

**House Study Bill 109 - Introduced**

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED GOVERNOR BILL)

**A BILL FOR**

1 An Act relating to public safety on highways, including the use  
2 of electronic communication devices while driving where such  
3 use results in death and the establishment of a statewide  
4 sobriety and drug monitoring program, and providing  
5 penalties.  
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 DIVISION I  
2 HOMICIDE BY VEHICLE — USE OF ELECTRONIC COMMUNICATION DEVICES  
3 WHILE DRIVING

4 Section 1. Section 707.6A, subsection 2, paragraph a, Code  
5 2017, is amended to read as follows:

6 a. Driving a motor vehicle in a reckless manner with willful  
7 or wanton disregard for the safety of persons or property, in  
8 violation of [section 321.277](#).

9 (1) For the purposes of this paragraph "a", a person's  
10 hand-held use of an electronic communication device while  
11 driving a motor vehicle shall be considered prima facie  
12 evidence that the person was driving the motor vehicle in a  
13 reckless manner with willful or wanton disregard for the safety  
14 of persons or property, in violation of section 321.277.

15 (2) Subparagraph (1) shall not apply to any of the  
16 following:

17 (a) A member of a public safety agency, as defined in  
18 section 34.1, performing official duties and acting in a  
19 reasonable manner.

20 (b) A health care professional or emergency medical  
21 services provider in the course of an emergency situation  
22 acting in a reasonable manner.

23 (c) A person using an electronic communication device in a  
24 hands-free or voice-operated mode, including but not limited  
25 to the use of a headset.

26 (3) For the purposes of this paragraph "a", the following  
27 definitions apply:

28 (a) "Electronic communication device" means an electronic  
29 device capable of being used to compose, send, receive, or  
30 read an electronic message. "Electronic communication device"  
31 includes but is not limited to telephones, personal digital  
32 assistants, and portable or mobile computers.

33 (b) "Electronic message" means a self-contained piece of  
34 digital communication designed or intended to be transmitted  
35 between electronic communication devices. "Electronic message"

1 includes but is not limited to video calls, electronic mail,  
2 text messages, instant messages, and commands or requests to  
3 access an internet site.

4 DIVISION II

5 STATEWIDE SOBRIETY AND DRUG MONITORING PROGRAM

6 Sec. 2. LEGISLATIVE FINDINGS — PURPOSE.

7 1. The general assembly finds that operating a motor vehicle  
8 in this state is a privilege, not a right. A person who wishes  
9 to enjoy the benefits of this privilege shall accept the  
10 corresponding responsibilities.

11 2. The general assembly declares that the purpose of this  
12 division of this Act is to do all of the following:

13 a. Protect the public health and welfare by reducing the  
14 number of people on the highways of this state who operate a  
15 motor vehicle under the influence of alcohol or a controlled  
16 substance.

17 b. Protect the public health and welfare by reducing the  
18 number of repeat offenders who commit crimes in which the abuse  
19 of alcohol or a controlled substance is a contributing factor  
20 in the commission of the crime.

21 c. Strengthen the pretrial and post-trial options available  
22 to prosecutors and judges in responding to repeat offenders who  
23 commit crimes in which the abuse of alcohol or a controlled  
24 substance is a contributing factor in the commission of the  
25 crime.

26 d. Assure the timely and sober participation of offenders  
27 in judicial proceedings.

28 3. The general assembly declares that it is important to  
29 have a centralized repository for all information related to  
30 alcohol and controlled substance testing required by the laws  
31 of this state or as a condition of bond, pretrial release,  
32 sentence, probation, parole, or a temporary restricted license.

33 Sec. 3. NEW SECTION. 901D.1 Short title.

34 This chapter shall be known and may be cited as the "*Iowa*  
35 *Sobriety and Drug Monitoring Program Act*".

1     Sec. 4. NEW SECTION.   **901D.2 Definitions.**

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1. "*Alcohol*" means an alcoholic beverage as defined in  
5 section 321J.1.

