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Deputy  Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

MINUTES OF THE
SANTA FE COUNTY



DWI PLANNING COUNCIL

January 14, 2010

Santa Fe, New Mexico

This meeting of the Santa Fe County DWI Planning Council was called to order by Allan Wheeler, Chair at approximately 8:37 a.m. on the above-cited date at 2052 S. Galisteo, Santa Fe, New Mexico.

The following members were present:

Members Present:

Allan Wheeler, Chairman
Sgt. Joe McLaughlin
Yvonne Ortiz
Donna Morris
Sgt. Louis Carlos
Shelley Mann-Lev [late arrival]
Donna Bevacqua-Young
Diego Lopez

Member(s) Excused:

Marti Rodriguez
Jon Paul Romero

Staff Present:

Becky Beardsley, Program Coordinator

Others Present:

Lt. Dale Lettenberger, Santa Fe PD
Cpl. Bill Ritch, Santa Fe County Sheriff's Department

AGENDA

Ms. Beardsley asked that the Juvenile DWI Report be postponed until March. Under New Business, Sgt. Carlos will report on the HPPC meeting and Ms. Beardsley will discuss media relations. The agenda was approved by consensus.

REC CLERK RECORDED 7/13/2010

APPROVAL OF MINUTES:

November 11, 2009

Ms. Ortiz moved to approve the November meeting minutes and Sgt. Carlos seconded. The motion passed without opposition.

December 10, 2009

Upon motion by Ms. Ortiz and second by Sgt. Carlos the minutes of December 10th were unanimously approved.

OLD BUSINESS

B. Legislative Update

Ms. Beardsley announced that there have been many meetings related to the legislature and she said "it's anybody's guess what's going to happen." She said the pre-filed draft bills are already being revised, even before the start of the session.

SB 5 [Exhibit 1]

Ms. Beardsley said this changes the DWI penalties by imposing a three-day mandatory jail sentence on a first offense, seven days on a second and six months on a third offense. Fines are increased from \$500 to \$1000 on a first, \$1000 to \$2000 on a second, and \$5000 for a third, which will be considered a felony. There is a possibility of allowing three months of the six months to be served by electronic monitoring, but this is subject to compromise.

She stated the potential for penalties already exists at the discretion of the judge; this simply makes things mandatory. Jail may in fact exacerbate the problem. She said the fines would go to the courts so staff is neutral on that.

Chairman Wheeler asked what happens in the case of those who cannot afford the fines. Ms. Beardsley said some can be handled through community service, or they can be incarcerated. She added the theory is that more severe penalties will serve as a deterrent and will increase awareness.

Ms. Bevacqua-Young said she thought it would be a hard sell given the fact the defense attorneys will put up a fight.

Ms. Beardsley speculated that bits and pieces of the bill could be passed, including possibly a sliding scale for fines. It will probably be heard the second week. The County won't be opposing it, but they are waiting for a fiscal impact report to see if counties will be held harmless for jail costs.

SB 3 [Exhibit 2]

Ms. Beardsley noted staff was not taking a position on this. It concerns the use of electronic monitoring. She said there have been conversations about combinations of jail time and electronic monitoring. "Electronic monitoring" will have to be defined. Will a Sobriotor be included? A SCRAM unit measuring blood alcohol? Without those an offender can do whatever

they want, so there is little in the way of penalty. Tracking is also an issue. She indicated the County will support anything that increases safety, reduces DWIs and does not have a negative financial impact, so they may support the bill.

Sgt. McLaughlin asked how these bills will impact the interlock program. Ms. Beardsley said they do not have any impact on it since they are separate issues.

SB 4 [Exhibit 3]

Ms. Beardsley stated this specifies that DWIs cannot be pled down to non-DWI offenses. The fact that it does not address DWIs where the defendant refuses to blow is a loophole that defense attorneys are using. This bill cleans up the language so the affiliate will support it.

Ms. Bevacqua-Young pointed out that DAs are generally thought to have a constitutional right to plea down.

SB 32 [Exhibit 4]

Ms. Beardsley said they will be supporting this bill which increases the fees for chemical test from \$65 to \$85. The fee is collected by the Scientific Lab Division.

Ms. Bevacqua-Young noted she was in favor of this but often the fees are not collected, even in felony cases. Ms. Beardsley said there should be more tracking in the future.

Discussion Draft [Exhibit 5]

This concerns the local option and Ms. Beardsley said she was not sure where the money will go or who will have oversight. She added it pertains to Class A Counties – Bernalillo, San Juan and Santa Fe. McKinley County already has a local option. There is a potential for an additional \$2 million in revenue for the County.

