

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 461

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO BEING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING A SHORT  
2 TITLE; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 67-1401, IDAHO  
3 CODE, TO PROVIDE ADDITIONAL DUTIES OF THE ATTORNEY GENERAL; AMEND-  
4 ING CHAPTER 29, TITLE 67, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS  
5 67-1412 THROUGH 67-1416, IDAHO CODE, TO DEFINE TERMS, TO CREATE THE  
6 SOBRIETY AND DRUG MONITORING PROGRAM, TO PROVIDE FOR RULES AND TESTING  
7 FEES, TO PROVIDE THE AUTHORITY FOR COURTS OR OTHER ENTITIES TO PAR-  
8 TICIPATE IN A SOBRIETY AND DRUG MONITORING PROGRAM AND TO PROVIDE FOR  
9 COLLECTION, DISTRIBUTION AND USE OF TESTING FEES.  
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. SHORT TITLE. This act shall be known and may be cited as the  
13 "Idaho 24/7 Sobriety and Drug Monitoring Program Act."

14 SECTION 2. LEGISLATIVE INTENT. The Legislature declares that driving  
15 in Idaho is a privilege, not a right. A driver who wishes to enjoy the bene-  
16 fits of this privilege must accept the corresponding responsibilities. The  
17 Legislature further declares that the purpose of this act is to protect the  
18 public health and welfare by reducing the number of people on Idaho's high-  
19 ways who drive under the influence of alcohol or dangerous drugs; to protect  
20 the public health and welfare by reducing the number of repeat offenders for  
21 certain offenses in which the abuse of alcohol or dangerous drugs was a con-  
22 tributing factor in the commission of the crime; and to strengthen the pre-  
23 trial and posttrial options available to prosecutors and judges in respond-  
24 ing to repeat DUI offenders and offenders for certain crimes in which the  
25 abuse of alcohol or dangerous drugs was a contributing factor in the commis-  
26 sion of the crime.

27 SECTION 3. That Section 67-1401, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in  
30 this chapter, it is the duty of the attorney general:

31 (1) To perform all legal services for the state and to represent the  
32 state and all departments, agencies, offices, officers, boards, commis-  
33 sions, institutions and other state entities, in all courts and before all  
34 administrative tribunals or bodies of any nature. Representation shall be  
35 provided to those entities exempted pursuant to the provisions of section  
36 67-1406, Idaho Code. Whenever required to attend upon any court or adminis-  
37 trative tribunal, the attorney general shall be allowed necessary and actual  
38 expenses, all claims for which shall be audited by the state board of exam-  
39 iners.

1 (2) To advise all departments, agencies, offices, officers, boards,  
2 commissions, institutions and other state entities in all matters involving  
3 questions of law.

4 (3) After judgment in any of the causes referred to in this chapter, to  
5 direct the issuing of such process as may be necessary to carry the same into  
6 execution.

7 (4) To account for and pay over to the proper officer all moneys re-  
8 ceived which belong to the state.

9 (5) To supervise nonprofit corporations, corporations, charitable or  
10 benevolent societies, person or persons holding property subject to any pub-  
11 lic or charitable trust and to enforce whenever necessary any noncompliance  
12 or departure from the general purpose of such trust and, in order to accom-  
13 plish such purpose, said nonprofit corporations, corporations, charitable  
14 or benevolent societies, person or persons holding property subject to any  
15 public or charitable trust are subject at all times to examination by the at-  
16 torney general, on behalf of the state, to ascertain the condition of its af-  
17 fairs and to what extent, if at all, said trustee or trustees may have failed  
18 to comply with trusts said trustee or trustees have assumed or may have de-  
19 parted from the general purpose for which it was formed. In case of any such  
20 failure or departure, the attorney general shall institute, in the name of  
21 the state, any proceeding necessary to enforce compliance with the terms of  
22 the trust or any departure therefrom.

