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23.18.301 DEFINITIONS

Unless the context indicates otherwise, the words and phrases in this subchapter have the definitions set forth in this rule.

(1) "Data management system" means a data management technology plan approved by the Attorney General that is designed to manage testing, data access, fees and fee payments, and any required reports.

(2) "Department" means the Montana Department of Justice.

(3) "Participant" means a person who has been ordered by a court or directed by the Board of Pardons and Parole, Department of Corrections, or a parole officer to participate in the 24/7 sobriety program.

(4) "Participating agency" means a sheriff's office or an entity designated by a sheriff that has agreed to participate in the 24/7 sobriety program.

(5) "Participating vendor" means a vendor that meets the 24/7 sobriety program criteria established by the Attorney General to provide equipment or services to implement and operate the 24/7 sobriety program.

(6) "Preliminary alcohol screening test device" means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration.

(7) "Program requirements" means a document that sets forth the type and frequency of testing, the testing location, the testing fees and payment procedures, and the participant's responsibilities under the 24/7 sobriety program.

(8) "24/7 sobriety program" or "program" means the program established in 2011 Mont. Laws, ch. 318, § 3. The program is a continuous sobriety program in which a participant submits to testing of breath or other bodily substances to determine whether alcohol or drugs are present in the participant's body.

(9) "Continuous remote transdermal alcohol monitoring device" means a device that is capable of remote continuous or transdermal alcohol monitoring that can be attached directly to the participant. The term includes any associated equipment necessary for the device to perform properly.

(10) "Vendor agreement" means an agreement approved by the Attorney General between a participating vendor and a participating agency that establishes the services the participating vendor and a participating agency will provide, the related costs and fees, and the portion of costs and fees that will be paid to a participating vendor and to a participating agency.

History: 44-4-1204, MCA; IMP, 44-4-1204, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.302 PLACEMENT IN THE 24/7 SOBRIETY PROGRAM

(1) A participant may be placed in the 24/7 sobriety program as a condition of bond or pretrial release, a condition of sentence or probation, or as a condition of parole.

(2) An order or directive placing a participant in the program should include the type of testing and the length of time that the participant is to remain in the program.

(3) A participant shall report for twice-daily breath tests or submit to testing through a continuous remote transdermal alcohol monitoring device for the length of time ordered by the court, the Board of Pardons and Parole, the Department of Corrections, or a parole officer.

(4) A participating agency must receive a copy of the order or directive before enrolling a participant in the program.

History: 44-4-1204, MCA; IMP, 44-4-1203, 44-4-1204, 44-4-1205, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.303 ENROLLMENT

(1) A representative of a participating agency shall enroll a participant in the 24/7 sobriety program prior to testing.

(2) During enrollment, the representative of a participating agency shall enter the participant's information in the data management system. The representative of a participating agency shall provide the participant with the appropriate program requirements, inform the participant that information may be shared for law enforcement and reporting purposes, and provide the participant with information related to testing, procedures, and fees.

(3) The participant shall sign the program requirements and release of information form.
History: 44-4-1204, MCA; IMP, 44-4-1203, 44-4-1204, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.304 TESTING AUTHORIZED

(1) Except as provided in (3), a participant in the 24/7 sobriety program shall submit to alcohol testing through twice-daily breath tests on a preliminary alcohol screening test device.

(2) A participant who has been ordered to provide twice-daily breath tests shall report to the participating agency's testing location at two daily testing times approximately 12 hours apart.

(3) A participant alternatively may be ordered to submit to continuous remote transdermal alcohol monitoring on a continuous remote transdermal alcohol monitoring device. Factors to be considered include whether:

- (a) a device is available;
- (b) the participant is capable of paying the fees and costs associated with continuous remote transdermal alcohol monitoring;
- (c) the participant is capable of wearing the device; and
- (d) the participant does not qualify for twice-daily breath tests because of one or more of the following:

(i) the participant lives in a rural area and submitting to twice-daily breath tests would be unduly burdensome;

(ii) the participant's employment requires job performance at a location remote from the testing location and submitting to twice-daily breath tests would be unduly burdensome; or

(iii) the participant repeatedly has violated the 24/7 sobriety program while submitting to twice-daily breath tests and poses a substantial risk of future violation.

(4) A participating agency shall record all testing results in the data management system.

History: 44-4-1204, MCA; IMP, 44-4-1203, 44-4-1204, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.305 PARTICIPANT FEES

(1) A participating agency shall charge a participant who has been ordered to provide twice-daily breath tests a fee, which may not exceed the amount provided for in the vendor agreement.

(2) A participating agency shall charge a participant who has been ordered to submit to continuous remote transdermal alcohol monitoring the following fees and costs, which may not exceed the amounts provided for in the vendor agreement:

(a) a daily monitoring fee as provided for in the vendor agreement, which must be paid in advance on a one-week, two-week, or four-week basis;

(b) an installation/activation fee as provided for in the vendor agreement; and

(c) any repair or replacement costs due to misuse.

History: **44-4-1204**, MCA; **IMP**, **44-4-1203**, **44-4-1204**, **44-4-1206**, MCA; **NEW**, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.306 COLLECTION, DISTRIBUTION, AND USE OF TESTING FEES

- (1) A participant shall pay all fees directly to the participating agency.
- (2) A participating agency shall distribute a portion of the fees to the participating vendors in accordance with the vendor agreements.
- (3) The remainder of the fee proceeds is for the use of the participating agency and must be placed in the sobriety program account authorized in 23.18.307. The fee proceeds may be used only for the purposes of administering the 24/7 sobriety program.

History: 44-4-1204, MCA; IMP, 44-4-1203, 44-4-1204, 44-4-1206, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.307 ACCOUNT FOR TESTING FEES

- (1) A participating agency shall establish and maintain a sobriety program account.
 - (2) A participating agency shall collect and deposit testing fees and any other funds received for the 24/7 sobriety program into the sobriety program account for administration of the program.
- History: 44-4-1204, MCA; IMP, 44-4-1204, 44-4-1206, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.308 DATA MANAGEMENT SYSTEM

(1) A participating agency shall use the data management system, including hardware and software, approved and provided by the Attorney General.

(2) The data management system must feature a secure, remotely hosted, demonstrated, web-based management application that allows multiple concurrent users to access and input information.

(3) The data management system must support breath testing, continuous remote transdermal alcohol monitoring, drug patch testing, and urinalysis testing.

(4) The data management system must be capable of tracking and storing an unlimited number of events, including, but not limited to, participant enrollment, testing activity, accounting activity, and participating agency activity.

(5) The data management system must be capable of generating reports with any combination of system fields and data. The data management system must allow reports to be generated as needed and on a scheduled basis and allow reports to be exported over a network connection or by remote printing.

History: 44-4-1204, MCA; IMP, 44-4-1203, 44-4-1204, 44-4-1206, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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23.18.309 24/7 SOBRIETY PROGRAM MANAGEMENT GROUP

(1) The Attorney General shall establish a 24/7 sobriety program management group. The group must include:

- (a) a representative from the department;
- (b) two representatives from rural participating agencies, one representing eastern Montana and one representing western Montana;
- (c) two representatives from urban participating agencies, one representing eastern Montana and one representing western Montana; and
- (d) a representative from the Lewis and Clark County participating agency.

(2) The Attorney General shall meet at least annually with the 24/7 sobriety program management group to review the program and administrative rules.

History: 44-4-1204, MCA; IMP, 44-4-1204, MCA; NEW, 2011 MAR p. 2033, Eff. 10/1/11.

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