Ms. Bevacqua-Young asked if this included energy drinks. Ms. Beardsley stated page 4 has a breakdown. Chairman Wheeler said the rates are not based on alcohol content and discriminate in favor of beer. He noted the alcohol lobby will oppose it strongly.

Ms. Beardsley pointed to the language referring to services via contract, and other ambiguities in the bill. She doubted it would pass, although many people are behind it on the theory that higher cost will limit consumption. She also doubted county residents would vote for any new tax.

Chairman Wheeler advocated taking the money and putting it into the general fund for the duration of the financial crisis, then transfer it to DWI programs later. Ms. Beardsley said DWI programs were capped at the fiscal year 2009 distribution rates in the previous versions of the bill but wasn't sure how it will end up.

Mr. Lopez said it fails to deal with the arguments the liquor industry presented last time, including the question of allocation. Also, an excise tax will cause people to drive to other counties.

Discussion Draft [Exhibit 6]

Ms. Beardsley said this prohibits intoxication of minors. The statute currently prohibits purchase or possession but nothing is said about consumption. The problem is proving

intoxication. She suggested changing "intoxication" to "consumption". She said staff will be supporting this bill.

Ms. Beardsley said she will be spending a great deal of time at the legislature during the session. Mr. Lopez and Chairman Wheeler volunteered to help in any testimony called for.

Ms. Beardsley said January 26th will be DWI Awareness Day at the Roundhouse and she invited everyone to participate. She added she has already heard talk of a special session.

Sgt. Carlos asked for electronic copies of the bills.

C. FY 2011 Funding Update

Ms. Beardsley indicated they will be applying for a \$150,000 grant for additional law enforcement. This is beyond the budget presented in November. She said there have been cuts in Traffic Safety which could impact two positions. The County's financial position is uncertain, particularly if the state decides not to hold the County harmless for food tax.

Sgt. McLaughlin explained federal funding vis-à-vis staffing of the Sustainability Program.

[Ms. Mann-Lev joined the meeting.]

Ms. Beardsley noted they have not applied for this competitive LDWI grant in three years.

NEW BUSINESS

A. HPPC Report

Sgt. Carlos stated the DWI Program budget was discussed and initially tabled by Dr. Melio because the spreadsheet for FY2011 showed that only \$10,000 was dedicated to treatment yet the minutes stated that there was over \$75,000. He therefore wanted to know why there had been a reduction since the presentation and what the impact would be. Due to time constraints and the requirement for HPPC and BCC approval before proceeding to DFA, Sgt. Carlos provided some information and reintroduced a motion to pass it. After substantial discussion the budget was approved. HPPC was unaware of how specifically the money was dedicated. Ms. Beardsley clarified that a presentation had been done at the prior meeting and an overview of FY2010 funding was given where there was over \$75,000 in treatment. She said she further explained that the Planning Council had supported an effort to reduce the treatment budget and move the funds to prevention and then reviewed the FY2011 budget. She stated there had been confusion after reading the minutes and they thought the budget had been changed after it had been presented. Ms. Beardsley has sent written clarification to the Health Policy and Planning Commission and will be at the next meeting to further explain the budget and the process if they so request.

B. Underage Drinking Operation

Sgt. Carlos thanked the DWI program for providing funds to facilitate a Santa Fe SID operation targeting providing alcohol to minors which was part of a statewide effort.

Ms. Mann-Lev stated she was able to participate as a ride-along. Although the final results are not available, there could be 11 violations, indicating the establishments are getting sloppy. She believed 99 establishments were checked, meaning around 10 percent were out of compliance.

Mr. Lopez asked if good press had resulted from this operation. Sgt. Carlos said the community was told what was happening, and Sgt. McLaughlin added a press release was issued.

Ms. Mann-Lev stated there is an opportunity to work with the media in the future. She said there were no establishments in violation in Rio Arriba but there were some shoulder tap arrests. The violations were mostly for on-premise – restaurants and bars – rather than stores.

Ms. Beardsley noted that one of the servers had recently completed the certification class. She indicated she and her staff will be going to the March 1st certification class for evaluation. Mr. Lopez asked to be included in the training.

C. Media Relations

Ms. Beardsley referred to a misleading article that appeared in the Sunday newspaper due to a lack of communication. An impression was conveyed by staff members that funding was insufficient for the youth conference. Ms. Beardsley emphasized, “We are not broke; we do not need donations from the community. We never initiate a program or event without sufficient funds to complete it.” She said she has dealt with the matter internally and staff has been instructed not to speak to the media. Staff was attempting to solicit partnerships with community organizations when speaking with the media. Ms. Morris asked if there had been feedback and Ms. Beardsley said a number of people called volunteering help and money.

