

CHAPTER 159
STATEWIDE SOBRIETY AND DRUG MONITORING PROGRAM

661—159.1(901D) Program created. The statewide sobriety and drug monitoring program, also referred to as the “24/7 program,” is established in the department of public safety for use by participating jurisdictions. The program shall be available at least twice per day during hours designated by the law enforcement agency, seven days per week in the participating jurisdictions. Participation in or use of the 24/7 program is a voluntary decision of a participating jurisdiction. A participating jurisdiction cannot be required to participate in or to continue to participate in the 24/7 program.
[ARC 4010C, IAB 9/26/18, effective 10/8/18]

661—159.2 to 159.9 Reserved.

661—159.10(901D) Definitions. The following definitions apply to this chapter:

“*Alcohol*” means an alcoholic beverage as defined in Iowa Code section 321J.1.

“*Commissioner*” means the commissioner of public safety as defined in Iowa Code section 80.1A.

“*Controlled substance*” means the same as defined in Iowa Code section 124.101.

“*Department*” means the department of public safety.

“*Eligible offense*” means a criminal offense in which the abuse of alcohol or a controlled substance was a contributing factor in the commission of the offense, as determined by the court or a governmental entity of the participating jurisdiction. For purposes of operating while intoxicated offenses committed in violation of Iowa Code section 321J.2, “eligible offense” includes only the following offenses:

1. A first offense in which the person’s alcohol concentration exceeded .15.
2. A first offense in which an accident resulting in personal injury or property damage occurred.
3. A first offense in which the person refused to submit to a chemical test requested pursuant to Iowa Code section 321J.6.
4. A second or subsequent offense.

“*Failed test*” means any of the following:

1. A test or combination of tests that shows the presence of alcohol, a controlled substance, a combination of alcohol and one or more controlled substances, or a combination of two or more controlled substances, if any of the controlled substances are not prescribed by a health care provider or are not used in accordance with the health care provider’s written instructions.
2. A failure or refusal to submit to testing, including but not limited to the nonpayment of the required fee.
3. Incomplete testing or results that indicate efforts to tamper with or interfere with the test or with valid test results, whether or not those efforts are successful.
4. Failure to appear to submit to testing.

“*Immediate sanction*” means a sanction that is applied within minutes of a failed test result.

“*Law enforcement agency*” means a sheriff’s office or city police department that has been approved to administer, implement and enforce the statewide sobriety and drug monitoring program established in Iowa Code chapter 901D for the participating jurisdiction.

“*Participating jurisdiction*” means a county or a city that chooses to participate in the statewide sobriety and drug monitoring program and that has been approved for participation by the department.

“*Sobriety and drug monitoring program*” or “*24/7 program*” means the statewide sobriety and drug monitoring program established in Iowa Code chapter 901D.

“*Test*” or “*testing*” means a procedure or set of procedures performed using equipment, devices and methods approved by the commissioner to determine the presence of alcohol or a controlled substance in a person’s breath or bodily fluid, including blood, urine, saliva, and perspiration, and includes any combination of breath testing, drug patch testing, urine analysis testing, saliva testing, and continuous or transdermal alcohol monitoring.

“*Timely sanction*” means a sanction that is applied within hours or days after a failed test result. A timely sanction shall be applied as soon as possible, but the period between the failed test result and the application of the timely sanction shall not exceed five days.

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661—159.11(901D) Participating jurisdiction requirements.

159.11(1) Program requirements. As a participating jurisdiction of the 24/7 program, the participating jurisdiction shall:

a. Designate the law enforcement agency or third-party provider that will administer, implement and enforce the 24/7 program. More than one law enforcement agency or third-party provider may be designated.

b. Provide one or more locations for testing persons who are participating in the 24/7 program for the presence of alcohol or a controlled substance.

c. Ensure that each designated location is available at least twice per day, seven days per week for persons to be tested, during hours designated by the law enforcement agency.

d. Ensure that personnel who administer tests and collect bodily specimens for testing at the location have all required training and certifications to use or operate the testing equipment or devices.

e. Provide testing equipment and devices.

f. Designate the law enforcement agency that will be responsible to collect program fees from persons subject to testing and use program fees to pay for the participating jurisdiction’s costs to administer the program and purchase or maintain testing equipment and devices.

g. Provide for and apply immediate sanctions for failed tests.

h. Provide for and apply timely sanctions for failed tests.

i. Provide test results to the court, prosecutor, and person’s attorney and also provide test results and other required program information to the program data management system.

j. Provide for one or more alternative testing methods, if such methods have been approved by the commissioner, in cases of persons for whom testing at least twice per day creates a documented hardship or is geographically impractical.