6     2. "*Controlled substance*" means as defined in section  
7 124.101.

8     3. "*Department*" means the department of public safety.

9     4. "*Eligible offense*" means a criminal offense in which the  
10 abuse of alcohol or a controlled substance was a contributing  
11 factor in the commission of the offense, as determined by the  
12 court or governmental entity of the participating jurisdiction.  
13 "*Eligible offense*" includes but is not limited to a first  
14 offense of operating while intoxicated in violation of section  
15 321J.2 where the person's alcohol concentration exceeded .15  
16 and an accident resulting in personal injury or property damage  
17 occurred, and a second or subsequent offense of operating while  
18 intoxicated in violation of section 321J.2.

19     5. "*Immediate sanction*" means a sanction that is applied  
20 within minutes of a failed test result.

21     6. "*Law enforcement agency*" means a law enforcement agency  
22 charged with enforcement of the program created under this  
23 chapter.

24     7. "*Participating jurisdiction*" means a county or other  
25 governmental entity that chooses to participate in the program  
26 created under this chapter.

27     8. "*Sobriety and drug monitoring program*" or "*program*" means  
28 the program established pursuant to section 901D.3.

29     9. "*Testing*" means a procedure or set of procedures  
30 performed to determine the presence of alcohol or a controlled  
31 substance in a person's breath or bodily fluid, including  
32 blood, urine, saliva, and perspiration, and includes any  
33 combination of breath testing, drug patch testing, urine  
34 analysis testing, saliva testing, and continuous or transdermal  
35 alcohol monitoring. Subject to section 901D.3, the department

1 may approve additional testing methodologies or the testing of  
2 alternative bodily fluids.

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

8 Sec. 5. NEW SECTION. 901D.3 **Program created.**

9 1. The department of public safety shall establish a  
10 statewide sobriety and drug monitoring program to be used  
11 by participating jurisdictions, which shall be available  
12 twenty-four hours per day, seven days per week. Pursuant to  
13 the provisions of this chapter, a court or governmental entity,  
14 or an authorized officer thereof, within a participating  
15 jurisdiction may, as a condition of bond, pretrial release,  
16 sentence, probation, parole, or a temporary restricted license,  
17 do all of the following:

18 a. Require a person who has been charged with, pled guilty  
19 to, or been convicted of an eligible offense to abstain from  
20 alcohol and controlled substances for a period of time.

21 b. Require the person to be subject to testing to determine  
22 whether alcohol or a controlled substance is present in the  
23 person's body in the following manner:

24 (1) At least twice per day at a central location where an  
25 immediate sanction can be effectively applied.

26 (2) Where testing under subparagraph (1) creates a  
27 documented hardship or is geographically impractical, by an  
28 alternative method approved by the department and consistent  
29 with this section where a timely sanction can be effectively  
30 applied.

31 2. a. A person who has been required to participate in the  
32 program by a court or governmental entity and whose driver's  
33 license is suspended or revoked shall not begin participation  
34 in the program or be subject to the testing required by the  
35 program until the person is eligible for a temporary restricted

1 license under applicable law.

2 *b.* In order to participate in the program, a person shall be  
3 required to install an approved ignition interlock device on  
4 all motor vehicles owned or operated by the person.

5 *c.* A person wishing to participate in the program who has  
6 been charged with, pled guilty to, or been convicted of an  
7 eligible offense, but has not been required by a court or  
8 governmental entity to participate in the program, may apply  
9 to the court or governmental entity of the participating  
10 jurisdiction on a form created by the participating  
11 jurisdiction, and the court or governmental entity may order  
12 the person to participate in the program as a condition  
13 of bond, pretrial release, sentence, probation, parole,  
14 or a temporary restricted license. The application form  
15 shall include an itemization of all costs associated with  
16 participation in the program.

17 3. The program shall be evidence-based and shall satisfy at  
18 least two of the following requirements:

19 *a.* The program is included in the United States substance  
20 abuse and mental health services administration's national  
21 registry of evidence-based programs and practices.