Ms. Beardsley mentioned Bernalillo paid for the production and air time of a commercial playing on Channel 13. These will also be on the government channel. Additionally, there will be a 15-minute spot on the County program along with 30-second PSA’s on underage drinking and the CADDy program. Ms. Beardsley will appear on the County Clerk’s program next Thursday. She said she was contacted by numerous media outlets around New Year’s Eve. Possibly due to the increased awareness and the 137 CADDy rides there were only two DWI arrests. She noted the culture is changing and awareness is heightened.

Chairman Wheeler stated the *New Mexican* has had a number of articles about DWI. He asked about sending them a letter of appreciation. Ms. Beardsley said much of that is due to the City-County Task Force, the Dashboard Program and the Prevention Alliance. There are ads for the CADDy program both in print and electronic media. Occasionally, the *New Mexican* runs ads pro bono. She said they will advertise CADDy in anticipation of the Super Bowl.

Ms. Beardsley stated Cynthia Delgado keeps a scrapbook of media coverage and could help provide examples for the letter.

Ms. Mann-Lev pointed out that letters to the editor should be under 150 words. She said they should be commended for separating DWI's in the police blotter, and for their feature articles.

It was decided that Chairman Wheeler would draft a letter and run it by the members at the next meeting.

STAFF REPORTS

Coordinator's Report & Financial Report

Ms. Beardsley said she is concentrating on the legislature and the budget.

Financial Report

The report was is in the packet as an information item and there was nothing extraordinary to report. Some vacancy savings have been realized and they could be diverted to prevention, law enforcement, or a social norms campaign. She anticipated a \$60,000 BAR.

Prevention Report

The report was in the packet as an information item. Mr. Magourilos has been busy helping other counties with their efforts. Mr. Lopez commended the positive findings in the evaluation report on the Change Your Reality Conference. Ms. Beardsley agreed there was good feedback.

Teen Court Report

A discussion ensued about the demographic statistics included in the packet. Ms. Mann-Lev cautioned about sharing specific information about the various schools as a number of variables are involved and there could be misunderstandings.

ANNOUNCEMENTS

DWI Awareness Day – January 26, 2010

Prevention – to be called for special topics

Law Enforcement/Adjudication – February 10, 2010 – 1 p.m.

Screening/Treatment – to be called for special topics

Next PC meeting – February 11, 2010 – 8:30-10:30 a.m. – if necessary

Chairman Wheeler said Impact DWI has allocated a yearly budget for pizzas for law enforcement at the checkpoints. Ms. Mann-Lev said they are getting youth involved.

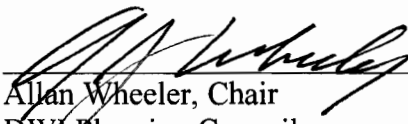
Sgt. McLaughlin announced this was his last meeting as he is transferring to patrol. His long service to the Council was appreciated and he received the committee's thanks and a round of applause.

Ms. Mann-Lev spoke of the upcoming presentation on juvenile DWI, noting that case review is being conducted. Since these are confidential an audit checklist will be assembled so that consequences can be evaluated and a baseline established.

ADJOURNMENT

This meeting was declared adjourned at approximately 10:10 a.m.

Approved by:


Allan Wheeler, Chair
DWI Planning Council

Submitted by:

Debbie Doyle, Wordswork



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SENATE BILL 5

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

INTRODUCED BY

Peter Wirth and Brian F. Egolf

AN ACT

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

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

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

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

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

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1 this state.

2 C. It is unlawful for:

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

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

15 D. Aggravated driving while under the influence of
16 intoxicating liquor or drugs consists of a person who:

17 (1) drives a vehicle in this state and has an
18 alcohol concentration of sixteen one hundredths or more in the
19 person's blood or breath within three hours of driving the
20 vehicle and the alcohol concentration results from alcohol
21 consumed before or while driving the vehicle;

22 (2) has caused bodily injury to a human being
23 as a result of the unlawful operation of a motor vehicle while
24 driving under the influence of intoxicating liquor or drugs; or

25 (3) refused to submit to chemical testing, as

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1 provided for in the Implied Consent Act, and in the judgment of
 2 the court, based upon evidence of intoxication presented to the
 3 court, was under the influence of intoxicating liquor or drugs.