23 (6) To give an opinion in writing, without fee, to the legislature or  
24 either house thereof, or any senator or representative, and to the gover-  
25 nor, secretary of state, treasurer, state controller, and the superinten-  
26 dent of public instruction, when requested, upon any question of law relat-  
27 ing to their respective offices. The attorney general shall keep a record of  
28 all written opinions rendered by the office and such opinions shall be com-  
29 piled annually and made available for public inspection. All costs incurred  
30 in the preparation of said opinions shall be borne by the office of the attor-  
31 ney general. A copy of the opinions shall be furnished to the supreme court  
32 and to the state librarian.

33 (7) When required by the public service, to repair to any county in the  
34 state and assist the prosecuting attorney thereof in the discharge of du-  
35 ties.

36 (8) To bid upon and purchase, when necessary, in the name of the state,  
37 and under the direction of the state controller, any property offered for  
38 sale under execution issued upon judgments in favor of or for the use of the  
39 state, and to enter satisfaction in whole or in part of such judgments as the  
40 consideration for such purchases.

41 (9) Whenever the property of a judgment debtor in any judgment men-  
42 tioned in subsection (8) of this section has been sold under a prior judg-  
43 ment, or is subject to any judgment, lien, or encumbrance, taking precedence  
44 of the judgment in favor of the state, under the direction of the state  
45 controller, to redeem such property from such prior judgment, lien, or en-  
46 cumbrance; and all sums of money necessary for such redemption must, upon the  
47 order of the board of examiners, be paid out of any money appropriated for  
48 such purposes.

49 (10) When necessary for the collection or enforcement of any judgment  
50 hereinbefore mentioned, to institute and prosecute, in behalf of the state,

1 such suits or other proceedings as may be necessary to set aside and annul all  
2 conveyances fraudulently made by such judgment debtors; the cost necessary  
3 to the prosecution must, when allowed by the board of examiners, be paid out  
4 of any appropriations for the prosecution of delinquents.

5 (11) To exercise all the common law power and authority usually apper-  
6 taining to the office and to discharge the other duties prescribed by law.

7 (12) To report to the governor, at the time required by this section, the  
8 condition of the affairs of the attorney general's office and of the reports  
9 received from prosecuting attorneys.

10 (13) To appoint deputy attorneys general and special deputy attorneys  
11 general and other necessary staff to assist in the performance of the du-  
12 ties of the office. Such deputies and staff shall be nonclassified employees  
13 within the meaning of section 67-5302, Idaho Code.

14 (14) To establish a medicaid fraud control unit pursuant to the provi-  
15 sions of section 56-226, Idaho Code, and to exercise concurrent investiga-  
16 tive and prosecutorial authority and responsibility with county prosecutors  
17 to prosecute persons for the violation of the criminal provisions of chap-  
18 ter 2, title 56, Idaho Code, and for criminal offenses that are not defined  
19 in said chapter 2, title 56, Idaho Code, but that involve or are directly re-  
20 lated to the use of medicaid program funds or services provided through the  
21 medicaid program.

22 (15) To seek injunctive and any other appropriate relief as expedi-  
23 tiously as possible to preserve the rights and property of the residents of  
24 the state of Idaho, and to defend as necessary the state of Idaho, its offi-  
25 cials, employees and agents in the event that any law or regulation violating  
26 the public policy set forth in the Idaho health freedom act, chapter 90,  
27 title 39, Idaho Code, is enacted by any government, subdivision or agency  
28 thereof.

29 (16) To establish an internet crimes against children unit pursuant to  
30 the provisions of section 67-1410, Idaho Code, and to exercise concurrent  
31 investigative and prosecutorial authority and responsibility with county  
32 prosecutors to prosecute persons for the violation of the criminal provi-  
33 sions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which  
34 may also encompass criminal offenses that are not defined in said sections  
35 but that involve or are directly related to child pornography and sollicita-  
36 tion of minors for pornography, prostitution or sex-related offenses.

