

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILLS 3 & 5

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

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
OR DRUGS; INCREASING PENALTIES AND FINES FOR DWI OFFENDERS;  
PROVIDING FOR DWI COMMUNITY CUSTODY PROGRAMS.

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

Section 1. A new section of Chapter 33 NMSA 1978 is  
enacted to read:

"~~[NEW MATERIAL]~~ DWI COMMUNITY CUSTODY PROGRAM.--

A. The corrections department, local jails and  
detention facilities may establish DWI community custody  
programs pursuant to this section and in accordance with rules  
promulgated by the corrections department.

B. A DWI community custody program is an  
individualized form of supervised community custody for DWI  
offenders that includes prescribed activities and restricted

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underscored material = new  
[bracketed material] = delete

1 daily movements. Compliance shall be verified by an electronic  
2 monitoring or surveillance system in place twenty-four hours a  
3 day, seven days a week. In addition, an alcohol monitoring  
4 component is required to determine compliance with restrictions  
5 against alcohol consumption. Offenders may also be subject to  
6 random drug and alcohol testing.

7 C. Offenders participating in a DWI community  
8 custody program shall agree in writing to abide by the terms  
9 and conditions of their individualized program, violation of  
10 which shall be referred to correctional administrators for  
11 corrective action that shall include the offender's return to  
12 serve the mandatory minimum term of incarceration or a longer  
13 term up to the remainder of the sentence in accordance with the  
14 judgment of the court.

15 D. Correctional administrators shall follow the  
16 orders of the sentencing judge unless resources are unavailable  
17 or the offender does not meet the eligibility criteria for a  
18 DWI community custody program, in which case, the alternative  
19 shall be applied. Correctional administrators shall ensure  
20 that the caseloads of officers involved in the DWI community  
21 custody program allow for intensive monitoring and supervision  
22 of the offenders.

23 E. The corrections department shall periodically  
24 review and update the rules applicable to DWI community custody  
25 programs and shall report to the appropriate interim

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1 legislative committee any DWI community custody program that  
2 does not meet the requirements established by rule.

3 F. As used in this section, "correctional  
4 administrators" means jail or detention facility administrators  
5 or corrections department administrators."

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

8 "66-8-102. [~~PERSONS~~] DRIVING UNDER THE INFLUENCE OF  
9 INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING [~~WHILE~~] UNDER  
10 THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--[~~PENALTY~~]  
11 PENALTIES.--

12 A. It is unlawful for a person who is under the  
13 influence of intoxicating liquor to drive a vehicle within this  
14 state.

15 B. It is unlawful for a person who is under the  
16 influence of any drug to a degree that renders the person  
17 incapable of safely driving a vehicle to drive a vehicle within  
18 this state.

19 C. It is unlawful for:

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

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

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

9 (1) [~~drives~~] driving a vehicle in this state  
10 [~~and has~~] with an alcohol concentration of sixteen one  
11 hundredths or more in the [~~person's~~] driver's blood or breath  
12 within three hours of driving the vehicle and the alcohol  
13 concentration results from alcohol consumed before or while  
14 driving the vehicle;

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

19 (3) [~~refused~~] refusing to submit to chemical  
20 testing, as provided for in the Implied Consent Act, and in the  
21 judgment of the court, based upon evidence of intoxication  
22 presented to the court, the driver was under the influence of  
23 intoxicating liquor or drugs.

24 E. A [~~person under~~] first conviction pursuant to  
25 this section shall be punished, notwithstanding the provisions

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1 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
2 than ninety days ~~[or]~~ and by a fine of ~~[not more than five~~  
3 ~~hundred dollars (\$500), or both]~~ one thousand dollars (\$1,000);  
4 provided that if the sentence is suspended in whole or in part  
5 or deferred, the period of probation may extend beyond ninety  
6 days but shall not exceed one year. ~~[Upon a first conviction~~  
7 ~~pursuant to this section]~~ In addition, an offender shall be  
8 sentenced to:

9 (1) a minimum jail term of seventy-two  
10 consecutive hours or, for aggravated driving under the  
11 influence of intoxicating liquor or drugs, a minimum jail term  
12 of one hundred twenty consecutive hours. The jail term imposed  
13 pursuant to this paragraph is mandatory and shall not be  
14 suspended, deferred or taken under advisement; provided that,  
15 in lieu of the mandatory jail term, the offender may be  
16 sentenced to a minimum of thirty days in a DWI community  
17 custody program or, for aggravated driving under the influence  
18 of intoxicating liquor or drugs, a minimum of fifty days in a  
19 DWI community custody program. A violation of the conditions  
20 of the program shall result in the imposition of the mandatory  
21 minimum term of incarceration;

