

1 **24/7 SOBRIETY PROGRAM EXPANSION**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill expands the 24-7 sobriety program statewide.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ removes language limiting the 24-7 sobriety program to a pilot program; and
- 11 ▶ allows expansion of the program statewide.

12 **Money Appropriated in this Bill:**

13 None

14 **Other Special Clauses:**

15 None

16 **Utah Code Sections Affected:**

17 AMENDS:

18 **41-6a-515.5**, as last amended by Laws of Utah 2018, Chapter 135

19 **41-6a-517**, as last amended by Laws of Utah 2020, Chapter 12

20

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

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

23 **41-6a-515.5. Sobriety program for DUI.**

24 (1) As used in this section:

25 (a) "24-7 sobriety program" means a 24 hours a day, seven days a week sobriety and
26 drug monitoring program that:

- 27 (i) requires an individual to abstain from alcohol or drugs for a period of time;
- 28 (ii) requires an individual to submit to random drug testing; and
- 29 (iii) requires the individual to be subject to testing to determine the presence of alcohol:
 - 30 (A) twice a day at a central location where timely sanctions may be applied;
 - 31 (B) by continuous remote sensing or transdermal alcohol monitoring by means of an

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

33 (C) by an alternate method that is approved by the National Highway Traffic Safety
34 Administration.

35 (b) (i) "Testing" means a procedure for determining the presence and level of alcohol or a
36 drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration.

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

38 (A) remote and in-person breath testing;

39 (B) drug patch testing;

40 (C) urinalysis testing;

41 (D) saliva testing;

42 (E) continuous remote sensing;

43 (F) transdermal alcohol monitoring; or

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

45 ~~[(2) (a) The department shall establish and administer a 24-7 sobriety program as a pilot~~
46 ~~program.]~~

47 ~~[(b) (2) The department [shall establish one pilot] may establish a 24-7 sobriety program~~
48 ~~with a law enforcement agency that is able to meet the 24-7 sobriety program qualifications and~~
49 ~~requirements under this section.~~

50 (3) (a) The 24-7 sobriety program shall include use of multiple testing methodologies for
51 the presence of alcohol or drugs that:

52 (i) best facilitates the ability to apply timely sanctions for noncompliance;

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

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

55 (b) The commissioner shall consider the following factors to determine which testing
56 methodologies are best suited for each participant:

57 (i) whether a device is available;

58 (ii) whether the participant is capable of paying the fees and costs associated with each
59 testing methodology;

60 (iii) travel requirements based on each testing methodology and the participant's
61 circumstances;

62 (iv) the substance or substances for which testing will be required; and

63 (v) other factors the commissioner considers relevant.

64 (4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and
65 satisfy at least two of the following categories:

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

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

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

72 (b) If a law enforcement agency participates in a 24-7 sobriety program, the department
73 shall assist in the creation and administration of the program in the manner provided in this
74 section.

75 (c) A 24-7 sobriety program shall have at least one testing location and two daily testing
76 times approximately 12 hours apart.

77 (d) If a person who is ordered by a judge to participate in the 24-7 sobriety program has a
78 prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current
79 conviction under Section 41-6a-502 or the commission of the offense upon which the current
80 conviction is based, the person shall be required to participate in a 24-7 sobriety program for at
81 least one year.

82 (5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law
83 enforcement agency may designate an entity to provide the testing services or to take any other
84 action required or authorized to be provided by the law enforcement agency pursuant to this
85 section, except that the law enforcement agency's designee may not determine whether an
86 individual is required to participate in the 24-7 sobriety program.

87 (b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall
88 establish the testing locations and times for the county.

89 (6) (a) The commissioner of the department shall establish a data management
90 technology plan for data collection on 24-7 sobriety program participants.

91 (b) All required data related to participants in the 24-7 sobriety program shall be received
92 into the data management technology plan.

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

94 (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
95 the department shall make rules to implement this section.

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

97 (i) provide for the nature and manner of testing and the procedures and apparatus to be
98 used for testing;

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

101 (iii) require and provide for the approval of a 24-7 sobriety program data management
102 technology plan that shall be used by the department and participating law enforcement agencies
103 to manage testing, data access, fees and fee payments, and any required reports; and

104 (iv) establish a model sanctioning schedule for program noncompliance[~~;~~and].