22 *b.* The program has been reported in a peer-reviewed journal  
23 as having positive effects on the primary targeted outcome.

24 *c.* The program has been documented as effective by informed  
25 experts and other sources.

26 4. *a.* The core components of the program shall include  
27 the use of a primary testing methodology for determining the  
28 presence of alcohol or a controlled substance in a person that  
29 best facilitates the ability of a law enforcement agency to  
30 apply immediate sanctions for failed test results and that is  
31 available at an affordable cost.

32 *b.* In cases of documented hardship or geographic  
33 impracticality, or in cases where a program participant  
34 has received less stringent testing requirements, testing  
35 methodologies that best facilitate the ability of a law

1 enforcement agency to apply timely sanctions for noncompliant  
2 test results may be utilized. For purposes of this section,  
3 hardship or geographic impracticality shall be determined by  
4 documentation and consideration of the following factors:

5 (1) Whether a testing device is available.

6 (2) Whether the participant is capable of paying the fees  
7 and costs associated with the testing device.

8 (3) Whether the participant is capable of wearing the  
9 testing device.

10 (4) Whether the participant fails to qualify for testing  
11 twice per day because of one or more of the following:

12 (a) The participant lives in a rural area and submitting to  
13 testing twice per day would be unduly burdensome.

14 (b) The participant's employment requires the participant's  
15 presence at a location remote from the testing location and  
16 submitting to testing twice per day would be unduly burdensome.

17 (c) The participant has repeatedly violated the  
18 requirements of the program while submitting to testing twice  
19 per day and poses a substantial risk of continuing to violate  
20 the requirements of the program.

21 5. A jurisdiction wishing to participate in the program  
22 shall submit an application to the department. A jurisdiction  
23 shall not participate in the program unless the jurisdiction's  
24 application for participation has been approved by the  
25 department. If a jurisdiction is approved for participation in  
26 the program, the department shall assist the jurisdiction in  
27 setting up and administering the program in that jurisdiction  
28 in compliance with this chapter.

29 6. a. If a jurisdiction participates in the program, the  
30 participating jurisdiction or a law enforcement agency of the  
31 participating jurisdiction may designate a third party to  
32 provide testing services or to take any other action required  
33 or authorized to be provided by the participating jurisdiction  
34 or law enforcement agency under this chapter, except a  
35 third-party designee shall not determine whether to participate

1 in the program.

2     *b.* The participating jurisdiction, in consultation with the  
3 law enforcement agency of the participating jurisdiction, shall  
4 establish testing locations for the program.

5     7. Any efforts by the department to alter or modify a core  
6 component of the program shall include a documented strategy  
7 for achieving and measuring the effectiveness of the planned  
8 alteration or modification. Before the department alters or  
9 modifies a core component of the program, a pilot program  
10 with defined objectives and timelines shall be initiated, and  
11 measurements of the effectiveness and impact of the proposed  
12 alteration or modification to a core component shall be  
13 monitored. The data shall be assessed and the department  
14 shall make a determination as to whether the stated goals of  
15 the alteration or modification were achieved and whether the  
16 alteration or modification should be formally implemented into  
17 the program.

18     Sec. 6. NEW SECTION. 901D.4 Rulemaking — fees.

19     The department shall adopt rules pursuant to chapter 17A to  
20 administer this chapter, including but not limited to rules  
21 regarding any of the following:

22     1. Providing for the nature and manner of testing, including  
23 the procedures and apparatus to be used for testing.

24     2. Establishing reasonable participant, enrollment, and  
25 testing fees for the program, including fees to pay the costs  
26 of installation, monitoring, and deactivation of any testing  
27 device. The fees shall be set at an amount such that the fees  
28 collected in a participating jurisdiction are sufficient to pay  
29 for the costs of the program in the participating jurisdiction,  
30 including all costs to the state associated with the program in  
31 the participating jurisdiction.

32     3. Providing for the application, acceptance, and use of  
33 public and private grants, gifts, and donations to support  
34 program activities.