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

14 (1) a jail term of seventy-two consecutive
 15 hours or, for aggravated driving while under the influence of
 16 intoxicating liquor or drugs, a jail term of one hundred twenty
 17 consecutive hours. The jail term imposed pursuant to this
 18 paragraph is mandatory and shall not be suspended, deferred or
 19 taken under advisement;

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

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

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

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

21 F. On a first conviction pursuant to this section,
22 any time spent in jail for the offense prior to the conviction
23 for that offense shall be credited to any term of imprisonment
24 fixed by the court. A deferred sentence pursuant to Subsection
25 E of this [subsection] section shall be considered a first

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1 conviction for the purpose of determining subsequent
2 convictions.

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

14 (1) sentenced to a jail term of [~~not less than~~
15 ~~ninety-six consecutive hours~~] seven consecutive days or, for
16 aggravated driving while under the influence of intoxicating
17 liquor or drugs, a jail term of fifteen consecutive days. The
18 jail term imposed pursuant to this paragraph is mandatory and
19 shall not be suspended, deferred or taken under advisement;

20 (2) sentenced to not less than forty-eight
21 hours of community service; and [a fine of five hundred dollars
22 (\$500)]

23 (3) required to participate in and complete,
24 which requirement shall not be suspended, deferred or taken
25 under advisement, within a time specified by the court;

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

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

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

8 (d) any other substance abuse treatment
9 program approved by the court. [~~In addition to those~~
10 penalties, when an offender commits aggravated driving while
11 under the influence of intoxicating liquor or drugs, the
12 offender shall be sentenced to a jail term of not less than
13 ninety-six consecutive hours.]

14 H. If an offender with a first or second conviction
15 fails to complete, within a time specified by the court, any
16 community service, screening program, [~~or~~] treatment program or
17 DWI school ordered by the court, the offender shall be
18 sentenced to the following mandatory jail terms that shall not
19 be suspended, deferred or taken under advisement:

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

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

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

15 G.] I. Upon a [~~fourth~~] third conviction pursuant to
16 this section, an offender is guilty of a fourth degree felony
17 and, notwithstanding the provisions of Section 31-18-15 NMSA
18 1978, shall be [~~sentenced to~~] punished by a term of
19 imprisonment of eighteen months, six months of which shall not
20 be suspended, deferred or taken under advisement, and a fine of
21 five thousand dollars (\$5,000).

22 [H.] J. Upon a [~~fifth~~] fourth conviction pursuant
23 to this section, an offender is guilty of a fourth degree
24 felony and, notwithstanding the provisions of Section 31-18-15
25 NMSA 1978, shall be [~~sentenced to~~] punished by a term of

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1 imprisonment of two years, one year of which shall not be
2 suspended, deferred or taken under advisement, and a fine of
3 five thousand dollars (\$5,000).

4 [~~I~~] K. Upon a [~~sixth~~] fifth conviction pursuant to
5 this section, an offender is guilty of a third degree felony
6 and, notwithstanding the provisions of Section 31-18-15 NMSA
7 1978, shall be [~~sentenced to~~] punished by a term of
8 imprisonment of thirty months, eighteen months of which shall
9 not be suspended, deferred or taken under advisement, and a
10 fine of five thousand dollars (\$5,000).

11 [~~J~~] L. Upon a [~~seventh~~] sixth or subsequent
12 conviction pursuant to this section, an offender is guilty of a
13 third degree felony and, notwithstanding the provisions of
14 Section 31-18-15 NMSA 1978, shall be [~~sentenced to~~] punished by
15 a term of imprisonment of three years, two years of which shall
16 not be suspended, deferred or taken under advisement, and a
17 fine of five thousand dollars (\$5,000).

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

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

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

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

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

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

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

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

~~[N.] O. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and~~

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

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

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

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

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

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

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1 proof from the interlock vendor that the person has not had
2 violations of the interlock device.

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

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

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

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

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1 originally imposed and credit shall not be given for time
2 served by the offender on probation.

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

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

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

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

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

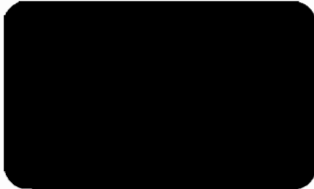
18 (c) is designed to transport sixteen or
19 more passengers, including the driver; or

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

23 Section 2. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2010.

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SENATE BILL 3

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

INTRODUCED BY

Peter Wirth

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; CLARIFYING THAT CERTAIN TERMS OF INCARCERATION ARE MANDATORY AND THAT ELECTRONIC MONITORING OR COMMUNITY SUPERVISION SHALL NOT BE SUBSTITUTED FOR INCARCERATION.