105 [~~(v) establish a process for piloting alternate components of the 24-7 sobriety program.~~]

106 Section 2. Section ~~41-6a-517~~ is amended to read:

107 **41-6a-517. Definitions -- Driving with any measurable controlled substance in**
108 **the body -- Penalties -- Arrest without warrant.**

109 (1) As used in this section:

110 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.

111 (b) "Practitioner" means the same as that term is defined in Section 58-37-2.

112 (c) "Prescribe" means the same as that term is defined in Section 58-37-2.

113 (d) "Prescription" means the same as that term is defined in Section 58-37-2.

114 (2) (a) Except as provided in Subsection (2)(b), in cases not amounting to a violation of
115 Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle
116 within this state if the person has any measurable controlled substance or metabolite of a
117 controlled substance in the person's body.

118 (b) Subsection (2)(a) does not apply to a person that has
119 11-nor-9-carboxy-tetrahydrocannabinol as the only controlled substance present in the person's
120 body.

121 (3) It is an affirmative defense to prosecution under this section that the controlled
122 substance was:

123 (a) involuntarily ingested by the accused;

- 124 (b) prescribed by a practitioner for use by the accused;
- 125 (c) cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form
- 126 that the accused ingested in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act;
- 127 or
- 128 (d) otherwise legally ingested.
- 129 (4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B
- 130 misdemeanor.
- 131 (b) A person who violates this section is subject to conviction and sentencing under both
- 132 this section and any applicable offense under Section 58-37-8.
- 133 (5) A peace officer may, without a warrant, arrest a person for a violation of this section
- 134 when the officer has probable cause to believe the violation has occurred, although not in the
- 135 officer's presence, and if the officer has probable cause to believe that the violation was
- 136 committed by the person.
- 137 (6) The Driver License Division shall, if the person is 21 years of age or older on the date
- 138 of arrest:
- 139 (a) suspend, for a period of 120 days, the driver license of a person convicted under
- 140 Subsection (2) of an offense committed on or after July 1, 2009; or
- 141 (b) revoke, for a period of two years, the driver license of a person if:
- 142 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
- 143 (ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and
- 144 within a period of 10 years after the date of the prior violation.
- 145 (7) The Driver License Division shall, if the person is 19 years of age or older but under
- 146 21 years of age on the date of arrest:
- 147 (a) suspend, until the person is 21 years of age or for a period of one year, whichever is
- 148 longer, the driver license of a person convicted under Subsection (2) of an offense committed on
- 149 or after July 1, 2011; or
- 150 (b) revoke, until the person is 21 years of age or for a period of two years, whichever is
- 151 longer, the driver license of a person if:
- 152 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
- 153 (ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and

154 within a period of 10 years after the date of the prior violation.

155 (8) The Driver License Division shall, if the person is under 19 years of age on the date
156 of arrest:

157 (a) suspend, until the person is 21 years of age, the driver license of a person convicted
158 under Subsection (2) of an offense committed on or after July 1, 2009; or

159 (b) revoke, until the person is 21 years of age, the driver license of a person if:

160 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

161 (ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and
162 within a period of 10 years after the date of the prior violation.

163 (9) The Driver License Division shall subtract from any suspension or revocation period
164 the number of days for which a license was previously suspended under Section 53-3-223 or
165 53-3-231, if the previous suspension was based on the same occurrence upon which the record of
166 conviction is based.

167 (10) The Driver License Division shall:

168 (a) deny, suspend, or revoke a person's license for the denial and suspension periods in
169 effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was
170 committed prior to July 1, 2009; or

171 (b) deny, suspend, or revoke the operator's license of a person for the denial, suspension,
172 or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

173 (i) the person was 20 years of age or older but under 21 years of age at the time of
174 arrest; and

175 (ii) the conviction under Subsection (2) is for an offense that was committed on or after
176 July 1, 2009, and prior to July 1, 2011.