35     4. Establishing a process for the identification and

1 management of indigent participants.

2 5. Providing for the creation and administration of a  
3 stakeholder group to review and recommend changes to the  
4 program.

5 6. Establishing a process for the submission and approval of  
6 applications from jurisdictions to participate in the program.

7 Sec. 7. NEW SECTION. 901D.5 Data management system.

8 1. The department shall provide for and approve the use  
9 of a program data management system that shall be used by  
10 the department and all participating jurisdictions to manage  
11 testing, test events, test results, data access, fees, the  
12 collection of fee payments, and the submission and collection  
13 of any required reports.

14 2. The data management system shall include but is not  
15 limited to all of the following features:

16 a. A secure, remotely hosted, demonstrated, internet-based  
17 management application that allows multiple concurrent users to  
18 access and input information.

19 b. The support of breath testing, continuous remote  
20 transdermal alcohol monitoring, drug patch testing, and urine  
21 analysis testing.

22 c. The capability to track and store events including  
23 but not limited to participant enrollment, testing activity,  
24 accounting activity, and participating law enforcement agency  
25 activity.

26 d. The capability to generate reports of system fields and  
27 data. The data management system shall allow reports to be  
28 generated as needed and on a scheduled basis, and shall allow  
29 reports to be exported over a network connection or by remote  
30 printing.

31 e. The ability to identify program participants who have  
32 previously been enrolled in a similar program in this state or  
33 another state.

34 3. Unless otherwise required by federal law, all alcohol or  
35 controlled substance testing performed as a condition of bond,

1 pretrial release, sentence, probation, parole, or a temporary  
2 restricted license shall utilize and input results to the data  
3 management system.

4 4. The data management system shall contain sufficient  
5 security protocols to protect participants' personal  
6 information from unauthorized use.

7 Sec. 8. NEW SECTION. 901D.6 Authority to order program  
8 participation.

9 1. A court or governmental entity, or an authorized officer  
10 thereof, in a participating jurisdiction may utilize the  
11 program as provided in this section. The program shall be a  
12 preferred program for offenders charged with or convicted of an  
13 eligible offense.

14 2. If a person convicted of a first offense of operating  
15 while intoxicated where the person's alcohol concentration  
16 exceeded .15 and an accident resulting in personal injury or  
17 property damage occurred, or a second or subsequent offense of  
18 operating while intoxicated, has been required to participate  
19 in the program, has financial liability coverage pursuant  
20 to section 321.20B, and the minimum period of ineligibility  
21 for issuance of a temporary restricted license has expired  
22 pursuant to chapter 321J, the court may notify the department  
23 of transportation that, as a participant in the program, the  
24 person is eligible for a temporary restricted license pursuant  
25 to section 321J.20.

26 3. A court may condition any bond or pretrial release  
27 otherwise authorized by law for a person charged with an  
28 eligible offense upon participation in the program and payment  
29 of the fees established pursuant to section 901D.4.

30 4. A court may condition a suspended sentence or probation  
31 otherwise authorized by law for a person convicted of an  
32 eligible offense upon participation in the program and payment  
33 of the fees established pursuant to section 901D.4.

34 5. The board of parole, the department of corrections, or  
35 a parole officer may condition parole otherwise authorized

1 by law for a person convicted of an eligible offense upon  
2 participation in the program and payment of the fees  
3 established pursuant to section 901D.4.

4 Sec. 9. NEW SECTION. 901D.7 Placement and enrollment.

5 1. Subject to sections 901D.3 and 901D.6, a participant  
6 may be placed in the program as a condition of bond, pretrial  
7 release, sentence, probation, parole, or a temporary  
8 restricted license. However, a person who has been required to  
9 participate in the program by a court or governmental entity  
10 and whose driver's license is suspended or revoked shall not  
11 begin participation in the program or be subject to the testing  
12 required by the program until the person is eligible for a  
13 temporary restricted license under applicable law.