k. Designate the law enforcement agency to establish and maintain a 24/7 program account, place all program fees collected into the account and use the funds in the account only for the purposes of administering and operating the 24/7 program, including but not limited to paying for the services of a third-party provider. The funds in the account shall be considered public funds and shall be subject to the rules and policies of the state auditor’s office.

l. Establish a program that is administered by the law enforcement agency to accept public or private grant funds, gifts, or donations and use the funds received to support program activities, including but not limited to the payment of fees for indigent persons. The funds collected under this program shall be deposited and held in the 24/7 program account.

m. Provide reports to the department as required.

n. Ensure that an audit of the 24/7 program account is conducted at least annually and make the audit report available to the department upon request.

o. Maintain sufficient security protocols to protect the personal information of persons subject to testing from unauthorized use.

p. Be approved by the department as a participating jurisdiction.

159.11(2) Third-party provider. A participating jurisdiction may designate a third-party provider to provide testing services as described in subrule 159.11(1), except, that the third-party provider shall not provide any of the requirements in paragraphs 159.11(1) “*f*,” “*g*,” “*h*,” “*k*,” and “*l*.” The department shall review any third-party provider designated by the participating jurisdiction as a part of the application process. A third-party provider must be approved by the department before providing any service of the 24/7 program.

159.11(3) Application. A county or city that desires to become a participating jurisdiction shall submit an application to the department. The application shall be made on a form provided by the department, which is available at www.dps.state.ia.us/commis/gtsb/index.shtml. The department shall

notify the participating jurisdiction whether it has been approved to participate in the 24/7 program. Approval shall be in the sole discretion of the department.

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661—159.12(901D) Participant requirements.

159.12(1) Requirements. A person subject to testing in the 24/7 program is required to do all of the following:

a. Abstain from all alcohol and controlled substances while enrolled in the program. If a person has been issued a prescription for a controlled substance, the person may participate in the 24/7 program and continue to take the prescribed controlled substance only with the health care provider's approval and in accordance with the health care provider's written instructions.

b. Submit to testing as required to determine whether alcohol or a controlled substance is present in the person's body.

c. Participate in the 24/7 program when ordered as a condition of bond, pretrial release, sentence, probation, parole, or a temporary restricted license.

d. Sign all forms, waivers and releases and provide all required information that is necessary for participation in the program to enable the testing to occur and the test results to be reported, disseminated and used as required by the 24/7 program, including but not limited to providing testing information to the county attorney, person's attorney, court or parole or probation officer as appropriate.

e. Obtain a temporary restricted license when eligible, if the person's driver's license is suspended or revoked.

f. Install an approved ignition interlock device on all motor vehicles owned or operated by the person if the person's driver's license is suspended or revoked or as is otherwise required by Iowa Code section 321J.17, and in any circumstance in which Iowa Code chapter 321J requires the installation of an ignition interlock device, or as ordered by the court pursuant to Iowa Code section 901D.3(2) "b."

g. Pay all program fees, including but not limited to the enrollment fee; the costs of tests, test equipment or test devices; and the costs of installing, activating, monitoring, and deactivating any testing equipment or devices.

h. Agree to be subject to immediate sanctions or timely sanctions, as applicable, for noncompliance with the 24/7 program requirements.

159.12(2) Reserved.

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661—159.13 to 159.19 Reserved.

661—159.20(901D) Testing.

159.20(1) Methods. The following methods and procedures shall be used to collect samples or perform testing to determine the presence of alcohol or a controlled substance in the person's breath or bodily fluid.

a. Evidentiary breath testing devices and methods as described in rule 661—157.2(321J).

b. Preliminary breath screening test devices and methods as described in rule 661—157.5(321J).

c. Urine collection methods and equipment as described in rule 661—157.3(321J).

d. The SCRAM® continuous alcohol monitoring or remote breath device.

159.20(2) Other devices and methods. Scientifically established tests or methods appropriate to a particular device shall be used in determining whether an alternative device or method meets an acceptable standard for operation, including accuracy. The department may, in its discretion, accept test results from another laboratory. The commissioner may consider all other factors in addition to scientific testing and accuracy, including but not limited to cost, availability, and training in determining whether or not to approve a method or device. Approval of other devices or methods is in the sole discretion of the commissioner.

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661—159.21 to 159.29 Reserved.

661—159.30(901D) Program fees.

159.30(1) Enrollment fee. A person subject to testing shall pay an enrollment fee of \$30 for each enrollment in the program. A person may be ordered or required to enroll in the program more than once, and the enrollment fee is required for each enrollment.

