

Representative Justin L. Fawson proposes the following substitute bill:

DUI PROGRAM AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin L. Fawson

Senate Sponsor: David G. Buxton

LONG TITLE

General Description:

This bill amends provisions related to participation in the 24-7 sobriety program and available technologies for testing for the presence of alcohol or drugs.

Highlighted Provisions:

This bill:

- ▶ amends provisions to allow for timely sanctions, instead of immediate sanctions, to allow for more options in testing methodologies and flexibility for participants;
- ▶ removes provisions related to primary testing methods and hardship testing methods;
- ▶ allows the commissioner of the Department of Public Safety to evaluate the appropriate testing methodologies for each participant;
- ▶ amends a provision related to the duration of participation in the 24-7 sobriety program for a person ordered by a judge to participate if the person also has a prior conviction for driving under the influence; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **41-6a-515.5**, as enacted by Laws of Utah 2017, Chapter 446

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

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

33 **41-6a-515.5. Sobriety program for DUI.**

34 (1) As used in this section:

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

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

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

39 (iii) requires the individual to be subject to testing to determine the presence of
40 alcohol:

41 (A) twice a day at a central location where [~~immediate~~] timely sanctions may be
42 applied;

43 (B) by continuous remote sensing or transdermal alcohol monitoring by means of an
44 electronic monitoring device that allows timely sanctions to be applied; or

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

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

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

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

51 (B) drug patch testing;

52 (C) urinalysis testing;

53 (D) saliva testing;

54 (E) continuous remote sensing;

55 (F) transdermal alcohol monitoring; or

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

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

59 (b) The department shall establish one pilot program with a law enforcement agency
60 that is able to meet the 24-7 sobriety program qualifications and requirements under this
61 section.

62 (3) (a) The 24-7 sobriety program shall include use of [~~a primary testing methodology~~]
63 multiple testing methodologies for the presence of alcohol or drugs that:

64 (i) best facilitates the ability to apply [~~immediate~~] timely sanctions for noncompliance;

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

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

67 [~~(b) Primary testing methods include twice a day, in person breath testing for alcohol at
68 a central location, random drug testing, and other methodologies approved by the
69 commissioner of the department.]~~

70 [~~(c) In cases of hardship, testing methodologies with timely sanctions for
71 noncompliance may be used.]~~

72 [~~(d) Hardship testing methodologies under Subsection (3)(c) include:]~~

73 [~~(i) the use of transdermal alcohol monitoring devices;~~

74 [~~(ii) remote breath test devices; and]~~

75 [~~(iii) other commissioner approved methods for hardship exceptions:]~~

76 [~~(e) The commissioner shall consider the following factors to determine whether a
77 hardship exception applies under Subsection (3)(c):]~~

78 [~~(i) whether a device is available;]~~

79 [~~(ii) whether the participant is capable of paying the fees and costs associated with
80 transdermal alcohol monitoring or remote breath testing; and]~~

81 [~~(iii) whether the participant qualifies for a hardship exception from twice-daily breath
82 testing because of one or more of the following:]~~

83 [~~(A) the participant lives more than a 25-mile radius from a testing site, and submitting
84 to twice-daily breath tests would be unduly burdensome;]~~

85 [~~(B) the participant's employment requires job performance at a location that is more
86 than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be
87 unduly burdensome;]~~

88 ~~[(C) the participant's schooling is at a location that is more than a 25-mile radius from a~~
89 ~~testing site and submitting to twice-daily breath tests would be unduly burdensome; or]~~

90 ~~[(D) the participant lives in a county where twice-daily breath testing is not available.]~~

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

93 (i) whether a device is available;

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

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

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

99 (v) other factors the commissioner considers relevant.

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

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

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

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

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

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

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

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

119 enforcement agency may designate an entity to provide the testing services or to take any other
120 action required or authorized to be provided by the law enforcement agency pursuant to this
121 section, except that the law enforcement agency's designee may not determine whether an
122 individual is required to participate in the 24-7 sobriety program.

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

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

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

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

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

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

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

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

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

141 (iv) establish a model sanctioning schedule for program noncompliance; and

142 (v) establish a process for piloting alternate components of the 24-7 sobriety program.

143 **Section 2. Effective date.**

144 If approved by two-thirds of all the members elected to each house, this bill takes effect
145 upon approval by the governor, or the day following the constitutional time limit of Utah
146 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
147 the date of veto override.