

**Senate File 444 - Introduced**

SENATE FILE 444  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1101)

**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 (d) A person using an electronic communication device  
27 by pressing a single button to initiate or terminate a voice  
28 communication.

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

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

1 include global positioning systems, navigation systems, or  
2 devices that are physically or electronically integrated into a  
3 motor vehicle.

4 (b) "Electronic message" means a self-contained piece of  
5 digital communication designed or intended to be transmitted  
6 between electronic communication devices. "Electronic message"  
7 includes but is not limited to video calls, electronic mail,  
8 text messages, instant messages, and commands or requests to  
9 access an internet site.

10 DIVISION II

11 STATEWIDE SOBRIETY AND DRUG MONITORING PROGRAM

12 Sec. 2. LEGISLATIVE FINDINGS — PURPOSE.

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

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

19 a. Protect the public health and welfare by reducing the  
20 number of people on the highways of this state who operate a  
21 motor vehicle under the influence of alcohol or a controlled  
22 substance.

23 b. Protect the public health and welfare by reducing the  
24 number of repeat offenders who commit crimes in which the abuse  
25 of alcohol or a controlled substance is a contributing factor  
26 in the commission of the crime.

27 c. Strengthen the pretrial and post-trial options available  
28 to prosecutors and judges in responding to repeat offenders who  
29 commit crimes in which the abuse of alcohol or a controlled  
30 substance is a contributing factor in the commission of the  
31 crime.

32 d. Assure the timely and sober participation of offenders  
33 in judicial proceedings.

34 3. The general assembly declares that it is important to  
35 have a centralized repository for all information related to

1 alcohol and controlled substance testing required by the laws  
2 of this state or as a condition of bond, pretrial release,  
3 sentence, probation, parole, or a temporary restricted license.

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

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

7 Sec. 4. NEW SECTION. 901D.2 Definitions.

8 As used in this chapter, unless the context otherwise  
9 requires:

10 1. "*Alcohol*" means an alcoholic beverage as defined in  
11 section 321J.1.

12 2. "*Controlled substance*" means as defined in section  
13 124.101.

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

15 4. "*Eligible offense*" means a criminal offense in which the  
16 abuse of alcohol or a controlled substance was a contributing  
17 factor in the commission of the offense, as determined by the  
18 court or governmental entity of the participating jurisdiction.  
19 For the purposes of operating while intoxicated offenses  
20 committed in violation of section 321J.2, "*eligible offense*"  
21 includes only the following offenses:

22 a. A first offense in which the person's alcohol  
23 concentration exceeded .15.

24 b. A first offense in which an accident resulting in  
25 personal injury or property damage occurred.

26 c. A first offense in which the person refused to submit to  
27 a chemical test requested pursuant to section 321J.6.

28 d. A second or subsequent offense.

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

31 6. "*Law enforcement agency*" means a law enforcement agency  
32 charged with enforcement of the program created under this  
33 chapter.

34 7. "*Participating jurisdiction*" means a county or other  
35 governmental entity that chooses to participate in the program

1 created under this chapter.

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

4 9. "*Testing*" means a procedure or set of procedures  
5 performed to determine the presence of alcohol or a controlled  
6 substance in a person's breath or bodily fluid, including  
7 blood, urine, saliva, and perspiration, and includes any  
8 combination of breath testing, drug patch testing, urine  
9 analysis testing, saliva testing, and continuous or transdermal  
10 alcohol monitoring. Subject to section 901D.3, the department  
11 may approve additional testing methodologies or the testing of  
12 alternative bodily fluids.

13 10. "*Timely sanction*" means a sanction that is applied  
14 within hours or days after a failed test result. A timely  
15 sanction shall be applied as soon as possible, but the period  
16 between the failed test result and the application of the  
17 timely sanction shall not exceed five days.

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

19 1. The department of public safety shall establish a  
20 statewide sobriety and drug monitoring program to be used  
21 by participating jurisdictions, which shall be available  
22 twenty-four hours per day, seven days per week. Pursuant to  
23 the provisions of this chapter, a court or governmental entity,  
24 or an authorized officer thereof, within a participating  
25 jurisdiction may, as a condition of bond, pretrial release,  
26 sentence, probation, parole, or a temporary restricted license,  
27 do all of the following:

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

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

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

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

6 2. *a.* A person who has been required to participate in the  
7 program by a court or governmental entity and whose driver's  
8 license is suspended or revoked shall not begin participation  
9 in the program or be subject to the testing required by the  
10 program until the person is eligible for a temporary restricted  
11 license under applicable law.

