

SENATE JOURNAL
SENATE NO. 5
DATE 4/3/12
PAGE NO. HB 233

2013 Montana Legislature

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HOUSE BILL NO. 233

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE 24/7 SOBRIETY PROGRAM; EXPANDING THE 24/7 SOBRIETY PROGRAM TO INCLUDE OTHER CRIMES IN WHICH THE ABUSE OF ALCOHOL OR DANGEROUS DRUGS WAS A CONTRIBUTING FACTOR IN THE COMMISSION OF THE CRIME; EXPANDING USE OF THE 24/7 PROGRAM TO ADDITIONAL LOCAL LAW ENFORCEMENT AGENCIES; REQUIRING THE STATEWIDE PROGRAM TO MEET CERTAIN STANDARDS; AUTHORIZING ANY COURT, COUNTY ATTORNEY, OR CITY ATTORNEY TO UTILIZE THE PROGRAM; AMENDING SECTIONS 44-4-1201, 44-4-1202, 44-4-1203, 44-4-1204, 44-4-1205, AND 44-4-1206, 46-18-201, 61-8-422, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, a Rand Corporation study published in the American Journal of Public Health concluded that the 24/7 Sobriety Program's frequent alcohol testing combined with swift, certain, and modest sanctions for violations can reduce problem drinking and improve public health outcomes AND PUBLIC SAFETY; and

WHEREAS, the Rand Corporation analysis provides strong evidence that the 24/7 Sobriety Program, when applied to repeat DUI offenders and offenders of other crimes in which the abuse of alcohol or dangerous drugs is a factor such as domestic violence, is successful in reducing arrests for those crimes; and

WHEREAS, as a result of the success of the 24/7 Sobriety Program, the program is an authorized program for which impaired driving countermeasure incentive grant funding is available under federal law.

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

Section 1. Section 44-4-1201, MCA, is amended to read:

"44-4-1201. **Short title.** This part may be cited as the "Montana 24/7 Sobriety and Drug Monitoring Program Act"."

Section 2. Section 44-4-1202, MCA, is amended to read:

"44-4-1202. **Purpose -- definitions.** (1) The legislature declares that driving in Montana upon a way of this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege ~~must~~ shall accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of this part 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 protect the public health and welfare by reducing the number of repeat offenders for crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;
and

(~~b~~)~~(c)~~ to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders or other repeat offenders who commit crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.

(3) As used in this part, the following definitions apply:

(a) "Core components" means those elements of a sobriety program that analysis demonstrates are most likely to account for positive program outcomes.

(B) "DANGEROUS DRUG" HAS THE MEANING PROVIDED IN 50-32-101.

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

(~~e~~)~~(D)~~ "Immediate sanction" means a sanction that is applied within minutes of a noncompliant test event.

(~~d~~)~~(E)~~ "Law enforcement agency" means the county sheriff's office or ~~other~~ ANOTHER law enforcement agency DESIGNATED BY THE COUNTY SHERIFF'S OFFICE THAT IS charged with enforcing the sobriety program.

(~~b~~)~~(e)~~(F) "Sobriety program" or "program" means the 24/7 sobriety and drug monitoring program established in 44-4-1203, which authorizes a court or AN agency AS DEFINED IN 2-15-102, as a condition of bond, sentence, probation, parole, or work permit to:-

(i) require an individual who has been charged, ~~pleaded guilty, or been~~ WITH OR convicted of a crime in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the

crime, including but not limited to A SECOND OR SUBSEQUENT OFFENSE OF driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or dangerous drugs for a period of time; and

(ii) require the individual to be subject to testing to determine the presence of alcohol or dangerous drugs:

(A) ~~at least~~ twice a day at a central location where immediate sanctions may be applied;

(B) when testing twice a day is impractical, by continuous, REMOTE SENSING, or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or

(C) with the concurrence of the department, by an alternate method that is consistent with 44-4-1203.

~~(e)(f)(G)~~ "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug, ~~as defined in 50-32-104,~~ in an individual's breath or body fluid, including blood, breath, or urine, saliva, or perspiration, and includes any combination of the use of breath testing, drug patch testing, urinalysis testing, saliva testing, or continuous, REMOTE SENSING, or transdermal alcohol monitoring. With the concurrence of the department and consistent with 44-4-1203, alternate body fluids may be approved for testing.

~~(g)(H)~~ "Timely sanction" means a sanction that is applied ~~within hours or days after a noncompliant test event, but the period of time must be as short as possible and may not exceed 14 days AS SOON AS PRACTICAL FOLLOWING A NONCOMPLIANT TEST EVENT.~~"

Section 3. Section 44-4-1203, MCA, is amended to read:

"44-4-1203. Sobriety and drug monitoring program created. (1) There is a statewide 24/7 sobriety and drug monitoring program within the department of justice to be administered by the attorney general.

(2) The core components of the sobriety program must include use of a primary testing methodology for the presence of alcohol or dangerous drugs that best facilitates the ability to apply immediate sanctions for noncompliance at an affordable cost. In cases of economic hardship or when a sobriety program participant is subject to less-stringent testing requirements, testing methodologies with timely sanctions for noncompliance may be utilized.