37 (17) To establish a sobriety and drug monitoring program to reduce the  
38 number of people on Idaho's highways who drive under the influence of alco-  
39 hol or drugs, reduce the number of repeat offenders for certain offenses in  
40 which the abuse of alcohol or drugs was a contributing factor, and increase  
41 pretrial and posttrial options for prosecutors and judges in responding to  
42 repeat DUI offenders and offenders for certain crimes in which the abuse of  
43 alcohol or drugs was a contributing factor in the commission of the crime,  
44 and to adopt such rules and establish such fees as are necessary for the oper-  
45 ation of said program , as set forth by law.

46 SECTION 4. That Chapter 29, Title 67, Idaho Code, be, and the same is  
47 hereby amended by the addition thereto of NEW SECTIONS, to be known and des-  
48 ignated as Sections 67-1412 through 67-1416, Idaho Code, and to read as fol-  
49 lows:

1           67-1412. DEFINITIONS. As used in sections 67-1412 through 67-1416,  
2 Idaho Code, the following definitions apply:

3           (1) "Attorney general" means the Idaho office of the attorney general.

4           (2) "Core components" means those elements of a 24/7 program that anal-  
5 ysis demonstrates are most likely to account for positive program outcomes.

6           (3) "Immediate sanction" means sanctions that are applied within min-  
7 utes of a noncompliant test event.

8           (4) "Jurisdiction" means the county or municipality that chooses to  
9 participate in a 24/7 program.

10           (5) "Law enforcement agency" means the county sheriff's office or an-  
11 other law enforcement agency designated by the county sheriff's office that  
12 is charged with enforcement of a 24/7 program.

13           (6) "24/7 sobriety and drug monitoring program" or "24/7 program"  
14 means the 24/7 sobriety and drug monitoring program established in section  
15 67-2920, Idaho Code, that authorizes a court or agency as a condition of  
16 bond, sentence, probation, parole or work permit to:

17           (a) Require an individual to abstain from alcohol or dangerous drugs  
18 for a period of time when that individual has been charged, pleads  
19 guilty, found guilty, convicted or received a withheld judgment for a  
20 crime in which the abuse of alcohol or dangerous drugs was a contribut-  
21 ing factor in the commission of the crime including, but not limited to,  
22 driving under the influence of alcohol or dangerous drugs; and

23           (b) Require the individual to be subject to testing for alcohol and/or  
24 dangerous drugs:

25           (i) At least twice a day at a central location where immediate  
26 sanctions can be applied;

27           (ii) Where twice a day testing is impractical, by continuous  
28 transdermal alcohol monitoring by means of an electronic monitor-  
29 ing device where timely sanctions can be applied; or

30           (iii) By an alternate method with concurrence of the attorney gen-  
31 eral and consistent with section 67-1413, Idaho Code.

32           (7) "Testing" means a procedure for determining the presence and level  
33 of alcohol or a dangerous drug, as enumerated in chapter 80, title 18, Idaho  
34 Code, or as provided as a condition of probation, withheld judgment or pa-  
35 role, in an individual's body fluid including blood, breath, urine, saliva  
36 or perspiration and includes any combination of the use of breath testing,  
37 drug patch testing, urinalysis testing, saliva testing or continuous or  
38 transdermal alcohol monitoring. With the concurrence of the attorney gen-  
39 eral and consistent with section 67-1413, Idaho Code, alternate body fluids  
40 can be approved for use.

41           (8) "Timely sanction" means a sanction that is applied within a period  
42 of time that can be hours or days after the noncompliant test event, but the  
43 period of time should be as short as possible and not extend beyond fourteen  
44 (14) days.

45           67-1413. SOBRIETY AND DRUG MONITORING PROGRAM CREATED. (1) There is  
46 hereby created within the office of the attorney general the sobriety and  
47 drug monitoring program.

48           (2) The core components of the statewide 24/7 program shall include the  
49 utilization of a primary testing methodology that facilitates the ability to

1 apply immediate sanctions for noncompliance at an affordable cost. In hard-  
2 ship cases or where a program participant is rewarded with less stringent  
3 testing requirements, testing methodologies with timely sanctions for non-  
4 compliance may be utilized.