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

15 *c.* A person wishing to participate in the program who has  
16 been charged with, pled guilty to, or been convicted of an  
17 eligible offense, but has not been required by a court or  
18 governmental entity to participate in the program, may apply  
19 to the court or governmental entity of the participating  
20 jurisdiction on a form created by the participating  
21 jurisdiction, and the court or governmental entity may order  
22 the person to participate in the program as a condition  
23 of bond, pretrial release, sentence, probation, parole,  
24 or a temporary restricted license. The application form  
25 shall include an itemization of all costs associated with  
26 participation in the program.

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

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

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

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

1 4. a. The core components of the program shall include  
2 the use of a primary testing methodology for determining the  
3 presence of alcohol or a controlled substance in a person that  
4 best facilitates the ability of a law enforcement agency to  
5 apply immediate sanctions for failed test results and that is  
6 available at an affordable cost.

7 b. In cases of documented hardship or geographic  
8 impracticality, or in cases where a program participant  
9 has received less stringent testing requirements, testing  
10 methodologies that best facilitate the ability of a law  
11 enforcement agency to apply timely sanctions for noncompliant  
12 test results may be utilized. For purposes of this section,  
13 hardship or geographic impracticality shall be determined by  
14 documentation and consideration of the following factors:

15 (1) Whether a testing device is available.

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

18 (3) Whether the participant is capable of wearing the  
19 testing device.

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

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

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

27 (c) The participant has repeatedly violated the  
28 requirements of the program while submitting to testing twice  
29 per day and poses a substantial risk of continuing to violate  
30 the requirements of the program.

31 5. A jurisdiction wishing to participate in the program  
32 shall submit an application to the department. A jurisdiction  
33 shall not participate in the program unless the jurisdiction's  
34 application for participation has been approved by the  
35 department. If a jurisdiction is approved for participation in

1 the program, the department shall assist the jurisdiction in  
2 setting up and administering the program in that jurisdiction  
3 in compliance with this chapter.

4 6. a. If a jurisdiction participates in the program, the  
5 participating jurisdiction or a law enforcement agency of the  
6 participating jurisdiction may designate a third party to  
7 provide testing services or to take any other action required  
8 or authorized to be provided by the participating jurisdiction  
9 or law enforcement agency under this chapter, except a  
10 third-party designee shall not determine whether to participate  
11 in the program.

12 b. The participating jurisdiction, in consultation with the  
13 law enforcement agency of the participating jurisdiction, shall  
14 establish testing locations for the program.

15 7. Any efforts by the department to alter or modify a core  
16 component of the program shall include a documented strategy  
17 for achieving and measuring the effectiveness of the planned  
18 alteration or modification. Before the department alters or  
19 modifies a core component of the program, a pilot program  
20 with defined objectives and timelines shall be initiated, and  
21 measurements of the effectiveness and impact of the proposed  
22 alteration or modification to a core component shall be  
23 monitored. The data shall be assessed and the department  
24 shall make a determination as to whether the stated goals of  
25 the alteration or modification were achieved and whether the  
26 alteration or modification should be formally implemented into  
27 the program.

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

29 The department shall adopt rules pursuant to chapter 17A to  
30 administer this chapter, including but not limited to rules  
31 regarding any of the following:

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

34 2. Establishing reasonable participant, enrollment, and  
35 testing fees for the program, including fees to pay the costs



1 of installation, monitoring, and deactivation of any testing  
2 device. The fees shall be set at an amount such that the fees  
3 collected in a participating jurisdiction are sufficient to pay  
4 for the costs of the program in the participating jurisdiction,  
5 including all costs to the state associated with the program in  
6 the participating jurisdiction.

7 3. Providing for the application, acceptance, and use of  
8 public and private grants, gifts, and donations to support  
9 program activities.

10 4. Establishing a process for the identification and  
11 management of indigent participants.

12 5. Providing for the creation and administration of a  
13 stakeholder group to review and recommend changes to the  
14 program.