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

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

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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

B. It is unlawful for a person who is under the

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1 influence of any drug to a degree that renders the person
2 incapable of safely driving a vehicle to drive a vehicle within
3 this state.

4 C. It is unlawful for:

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

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

17 D. Aggravated driving while under the influence of
18 intoxicating liquor or drugs consists of a person who:

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

24 (2) has caused bodily injury to a human being
25 as a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or
2 (3) refused to submit to chemical testing, as
3 provided for in the Implied Consent Act, and in the judgment of
4 the court, based upon evidence of intoxication presented to the
5 court, was under the influence of intoxicating liquor or drugs.

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

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

19 F. A second or third conviction pursuant to this
20 section shall be punished, notwithstanding the provisions of
21 Section 31-18-13 NMSA 1978, by imprisonment for not more than
22 three hundred sixty-four days or by a fine of not more than one
23 thousand dollars (\$1,000), or both; provided that if the
24 sentence is suspended in whole or in part, the period of
25 probation may extend beyond one year but shall not exceed five

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1 years. Notwithstanding any provision of law to the contrary
2 for suspension or deferment of execution of a sentence:

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

17 (2) upon a third conviction, an offender shall
18 be sentenced to a jail term of not less than thirty consecutive
19 days, not less than ninety-six hours of community service and a
20 fine of seven hundred fifty dollars (\$750). In addition to
21 those penalties, when an offender commits aggravated driving
22 while under the influence of intoxicating liquor or drugs, the
23 offender shall be sentenced to a jail term of not less than
24 sixty consecutive days. If an offender fails to complete,
25 within a time specified by the court, any community service,

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1 screening program or treatment program ordered by the court,
2 the offender shall be sentenced to not less than an additional
3 sixty consecutive days in jail. A penalty imposed pursuant to
4 this paragraph shall not be suspended or deferred or taken
5 under advisement.

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

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

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

24 J. Upon a seventh or subsequent conviction pursuant
25 to this section, an offender is guilty of a third degree felony

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

5 K. Terms of incarceration not to be suspended,
6 deferred or taken under advisement pursuant to the provisions
7 of Subsections E, F, G, H, I and J of this section are
8 mandatory, and an offender shall spend that period of time
9 incarcerated. No form of electronic monitoring or community
10 supervision shall be substituted for those incarceration terms.

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

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

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

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

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1 treatment program approved by the court;

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

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

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

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

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

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

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

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

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

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

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

24 [Q-] R. A conviction pursuant to a municipal or
25 county ordinance in New Mexico or a law of any other

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

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

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

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

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

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1 or organ of the person's body; and

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

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

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

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

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

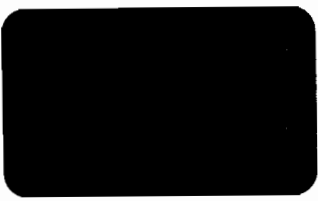
16 Section 2. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2010.

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SENATE BILL 4

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

INTRODUCED BY

Peter Wirth

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; PROHIBITING CERTAIN PLEA AGREEMENTS FOR A PERSON WHO
REFUSES TO SUBMIT TO A CHEMICAL TEST AUTHORIZED BY THE IMPLIED
CONSENT ACT.

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

Section 1. Section 66-8-102.1 NMSA 1978 (being Laws 1982,
Chapter 102, Section 2, as amended by Laws 2003, Chapter 51,
Section 11 and by Laws 2003, Chapter 90, Section 4) is amended
to read:

"66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the
complaint or information alleges a violation of Section
66-8-102 NMSA 1978, any plea of guilty thereafter entered in
satisfaction of the charges shall include at least a plea of
guilty to ~~the~~ a violation of one of the subsections of
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1 Section 66-8-102 NMSA 1978, and no other disposition by plea of
2 guilty to any other charge in satisfaction of the charge shall
3 be authorized if:

4 A. the results of a test performed pursuant to the
5 Implied Consent Act disclose that the blood or breath of the
6 person charged contains an alcohol concentration of:

7 ~~[A.]~~ (1) eight one hundredths or more; or

8 ~~[B.]~~ (2) four one hundredths or more if the
9 person charged is driving a commercial motor vehicle; or

10 B. the person refuses to submit to a chemical test
11 authorized by the Implied Consent Act."

12 Section 2. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2010.

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SENATE BILL 32

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

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
OR DRUGS; INCREASING THE FEE CHARGED TO DEFRAY THE COSTS OF
CHEMICAL AND OTHER TESTS.