177 (11) A court that reported a conviction of a violation of this section for a violation that
178 occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension
179 period imposed under Subsection (7)(a) or (8)(a) prior to completion of the suspension period if
180 the person:

181 (a) completes at least six months of the license suspension;

182 (b) completes a screening;

183 (c) completes an assessment, if it is found appropriate by a screening under Subsection

184 (11)(b);

185 (d) completes substance abuse treatment if it is found appropriate by the assessment
186 under Subsection (11)(c);

187 (e) completes an educational series if substance abuse treatment is not required by the
188 assessment under Subsection (11)(c) or the court does not order substance abuse treatment;

189 (f) has not been convicted of a violation of any motor vehicle law in which the person
190 was involved as the operator of the vehicle during the suspension period imposed under
191 Subsection (7)(a) or (8)(a);

192 (g) has complied with all the terms of the person's probation or all orders of the court if
193 not ordered to probation; and

194 (h) (i) is 18 years of age or older and provides a sworn statement to the court that the
195 person has not consumed a controlled substance not prescribed by a practitioner for use by the
196 person or unlawfully consumed alcohol during the suspension period imposed under Subsection
197 (7)(a) or (8)(a); or

198 (ii) is under 18 years of age and has the person's parent or legal guardian provide an
199 affidavit or other sworn statement to the court certifying that to the parent or legal guardian's
200 knowledge the person has not consumed a controlled substance not prescribed by a practitioner
201 for use by the person or unlawfully consumed alcohol during the suspension period imposed under
202 Subsection (7)(a) or (8)(a).

203 (12) If the court shortens a person's license suspension period in accordance with the
204 requirements of Subsection (11), the court shall forward the order shortening the person's license
205 suspension period prior to the completion of the suspension period imposed under Subsection
206 (7)(a) or (8)(a) to the Driver License Division.

207 (13) (a) The court shall notify the Driver License Division if a person fails to:

208 (i) complete all court ordered screening and assessment, educational series, and
209 substance abuse treatment; or

210 (ii) pay all fines and fees, including fees for restitution and treatment costs.

211 (b) Upon receiving the notification, the division shall suspend the person's driving privilege
212 in accordance with Subsections 53-3-221(2) and (3).

213 (14) The court:

214 (a) shall order supervised probation in accordance with Section 41-6a-507 for a person

215 convicted under Subsection (2); and

216 (b) may order a person convicted under Subsection (2) to participate in a 24-7 sobriety
217 program as defined in Section 41-6a-515.5 if the person is 21 years of age or older.

218 (15) (a) A court that reported a conviction of a violation of this section to the Driver
219 License Division may shorten the suspension period imposed under Subsection (6) before
220 completion of the suspension period if the person is participating in or has successfully completed
221 a 24-7 sobriety program as defined in Section 41-6a-515.5.

222 (b) If the court shortens a person's license suspension period in accordance with the
223 requirements of this Subsection (15), the court shall forward to the Driver License Division the
224 order shortening the person's suspension period.

225 (c) The court shall notify the Driver License Division, in a manner specified by the
226 division, if a person fails to complete all requirements of a 24-7 sobriety program.

227 ~~[(d) Upon receiving the notification described in Subsection (15)(c), the division shall~~
228 ~~suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).]~~

229 (d) (i) (A) Upon receiving the notification described in Subsection (15)(c), for a first
230 offense, the division shall suspend the person's driving privilege for a period of 120 days from the
231 date of notice.

232 (B) For a suspension described in Subsection (15)(d)(i)(A), no days shall be subtracted
233 from the 120-day suspension period for which a driving privilege was suspended under this section
234 or under section 53-3-223, if the previous suspension was based on the same occurrence upon
235 which the conviction under this section is based.

236 (ii) (A) Upon receiving the notification described in Subsection (15)(c), for a second or
237 subsequent offense, the division shall revoke the person's driving privilege for a period of two
238 years from the date of notice.

239 (B) For a revocation described in Subsection (15)(d)(ii)(A), no days shall be subtracted
240 from the two-year revocation period for which a driving privilege was previously revoked under
241 this section or under Section 53-3-223, if the previous revocation was based on the same
242 occurrence upon which the conviction under this section is based.