(3) The sobriety program must be supported by evidence of effectiveness and satisfy at least two of the following categories:

(a) the program is included in the federal registry of evidence-based programs and practices;

(b) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or

(c) the program has been documented as effective by informed experts and other sources.

~~(2)~~(4) If a ~~county sheriff~~ law enforcement agency 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 this part. The department shall also assist ~~counties in which a sobriety program exists~~ entities participating in the program in determining alternatives to incarceration.

~~(3)~~(5) (a) If a ~~county~~ law enforcement agency participates in the program, the ~~sheriff~~ law enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the ~~sheriff~~ law enforcement agency pursuant to this part, except that the ~~sheriff's~~ law enforcement agency's designee may not determine whether to participate in the sobriety program.

(b) The ~~sheriff~~ law enforcement agency 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.

(6) Any efforts by the department to alter or modify the core components of the statewide sobriety program must include a documented strategy for achieving and measuring the effectiveness of the proposed modifications. Before core components may be modified, a pilot program with defined objectives and timelines must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the core components are monitored. The data COLLECTED FROM THE PILOT PROGRAM must be assessed by the department, and a determination must be made as to whether the stated goals were achieved and whether the modifications should be formally implemented in the sobriety program."

Section 4. Section 44-4-1204, MCA, is amended to read:

"44-4-1204. Rulemaking -- testing fee. The attorney general shall adopt rules to implement this part.

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~~ law enforcement agencies to manage testing, data access, fees and fee payments, and any required reports."

Section 5. Section 44-4-1205, MCA, is amended to read:

"44-4-1205. Authority of court ~~and other entities~~ to order participation in sobriety and drug monitoring program -- probationary license -- ~~condition of parole~~imposition of conditions. ~~(1) Any court, county attorney, or city attorney may participate in the sobriety program.~~

~~(2)(1) (a) Any entity participating in COURT OR AGENCY UTILIZING the sobriety program may stay any sanctions THAT IT imposed against an offender while the offender is in compliance with the sobriety program.~~

~~(1)(b) If an individual convicted of THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE IN VIOLATION OF 61-8-465, a second or subsequent offense of driving under the influence in violation of 61-8-401, or A 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 to 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, NOTWITHSTANDING THE REQUIREMENTS OF 61-5-208 THAT AN INDIVIDUAL IS REQUIRED TO COMPLETE A CERTAIN PORTION OF A SUSPENSION PERIOD BEFORE A PROBATIONARY LICENSE MAY BE ISSUED.~~

~~(2)(c) 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)(2) The Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:~~

(a) the court may condition any bond or pretrial release for an individual charged with A VIOLATION OF 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or charged with any OTHER crime in which a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; upon participation in the sobriety program and payment of the fees required by 44-4-1204.

~~(4)(3) The~~ (b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of A VIOLATION OF 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or convicted of any OTHER crime in which a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; upon participation in the sobriety program and payment of the fees required by 44-4-1204.

~~(5)(4) The~~ (c) the board of pardons and parole, the department of corrections, or a parole officer may condition parole FOR A VIOLATION OF 61-8-465, for a second or subsequent violation of 61-8-401 or 61-8-406, or for any OTHER crime in which a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or upon participation in the sobriety program and payment of the fees required by 44-4-1204

(d) the department of corrections may establish conditions for conditional release for a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime."

Section 6. Section 44-4-1206, MCA, is amended to read:

"44-4-1206. Collection, distribution, and use of testing fees. The sheriff law enforcement agency 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 entity for use by the sheriff law enforcement agency or the sheriff's law enforcement agency's designee pursuant to the terms determined by the sheriff law enforcement agency in accordance with the provisions of this part and the rules implementing this part."

SECTION 7. 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 Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or any other crime in which a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(q) 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.

(9) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

SECTION 8. SECTION 61-8-442, MCA, IS AMENDED TO READ:

"61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety program -- forfeiture of vehicle. (1) In

addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401 or 61-8-406:

(a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

~~(b) require the person to participate in the 24/7 sobriety program provided for in 44-4-1203 and pay the fees associated with the program or~~ require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program.

(2) If a person is convicted of a second or subsequent violation of 61-8-401 or 61-8-406, in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

~~(b) require the person to participate in the 24/7 sobriety program provided for in 44-4-1203 and pay the fees associated with the program or~~ require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

~~(b)(c)~~ order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-421.

(3) Any restriction or requirement imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department."

SECTION 9. SECTION 61-8-733, MCA, IS AMENDED TO READ:

"61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety program -- forfeiture of vehicle. (1) On the second or subsequent conviction of a violation of 61-8-401 or 61-8-406 or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a

test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the court, in addition to the punishments provided in 61-5-212, 61-8-714, and 61-8-722 and any other penalty imposed by law, shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;

(b) require the person to participate in the 24/7 sobriety program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

~~(b)~~(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -
