

## CHAPTER 76

### VEHICULAR HOMICIDE AND USE OF ELECTRONIC COMMUNICATION DEVICES — STATEWIDE SOBRIETY AND DRUG MONITORING PROGRAM

S.F. 444

**AN ACT** relating to public safety on highways, including the use of electronic communication devices while driving where such use results in death and the establishment of a statewide sobriety and drug monitoring program, and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I

#### HOMICIDE BY VEHICLE — USE OF ELECTRONIC COMMUNICATION DEVICES WHILE DRIVING

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

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

(1) For the purposes of this paragraph “a”, a person’s use of a hand-held electronic communication device to write, send, or view an electronic message while driving a motor vehicle shall be considered prima facie evidence that the person was driving the motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of [section 321.277](#).

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

(a) A member of a public safety agency, as defined in [section 34.1](#), performing official duties.

(b) A health care professional in the course of an emergency situation.

(c) A person receiving safety-related information including emergency, traffic, or weather alerts.

(3) For the purposes of this paragraph “a”, the following definitions apply:

(a) “Hand-held electronic communication device” means a mobile telephone or other portable electronic communication device capable of being used to write, send, or view an electronic message. “Hand-held electronic communication device” does not include a voice-operated or hands-free device which allows the user to write, send, or view an electronic message without the use of either hand except to activate or deactivate a feature or function. “Hand-held electronic communication device” does not include a wireless communication device used to transmit or receive data as part of a digital dispatch system. “Hand-held electronic communication device” includes a device which is temporarily mounted inside the motor vehicle, unless the device is a voice-operated or hands-free device.

(b) “Electronic message” includes images visible on the screen of a hand-held electronic communication device including a text-based message, an instant message, a portion of electronic mail, an internet site, a social media application, or a game.

(c) The terms “write”, “send”, and “view”, with respect to an electronic message, mean the manual entry, transmission, or retrieval of an electronic message, and include playing, browsing, or accessing an electronic message.

#### DIVISION II

#### STATEWIDE SOBRIETY AND DRUG MONITORING PROGRAM

##### Sec. 2. LEGISLATIVE FINDINGS — PURPOSE.

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

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

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

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

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

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

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

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

**This chapter** shall be known and may be cited as the “*Iowa Sobriety and Drug Monitoring Program Act*”.

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

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

1. “*Alcohol*” means an alcoholic beverage as defined in [section 321J.1](#).

2. “*Controlled substance*” means as defined in [section 124.101](#).

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

4. “*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 governmental entity of the participating jurisdiction. For the purposes of operating while intoxicated offenses committed in violation of [section 321J.2](#), “*eligible offense*” includes only the following offenses:

a. A first offense in which the person’s alcohol concentration exceeded .15.

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

c. A first offense in which the person refused to submit to a chemical test requested pursuant to [section 321J.6](#).

d. A second or subsequent offense.

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

6. “*Law enforcement agency*” means a law enforcement agency charged with enforcement of the program created under **this chapter**.

7. “*Participating jurisdiction*” means a county or other governmental entity that chooses to participate in the program created under **this chapter**.

8. “*Sobriety and drug monitoring program*” or “*program*” means the program established pursuant to [section 901D.3](#).

9. “*Testing*” means a procedure or set of procedures performed 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. Subject to [section 901D.3](#), the department may approve additional testing methodologies or the testing of alternative bodily fluids.

10. “*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.

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

1. The department of public safety shall establish a statewide sobriety and drug monitoring program to be used by participating jurisdictions, which shall be available twenty-four hours per day, seven days per week. Pursuant to the provisions of **this chapter**, a court

or governmental entity, or an authorized officer thereof, within a participating jurisdiction may, as a condition of bond, pretrial release, sentence, probation, parole, or a temporary restricted license, do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Whether a testing device is available.

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

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

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

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

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

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

5. A jurisdiction wishing to participate in the program shall submit an application to the department. A jurisdiction shall not participate in the program unless the jurisdiction's application for participation has been approved by the department. If a jurisdiction is approved for participation in the program, the department shall assist the jurisdiction in setting up and administering the program in that jurisdiction in compliance with [this chapter](#).

6. *a.* If a jurisdiction participates in the program, the participating jurisdiction or a law enforcement agency of the participating jurisdiction may designate a third party to provide testing services or to take any other action required or authorized to be provided by the participating jurisdiction or law enforcement agency under [this chapter](#), except a third-party designee shall not determine whether to participate in the program.

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

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

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

The department shall adopt rules pursuant to [chapter 17A](#) to administer [this chapter](#), including but not limited to rules regarding any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A court or governmental entity, or an authorized officer thereof, in a participating jurisdiction may utilize the program as provided in [this section](#). The program shall be a preferred program for offenders charged with or convicted of an eligible offense.

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

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

4. The board of parole, the department of corrections, or a parole officer may condition parole otherwise authorized by law for a person convicted of an eligible offense upon participation in the program and payment of the fees established pursuant to [section 901D.4](#).

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

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

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

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

4. At the time of enrollment, a representative of the law enforcement agency of the participating jurisdiction shall enter the participant's information into the data management system described in [section 901D.5](#). The representative of the agency shall provide the participant with the appropriate materials required by the program, inform the participant that the participant's information may be shared for law enforcement and reporting purposes, and provide the participant with information related to the required testing, procedures, and fees.

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

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

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

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

a. Establish and maintain a sobriety program account.

b. Collect the participant, enrollment, and testing fees established pursuant to [section 901D.4](#) and deposit the fees and any other funds received for the program into the sobriety program account for administration of the program.

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

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

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

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

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

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

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

1. The department, in consultation with the judicial branch and the department of transportation, shall by December 1, 2021, submit a report to the general assembly detailing the effectiveness of the program established pursuant to [this chapter](#) and shall make recommendations concerning the continued implementation of the program or the elimination of the program.

2. [This chapter](#) is repealed July 1, 2022.

DIVISION III

OPERATING WHILE INTOXICATED — SOBRIETY AND DRUG MONITORING PROGRAM PROVISIONS

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

The department may, on application, issue a temporary restricted license to a person whose noncommercial driver's license is revoked under [this chapter](#) allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, court-ordered community service responsibilities, and appointments with the person's parole or probation officer, and participation in a program established pursuant to [chapter 901D](#), if the person's driver's license has not been revoked previously under [section 321J.4](#), [321J.9](#), or [321J.12](#) and if any of the following apply:

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

*a.* Notwithstanding [section 321.560](#), the department may, on application, and upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under [section 321.560](#), [321J.4](#), [321J.9](#), or [321J.12](#), issue a temporary restricted license to a person whose noncommercial driver's license has either been revoked under [this chapter](#), or revoked or suspended under [chapter 321](#) solely for violations of [this chapter](#), or who has been determined to be a habitual offender under [chapter 321](#) based solely on violations of [this chapter](#) or on violations listed in [section 321.560, subsection 1](#), paragraph "b", and who is not eligible for a temporary restricted license under [subsection 1](#). However, the department may not issue a temporary restricted license under [this subsection](#) for a violation of [section](#)

[321J.2A](#) or to a person under the age of twenty-one whose license is revoked under [section 321J.4](#), [321J.9](#), or [321J.12](#). A temporary restricted license issued under [this subsection](#) may allow the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment; continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion; ~~or substance abuse treatment;~~ or participation in a program established pursuant to [chapter 901D](#).

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

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

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

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

Sec. 17. FUTURE REPEAL. This division of this Act is repealed July 1, 2022.

Approved April 17, 2017