14 2. An order or directive placing a participant in the  
15 program shall include the type of testing required to be  
16 administered in the program and the length of time that the  
17 participant is required to remain in the program. The person  
18 issuing the order or directive shall send a copy of the order  
19 or directive to the law enforcement agency of the participating  
20 jurisdiction.

21 3. Upon receipt of a copy of an order or directive,  
22 a representative of the law enforcement agency of the  
23 participating jurisdiction shall enroll a participant in the  
24 program prior to testing.

25 4. At the time of enrollment, a representative of the law  
26 enforcement agency of the participating jurisdiction shall  
27 enter the participant's information into the data management  
28 system described in section 901D.5. The representative of  
29 the agency shall provide the participant with the appropriate  
30 materials required by the program, inform the participant that  
31 the participant's information may be shared for law enforcement  
32 and reporting purposes, and provide the participant with  
33 information related to the required testing, procedures, and  
34 fees.

35 5. The participant shall sign a form stating that the

1 participant understands the program requirements and releases  
2 the participant's information for law enforcement and reporting  
3 purposes.

4 6. A participant shall report to the program for testing for  
5 the length of time ordered by the court, the board of parole,  
6 the department of corrections, or a parole officer.

7 Sec. 10. NEW SECTION. 901D.8 **Collection, distribution, and**  
8 **use of fees.**

9 1. The law enforcement agency of a participating  
10 jurisdiction shall do all of the following:

11 a. Establish and maintain a sobriety program account.

12 b. Collect the participant, enrollment, and testing fees  
13 established pursuant to section 901D.4 and deposit the fees  
14 and any other funds received for the program into the sobriety  
15 program account for administration of the program.

16 2. A participant shall pay all fees directly to the law  
17 enforcement agency of the participating jurisdiction.

18 3. a. The law enforcement agency shall distribute a  
19 portion of the fees to any participating third-party designee  
20 in accordance with the agreement between the agency and the  
21 third-party designee.

22 b. The remainder of the fees collected shall be deposited in  
23 the sobriety program account, and shall be used only for the  
24 purposes of administering and operating the program.

25 Sec. 11. NEW SECTION. 901D.9 **Noncompliance.**

26 1. An allegation that a participant failed a test, refused  
27 to submit to a test, or failed to appear for testing shall  
28 be communicated ex parte by the participating jurisdiction,  
29 a law enforcement agency of the participating jurisdiction,  
30 or the participating jurisdiction's third-party designee to a  
31 magistrate as soon as practicable. A magistrate who receives  
32 such a communication may order the participant's immediate  
33 incarceration pending a hearing on the allegation but lasting  
34 no longer than twenty-four hours after the issuance of the  
35 order, or if the participant failed to appear for testing as

1 scheduled, the magistrate may issue a warrant for the arrest of  
2 the participant for a violation of the terms of bond, pretrial  
3 release, sentence, probation, or parole, as applicable.

4 2. The magistrate may notify the department of  
5 transportation of the participant's noncompliance and direct  
6 the department to withdraw any temporary restricted license  
7 issued to the participant and reinstate the remainder of any  
8 applicable license suspension or revocation period provided by  
9 law.

10 Sec. 12. NEW SECTION. 901D.10 Report and repeal.

11 1. The department, in consultation with the judicial branch  
12 and the department of transportation, shall by December 1,  
13 2021, submit a report to the general assembly detailing the  
14 effectiveness of the program established pursuant to this  
15 chapter and shall make recommendations concerning the continued  
16 implementation of the program or the elimination of the  
17 program.

18 2. This chapter is repealed July 1, 2022.

