MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

1218

DESCRIPTION

2001 HOUSE JUDICIARY

HB 1218

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1218

House Judiciary Committee

❑ Conference Committee

Hearing Date 01-23-01

Tape Number	Side A	Side B	Meter #
Tape I	x		4460 to 6251
		x	01 to 781
Committee Clerk Signature			

Minutes: Chr DeKrey opened the hearing on HB 1218. All present with the exception of Rep Onstad. The clerk will read the title. Relating to driving under the influence of intoxication liquor or any other drug or substance; to provide an expiration date and to declare an emergency.

Rep Carlisle: Here to introduce HB 1218. The main part of the bill, page 1 line 8 thr 13 and on page 2 line 9 thr 23. This will be the purpose of the sub section is a drug court program. We have two judges here to testify, it is their bill and their program so they will explain.

Judge Gail Hagerty: District Judge in Burleigh County (see attached testimony).

Judge Bruce Haskel: District Court in Bismarck. He is one of the judges on the Drug Court Program (see handout for more information and statie's Studies that have gone into this program indicate that if there is immediate intervention and they have to go through the program, the possibility of pre-peat offenders goes down.

Rep Klemin: Under this bill, you would wait until after the third offense, the five years, why is that point picked rather than say after the second offense?

Judge Haskel: For a number of reasons, your typical first offender, 90% of those never offend again. It also has to do with resources. It is a cut off where we think we can do the most good.

Rep Eckre: 70% of the people who complete this, never offend again. What is the figure otherwise?

Judge Haskel: If you are talking about the people who go to the penitentiary they have a residual rate of 30%. You have to keep in mind that you are spending 20 grand a year on those people. Where this program is 2 or 3 thousand a year. One of the things we are going to have is a pilot program is have a control group, that is going to do show us.

Chr DeKrey: Thank you your Honor for appearing. Is there anyone else wishing to appear?

Richard Riha: Burleigh County States Attorney: I am one of the members of the committee which established the drug court in Burleigh and Morton County. I have been on the committee for a year, and I am very impressed with it. This bill has the support of our office. We ask you to pass this bill.

Chr DeKrey: Thank you for testifying in front of our committee. Is there anyone else wishing to testify in favor, anyone in opposition?

Keith Magnusson: North Dakota Director of Drivers Vehicle Service For the Department of Transportation. I am not in opposition of this bill. There are some possible problems, but we think this is a good bill. We would ask the committee to hold this bill until next Tuesday OR Wednesday until we hear from the Federal Highway Administration and the National Highway Traffic Safety Administration. This would have to do with money moved to the safety program in the state.

TAPE 1 SIDE B

Susan Beehler: (see attached testimony).

Rep Mahoney: Some people, you just don't be able to help, the idea behind this is to work on the treatment of the program. It is a step towards promoting the treatment portion rather than the punishment. Don't you think we should do this?

Susan Beehler: I think it should be a combination of both. I think the fines should be higher, and also I think they should pay for their own treatment. That is part of the problem, the court should be working with the family. Repeat offenders are cunning.

Chr DeKrey: Thank you for appearing in front of the committee. We will close the hearing on HB 1218.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1218a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-06-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		1130 to 1500
Committee Clerk Signature			

Minutes: Chairman DeKrey called the committee to order and we will take up HB 1218.

COMMITTEE ACTION

Rep Mahoney moved a DO PASS, Rep Grande seconded the motion

The clerk will call the roll on a DO PASS motion on HB 1218.

The motion passes with 15 YES 0 NO 0 Absent

Carrier Rep Wrangham.

FISCAL NOTE

Requested by Legislative Council
03/09/2001

Bill/Resolution No.:

Amendment to: HB 1218

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$4,000	$0	$23,446	$0	$23,446
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Supreme Court indicates that the additional judge time required for the Burleigh/Morton pilot drug court program can be absorbed by the current assigned judges; thus there is no fiscal impact as far as the judiciary is concerned. However, the Court indicates that if drug court programs are expanded to other judicial districts, additional judge staffing may be required; appropriations could be necessary to fund this additional judge staffing. Drug Courts are labor-intensive as far as judge time is concerned.

The Department of Corrections and Rehabilitation estimates that the pilot Burleigh/Morton drug court program will require one probation officer to supervise the offenders placed in the drug court program. The Executive Budget recommmendation for the DOCR Field Services Division includes funding for one FTE probation officer position and associated operating expenses for the pilot drug court program. The DOCR estimates that approximately one tenth of the officer's time will be required to supervise the DUI offenders placed in the program. The amounts listed for expenditures above reflect the costs associated with the DUI offenders.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No fiscal impact.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each*

agency, line item, and fund affected and the number of FTE positions affected.