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

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

18 1. The department shall provide for and approve the use  
19 of a program data management system that shall be used by  
20 the department and all participating jurisdictions to manage  
21 testing, test events, test results, data access, fees, the  
22 collection of fee payments, and the submission and collection  
23 of any required reports.

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

26 a. A secure, remotely hosted, demonstrated, internet-based  
27 management application that allows multiple concurrent users to  
28 access and input information.

29 b. The support of breath testing, continuous remote  
30 transdermal alcohol monitoring, drug patch testing, and urine  
31 analysis testing.

32 c. The capability to track and store events including  
33 but not limited to participant enrollment, testing activity,  
34 accounting activity, and participating law enforcement agency  
35 activity.

1 d. The capability to generate reports of system fields and  
2 data. The data management system shall allow reports to be  
3 generated as needed and on a scheduled basis, and shall allow  
4 reports to be exported over a network connection or by remote  
5 printing.

6 e. The ability to identify program participants who have  
7 previously been enrolled in a similar program in this state or  
8 another state.

9 3. Unless otherwise required by federal law, all alcohol or  
10 controlled substance testing performed as a condition of bond,  
11 pretrial release, sentence, probation, parole, or a temporary  
12 restricted license shall utilize and input results to the data  
13 management system.

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

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

19 1. A court or governmental entity, or an authorized officer  
20 thereof, in a participating jurisdiction may utilize the  
21 program as provided in this section. The program shall be a  
22 preferred program for offenders charged with or convicted of an  
23 eligible offense.

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

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

32 4. The board of parole, the department of corrections, or  
33 a parole officer may condition parole otherwise authorized  
34 by law for a person convicted of an eligible offense upon  
35 participation in the program and payment of the fees

1 established pursuant to section 901D.4.

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

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

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

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

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

33 5. The participant shall sign a form stating that the  
34 participant understands the program requirements and releases  
35 the participant's information for law enforcement and reporting

1 purposes.

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

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

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

9 a. Establish and maintain a sobriety program account.

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

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

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

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

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

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

1 release, sentence, probation, or parole, as applicable.

2 2. The magistrate may notify the department of  
3 transportation of the participant's noncompliance and direct  
4 the department to withdraw any temporary restricted license  
5 issued to the participant.

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

7 1. The department, in consultation with the judicial branch  
8 and the department of transportation, shall by December 1,  
9 2021, submit a report to the general assembly detailing the  
10 effectiveness of the program established pursuant to this  
11 chapter and shall make recommendations concerning the continued  
12 implementation of the program or the elimination of the  
13 program.

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

15 DIVISION III

16 OPERATING WHILE INTOXICATED — SOBRIETY AND DRUG MONITORING  
17 PROGRAM PROVISIONS

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

21 The department may, on application, issue a temporary  
22 restricted license to a person whose noncommercial driver's  
23 license is revoked under [this chapter](#) allowing the person to  
24 drive to and from the person's home and specified places at  
25 specified times which can be verified by the department and  
26 which are required by the person's full-time or part-time  
27 employment, continuing health care or the continuing health  
28 care of another who is dependent upon the person, continuing  
29 education while enrolled in an educational institution on a  
30 part-time or full-time basis and while pursuing a course of  
31 study leading to a diploma, degree, or other certification of  
32 successful educational completion, substance abuse treatment,  
33 court-ordered community service responsibilities, ~~and~~  
34 appointments with the person's parole or probation officer,  
35 and participation in a program established pursuant to chapter

1 901D, if the person's driver's license has not been revoked  
2 previously under [section 321J.4](#), [321J.9](#), or [321J.12](#) and if any  
3 of the following apply:

4 Sec. 14. Section 321J.20, subsection 2, paragraph a, Code  
5 2017, is amended to read as follows:

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

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

34 3. If a person required to install an ignition interlock  
35 device or participate in a program established pursuant to

1 chapter 901D operates a motor vehicle which does not have an  
2 approved ignition interlock device or while not in compliance  
3 with the program, or if the person tampers with or circumvents  
4 an ignition interlock device, in addition to other penalties  
5 provided, the person's temporary restricted license shall be  
6 revoked.

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

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

35 Sec. 17. FUTURE REPEAL. This division of this Act is

1 repealed July 1, 2022.