19 DIVISION III

20 OPERATING WHILE INTOXICATED — SOBRIETY AND DRUG MONITORING  
21 PROGRAM PROVISIONS

22 Sec. 13. Section 321J.20, subsection 1, paragraph a,  
23 unnumbered paragraph 1, Code 2017, is amended to read as  
24 follows:

25 The department may, on application, issue a temporary  
26 restricted license to a person whose noncommercial driver's  
27 license is revoked under [this chapter](#) allowing the person to  
28 drive to and from the person's home and specified places at  
29 specified times which can be verified by the department and  
30 which are required by the person's full-time or part-time  
31 employment, continuing health care or the continuing health  
32 care of another who is dependent upon the person, continuing  
33 education while enrolled in an educational institution on a  
34 part-time or full-time basis and while pursuing a course of  
35 study leading to a diploma, degree, or other certification of

1 successful educational completion, substance abuse treatment,  
2 court-ordered community service responsibilities, ~~and~~  
3 appointments with the person's parole or probation officer,  
4 and participation in a program established pursuant to chapter  
5 901D, if the person's driver's license has not been revoked  
6 previously under [section 321J.4](#), [321J.9](#), or [321J.12](#) and if any  
7 of the following apply:

8 Sec. 14. Section 321J.20, subsection 2, paragraph a, Code  
9 2017, is amended to read as follows:

10 a. Notwithstanding [section 321.560](#), the department may,  
11 on application, and upon the expiration of the minimum period  
12 of ineligibility for a temporary restricted license provided  
13 for under [section 321.560](#), [321J.4](#), [321J.9](#), or [321J.12](#), issue a  
14 temporary restricted license to a person whose noncommercial  
15 driver's license has either been revoked under [this chapter](#), or  
16 revoked or suspended under [chapter 321](#) solely for violations  
17 of [this chapter](#), or who has been determined to be a habitual  
18 offender under [chapter 321](#) based solely on violations of  
19 this chapter or on violations listed in [section 321.560](#),  
20 subsection 1, paragraph "b", and who is not eligible for a  
21 temporary restricted license under [subsection 1](#). However,  
22 the department may not issue a temporary restricted license  
23 under [this subsection](#) for a violation of [section 321J.2A](#) or  
24 to a person under the age of twenty-one whose license is  
25 revoked under [section 321J.4](#), [321J.9](#), or [321J.12](#). A temporary  
26 restricted license issued under [this subsection](#) may allow the  
27 person to drive to and from the person's home and specified  
28 places at specified times which can be verified by the  
29 department and which are required by the person's full-time or  
30 part-time employment; continuing education while enrolled in an  
31 educational institution on a part-time or full-time basis and  
32 while pursuing a course of study leading to a diploma, degree,  
33 or other certification of successful educational completion;  
34 ~~or~~ substance abuse treatment; or participation in a program  
35 established pursuant to chapter 901D.

1 Sec. 15. Section 321J.20, subsection 3, Code 2017, is  
2 amended to read as follows:

3 3. If a person required to install an ignition interlock  
4 device or participate in a program established pursuant to  
5 chapter 901D operates a motor vehicle which does not have an  
6 approved ignition interlock device or while not in compliance  
7 with the program, or if the person tampers with or circumvents  
8 an ignition interlock device, in addition to other penalties  
9 provided, the person's temporary restricted license shall be  
10 revoked.

11 Sec. 16. Section 321J.20, Code 2017, is amended by adding  
12 the following new subsection:

13 NEW SUBSECTION. 10. Notwithstanding any other provision of  
14 law to the contrary, in any circumstance in which this chapter  
15 requires the installation of an ignition interlock device in  
16 all vehicles owned or operated by a person as a condition of  
17 the person's license or privilege to operate noncommercial  
18 motor vehicles, the department shall require the person to be  
19 a participant in and in compliance with a sobriety and drug  
20 monitoring program established pursuant to chapter 901D if the  
21 person's offense under this chapter qualifies as an eligible  
22 offense as defined in section 901D.2, and the person's offense  
23 occurred in a participating jurisdiction, as defined in section  
24 901D.2. The department, in consultation with the department  
25 of public safety, may adopt rules for issuing and accepting a  
26 certification of participation in and compliance with a program  
27 established pursuant to chapter 901D. This subsection shall be  
28 construed and implemented to comply with 23 U.S.C. §164(a), as  
29 amended by the federal Fixing America's Surface Transportation  
30 Act, Pub. L. No. 114-94, §1414, and shall not apply if such  
31 application results in a finding of noncompliance with 23  
32 U.S.C. §164 that results or will result in a reservation  
33 or transfer of funds pursuant to 23 U.S.C. §164(b). This  
34 subsection shall not authorize the operation of a motor vehicle  
35 for any purpose not otherwise authorized by this chapter.