159.30(2) Fees for tests.

a. A person subject to testing shall pay all fees associated with the testing. The following fees are established:

- (1) For breath test, \$2 per test.
- (2) For a urine test, \$6 per test.
- (3) For a SCRAM® continuous alcohol monitoring or remote breath device, an installation fee of \$30 and a fee of \$7 per day.

b. The law enforcement agency shall inform a person subject to testing of each applicable test fee.

159.30(3) Payment of fees. A person subject to testing shall pay the fee for each test before taking the test. The law enforcement agency may, but shall not be required to, administer the test if the person subject to testing does not pay the fee for the test. For the device(s) approved for use in cases where twice-a-day testing creates a documented hardship or is geographically impracticable, the fee for two weeks' use of the device shall be paid prior to the installation of the device on the person. The person shall appear at the law enforcement agency a minimum of once per week according to the agency's instructions for the use of the device and shall pay each week's fee in advance. Failure to pay the required test fee may subject the person to immediate sanctions or timely sanctions. Community service or other in-kind payment is not authorized as a substitute for payment of the required fees. For a person who has been determined to be indigent or who is only able to pay a portion of the fee, the fees shall be paid from the 24/7 program account to the extent that funds are available.

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661—159.31 to 159.39 Reserved.

661—159.40(901D) Fees—indigent participants. A person subject to testing is required to pay the full fee for each test. The fees are established at the minimum level needed to purchase supplies and equipment and to cover the costs of administering the program.

159.40(1) Determination of indigency. A person subject to testing who requests a determination of indigency for purposes of the 24/7 program shall provide all requested financial information. An application for court-appointed counsel may be considered and used in determining whether a person is indigent. A finding of indigency by the court for purposes of determining whether a person should receive court-appointed counsel does not constitute a final determination of indigency for purposes of the 24/7 program. In determining indigency, all relevant information may be considered, including but not limited to income, assets, other sources of support, barter or in-kind payments, and expenditures including but not limited to expenditures for nonessential or luxury items.

159.40(2) Payment of indigent fees.

a. If a person subject to testing is determined to be indigent and is reasonably able to pay a portion of the required fee for testing but is not able to pay the full fee amount, the person shall pay only the portion of the fee which the person is reasonably able to pay. The law enforcement agency shall authorize payment of the remaining fee out of the 24/7 program funds, including but not limited to funds received from public or private grants, gifts or donations, if such funds have been received and there are funds remaining after paying the costs for testing supplies and devices and the costs to administer the program.

b. If a person subject to testing is determined to be indigent and is not reasonably able to pay any part of the required fee for testing, the law enforcement agency shall authorize the payment of the fee out of the 24/7 program funds, including but not limited to funds received from public or private grants, gifts or donations, if such funds have been received and there are funds remaining after paying the costs for testing supplies and devices and the costs to administer the program.

c. The participating jurisdiction, including the designated law enforcement agency or third-party provider, is not required to provide unpaid or free testing at the jurisdiction's, agency's or provider's

expense if there are not sufficient funds in the 24/7 program account. The participating jurisdiction or law enforcement agency shall first use the funds in the 24/7 program account to pay for the participating jurisdiction's costs to administer the program and purchase, rent, or maintain testing equipment and devices and then use any remaining funds to pay fees for indigent participants.

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661—159.41 to 159.49 Reserved.

661—159.50(901D) Stakeholder group. The department hereby establishes a stakeholder group for the 24/7 program. The designated stakeholder group for the 24/7 program shall be the Iowa impaired driving coalition. Representatives of other public or private groups may request to be added to the 24/7 program stakeholder group.

159.50(1) Duties. The 24/7 program stakeholder group shall act as an advisory group to the department and the governor's traffic safety bureau. The stakeholder group shall review the 24/7 program and recommend changes to the governor's traffic safety bureau.

159.50(2) Meetings. The 24/7 program stakeholder group shall meet as requested by the bureau chief of the governor's traffic safety bureau. Notice of the stakeholder meetings shall be provided as required by Iowa Code chapter 21. Records of the stakeholder group shall be subject to the provisions of Iowa Code chapter 22.

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661—159.51 to 159.59 Reserved.

661—159.60(901D) Grant program established. The department authorizes each participating jurisdiction to create a grant program account for the purpose of accepting public and private grant funds, gifts and donations to support the 24/7 program of the participating jurisdiction. The funds in the account shall be considered public funds and shall be subject to the rules and policies of the state auditor's office.

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These rules are intended to implement Iowa Code chapter 901D.

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