Please refer to narrative above.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

As stated in the narrative above, the Executive Recommendation for the DOCR includes funding for the pilot drug court program.

Name:	Elaine Little	**Agency:**	DOCR
Phone Number:	328-6390	**Date Prepared:**	03/12/2001

FISCAL NOTE

Requested by Legislative Council
01/15/2001

Bill/Resolution No.: HB 1218

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$4,000	$0	$23,446	$0	$23,446
Appropriations	$0	$4,000	$0	$23,446	$0	$23,446

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Supreme Court indicates that the additional judge time required for the Burleigh/Morton pilot drug court program can be absorbed by the current assigned judges; thus there is no fiscal impact as far as the judiciary is concerned. However, the Court indicates that if drug court programs are expanded to other judicial districts, additional judge staffing may be required; appropriations could be necessary to fund this additional judge staffing. Drug Courts are labor-intensive as far as judge time is concerned.

The Department of Corrections and Rehabilitation estimates that the pilot Burleigh/Morton drug court program will require one probation officer to supervise the offenders placed in the drug court program. The Executive Budget recommendation for the DOCR Field Services Division includes funding for one FTE probation officer position and associated operating expenses for the this pilot drug court program. The DOCR estimates that approximately one tenth of the officer's time will be required to supervise the DUI offenders placed in the program. The amounts listed for expenditures and appropriations above reflect the costs associated with the DUI offenders.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type*

and fund affected and any amounts included in the executive budget.

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Please refer to narrative above.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Please refer to the narrative above.

Name:	Elaine Little	**Agency:**	DOCR
Phone Number:	328-6390	**Date Prepared:**	01/18/2001

FISCAL NOTE

Requested by Legislative Council
01/15/2001

Bill/Resolution No.: HB 1218

Amendment to:

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures	$0	$0				
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

As to the pilot program in Burleigh County, the additional judge time required can be absorbed by the current assigned judges; thus there is no fiscal impact as far as the judiciary is concerned. If the program is expanded, additional judge staffing may be required. Drug Courts are labor-intensive as far as judge time is concerned.

The impact on corrections, the originator of the legislation, should be addressed separately.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

If the program expands, an additional judge or judges may be required.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the*

executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

This depends on whether the program is expanded.

Name:	Keithe E. Nelson	**Agency:**	Supreme Court
Phone Number:	328-4216	**Date Prepared:**	01/15/2001

Date: 02-06-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1218

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Mahoney Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR --Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Wrangham

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 6, 2001 1:00 p.m.

Module No: HR-21-2475
Carrier: Wrangham
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1218: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1218 was placed on the Eleventh order on the calendar.

2001 SENATE JUDICIARY

HB 1218

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1218

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 6th, 2001

Tape Number	Side A	Side B	Meter #
1	x		0-25.4
2	x		0-2.9

Committee Clerk Signature

Minutes: **Senator Traynor**, opened the hearing on HB 1218: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 4 OF SECTION 39-08-01 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY OTHER DRUG OR SUBSTANCE; TO PROVIDE AN EXPIRATION DATE; AND TO DECLARE AN EMERGENCY.

Rep. Carlisle, district 40, prime sponsor of the bill. This bill started from a pilot drug program. Asked question to the federal government to find out about federal programs. Submitted testimony from District Judge Gail Hagerty.

Judge Haskall, district court judge in Bismarck, bill deals with DUI offenders. Drug courts started in mid 1980's. People came to see judges for evaluations. 70% of people recover form drug addictions who enter this program. People are required to do community service. Bill will accomplish an immediate intervention in their lives. The bottom line is that our traditional methods are not working so we are going to try this.

Senator Traynor, have you figured out how much this will take from your schedule?

Judge Haskall, about 7 hours.

Senator Trenbeath, how long is the drug program?

Judge Haskall, one year is the fastest you can get through.

Senator Trenbeath, how much will it cost?

Judge Haskall, 3,000 dollars a year per person. Right now we have tried to work this into our work load.

Senator Trenbeath, this is the Burleigh Morton project are there any more?

Judge Haskall, there is a juvenile court at Cass County.

Senator Trenbeath, how much would this cost if it caught on state wide?

Pat Bohn, the average cost would be 33,000 dollars. Right now we have tried to work this out into our regular work hours.

Senator Trenbeath, this is the Burleigh Morton program.

Senator Watne, they say they will need another probation officer. I also think that there would be a positive fiscal note?

Pat Bohn, we are trying not to be to optimistic about the outcome.

