



The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 29

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 207

Introduced by



Chapter 29

AN ACT

1
2 RELATING TO THE INTERLOCK DEVICE FUND; PROVIDING THAT THE
3 TRAFFIC SAFETY BUREAU OF THE DEPARTMENT OF TRANSPORTATION
4 SHALL DETERMINE ELIGIBILITY FOR ASSISTANCE FROM THE FUND;
5 PROVIDING A STANDARD FOR INDIGENCY; MODIFYING THE ASSISTANCE
6 PROVIDED FROM THE FUND; REQUIRING CREDIT AT SENTENCING FOR USE
7 OF INTERLOCK DEVICE; INCREASING THE PERCENTAGE OF THE FUND
8 ALLOWABLE FOR ADMINISTRATIVE COSTS.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
14 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
15 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

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

19 B. It is unlawful for a person who is under the
20 influence of any drug to a degree that renders the person
21 incapable of safely driving a vehicle to drive a vehicle
22 within this state.

23 C. It is unlawful for:

24 (1) a person to drive a vehicle in this
25 state if the person has an alcohol concentration of eight one

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

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

11 D. Aggravated driving under the influence of
12 intoxicating liquor or drugs consists of:

13 (1) driving a vehicle in this state with an
14 alcohol concentration of sixteen one hundredths or more in the
15 driver's blood or breath within three hours of driving the
16 vehicle and the alcohol concentration results from alcohol
17 consumed before or while driving the vehicle;

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

22 (3) refusing to submit to chemical testing,
23 as provided for in the Implied Consent Act, and in the
24 judgment of the court, based upon evidence of intoxication
25 presented to the court, the driver was under the influence of

1 intoxicating liquor or drugs.

2 E. A first conviction pursuant to this section
3 shall be punished, notwithstanding the provisions of Section
4 31-18-13 NMSA 1978, by imprisonment for not more than ninety
5 days or by a fine of not more than five hundred dollars
6 (\$500), or both; provided that if the sentence is suspended in
7 whole or in part or deferred, the period of probation may
8 extend beyond ninety days but shall not exceed one year. Upon
9 a first conviction pursuant to this section, an offender shall
10 be sentenced to not less than twenty-four hours of community
11 service. In addition, the offender may be required to pay a
12 fine of three hundred dollars (\$300). The offender shall be
13 ordered by the court to participate in and complete a
14 screening program described in Subsection K of this section
15 and to attend a driver rehabilitation program for alcohol or
16 drugs, also known as a "DWI school", approved by the bureau
17 and also may be required to participate in other
18 rehabilitative services as the court shall determine to be
19 necessary. In addition to those penalties, when an offender
20 commits aggravated driving under the influence of intoxicating
21 liquor or drugs, the offender shall be sentenced to not less
22 than forty-eight consecutive hours in jail. If an offender
23 fails to complete, within a time specified by the court, any
24 community service, screening program, treatment program or DWI
25 school ordered by the court or fails to comply with any other

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

15 F. A second or third 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 three hundred sixty-four days or by a fine of not more than
19 one thousand dollars (\$1,000), or both; provided that if the
20 sentence is suspended in whole or in part, the period of
21 probation may extend beyond one year but shall not exceed five
22 years. Notwithstanding any provision of law to the contrary
23 for suspension or deferment of execution of a sentence:

24 (1) upon a second conviction, an offender
25 shall be sentenced to a jail term of not less than ninety-six

1 consecutive hours, not less than forty-eight hours of
2 community service and a fine of five hundred dollars (\$500).

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

13 (2) upon a third conviction, an offender
14 shall be sentenced to a jail term of not less than thirty
15 consecutive days, not less than ninety-six hours of community
16 service and a fine of seven hundred fifty dollars (\$750). In
17 addition to those penalties, when an offender commits
18 aggravated driving under the influence of intoxicating liquor
19 or drugs, the offender shall be sentenced to a jail term of
20 not less than sixty consecutive days. If an offender fails to
21 complete, within a time specified by the court, any community
22 service, screening program or treatment program ordered by the
23 court, the offender shall be sentenced to not less than an
24 additional sixty consecutive days in jail. A penalty imposed
25 pursuant to this paragraph shall not be suspended or deferred

1 or taken under advisement.

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

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

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

20 J. Upon a seventh or subsequent conviction
21 pursuant to this section, an offender is guilty of a third
22 degree felony and, notwithstanding the provisions of Section
23 31-18-15 NMSA 1978, shall be sentenced to a term of
24 imprisonment of three years, two years of which shall not be
25 suspended, deferred or taken under advisement.

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

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

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

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

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

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

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

23 M. Upon a felony conviction pursuant to this
24 section, the corrections department shall provide substance
25 abuse counseling and treatment to the offender in its custody.

1 While the offender is on probation or parole under its
2 supervision, the corrections department shall also provide
3 substance abuse counseling and treatment to the offender or
4 shall require the offender to obtain substance abuse
5 counseling and treatment.

6 N. Upon a conviction pursuant to this section, an
7 offender shall be required to obtain an ignition interlock
8 license and have an ignition interlock device installed and
9 operating on all motor vehicles driven by the offender,
10 pursuant to rules adopted by the traffic safety bureau.

