level greater than five one hundredths alcohol  
24 concentration during the most recent six months of ignition  
25 interlock or sobriety monitoring prior to reinstatement of the

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1 unrestricted driver's license; and

2 (6) for a person with an ignition interlock  
3 device, evidence of at least twenty ignition interlock tests  
4 during those six months, administered at least one week apart.

5 C. The department may reinstate the driving  
6 privileges of an out-of-state resident without the requirement  
7 that the person obtain an ignition interlock license for a  
8 minimum of six months, if the following conditions are met:

9 (1) the license revocation period is  
10 completed;

11 (2) satisfactory proof is presented to the  
12 department that the person is no longer a resident of New  
13 Mexico; and

14 (3) the license reinstatement fee is paid.

15 D. Fees collected pursuant to Subsection B of this  
16 section are appropriated to the local governments road fund.  
17 The department shall maintain an accounting of the fees  
18 collected and shall report that amount upon request to the  
19 legislature."

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

22 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING  
23 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF  
24 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

25 A. It is unlawful for a person who is under the

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1 influence of intoxicating liquor to drive a vehicle within this  
2 state.

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

7 C. It is unlawful for:

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

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

20 D. Aggravated driving under the influence of  
21 intoxicating liquor or drugs consists of:

22 (1) driving a vehicle in this state with an  
23 alcohol concentration of sixteen one hundredths or more in the  
24 driver's blood or breath within three hours of driving the  
25 vehicle and the alcohol concentration results from alcohol

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1 consumed before or while driving the vehicle;

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

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

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

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

23 F. A second or third conviction pursuant to this  
24 section shall be punished, notwithstanding the provisions of  
25 Section 31-18-13 NMSA 1978, by imprisonment for not more than

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

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

21 (2) upon a third conviction, an offender shall  
22 be sentenced to a jail term of not less than thirty consecutive  
23 days, not less than ninety-six hours of community service and a  
24 fine of seven hundred fifty dollars (\$750). In addition to  
25 those penalties, when an offender commits aggravated driving

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

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

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

22 I. Upon a sixth conviction pursuant to this  
23 section, an offender is guilty of a third degree felony and,  
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
25 shall be sentenced to a term of imprisonment of thirty months,

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1     eighteen months of which shall not be suspended, deferred or  
2     taken under advisement.

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

9             K. Upon an eighth or subsequent conviction pursuant  
10    to this section, an offender is guilty of a second degree  
11    felony and, notwithstanding the provisions of Section 31-18-15  
12    NMSA 1978, shall be sentenced to a term of imprisonment of  
13    twelve years, ten years of which shall not be suspended,  
14    deferred or taken under advisement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Q. An offender who obtains an ignition interlock

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1 license and installs an ignition interlock device prior to  
2 conviction shall be given credit at sentencing for the time  
3 period the ignition interlock device has been in use.

4 R. An offender who has not installed an ignition  
5 interlock device and has not obtained an ignition interlock  
6 license shall be required to maintain sobriety and to  
7 participate in a court-approved sobriety monitoring program for  
8 the same period as the ignition interlock requirement in  
9 Subsection 0 of this section or until the end of the period of  
10 supervision by the court in the matter, whichever is shorter.  
11 The court-approved sobriety monitoring program may include the  
12 use of a breathalyzer device that identifies the person giving  
13 the sample, pursuant to rules adopted by the bureau. Sobriety  
14 shall be monitored at least twice daily. After twelve months  
15 of monitored sobriety, the court may reduce the frequency of  
16 monitoring. Failure to maintain sobriety or to comply with the  
17 monitoring program may result in a jail term of forty-eight  
18 hours for each failure to maintain sobriety or to comply with  
19 the monitoring program. Unless determined by the bureau to be  
20 indigent, the offender shall pay all costs associated with  
21 sobriety monitoring. Upon the offender installing an ignition  
22 interlock device and obtaining an ignition interlock license,  
23 the court may suspend the sobriety maintenance and monitoring  
24 requirements. The time spent successfully maintaining sobriety  
25 shall be credited toward the time required in Subsection 0 of

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1 this section to have the ignition interlock device and license  
2 and shall be credited to the six-month interlock requirement  
3 pursuant to Section 66-5-33.1 NMSA 1978.

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

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

17 [F-] U. In addition to any other fine or fee that  
18 may be imposed pursuant to the conviction or other disposition  
19 of the offense under this section, the court may order the  
20 offender to pay the costs of any court-ordered screening and  
21 treatment programs.

22 [U-] V. With respect to this section and  
23 notwithstanding any provision of law to the contrary, if an  
24 offender's sentence was suspended or deferred in whole or in  
25 part and the offender violates any condition of probation, the

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1 court may impose any sentence that the court could have  
2 originally imposed and credit shall not be given for time  
3 served by the offender on probation.

4 [V-] W. As used in this section:

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

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

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

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

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

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

24 **SECTION 3.** Section 66-8-102.3 NMSA 1978 (being Laws 2002,  
25 Chapter 82, Section 2, as amended) is amended to read:

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1 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND  
2 CREATED.--

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

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

22 C. All money in the interlock device fund is  
23 appropriated to the [~~traffic safety~~] bureau [~~of the department~~  
24 ~~of transportation~~] to cover part of the costs of installing,  
25 removing and leasing ignition interlock devices or leasing

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1 breathalyzer devices for indigent people who are required,  
2 pursuant to convictions under Section 66-8-102 NMSA 1978 or  
3 adjudications on the basis of Subparagraph (a) of Paragraph (1)  
4 of Subsection A of Section 32A-2-3 NMSA 1978 or driver's  
5 license revocations pursuant to the provisions of the Implied  
6 Consent Act or as a condition of parole, to install [~~these~~]  
7 ignition interlock devices in their vehicles or to use a  
8 breathalyzer device. Provided that money is available in the  
9 interlock device fund, the [~~traffic safety~~] bureau shall pay:

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

15 (2) up to thirty dollars (\$30.00) monthly  
16 toward the lease and use of a breathalyzer device.

17 D. The [~~traffic safety~~] bureau shall not pay any  
18 amount above what an offender would be required to pay for the  
19 installation, removal or usage of an interlock device or for  
20 the lease of a breathalyzer device.

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

- 24 (1) temporary assistance for needy families;  
25 (2) general assistance;

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1 (3) the supplemental [~~nutritional~~] nutrition  
2 assistance program, also known as "food stamps";

3 (4) supplemental security income;

4 (5) the federal food distribution program on  
5 Indian reservations; or

6 (6) other criteria approved by the [~~traffic~~  
7 ~~safety~~] bureau.

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

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

17 SECTION 4. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2017.