1 DIVISION II — STATEWIDE SOBRIETY AND DRUG MONITORING  
2 PROGRAM. The bill directs the department of public safety  
3 (DPS) to establish a statewide sobriety and drug monitoring  
4 program that is available 24 hours per day, seven days per  
5 week. Under the program, a court or governmental entity, as  
6 a condition of bond, pretrial release, sentence, probation,  
7 parole, or a temporary restricted license, may require a person  
8 who has been charged with, pled guilty to, or been convicted  
9 of an eligible offense to abstain from alcohol and controlled  
10 substances for a period of time. The bill provides that an  
11 eligible offense is a criminal offense in which the abuse of  
12 alcohol or a controlled substance was a contributing factor  
13 in the commission of the offense as determined by the court  
14 or governmental entity of the participating jurisdiction,  
15 including but not limited to a first offense of operating  
16 while intoxicated where the person's alcohol concentration  
17 exceeded .15 and an accident resulting in personal injury or  
18 property damage occurred, and a second or subsequent offense  
19 of operating while intoxicated.

20 The program requires a person to be subject to testing to  
21 determine whether alcohol or a controlled substance is present  
22 in the person's body at least twice per day at a central  
23 location where an immediate sanction can be applied. Where  
24 such testing creates a documented hardship or is geographically  
25 impractical, an alternative method approved by DPS may be used.

26 Hardship or geographic impracticality is determined by  
27 documentation and consideration of whether a testing device is  
28 available, whether the participant is capable of paying the  
29 fees and costs associated with the testing device, whether  
30 the participant is capable of wearing the testing device, and  
31 whether the participant fails to qualify for testing twice  
32 per day because the participant lives in a rural area, the  
33 participant's employment requires the participant's presence at  
34 a location remote from the testing location, or the participant  
35 has repeatedly violated the requirements of the program.

1 The bill prohibits a person who has been required to  
2 participate in the program and whose driver's license is  
3 suspended or revoked from participating in the program until  
4 the person is eligible for a temporary restricted license. A  
5 person must install an ignition interlock device on all motor  
6 vehicles owned or operated by the person to participate in  
7 the program. A person who has been charged with, pled guilty  
8 to, or been convicted of an eligible offense who has not  
9 been required to participate in the program may apply to the  
10 participating jurisdiction in order to participate.

11 If a jurisdiction applies to and is approved by DPS to  
12 participate in the program, the bill requires DPS to assist the  
13 jurisdiction in setting up and administering the program. The  
14 participating jurisdiction must establish testing locations and  
15 may designate a third party to provide testing services.

16 Any efforts by DPS to alter or modify the core components  
17 of the program are required to include a documented strategy  
18 for achieving and measuring the effectiveness of the planned  
19 alteration or modification. Before the core components of the  
20 program can be altered or modified, a pilot program must be  
21 initiated and monitored.

22 The bill requires DPS to adopt rules providing for the nature  
23 and manner of testing; establishing reasonable fees; providing  
24 for the application, acceptance, and use of public and private  
25 grants, gifts, and donations; establishing a process for  
26 the identification and management of indigent participants;  
27 providing for the creation and administration of a stakeholder  
28 group to review and recommend changes to the program; and  
29 establishing a process for the submission and approval of  
30 applications from jurisdictions. The bill further requires the  
31 amount of the fees to be set at an amount such that the fees  
32 collected in a participating jurisdiction are sufficient to pay  
33 for the costs of the program in the participating jurisdiction,  
34 including all costs to the state.