22 (2) not less than twenty-four hours of  
23 community service ~~[In addition, the offender may be required to~~  
24 ~~pay a fine of three hundred dollars (\$300). The offender shall~~  
25 ~~be ordered by the court to];~~

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1                   (3) participate in and complete a screening  
2 program described in Subsection [K] M of this section; ~~[and to]~~

3                   (4) attend a driver rehabilitation program for  
4 alcohol or drugs, also known as a "DWI school", approved by the  
5 bureau; and ~~[also may be required to]~~

6                   (5) participate in other rehabilitative  
7 services as the court shall determine to be necessary. ~~[In~~  
8 ~~addition to those penalties, when an offender commits~~  
9 ~~aggravated driving while under the influence of intoxicating~~  
10 ~~liquor or drugs, the offender shall be sentenced to not less~~  
11 ~~than forty-eight consecutive hours in jail. If an offender~~  
12 ~~fails to complete, within a time specified by the court, any~~  
13 ~~community service, screening program, treatment program or DWI~~  
14 ~~school ordered by the court or fails to comply with any other~~  
15 ~~condition of probation, the offender shall be sentenced to not~~  
16 ~~less than an additional forty-eight consecutive hours in jail.~~  
17 ~~Any jail sentence imposed pursuant to this subsection for~~  
18 ~~failure to complete, within a time specified by the court, any~~  
19 ~~community service, screening program, treatment program or DWI~~  
20 ~~school ordered by the court or for aggravated driving while~~  
21 ~~under the influence of intoxicating liquor or drugs shall not~~  
22 ~~be suspended, deferred or taken under advisement.]~~

23                   F. On a first conviction pursuant to this section,  
24 any time spent in jail for the offense prior to the conviction  
25 for that offense shall be credited to any term of imprisonment

1 fixed by the court. A deferred sentence pursuant to Subsection  
2 E of this [subsection] section shall be considered a first  
3 conviction for the purpose of determining subsequent  
4 convictions.

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

16 (1) sentenced to a minimum jail term of ~~[not~~  
17 ~~less than ninety-six consecutive hours]~~ seven consecutive days  
18 or, for aggravated driving under the influence of intoxicating  
19 liquor or drugs, a minimum jail term of fifteen consecutive  
20 days. The jail term imposed pursuant to this paragraph is  
21 mandatory and shall not be suspended, deferred or taken under  
22 advisement; provided that, in lieu of the mandatory jail term,  
23 the offender may be sentenced to a minimum of seventy days in a  
24 DWI community custody program or, for aggravated driving under  
25 the influence of intoxicating liquor or drugs, a minimum of one

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1 hundred fifty days in a DWI community custody program. A  
2 violation of the conditions of the program shall result in the  
3 imposition of the mandatory minimum term of incarceration;

4 (2) sentenced to not less than forty-eight  
5 hours of community service; and [a fine of five hundred dollars  
6 (\$500). In addition to those penalties, when an offender  
7 commits aggravated driving while under the influence of  
8 intoxicating liquor or drugs, the offender shall be sentenced  
9 to a jail term of not less than ninety-six consecutive hours.]

10 (3) required to participate in and complete,  
11 which requirement shall not be suspended, deferred or taken  
12 under advisement, within a time specified by the court:

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

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

18 (c) a drug court program approved by the  
19 court; or

20 (d) any other substance abuse treatment  
21 program approved by the court.

22 H. If an offender with a first or second conviction  
23 fails to complete, within a time specified by the court, any  
24 community service, screening program, [or] treatment program or  
25 DWI school ordered by the court, the offender shall be



1 sentenced to the following mandatory jail terms that shall not  
2 be suspended, deferred or taken under advisement:

3 (1) for a first conviction, not less than an  
4 additional forty-eight consecutive hours in jail; and

5 (2) for a second conviction, not less than an  
6 additional seven consecutive days in jail. [A penalty imposed  
7 pursuant to this paragraph shall not be suspended or deferred  
8 or taken under advisement; and

9 ~~(2) upon a third conviction, an offender shall~~  
10 ~~be sentenced to a jail term of not less than thirty consecutive~~  
11 ~~days, not less than ninety-six hours of community service and a~~  
12 ~~fine of seven hundred fifty dollars (\$750). In addition to~~  
13 ~~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 ~~sixty consecutive days. If an offender fails to complete,~~  
17 ~~within a time specified by the court, any community service,~~  
18 ~~screening program or treatment program ordered by the court,~~  
19 ~~the offender shall be sentenced to not less than an additional~~  
20 ~~sixty consecutive days in jail. A penalty imposed pursuant to~~  
21 ~~this paragraph shall not be suspended or deferred or taken~~  
22 ~~under advisement.~~

