



AN ACT ESTABLISHING THE 24/7 SOBRIETY PROGRAM IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR SOBRIETY TESTING BY COUNTY SHERIFFS OR DESIGNEES; PROVIDING FOR FEES, PROBATIONARY DRIVER LICENSES, ADMINISTRATIVE RULES, AND PENALTIES; EXPANDING THE PENALTIES FOR A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-7-309, 46-18-201, AND 61-5-208, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana 24/7 Sobriety Program Act".

**Section 2. Purpose -- definitions.** (1) The legislature declares that driving in Montana upon a way of the state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of [sections 1 through 6] is:

(a) to protect the public health and welfare by reducing the number of people on Montana's highways who drive under the influence of alcohol or dangerous drugs; and

(b) to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders.

(3) As used in [sections 1 through 6], the following definitions apply:

(a) "Department" means the department of justice provided for in 2-15-2001.

(b) "Sobriety program" or "program" means the 24/7 sobriety program established in [section 3].

(c) "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug, as defined in 50-32-101, in an individual's blood, breath, or urine and includes any combination of the use of breath testing, drug patch testing, urinalysis, or continuous or transdermal alcohol monitoring.

**Section 3. Sobriety program created.** (1) There is a statewide 24/7 sobriety program within the

department of justice to be administered by the attorney general.

(2) If a county sheriff chooses to participate in the sobriety program, the department shall assist in the creation and administration of the program in the county in the manner provided in [sections 1 through 6]. The department shall also assist counties in which a sobriety program exists in determining alternatives to incarceration.

(3) (a) If a county participates in the program, the sheriff may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the sheriff pursuant to [sections 1 through 6], except that the sheriff's designee may not determine whether to participate in the sobriety program.

(b) The sheriff shall establish the testing locations and times for the county but must have at least one testing location and two daily testing times approximately 12 hours apart.

**Section 4. Rulemaking -- testing fee.** The attorney general shall adopt rules to implement [sections 1 through 6]. The rules must:

(1) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

(2) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(3) provide for the establishment and use of local accounts for the deposit of fees collected pursuant to these rules; and

(4) require and provide for the approval of a sobriety program data management technology plan that must be used by the department and participating counties to manage testing, data access, fees and fee payments, and any required reports.

**Section 5. Authority of court to order participation in sobriety program -- probationary license -- condition of parole.** (1) If an individual convicted of a second or subsequent offense of driving under the influence in violation of 61-8-401 or second or subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's successful completion of a court-approved chemical dependency treatment program and proof of insurance pursuant 61-6-301, notify the department, that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements

of 61-5-208 that an individual must complete a certain portion of a suspension period before a probationary license may be issued.

(2) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(3) The court may condition any bond or pretrial release for an individual charged with a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

(4) The court may condition the granting of a suspended execution of sentence, or probation for an individual convicted of a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

(5) The board of pardons and parole, the department of corrections, or a parole officer may condition parole for a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

**Section 6. Collection, distribution, and use of testing fees.** The sheriff of a county in which a sobriety program exists shall collect the testing fee required by the rules of the department and deposit the fees into the local sobriety program account established pursuant to department rules. The fee must be distributed according to those rules to the proper county for use by the sheriff or the sheriff's designee pursuant to the terms determined by the sheriff in accordance with the provisions of [sections 1 through 6] and the rules implementing [sections 1 through 6].

**Section 7.** Section 45-7-309, MCA, is amended to read:

**"45-7-309. Criminal contempt.** (1) A person commits the offense of criminal contempt when the person knowingly engages in any of the following conduct:

- (a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;
- (b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;
- (c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; ~~or~~

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15; or

(g) purposely failing to comply with the requirements of the sobriety program provided for in [sections 1 through 6] if ordered by a court to participate in the program.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

**Section 8.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in

46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

- (e) payment of a fine as provided in 46-18-231;
- (f) payment of costs as provided in 46-18-232 and 46-18-233;
- (g) payment of costs of assigned counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (j) community service;
- (k) home arrest as provided in Title 46, chapter 18, part 10;
- (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
- (n) participation in a day reporting program provided for in 53-1-203;
- (o) participation in the sobriety program provided for in [sections 1 through 6] for a second or subsequent violation of 61-8-401 or 61-8-406;
- ~~(p)~~ any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

~~(p)~~ any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

**Section 9.** Section 61-5-208, MCA, is amended to read:

**"61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in [section 5] and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) (i) ~~When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon~~ Upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401 or 61-8-406, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months.

(ii) ~~Upon receiving a report of a~~ person's conviction or forfeiture of bail or collateral not vacated for a second, third, or subsequent offense of violating 61-8-401 or 61-8-406 within 5 years of the first offense, the department shall the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course; or treatment, or both, are completed.

(iii) Upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401 or 61-8-406 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

~~—— (c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.~~

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

- (i) operation is authorized by the person's probation officer; or
- (ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

**Section 10. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 1 through 6].

**Section 11. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

I hereby certify that the within bill,  
HB 0106, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 106

INTRODUCED BY S. LAVIN, BRODEHL, HINER, HOLLENBAUGH, HOWARD, MENAHAN, O'NEIL ,  
K. PETERSON, REGIER, REICHNER, SKEES, TAYLOR, AUGARE, BLEWETT, BUTTREY, JACKSON,  
OLSON, SONJU, VINCENT, JENT, KAUFMANN, LARSEN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT ESTABLISHING THE 24/7 SOBRIETY PROGRAM IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR SOBRIETY TESTING BY COUNTY SHERIFFS OR DESIGNEES; PROVIDING FOR FEES, PROBATIONARY DRIVER LICENSES, ADMINISTRATIVE RULES, AND PENALTIES; EXPANDING THE PENALTIES FOR A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-7-309, 46-18-201, AND 61-5-208, MCA.