

Testimony in Opposition to SB 2365  
69<sup>th</sup> Legislative Assembly  
Senate Judiciary Committee  
March 10, 2025  
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in opposition to Senate Bill 2365. Senate Bill 2365 provides district court judges cannot waive fees for a defendant participating in the 24/7 sobriety program. This changes the rules of the 24/7 program which currently allows for the Court to make the determination. The 24/7 sobriety program manual provides “A municipal court or district court may only waive the fees, or part of the fees upon a finding of hardship when participation in the 24/7 Sobriety Program is a condition of bond or pretrial release. A municipal court or district court may not waive the 24/7 Sobriety Program fees in whole or in part if the offender is participating in the 24/7 Sobriety Program as a condition of probation or as a condition of a temporary restricted driver’s license. See N.D.C.C. § 39-08-01(7) (24/7 Program Manual as provided by the Attorney General’s Website)<sup>1</sup>

The reason for allowing waiver of fees currently within in the program on a pre-trial status, is to protect the program from constitutional challenges. If the fee is not allowed to be waived, and the defendant were found to be not guilty and the fees not returned, the program equates to a pre-trial punishment. See generally Bell v. Wolfish, 441 U.S. 520 (1979). The Commission believes by removing the ability to waive the fees, you are limiting due process of the defendant and changing the calculation of the program from a pre-trial program with a legitimate government interest to a pretrial punishment. Further, this elimination of the waiver condition could be challenged on the grounds of equal protection as well. This would allow those with means to be out on bond because they can afford the

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<sup>1</sup> <https://attorneygeneral.nd.gov/wp-content/uploads/2023/02/24-7-Sobriety-Program-Guidelines.pdf>

program where those who are indigent, our clients, would be left to be in jail for inability to pay the fees.

The Commission has tried to work with one of the sheriff's pushing this bill to try and find an alternate payee source. I do believe there are other sources/grants available to help cover some of the costs of the program. If the impetus of this legislation is to hold those running the program harmless, then we should be looking at an appropriation. Not a statutory change effecting the due process and equal protection rights of North Dakotans.

For the reasons states herein, the Commission is in opposition to SB 2365 and respectfully requests a do not pass recommendation.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', with a stylized flourish at the end.

Travis W. Finck  
Executive Director, NDCLCI