23 ~~G.]~~ I. Upon a ~~[fourth]~~ third conviction pursuant to  
24 this section, an offender is guilty of a fourth degree felony  
25 and, notwithstanding the provisions of Section 31-18-15 NMSA

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1 1978, shall be ~~[sentenced to]~~ punished by a fine of five  
2 thousand dollars (\$5,000) and a term of imprisonment of  
3 eighteen months, six months of which are mandatory and shall  
4 not be suspended, deferred or taken under advisement; provided  
5 that, three months of the mandatory incarceration may be spent  
6 in a DWI community custody program. A violation of the  
7 conditions of the program shall result in the imposition of the  
8 entire mandatory term of incarceration.

9 [H.] J. Upon a ~~[fifth]~~ fourth conviction pursuant  
10 to this section, an offender is guilty of a fourth degree  
11 felony and, notwithstanding the provisions of Section 31-18-15  
12 NMSA 1978, shall be ~~[sentenced to]~~ punished by a fine of five  
13 thousand dollars (\$5,000) and a term of imprisonment of two  
14 years, one year of which is mandatory and shall not be  
15 suspended, deferred or taken under advisement; provided that,  
16 six months of the mandatory incarceration may be spent in a DWI  
17 community custody program. A violation of the conditions of  
18 the program shall result in the imposition of the entire  
19 mandatory term of incarceration.

20 [I.] K. Upon a ~~[sixth]~~ fifth conviction pursuant to  
21 this section, an offender is guilty of a third degree felony  
22 and, notwithstanding the provisions of Section 31-18-15 NMSA  
23 1978, shall be ~~[sentenced to]~~ punished by a fine of five  
24 thousand dollars (\$5,000) and a term of imprisonment of thirty  
25 months, eighteen months of which are mandatory and shall not be

1 suspended, deferred or taken under advisement; provided that,  
2 nine months of the mandatory incarceration may be spent in a  
3 DWI community custody program. A violation of the conditions  
4 of the program shall result in the imposition of the entire  
5 mandatory term of incarceration.

6 ~~[J.]~~ L. Upon a ~~[seventh]~~ sixth or subsequent  
7 conviction pursuant to this section, an offender is guilty of a  
8 third degree felony and, notwithstanding the provisions of  
9 Section 31-18-15 NMSA 1978, shall be ~~[sentenced to]~~ punished by  
10 a fine of five thousand dollars (\$5,000) and a term of  
11 imprisonment of three years, two years of which are mandatory  
12 and shall not be suspended, deferred or taken under advisement;  
13 provided that, one year of the mandatory incarceration may be  
14 spent in a DWI community custody program. A violation of the  
15 conditions of the program shall result in the imposition of the  
16 entire mandatory term of incarceration.

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

25 ~~[L. Upon a second or third conviction pursuant to~~

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1 ~~this section, an offender shall be required to participate in~~  
2 ~~and complete, within a time specified by the court:~~

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

6 ~~(2) not less than a ninety-day outpatient~~  
7 ~~treatment program approved by the court;~~

8 ~~(3) a drug court program approved by the~~  
9 ~~court; or~~

10 ~~(4) any other substance abuse treatment~~  
11 ~~program approved by the court.~~

12 ~~The requirement imposed pursuant to this subsection shall~~  
13 ~~not be suspended, deferred or taken under advisement.~~

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

22 ~~[N.]~~ O. Upon a conviction pursuant to this section,  
23 an offender shall be required to obtain an ignition interlock  
24 license and have an ignition interlock device installed and  
25 operating on all motor vehicles driven by the offender,

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

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

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

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

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

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

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1 violations of the interlock device.

2 [P-] Q. In the case of a first or second [~~or third~~]  
3 offense under this section, the magistrate court has concurrent  
4 jurisdiction with district courts to try the offender.

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

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

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

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1 served by the offender on probation.

2 ~~[F-]~~ U. As used in this section:

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

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

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

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

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

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

22 Section 3. TEMPORARY PROVISION--TASK FORCE--RULES FOR DWI  
23 COMMUNITY CUSTODY PROGRAMS.--The corrections department shall  
24 assemble and convene a task force that includes the governor's  
25 DWI czar and representatives from the judiciary, the counties

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1 and any interested municipalities to promulgate rules for DWI  
2 community custody programs. The rules shall include  
3 eligibility and participation criteria, levels of supervision,  
4 uniform procedures for electronic and alcohol monitoring,  
5 substance abuse treatment and reintegration programs and  
6 screening and tracking programs. The rules may also include  
7 curfew restrictions, funding plans, restitution to the victims  
8 and other criteria.

9 Section 4. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2010.