5 (3) The statewide 24/7 program shall be evidence-based and shall be  
6 able to satisfy at least two (2) of the following categories: included in the  
7 federal registry of evidence-based programs and practices; reported with  
8 positive effects on the primary target outcome in peer review journals; or  
9 documented effectiveness supported by other sources of information and the  
10 judgment of informed experts.

11 (4) If a jurisdiction chooses to participate in the 24/7 sobriety and  
12 drug monitoring program, the attorney general shall assist in creation and  
13 administration of the 24/7 program in the jurisdiction in the manner pro-  
14 vided in sections 67-1412 through 67-1416, Idaho Code. The attorney general  
15 shall also assist jurisdictions in which a 24/7 program exists in determin-  
16 ing alternatives to incarceration.

17 (5) (a) If a jurisdiction participates in the 24/7 program, the law  
18 enforcement agency may designate an entity to provide the testing ser-  
19 vices or take any other action required or authorized to be provided  
20 by the law enforcement agency pursuant to sections 67-1412 through  
21 67-1416, Idaho Code, except that the law enforcement agency's designee  
22 may not determine whether to participate in the 24/7 sobriety and drug  
23 monitoring program.

24 (b) The law enforcement agency shall establish the testing locations  
25 and times for the jurisdiction, but must have at least one (1) test-  
26 ing location and two (2) daily testing times approximately twelve (12)  
27 hours apart.

28 67-1414. RULES -- TESTING FEES. The attorney general shall adopt rules  
29 to implement the provisions of sections 67-1412 through 67-1416, Idaho Code.  
30 The rules must:

31 (1) Provide the nature and manner of testing and the procedures and ap-  
32 paratus to be used for testing;

33 (2) Establish reasonable participant and testing fees for the program,  
34 including the collection of fees to pay the cost of installation, monitor-  
35 ing, calibration and deactivation of any testing device and reimbursement to  
36 private or governmental entities providing such services;

37 (3) Provide the establishment and use of local accounts for the deposit  
38 of fees collected and for administration of the 24/7 sobriety and drug moni-  
39 toring program pursuant to these rules;

40 (4) Require approval by the attorney general of all contracts entered  
41 into between local or state agencies and vendors participating in the 24/7  
42 sobriety and drug monitoring program; and

43 (5) Require and provide for the approval of a 24/7 sobriety and drug  
44 monitoring program data management technology plan that must be used by the  
45 attorney general and participating jurisdictions to manage testing, data  
46 access, fees and fee payments and any required reports.

47 67-1415. AUTHORITY OF COURT AND OTHER ENTITIES TO ORDER PARTICIPA-  
48 TION IN SOBRIETY AND DRUG MONITORING PROGRAM. Any court, the commission for

1 pardons and parole, the department of juvenile corrections, the driver's  
2 license section of the transportation department, any county probation de-  
3 partment, any juvenile probation department, the department of correction  
4 and the department of health and welfare dealing with child protection is-  
5 sues or a law enforcement entity dealing with domestic violence issues may  
6 avail itself of the 24/7 program for persons. Any entity utilizing the 24/7  
7 program may condition any sanctions against an individual to be stayed as  
8 long as the individual participates in and/or successfully completes the  
9 24/7 sobriety and drug monitoring program.

10 67-1416. COLLECTION, DISTRIBUTION AND USE OF TESTING FEES. The law en-  
11 forcement agency of a jurisdiction in which a 24/7 sobriety and drug moni-  
12 toring program exists shall collect the testing fee required by the rules of  
13 the attorney general and deposit the fees into the local 24/7 program account  
14 established pursuant to rules of the attorney general. The fee must be dis-  
15 tributed according to those rules to the proper jurisdiction for use by the  
16 law enforcement agency or the law enforcement agency's designee pursuant to  
17 the terms determined by the law enforcement agency in accordance with the  
18 provisions of sections 67-1412 through 67-1416, Idaho Code, and the rules  
19 implementing those sections.