

## HOUSE BILL NO. 491

INTRODUCED BY S. LAVIN, E. ARNTZEN, M. BLASDEL, E. BUTTREY, R. LYNCH, G. PIERSON,  
L. RANDALL, C. SCHREINER, J. SESSO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM; CLARIFYING THE PURPOSE AND CORE COMPONENTS OF THE SOBRIETY PROGRAM; ~~PROVIDING THAT ALL PREVIOUS CONVICTIONS FOR A SECOND OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE, A SECOND OR SUBSEQUENT OFFENSE OF DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION, OR AGGRAVATED DRIVING UNDER THE INFLUENCE MUST BE COUNTED TO DETERMINE THE NUMBER OF CONVICTIONS~~ CLARIFYING ELIGIBILITY FOR PARTICIPATION IN THE SOBRIETY PROGRAM; AMENDING SECTIONS 44-4-1202, 44-4-1203, AND 44-4-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** 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 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;

(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~~

(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; and

(d) to ensure timely and sober participation in judicial proceedings.

(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

1 likely to account for positive program outcomes.

2 (b) "Dangerous drug" has the meaning provided in 50-32-101.

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

4 (d) "Immediate sanction" means a sanction that is applied within minutes of a noncompliant test event.

5 (e) "Law enforcement agency" means the county sheriff's office or another law enforcement agency  
6 designated by the county sheriff's office that is charged with enforcing the sobriety program.

7 (f) "Sobriety program" or "program" means the 24/7 sobriety and drug monitoring program established  
8 in 44-4-1203, which authorizes a court or an agency as defined in 2-15-102, as a condition of bond, sentence,  
9 probation, parole, or work permit, to:

10 (i) require an individual who has been charged with or convicted of a crime in which the abuse of alcohol  
11 or dangerous drugs was a contributing factor in the commission of the crime, including but not limited to a second  
12 or subsequent offense of driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or  
13 dangerous drugs for a period of time; and

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

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

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

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

19 (g) "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug  
20 in an individual's breath or body fluid, including blood, urine, saliva, or perspiration, and includes any combination  
21 of the use of breath testing, drug patch testing, urinalysis testing, saliva testing, continuous remote sensing, or  
22 transdermal alcohol monitoring. With the concurrence of the department and consistent with 44-4-1203, alternate  
23 body fluids may be approved for testing.

24 (h) "Timely sanction" means a sanction that is applied as soon as practical following a noncompliant test  
25 event."

26

27 **Section 2.** Section 44-4-1203, MCA, is amended to read:

28 **"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety  
29 and drug monitoring program within the department to be administered by the attorney general.

30 (2) (a) The core components of the sobriety program must include use of a primary testing methodology

1 for the presence of alcohol or dangerous drugs that:

2 (i) best facilitates the ability to apply immediate sanctions for noncompliance; and

3 (ii) is available at an affordable cost.

4 (b) In cases of hardship or when a sobriety program participant is subject to less-stringent testing  
5 requirements, testing methodologies with timely sanctions for noncompliance may be utilized.

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

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

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

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

12 (4) If a law enforcement agency chooses to participate in the sobriety program, the department shall  
13 assist in the creation and administration of the program in the manner provided in this part. The department shall  
14 also assist entities participating in the program in determining alternatives to incarceration.

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

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

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

28

29 **Section 3.** Section 44-4-1205, MCA, is amended to read:

30 **"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program --**

1 **probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may  
2 stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety  
3 program.

4 (b) If an individual convicted of the offense of aggravated driving under the influence in violation of  
5 61-8-465, a second or subsequent offense of driving under the influence in violation of 61-8-401, or a second or  
6 subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required  
7 to participate in the sobriety program, the court may, upon the individual's successful completion of a  
8 court-approved chemical dependency treatment program and proof of insurance pursuant to 61-6-301, notify the  
9 department that as a participant in the sobriety program, the individual is eligible for a restricted probationary  
10 driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required  
11 to complete a certain portion of a suspension period before a probationary license may be issued.

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

15 (2) Upon an offender's participation in the sobriety program and payment of the fees required by  
16 44-4-1204:

17 (a) the court may condition any bond or pretrial release for an individual charged with a violation of  
18 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any  
19 other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a  
20 contributing factor in the commission of the crime;

21 (b) the court may condition the granting of a suspended execution of sentence or probation for an  
22 individual convicted of a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a  
23 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse  
24 of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

25 (c) the board of pardons and parole may condition parole for a violation of 61-8-465, a second or  
26 subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that  
27 imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor  
28 in the commission of the crime; or

29 (d) the department of corrections may establish conditions for conditional release for a violation of  
30 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any

1 other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a  
 2 contributing factor in the commission of the crime.

3 (3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release,  
 4 suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for  
 5 an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or  
 6 neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the  
 7 crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the  
 8 statute.

9 ~~(4) For purposes of this section, all previous convictions for a second or subsequent offense of driving~~  
 10 ~~under the influence in violation of 61-8-401, a second or subsequent offense of driving with excessive alcohol~~  
 11 ~~concentration in violation of 61-8-406, or aggravated driving under the influence in violation of 61-8-465, must~~  
 12 ~~be counted to determine the number of convictions for participation in the sobriety program and the provisions~~  
 13 ~~of 61-8-734(1)(b) do not apply.~~

14 (4) A PERSON IS ELIGIBLE TO PARTICIPATE IN AND A COURT MAY COMPEL A PERSON TO PARTICIPATE IN A  
 15 SOBRIETY PROGRAM IF THE PERSON:

16 (A) IS CHARGED WITH VIOLATING 61-8-465; OR

17 (B) (I) IS CHARGED WITH OR HAS BEEN CONVICTED OF VIOLATING 61-8-401 OR 61-8-406; AND

18 (II) AT ANY TIME IN THE 10 YEARS PRECEDING THE DATE OF THE CURRENT CHARGE OR CONVICTION:

19 (A) HAS BEEN CONVICTED IN THIS STATE OF A VIOLATION OF 61-8-401, 61-8-406, OR 61-8-465;

20 (B) HAS BEEN CONVICTED OF A VIOLATION OF A STATUTE OR REGULATION IN ANOTHER STATE OR ON A FEDERALLY  
 21 RECOGNIZED INDIAN RESERVATION THAT IS SIMILAR TO 61-8-401, 61-8-406, OR 61-8-465; OR

22 (C) HAS FORFEITED BAIL OR COLLATERAL DEPOSITED TO SECURE THE DEFENDANT'S APPEARANCE IN COURT IN  
 23 THIS STATE, IN ANOTHER STATE, OR ON A FEDERALLY RECOGNIZED INDIAN RESERVATION FOR A CHARGE OF VIOLATING  
 24 61-8-401, 61-8-406, 61-8-465, OR A SIMILAR STATUTE OR REGULATION AND THE FORFEITURE HAS NOT BEEN VACATED.

25 (5) AS USED IN THIS SECTION, "CONVICTION" HAS THE MEANING PROVIDED IN 45-2-101."

26

27 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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