35 In addition, the bill requires DPS to provide for and approve

1 the use of a program data management system to be used by DPS  
2 and all participating jurisdictions to manage testing, test  
3 events, test results, data access, fees, the collection of fee  
4 payments, and the submission and collection of any required  
5 reports. The bill provides for certain required features of  
6 the data management system.

7 A court may condition any bond or pretrial release otherwise  
8 authorized by law for a person charged with an eligible offense  
9 upon participation in the program and payment of the required  
10 fees. A court may also condition a suspended sentence or  
11 probation otherwise authorized by law for a person convicted  
12 of an eligible offense upon participation in the program  
13 and payment of the required fees. Likewise, the board of  
14 parole, the department of corrections, or a parole officer  
15 may condition parole otherwise authorized by law for a person  
16 convicted of an eligible offense upon participation in the  
17 program and payment of the required fees.

18 The bill requires an order or directive placing a  
19 participant in the program to include the type of testing  
20 required to be administered and the length of time that the  
21 participant is required to remain in the program. At the  
22 time of enrollment, a representative of the law enforcement  
23 agency of a participating jurisdiction must enter the  
24 participant's information into the data management system. The  
25 representative of the agency must provide the participant with  
26 the appropriate materials required by the program, inform the  
27 participant that the participant's information may be shared  
28 for law enforcement and reporting purposes, and provide the  
29 participant with information related to the required testing,  
30 procedures, and fees.

31 The bill provides that the law enforcement agency of a  
32 participating jurisdiction must establish and maintain a  
33 sobriety program account, and collect the required fees. The  
34 law enforcement agency must distribute a portion of the fees to  
35 any participating third-party designee in accordance with the

1 agreement between the agency and the third-party designee, and  
2 the remainder of the fees collected must be deposited in the  
3 participating jurisdiction's sobriety program account and must  
4 be used only for the purposes of administering and operating  
5 the program.

6 The bill requires allegations that a participant failed  
7 a test, refused to submit to a test, or failed to appear  
8 for testing to be communicated ex parte by the participating  
9 jurisdiction, a law enforcement agency of the participating  
10 jurisdiction, or the participating jurisdiction's third-party  
11 designee to a magistrate as soon as practicable. A magistrate  
12 who receives such a communication may order the participant's  
13 immediate incarceration pending a hearing on the allegation  
14 but lasting no longer than 24 hours after the issuance of the  
15 order, or if the participant failed to appear for testing as  
16 scheduled, the magistrate may issue a warrant for the arrest of  
17 the participant for a violation of the terms of bond, pretrial  
18 release, sentence, probation, or parole.

19 Upon the failure of a participant to submit to or pass a  
20 test under the program, the court may notify the department  
21 of transportation (DOT) of the participant's noncompliance  
22 and direct the DOT to withdraw the participant's temporary  
23 restricted license and reinstate the remainder of the license  
24 suspension or revocation period.

25 The bill requires DPS to submit a report to the general  
26 assembly detailing the effectiveness of the program and making  
27 recommendations by December 1, 2021. The sobriety and drug  
28 monitoring program is repealed July 1, 2022.

29 DIVISION III — OPERATING WHILE INTOXICATED — SOBRIETY AND  
30 DRUG MONITORING PROGRAM PROVISIONS. The bill provides that a  
31 temporary restricted license issued under Code chapter 321J  
32 (operating while intoxicated) is valid for travel related to  
33 participation in a sobriety and drug monitoring program. In  
34 addition, the bill requires the DOT to revoke the temporary  
35 restricted license of a person operating a motor vehicle

1 while not in compliance with the person's sobriety and drug  
2 monitoring program.

3     The bill also provides that in any circumstance in which  
4 Code chapter 321J requires the installation of an ignition  
5 interlock device in all vehicles owned or operated by a person  
6 as a condition of the person's license or privilege to operate  
7 noncommercial motor vehicles, the DOT must require the person  
8 to be a participant in and in compliance with a sobriety and  
9 drug monitoring program if the person's offense under Code  
10 chapter 321J qualifies as an eligible offense and the person's  
11 offense occurred in a participating jurisdiction.