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

Section 1. Section 31-12-7 NMSA 1978 (being Laws 1981,
Chapter 367, Section 1, as amended) is amended to read:

"31-12-7. MOTOR VEHICLES--INFLUENCE OF INTOXICATING
LIQUOR OR DRUGS--FEE UPON CONVICTION.--Notwithstanding the
provisions of Section 66-8-102 NMSA 1978 or any municipal
ordinance that prohibits driving while under the influence of
intoxicating liquor or drugs, a person convicted of a violation
of Section 66-8-102 NMSA 1978 or a violation of a municipal
ordinance that prohibits driving while under the influence of
intoxicating liquor or drugs shall be assessed by the court, in
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addition to any other fee or fine:

A. a fee of [~~sixty-five dollars (\$65.00)~~] eighty-five dollars (\$85.00) to defray the costs of chemical and other tests used to determine the influence of liquor or drugs; and

B. a fee of seventy-five dollars (\$75.00) to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs and for other traffic safety purposes."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO LIQUOR EXCISE TAXES; AUTHORIZING CERTAIN CLASS A
COUNTIES TO IMPOSE A LOCAL LIQUOR EXCISE TAX; LIMITING RATES OF
LOCAL LIQUOR EXCISE TAXES.

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

Section 1. Section 7-24-9 NMSA 1978 (being Laws 1989,
Chapter 326, Section 2) is amended to read:

"7-24-9. DEFINITIONS.--As used in the Local Liquor Excise
Tax Act:

A. "alcoholic beverages" means distilled or
rectified spirits, potable alcohol, brandy, whiskey, rum, gin
and aromatic bitters or any similar alcoholic beverage,
including blended or fermented beverages, dilutions or mixtures
of one or more of the foregoing containing more than one-half
of one percent alcohol, but excluding medicinal bitters;

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B. "county" means:

(1) a class B county having a population of more than fifty-six thousand but less than seventy-five thousand, according to the most recent federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1988 or any subsequent property tax year of more than five hundred million dollars (\$500,000,000) but less than seven hundred million dollars (\$700,000,000); or

(2) a class A county having a population, according to the most recent federal decennial census or any subsequent decennial census, of:

(a) greater than one hundred thousand but less than one hundred seventy thousand; or

(b) greater than five hundred thousand;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "governing body" means the board of county commissioners of a county;

E. "microbrewer" means a person who is licensed as a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 to produce beer in New Mexico and who produces less than five thousand barrels of beer in a calendar year;

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1 ~~[E-]~~ F. "person" means any individual, estate,
2 trust, receiver, cooperative association, club, corporation,
3 company, firm, partnership, joint venture, syndicate or other
4 association; "person" also means, to the extent permitted by
5 law, any federal, state or other governmental unit or
6 subdivision or agency, department or instrumentality thereof;

7 ~~[F-]~~ G. "price" means the total amount of money or
8 the reasonable value of other consideration or both paid for
9 alcoholic beverages, inclusive of the amount of any tax paid
10 pursuant to the Liquor Excise Tax Act; ~~[and~~

11 ~~G-]~~ H. "retailer" means any person having a place
12 of business within the county who sells, offers for sale or
13 possesses for the purpose of selling alcoholic beverages within
14 the county;

15 I. "small winegrower" means a winegrower who is
16 licensed pursuant to Section 60-6A-11 NMSA 1978 and who
17 produces fewer than nine hundred fifty thousand liters of wine
18 in a year; and

19 J. "tribe" means a federally recognized Indian
20 nation, tribe or pueblo located wholly or partly within New
21 Mexico."

22 Section 2. Section 7-24-10 NMSA 1978 (being Laws 1989,
23 Chapter 326, Section 3) is amended to read:

24 "7-24-10. AUTHORIZATION TO IMPOSE LOCAL LIQUOR EXCISE
25 TAX--RATE--USE OF PROCEEDS--ELECTION REQUIRED.--

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1 A. The majority of the members elected to the
2 governing body of a county identified in Paragraph (1) of
3 Subsection B of Section 7-24-9 NMSA 1978 may enact an ordinance
4 imposing on any retailer an excise tax on the price paid by the
5 retailer for alcoholic beverages purchased by the retailer upon
6 which the tax imposed by this section has not been paid. The
7 tax may be imposed at a rate not to exceed five percent,
8 provided that any lower rate shall be an even multiple of one
9 percent. [~~The tax imposed under this section may be referred~~
10 ~~to as the "local liquor excise tax". Any tax imposed under~~
11 ~~this section shall be for a period of not more than three years~~
12 ~~from the effective date of the ordinance imposing the tax.~~]

