

SENATE BILL NO. 362

INTRODUCED BY M. LANG

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM ACT; ALLOWING DISCRETION ON THE FREQUENCY AND TYPE OF TESTING METHODS; REMOVING THE REQUIREMENT FOR A PILOT PROGRAM; AND AMENDING SECTIONS 44-4-1202, 44-4-1203, AND 44-4-1205, MCA."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**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;

(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 likely to account for positive program outcomes.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety  
27 and drug monitoring program within the department to be administered by the attorney general.

28 (2) (a) The core components of the sobriety program must include use of a primary testing methodology  
29 for the presence of alcohol or dangerous drugs that:

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

1 (ii) is available at an affordable cost.

2 (b) Primary testing methods for alcohol include twice-a-day, in-person breath testing at a central location  
 3 and other methodologies approved by the department. Primary testing methodologies must utilize devices that  
 4 are capable of determining alcohol concentrations below an equivalent breath alcohol concentration of 0.010  
 5 grams per 210 liters of breath. If the primary testing methodology is a breath alcohol analysis, the device utilized  
 6 must be listed on the most recent conforming products list for evidential breath alcohol measurement devices  
 7 as published by the national highway traffic safety administration.

8 ~~(b)~~(c) In cases of hardship or when a sobriety program participant is subject to less-stringent testing  
 9 requirements, testing methodologies with timely sanctions for noncompliance may be utilized. Hardship testing  
 10 methodologies include the use of transdermal alcohol monitoring devices, remote breath test devices, and other  
 11 methods approved by the department. A hardship testing methodology may be used if the court or agency  
 12 determines that hardship factors, including but not limited to distance from or lack of access to a primary testing  
 13 method site, prevent the reasonable use of a primary testing method.

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

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

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

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

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

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

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

29 ~~(6) Any efforts by the department to alter or modify the core components of the statewide sobriety~~  
 30 ~~program must include a documented strategy for achieving and measuring the effectiveness of the proposed~~

1 ~~modifications. Before core components may be modified, a pilot program with defined objectives and timelines~~  
 2 ~~must be initiated in which measurements of the effectiveness and impact of any proposed modifications to the~~  
 3 ~~core components are monitored. The data collected from the pilot program must be assessed by the department,~~  
 4 ~~and a determination must be made as to whether the stated goals were achieved and whether the modifications~~  
 5 ~~should be formally implemented in the sobriety program.~~

6 ~~(7)(6)~~ All alcohol or drug testing ordered by a court must utilize the data management technology plan  
 7 provided for in 44-4-1204(4). All alcohol or drug testing ordered by a court must utilize the data management  
 8 technology system in accordance with the data management technology plan provided for in 44-4-1204(4).  
 9 The data is owned by the state and maintained by the department. Approved testing methodologies, whether  
 10 designated as primary or hardship, must be capable of electronically transferring data directly into the data  
 11 management technology system through a department-approved interface.

12 ~~(8)(7) Alcohol~~ In order to provide a more complete record of drug and alcohol testing results, any alcohol  
 13 or drug testing required by the department of corrections pursuant to this part other state or local agencies must  
 14 may utilize the data management technology plan provided for in 44-4-1204(4) system."

15  
 16 **Section 3.** Section 44-4-1205, MCA, is amended to read:

17 **"44-4-1205. Authority of court to order participation in sobriety and drug monitoring program --**  
 18 **probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may  
 19 stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety  
 20 program.

21 (b) If an individual convicted of the offense of aggravated driving under the influence in violation of  
 22 61-8-465, a second or subsequent offense of driving under the influence in violation of 61-8-401, or a second or  
 23 subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required  
 24 to participate in the sobriety program, the court may, upon the individual's ~~successful completion of a~~  
 25 ~~court-approved chemical dependency treatment program and~~ obtaining proof of insurance pursuant to 61-6-301,  
 26 notify the department that as a participant in the sobriety program, the individual is eligible for a restricted  
 27 probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an  
 28 individual is required to complete a certain portion of a suspension period before a probationary license may be  
 29 issued.

30 (c) If the individual fails to comply with the requirements of the sobriety program, the court may notify

1 the department of the individual's noncompliance and direct the department to withdraw the individual's  
2 probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

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

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

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

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

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

27 (4) A person is eligible to participate in and a court may compel a person to participate in a sobriety  
28 program if the person:

29 (a) is charged with violating 61-8-465; or

30 (b) (i) is charged with or has been convicted of violating 61-8-401 or 61-8-406; and

- 1 (ii) at any time in the 10 years preceding the date of the current charge or conviction:  
2 (A) has been convicted in this state of a violation of 61-8-401, 61-8-406, or 61-8-465;  
3 (B) has been convicted of a violation of a statute or regulation in another state or on a federally  
4 recognized Indian reservation that is similar to 61-8-401, 61-8-406, or 61-8-465; or  
5 (C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state,  
6 in another state, or on a federally recognized Indian reservation for a charge of violating 61-8-401, 61-8-406,  
7 61-8-465, or a similar statute or regulation and the forfeiture has not been vacated.  
8 (5) As used in this section, "conviction" has the meaning provided in 45-2-101."

9 - END -