1 **DUI PROGRAM AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Justin L. Fawson**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends a provision related to the duration of participation in the 24-7 sobriety

10 program for a person ordered by a judge to participate if the person also has a prior

11 conviction for driving under the influence.

12 **Highlighted Provisions:**

13 This bill:

14 ▸ amends a provision related to the duration of participation in the 24-7 sobriety

15 program for a person ordered by a judge to participate if the person also has a prior

16 conviction for driving under the influence.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **41-6a-515.5**, as enacted by Laws of Utah 2017, Chapter 446

24

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **41-6a-515.5** is amended to read:

27 **41-6a-515.5. Sobriety program for DUI.**

28   (1) As used in this section:

29   (a) "24-7 sobriety program" means a 24 hours a day, seven days a week sobriety and

30   drug monitoring program that:

31   (i) requires an individual to abstain from alcohol or drugs for a period of time;

32   (ii) requires an individual to submit to random drug testing; and

33   (iii) requires the individual to be subject to testing to determine the presence of

34   alcohol:

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

36   (B) by continuous remote sensing or transdermal alcohol monitoring by means of an

37   electronic monitoring device that allows timely sanctions to be applied; or

38   (C) by an alternate method that is approved by the National Highway Traffic Safety

39   Administration.

40   (b) (i) "Testing" means a procedure for determining the presence and level of alcohol

41   or a drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration.

42   (ii) "Testing" includes any combination of the use of:

43   (A) breath testing;

44   (B) drug patch testing;

45   (C) urinalysis testing;

46   (D) saliva testing;

47   (E) continuous remote sensing;

48   (F) transdermal alcohol monitoring; or

49   (G) alternate body fluids approved for testing by the commissioner of the department.

50   (2) (a) The department shall establish and administer a 24-7 sobriety program as a pilot

51   program.

52   (b) The department shall establish one pilot program with a law enforcement agency

53   that is able to meet the 24-7 sobriety program qualifications and requirements under this

54   section.

55   (3) (a) The 24-7 sobriety program shall include use of a primary testing methodology

56   for the presence of alcohol or drugs that:

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

58   (ii) is available at an affordable cost; and

59   (iii) provides for positive, behavioral reinforcement for program compliance.

60   (b) Primary testing methods include twice a day, in person breath testing for alcohol at

61   a central location, random drug testing, and other methodologies approved by the

62   commissioner of the department.

63   (c) In cases of hardship, testing methodologies with timely sanctions for

64   noncompliance may be used.

65   (d) Hardship testing methodologies under Subsection (3)(c) include:

66   (i) the use of transdermal alcohol monitoring devices;

67   (ii) remote breath test devices; and

68   (iii) other commissioner approved methods for hardship exceptions.

69   (e) The commissioner shall consider the following factors to determine whether a

70   hardship exception applies under Subsection (3)(c):

71   (i) whether a device is available;

72   (ii) whether the participant is capable of paying the fees and costs associated with

73   transdermal alcohol monitoring or remote breath testing; and

74   (iii) whether the participant qualifies for a hardship exception from twice-daily breath

75   testing because of one or more of the following:

76   (A) the participant lives more than a 25-mile radius from a testing site, and submitting

77   to twice-daily breath tests would be unduly burdensome;

78   (B) the participant's employment requires job performance at a location that is more

79   than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be

80   unduly burdensome;

81   (C) the participant's schooling is at a location that is more than a 25-mile radius from a

82   testing site and submitting to twice-daily breath tests would be unduly burdensome; or

83   (D) the participant lives in a county where twice-daily breath testing is not available.

84   (4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and

85   satisfy at least two of the following categories:

86   (i) the program is included in the federal registry of evidence-based programs and

87   practices;

88   (ii) the program has been reported in a peer-reviewed journal as having positive effects

89   on the primary targeted outcome; or

90   (iii) the program has been documented as effective by informed experts and other

91   sources.

92   (b) If a law enforcement agency participates in a 24-7 sobriety program, the department

93   shall assist in the creation and administration of the program in the manner provided in this

94   section.

95   (c) A 24-7 sobriety program shall have at least one testing location and two daily

96   testing times approximately 12 hours apart.

97   (d) If a person who is ordered by a judge to participate in the 24-7 sobriety program has

98   a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current

99   conviction under Section 41-6a-502 or the commission of the offense upon which the current

100   conviction is based, the person shall be required to participate in a 24-7 sobriety program for at

101   least one year.

102   (5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law

103   enforcement agency may designate an entity to provide the testing services or to take any other

104   action required or authorized to be provided by the law enforcement agency pursuant to this

105   section, except that the law enforcement agency's designee may not determine whether an

106   individual is required to participate in the 24-7 sobriety program.

107   (b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall

108   establish the testing locations and times for the county.

109   (6) (a) The commissioner of the department shall establish a data management

110   technology plan for data collection on 24-7 sobriety program participants.

111   (b) All required data related to participants in the 24-7 sobriety program shall be

112   received into the data management technology plan.

113   (c) The data collected under this Subsection (6) is owned by the state.

114   (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

115   the department shall make rules to implement this section.

116   (b) The rules under Subsection (7)(a) shall:

117   (i) provide for the nature and manner of testing and the procedures and apparatus to be

118   used for testing;

119   (ii) establish reasonable participation and testing fees for the program, including the

120   collection of fees to pay the cost of installation, monitoring, and deactivation of any testing

121   device;
122   (iii) require and provide for the approval of a 24-7 sobriety program data management
123   technology plan that shall be used by the department and participating law enforcement
124   agencies to manage testing, data access, fees and fee payments, and any required reports;
125   (iv) establish a model sanctioning schedule for program noncompliance; and
126   (v) establish a process for piloting alternate components of the 24-7 sobriety program.
127   Section 2. **Effective date.**
128   If approved by two-thirds of all the members elected to each house, this bill takes effect
129   upon approval by the governor, or the day following the constitutional time limit of Utah
130   Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
131   the date of veto override.

Legislative Review Note
Office of Legislative Research and General Counsel