2

EXPLANATION

3

The inclusion of this explanation does not constitute agreement with  
4 the explanation's substance by the members of the general assembly.

4

5 DIVISION I — HOMICIDE BY VEHICLE — USE OF ELECTRONIC  
6 COMMUNICATION DEVICES WHILE DRIVING. Current law provides  
7 that a person commits a class "C" felony when the person  
8 unintentionally causes the death of another person by driving  
9 a motor vehicle in a reckless manner with willful or wanton  
10 disregard for the safety of persons or property. A class "C"  
11 felony is punishable by imprisonment for not more than 10 years  
12 and a fine of at least \$1,000 but not more than \$10,000.

13 This bill provides that for the purposes of that provision,  
14 a person's hand-held use of an electronic communication  
15 device while driving a vehicle shall be considered prima  
16 facie evidence that the person was driving the vehicle in a  
17 reckless manner with willful or wanton disregard for the safety  
18 of persons or property. This provision does not apply to a  
19 member of a public safety agency performing official duties  
20 and acting in a reasonable manner, a health care professional  
21 or emergency medical services provider in the course of an  
22 emergency situation acting in a reasonable manner, a person  
23 using an electronic communication device in a hands-free  
24 or voice-operated mode, or a person using an electronic  
25 communication device by pressing a single button to initiate or  
26 terminate a voice communication.

27 An electronic communication device is a device capable of  
28 being used to compose, send, receive, or read an electronic  
29 message, and includes telephones, personal digital assistants,  
30 and portable or mobile computers, but does not include global  
31 positioning systems, navigation systems, or devices integrated  
32 into the vehicle. An electronic message is a self-contained  
33 piece of digital communication designed or intended to be  
34 transmitted between electronic communication devices, and  
35 includes video calls, electronic mail, text messages, instant



1 messages, and commands or requests to access an internet site.

2       DIVISION II — STATEWIDE SOBRIETY AND DRUG MONITORING  
3 PROGRAM. The bill directs the department of public safety  
4 (DPS) to establish a statewide sobriety and drug monitoring  
5 program that is available 24 hours per day, seven days per  
6 week. Under the program, a court or governmental entity, as  
7 a condition of bond, pretrial release, sentence, probation,  
8 parole, or a temporary restricted license, may require a person  
9 who has been charged with, pled guilty to, or been convicted  
10 of an eligible offense to abstain from alcohol and controlled  
11 substances for a period of time. The bill provides that an  
12 eligible offense is a criminal offense in which the abuse of  
13 alcohol or a controlled substance was a contributing factor  
14 in the commission of the offense as determined by the court  
15 or governmental entity of the participating jurisdiction.  
16 For the purposes of operating while intoxicated offenses, an  
17 eligible offense includes a first offense in which the person's  
18 alcohol concentration exceeded .15, a first offense in which  
19 an accident resulting in personal injury or property damage  
20 occurred, a first offense in which the person refused to submit  
21 to a chemical test, and a second or subsequent offense.

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

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

1 a location remote from the testing location, or the participant  
2 has repeatedly violated the requirements of the program.

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

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

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

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

1 including all costs to the state.

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

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

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

33 The bill provides that the law enforcement agency of a  
34 participating jurisdiction must establish and maintain a  
35 sobriety program account, and collect the required fees. The

1 law enforcement agency must distribute a portion of the fees to  
2 any participating third-party designee in accordance with the  
3 agreement between the agency and the third-party designee, and  
4 the remainder of the fees collected must be deposited in the  
5 participating jurisdiction's sobriety program account and must  
6 be used only for the purposes of administering and operating  
7 the program.

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

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

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

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

1 restricted license of a person operating a motor vehicle  
2 while not in compliance with the person's sobriety and drug  
3 monitoring program.

4 The bill also provides that in any circumstance in which  
5 Code chapter 321J requires the installation of an ignition  
6 interlock device in all vehicles owned or operated by a person  
7 as a condition of the person's license or privilege to operate  
8 noncommercial motor vehicles, the DOT must require the person  
9 to be a participant in and in compliance with a sobriety and  
10 drug monitoring program if the person's offense under Code  
11 chapter 321J qualifies as an eligible offense and the person's  
12 offense occurred in a participating jurisdiction, unless a  
13 court enters an order finding the person is not required to  
14 participate in the program.