13 B. The majority of the members elected to the
14 governing body of a county identified in Paragraph (2) of
15 Subsection B of Section 7-24-9 NMSA 1978 may enact an ordinance
16 imposing on all wholesalers distributing alcoholic beverages to
17 retailers in that county, including tribes or tribally licensed
18 retailers seeking a state license to purchase alcoholic
19 beverages for resale on the tribe's land, a "local liquor
20 excise tax" at a rate not to exceed:

21 (1) on spirituous liquors, ninety-nine cents
22 (\$.99) per liter;

23 (2) on beer, except as provided in Paragraph
24 (5) of this subsection, twenty-five cents (\$.25) per gallon;

25 (3) on wine, except as provided in Paragraphs

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1 (4) and (6) of this subsection, twenty-eight cents (\$.28) per
2 liter;

3 (4) on fortified wine, ninety-three cents
4 (\$.93) per liter;

5 (5) on beer manufactured or produced by a
6 microbrewer, which beer is sold in this state, provided that
7 proof is furnished to the department that the beer was
8 manufactured or produced by a microbrewer, five cents (\$.05)
9 per gallon;

10 (6) on wine manufactured or produced by a
11 small winegrower and sold in New Mexico, provided that proof is
12 furnished to the department that the wine was manufactured or
13 produced by a small winegrower, six cents (\$.06) per liter on
14 the first eighty thousand liters sold and twelve cents (\$.12)
15 per liter on all liters sold over eighty thousand liters but
16 less than nine hundred fifty thousand liters; and

17 (7) on cider, twenty-five cents (\$.25) per
18 gallon.

19 C. A tax imposed pursuant to this section shall be
20 for a period of not more than three years from the effective
21 date of the tax and may be referred to as the "local liquor
22 excise tax".

23 D. Within the final year that a local liquor excise
24 tax is in effect, the governing body may impose the tax for
25 another three-year period, to begin in the month following the

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1 termination of the tax currently in effect, and submit the
2 question of the tax to the voters of the county in the same
3 manner as was required to approve the original tax.

4 [~~B.—The~~] E. A governing body at the time of
5 enacting an ordinance imposing [~~the~~] a tax authorized in
6 [~~Subsection A of~~] this section shall dedicate the revenue to
7 fund [~~educational programs and~~] direct program services, for
8 the prevention and treatment of alcoholism and drug abuse
9 within the county and for no other purpose, including indirect
10 costs. After approval of the imposition of a local liquor
11 excise tax by the voters but before the effective date of the
12 ordinance, the governing body shall hold a public meeting for
13 the purpose of inviting comment on and suggestions for the most
14 appropriate programs on which to expend the revenue produced by
15 the tax. The governing body shall invite representatives from
16 the appropriate [~~Indian~~] tribes [~~nations and pueblos~~] located
17 in that county to the meeting. If the governing body awards
18 [~~any~~] a contract using funds derived from the local liquor
19 excise tax, it shall do so only through a selection process
20 requiring submission of sealed bids or proposals after public
21 notice of the opportunity to submit the sealed bids or
22 proposals.

23 [~~G.~~] F. The governing body enacting an ordinance
24 imposing the local liquor excise tax shall submit the question
25 of imposing the tax to the qualified voters of the county at a

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1 ~~[regular or special]~~ general election.
2 ~~[D. Only those voters who are registered within the~~
3 ~~county shall be permitted to vote.]~~

4 G. In a county that has:

5 (1) no municipality within the county that
6 extends across the county boundary into a second county in New
7 Mexico, only the voters registered within the county shall vote
8 on the question of imposing a local liquor excise tax; or

9 (2) one or more incorporated municipalities
10 that extend across the county's exterior boundaries into a
11 second county in New Mexico, all of the voters of the
12 incorporated municipality that extends across the county
13 boundary shall be allowed to vote on the question of imposing a
14 local liquor excise tax in the first county; provided, however,
15 once the first county implements a local liquor excise tax that
16 the voters of a municipality that extends across the county
17 boundary have voted on, that local liquor excise tax shall be
18 imposed in the entire municipality and the municipality shall
19 be excluded from the imposition of an additional local liquor
20 excise tax that the second county in which the municipality is
21 located may subsequently impose. All voters of the
22 municipality extending across the county boundary would be
23 ineligible to vote on the question of imposing a local liquor
24 excise tax adopted by the governing body of the second county.

25 H. Two counties that share a municipality that

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1 crosses the counties' common boundary may enter into a joint
2 powers agreement to share the revenue from a local liquor
3 excise tax imposed within the shared municipality.