11 Unless determined by the bureau to be indigent, the offender
12 shall pay all costs associated with having an ignition
13 interlock device installed on the appropriate motor vehicles.
14 The offender shall operate only those vehicles equipped with
15 ignition interlock devices for:

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

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

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

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

25 O. Five years from the date of conviction and

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

12 P. An offender who obtains an ignition interlock
13 license and installs an ignition interlock device prior to
14 conviction shall be given credit at sentencing for the time
15 period the ignition interlock device has been in use.

16 Q. In the case of a first, second or third offense
17 under this section, the magistrate court has concurrent
18 jurisdiction with district courts to try the offender.

19 R. A conviction pursuant to a municipal or county
20 ordinance in New Mexico or a law of any other jurisdiction,
21 territory or possession of the United States or of a tribe,
22 when that ordinance or law is equivalent to New Mexico law for
23 driving under the influence of intoxicating liquor or drugs,
24 and prescribes penalties for driving under the influence of
25 intoxicating liquor or drugs, shall be deemed to be a

1 conviction pursuant to this section for purposes of
2 determining whether a conviction is a second or subsequent
3 conviction.

4 S. In addition to any other fine or fee that may
5 be imposed pursuant to the conviction or other disposition of
6 the offense under this section, the court may order the
7 offender to pay the costs of any court-ordered screening and
8 treatment programs.

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

16 U. As used in this section:

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

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

25 (a) has a gross combination weight

1 rating of more than twenty-six thousand pounds inclusive of a
2 towed unit with a gross vehicle weight rating of more than ten
3 thousand pounds;

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

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

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

11 Section 2. Section 66-8-102.3 NMSA 1978 (being Laws
12 2002, Chapter 82, Section 2, as amended) is amended to read:

13 "66-8-102.3. IMPOSING A FEE--INTERLOCK DEVICE FUND
14 CREATED.--

15 A. A fee is imposed on a person convicted of
16 driving under the influence of intoxicating liquor or drugs in
17 violation of Section 66-8-102 NMSA 1978 or adjudicated as a
18 delinquent on the basis of Subparagraph (a) of Paragraph (1)
19 of Subsection A of Section 32A-2-3 NMSA 1978 or a person whose
20 driver's license is revoked pursuant to the provisions of the
21 Implied Consent Act, in an amount determined by rule of the
22 traffic safety bureau of the department of transportation not
23 to exceed one hundred dollars (\$100) but not less than fifty
24 dollars (\$50.00) for each year the person is required to
25 operate only vehicles equipped with an ignition interlock

1 device in order to ensure the solvency of the interlock device
2 fund. The fee shall not be imposed on an indigent person.

3 B. The "interlock device fund" is created in the
4 state treasury. The fee imposed pursuant to Subsection A of
5 this section shall be collected by the motor vehicle division
6 of the taxation and revenue department and deposited in the
7 interlock device fund.

8 C. All money in the interlock device fund is
9 appropriated to the traffic safety bureau of the department of
10 transportation to cover part of the costs of installing,
11 removing and leasing ignition interlock devices for indigent
12 people who are required, pursuant to convictions under Section
13 66-8-102 NMSA 1978 or adjudications on the basis of
14 Subparagraph (a) of Paragraph (1) of Subsection A of Section
15 32A-2-3 NMSA 1978 or driver's license revocations pursuant to
16 the provisions of the Implied Consent Act or as a condition of
17 parole, to install those devices in their vehicles. Provided
18 that money is available in the interlock device fund, the
19 traffic safety bureau shall pay, for one vehicle per offender,
20 up to fifty dollars (\$50.00) for the cost of installation, up
21 to fifty dollars (\$50.00) for the cost of removal and up to
22 thirty dollars (\$30.00) monthly for verified active usage of
23 the interlock device. The traffic safety bureau shall not pay
24 any amount above what an offender would be required to pay for
25 the installation, removal or usage of an interlock device.


1 D. Indigency shall be determined by the traffic
2 safety bureau based on proof of enrollment in one or more of
3 the following types of public assistance:


- 4 (1) temporary assistance for needy families;
5 (2) general assistance;
6 (3) the supplemental nutritional assistance
7 program, also known as "food stamps";
8 (4) supplemental security income;
9 (5) the federal food distribution program on
10 Indian reservations; or
11 (6) other criteria approved by the traffic
12 safety bureau.


13 E. Any balance remaining in the interlock device
14 fund shall not revert to the general fund at the end of any
15 fiscal year.

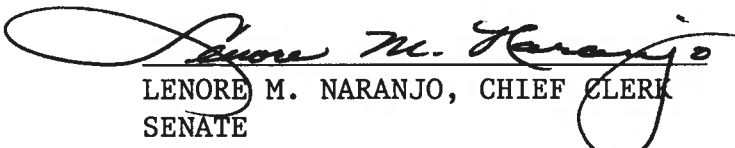
16 F. The interlock device fund shall be administered
17 by the traffic safety bureau of the department of
18 transportation. No more than ten percent of the money in the
19 interlock device fund in any fiscal year shall be expended by
20 the traffic safety bureau of the department of transportation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

22 Section 3. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2010. _____



BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES


STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES


DIANE D. DENISH, PRESIDENT
SENATE


LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 3rd day of March, 2010


BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

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OFFICE OF

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