

## 1 HOUSE BILL NO. 233

2 INTRODUCED BY S. LAVIN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE 24/7 SOBRIETY PROGRAM; EXPANDING THE 24/7  
5 SOBRIETY PROGRAM TO INCLUDE OTHER CRIMES IN WHICH THE ABUSE OF ALCOHOL OR  
6 DANGEROUS DRUGS WAS A CONTRIBUTING FACTOR IN THE COMMISSION OF THE CRIME; EXPANDING  
7 USE OF THE 24/7 PROGRAM TO ADDITIONAL LOCAL LAW ENFORCEMENT AGENCIES; REQUIRING THE  
8 STATEWIDE PROGRAM TO MEET CERTAIN STANDARDS; AUTHORIZING ANY COURT, COUNTY  
9 ATTORNEY, OR CITY ATTORNEY TO UTILIZE THE PROGRAM; AMENDING SECTIONS 44-4-1201,  
10 44-4-1202, 44-4-1203, 44-4-1204, 44-4-1205, AND 44-4-1206, MCA; AND PROVIDING AN IMMEDIATE  
11 EFFECTIVE DATE."  
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13 WHEREAS, a Rand Corporation study published in the American Journal of Public Health concluded that  
14 the 24/7 Sobriety Program's frequent alcohol testing combined with swift, certain, and modest sanctions for  
15 violations can reduce problem drinking and improve public health outcomes; and

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

19 WHEREAS, as a result of the success of the 24/7 Sobriety Program, the program is an authorized  
20 program for which impaired driving countermeasure incentive grant funding is available under federal law.  
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22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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24 **Section 1.** Section 44-4-1201, MCA, is amended to read:

25 "**44-4-1201. Short title.** This part may be cited as the "Montana 24/7 Sobriety and Drug Monitoring  
26 Program Act"."  
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28 **Section 2.** Section 44-4-1202, MCA, is amended to read:

29 "**44-4-1202. Purpose -- definitions.** (1) The legislature declares that driving in Montana upon a way of  
30 this state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege

1 ~~must~~ shall accept the corresponding responsibilities.

2 (2) The legislature further declares that the purpose of this part is:

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

5 (b) to protect the public health and welfare by reducing the number of repeat offenders for crimes in  
6 which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and

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

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

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

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

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

15 (d) "Law enforcement agency" means the county sheriff's office or other law enforcement agency  
16 charged with enforcing the sobriety program.

17 ~~(b)(e)~~ "Sobriety program" or "program" means the 24/7 sobriety and drug monitoring program established  
18 in 44-4-1203, which authorizes a court or agency as a condition of bond, sentence, probation, parole, or work  
19 permit to:-

20 (i) require an individual who has been charged, pleaded guilty, or been convicted of a crime in which the  
21 abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime, including but not  
22 limited to driving under the influence of alcohol or dangerous drugs, to abstain from alcohol or dangerous drugs  
23 for a period of time; and

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

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

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

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

29 ~~(e)(f)~~ "Testing" means a procedure for determining the presence and level of alcohol or a dangerous  
30 drug, as defined in 50-32-101, in an individual's breath or body fluid, including blood, ~~breath,~~ or urine, saliva, or

1 perspiration, and includes any combination of the use of breath testing, drug patch testing, urinalysis testing,  
 2 saliva testing, or continuous or transdermal alcohol monitoring. With the concurrence of the department and  
 3 consistent with 44-4-1203, alternate body fluids may be approved for testing.

4 (g) "Timely sanction" means a sanction that is applied within hours or days after a noncompliant test  
 5 event, but the period of time must be as short as possible and may not exceed 14 days."

6

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

8 **"44-4-1203. Sobriety and drug monitoring program created.** (1) There is a statewide 24/7 sobriety  
 9 and drug monitoring program within the department of ~~justice~~ to be administered by the attorney general.

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

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

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

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

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

21 ~~(2)(4)~~ If a ~~county sheriff~~ law enforcement agency chooses to participate in the sobriety program, the  
 22 department shall assist in the creation and administration of the program in the ~~county~~ in the manner provided  
 23 in this part. The department shall also assist ~~counties in which a sobriety program exists~~ entities participating in  
 24 the program in determining alternatives to incarceration.

25 ~~(3)(5)~~ (a) If a ~~county~~ law enforcement agency participates in the program, the ~~sheriff~~ law enforcement  
 26 agency may designate an entity to provide the testing services or to take any other action required or authorized  
 27 to be provided by the ~~sheriff~~ law enforcement agency pursuant to this part, except that the ~~sheriff's~~ law  
 28 enforcement agency's designee may not determine whether to participate in the sobriety program.

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

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

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

10           **"44-4-1204. Rulemaking -- testing fee.** The attorney general shall adopt rules to implement this part.

11           The rules must:

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

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

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

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

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

22           **"44-4-1205. Authority of court and other entities to order participation in sobriety and drug**  
 23 **monitoring program -- probationary license -- condition of parole.** (1) Any court, county attorney, or city  
 24 attorney may participate in the sobriety program.

25           (2) (a) Any entity participating in the sobriety program may stay any sanctions imposed against an  
 26 offender while the offender is in compliance with the sobriety program.

27           ~~(1)~~(b) If an individual convicted of a second or subsequent offense of driving under the influence in  
 28 violation of 61-8-401 or second or subsequent offense of driving with excessive alcohol concentration in violation  
 29 of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's  
 30 successful completion of a court-approved chemical dependency treatment program and proof of insurance

1 pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible  
 2 for a restricted probationary driver's license pursuant to 61-2-302, ~~notwithstanding the requirements of 61-5-208~~  
 3 ~~that an individual must complete a certain portion of a suspension period before a probationary license may be~~  
 4 ~~issued.~~

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

8 (3) The court may condition any bond or pretrial release for an individual charged with a second or  
 9 subsequent violation of 61-8-401 or 61-8-406 or charged with any crime in which the abuse of alcohol or  
 10 dangerous drugs was a contributing factor in the commission of the crime upon participation in the sobriety  
 11 program and payment of the fees required by 44-4-1204.

12 (4) The court may condition the granting of a suspended execution of sentence or probation for an  
 13 individual convicted of a second or subsequent violation of 61-8-401 or 61-8-406 or convicted of any crime in  
 14 which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime upon  
 15 participation in the sobriety program and payment of the fees required by 44-4-1204.

16 (5) The board of pardons and parole, the department of corrections, or a parole officer may condition  
 17 parole for a second or subsequent violation of 61-8-401 or 61-8-406 or for any crime in which the abuse of alcohol  
 18 or dangerous drugs was a contributing factor in the commission of the crime upon participation in the sobriety  
 19 program and payment of the fees required by 44-4-1204."

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

22 **"44-4-1206. Collection, distribution, and use of testing fees.** The ~~sheriff~~ law enforcement agency of  
 23 a county in which a sobriety program exists shall collect the testing fee required by the rules of the department  
 24 and deposit the fees into the local sobriety program account established pursuant to department rules. The fee  
 25 must be distributed according to those rules to the proper ~~county~~ entity for use by the ~~sheriff~~ law enforcement  
 26 agency or the ~~sheriff's~~ law enforcement agency's designee pursuant to the terms determined by the ~~sheriff~~ law  
 27 enforcement agency in accordance with the provisions of this part and the rules implementing this part."  
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29 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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