4 I. The election shall be called, conducted and
5 canvassed in substantially the same manner as provided by law
6 for general elections.

7 ~~[E-]~~ J. If at an election called pursuant to this
8 section a majority of the voters voting on the question ~~[vote]~~
9 votes in the affirmative on the question, then the ordinance
10 imposing the local liquor excise tax shall be approved. If at
11 such an election a majority of the voters voting on the
12 question ~~[fail]~~ fails to approve the question, then the
13 ordinance shall be disapproved and the question required to be
14 submitted by ~~[Subsection B of]~~ this section shall not be
15 submitted to the voters for a period of at least one year from
16 the date of the election.

17 ~~[F. Any]~~ K. An ordinance enacted under the
18 provisions of this section ~~[which]~~ that imposes a local liquor
19 excise tax or changes the rate of tax imposed shall include an
20 effective date ~~[which]~~ that is the first day of ~~[any]~~ a month
21 ~~[which]~~ that begins no earlier than ninety days after the date
22 of the election. A certified copy of ~~[any]~~ an ordinance
23 imposing a local liquor excise tax shall be mailed or
24 personally delivered to the department within five days after
25 the ordinance is certified to have been approved by the voters.

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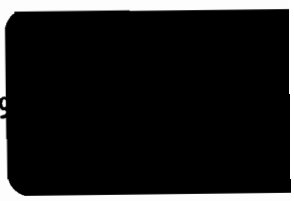
1 [G.—Any] L. An ordinance repealing the imposition
2 of a tax under the provisions of this section shall contain an
3 effective date ~~[which]~~ that is the first day of ~~[any]~~ a month
4 beginning no earlier than sixty days from the date the
5 ordinance repealing the tax is adopted by the governing body.
6 A certified copy of ~~[any]~~ an ordinance repealing a local liquor
7 excise tax shall be mailed or personally delivered to the
8 department within five days of the date the ordinance is
9 adopted."

10 Section 3. Section 7-24-15 NMSA 1978 (being Laws 1989,
11 Chapter 326, Section 8) is amended to read:

12 "7-24-15. ~~[ADMINISTRATIVE CHARGE]~~ ADMINISTRATION.--The
13 department ~~[may deduct an amount not to exceed five percent of~~
14 ~~the proceeds of a local liquor excise tax as a charge for the~~
15 ~~administrative costs of collection, which amount shall be~~
16 ~~retained by the department for use in administration of]~~ shall
17 collect and distribute pursuant to Section 7-1-6.1 NMSA 1978 to
18 the county from which the local liquor excise tax revenue was
19 remitted the net proceeds of the taxes imposed pursuant to the
20 Local Liquor Excise Tax Act."

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

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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

PROHIBITING INTOXICATION BY PERSONS UNDER TWENTY-ONE YEARS OF AGE; PROVIDING CIVIL PENALTIES.

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

Section 1. A new section of the Liquor Control Act is enacted to read:

"[NEW MATERIAL] INTOXICATION BY MINORS--CIVIL PENALTIES.--

A. A minor shall not be intoxicated by alcoholic beverages.

B. A minor who violates the provisions of Subsection A of this section shall be ordered to attend an alcohol prevention or early intervention program approved by the department of health that is at least twelve hours in length. In addition:

(1) for a first violation, the minor's

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1 driver's license shall be suspended for a period of thirty
2 days. If the minor is too young to be eligible for a driver's
3 license at the time of the violation, then thirty days shall be
4 added to the date the minor would otherwise become eligible for
5 a driver's license;

6 (2) for a second violation:

7 (a) the minor's driver's license shall
8 be suspended for a period of ninety days. If the minor is too
9 young to be eligible for a driver's license at the time of the
10 violation, then ninety days shall be added to the date the
11 minor would otherwise become eligible for a driver's license;
12 and

13 (b) the minor shall be fined an amount
14 not to exceed one thousand dollars (\$1,000) or ordered to
15 perform forty hours of community service related to reducing
16 the incidence of driving under the influence of intoxicating
17 liquor or both; or

18 (3) for a third or subsequent violation:

19 (a) the minor's driver's license shall
20 be suspended for a period of two years or until the minor
21 reaches twenty-one years of age, whichever period of time is
22 greater; and

23 (b) the minor shall be fined an amount
24 not to exceed one thousand dollars (\$1,000) or ordered to
25 perform sixty hours of community service related to reducing

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1 the incidence of driving under the influence of intoxicating
2 liquor or both.

3 C. The provisions of Section 60-7A-25 NMSA 1978
4 shall not apply to a minor who violates this section."

5 Section 2. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2010.

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