Senator Nelson, your thinking about serving 40-41 people per year. That would cost 240,000 dollars a year.

Senator Dever, is this a matter of money or are we trying to work out the program before you expand?

Pat Bohn, yes to both parts.

Judge Haskall, it may not work at other locations in ND.

Rep. Maragos, district 3, cosponsor of the bill encourages to support the bill.

Keith Magnasuun, director of driver of vehicle services for the department of transportation. Bill has some good concepts, but has some amendments to propose. (see attached amendments)

Cynthia Feelend, on behalf of Burleigh county states attorney office. Is very supportive of the bill.

Senator Traynor, is there a grant on hand?

Pat Bohn, not to my knowledge. I won't find out until June.

Senator Traynor, it isn't dependent upon the grant right now?

Pat Bohn, correct. We are already running this program currently.

Senator Traynor, it would be in this biennium.

Senator Traynor, closed the hearing on HB 1218.

Discussion followed tape 2 side a

SENATOR NELSON MOTIONED TO ADOPT AMENDMENTS PRESENTED BY KEITH MAGNASUUN, SECONDED BY SENATOR LYSON. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR WATNE MOTIONED TO DO PASS, SECONDED BY SENATOR DEVER. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR NELSON VOLUNTEERED TO CARRY THE BILL.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1218

Page 2, line 5, replace "and" with an underscored semicolon

Page 2, line 6, after "dollars" insert "; and an order for addiction evaluation by an appropriate licensed addiction treatment program"

Page 2, line 10, after "sentence" insert ", except for ten days' imprisonment,"

18270.0101
Title.0200

Adopted by the Judiciary Committee
March 6, 2001

3-6-1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1218

Page 2, line 5, overstrike "and" and insert immediately thereafter an underscored semicolon

Page 2, line 6, after "dollars" insert "; and an order for addiction evaluation by an appropriate licensed treatment program"

Page 2, line 10, after "sentence" insert ", except for ten days' imprisonment,"

Renumber accordingly

Date: 3/6/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1218

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendments, prepared by Keith Magnuson.

Motion Made By Nelson Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.					

Total (Yes) 5 No 0

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/6/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1218

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Watne Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.					

Total (Yes) 5 No 0

Absent 2

Floor Assignment C. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 8, 2001 8:43 a.m.

Module No: SR-40-5089
Carrier: C. Nelson
Insert LC: 18270.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1218: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1218 was placed on the Sixth order on the calendar.

Page 2, line 5, overstrike "and" and insert immediately thereafter an underscored semicolon

Page 2, line 6, after "dollars" insert "; and an order for addiction evaluation by an appropriate licensed treatment program"

Page 2, line 10, after "sentence" insert ", except for ten days' imprisonment,"

Renumber accordingly

2001 SENATE APPROPRIATIONS

HB 1218

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1218

Senate Appropriations Committee

❑ Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
1		X	13.0-21.7
Committee Clerk Signature			

Minutes:

Senator Nething opened the hearing on HB 1218.

Representative Ronald Carlisle, District #30, testified in support of this bill and gave hand outs of testimony from Judge Gail Hagerty District Judge (attached). Also attached is a copy of a letter to The Honorable Gail Hagerty from Keith C. Magnusson, ND Department of Transportation. He spoke on the emergency clause and the sunset clause of the bill. Burleigh and Morton Counties now have a pilot drug court program which is a result of a planning grant obtained by the Department of Corrections and it is working very well.

Judge Bruce Haskell, District Court Judge, South Central Judicial District, spoke briefly on the Burleigh County program. He stated he would answer any questions the committee might have concerning this program. The savings is 10 beds at the penitentiary with this bill. Right now at the penitentiary there are 43 inmates convicted solely for DUI and/or physical control. This

program will save fiscal impact benefits. It is a clear and effective program verses jail. Success statistics is around 70% whereby they never offended again.

Pat Bond, ND Parole and Probation, spoke on the fiscal impact and urged the committee's support on this bill.

Senator Nething: Representative Carlisle, amendments offered on the 10 day minimum and addiction evaluation on fourth offense.

Representative Carlisle: Yes, the amendments submitted to the committee.

Senator Bowman: You referenced DOT standard law requires all offenders with 3 or more offenses to 10 days. Is this law tied to federal highway money for ND eligibility. Does this support the amendment and without the amendment we would lose federal funds?

Judge Haskell: This amendment was needed for the 4th offense. This was an oversight and needed the corrections.

With no further testimony, the hearing was closed on HB 1281.

Tape #1, Side B, meter 21.7.

March 20, 2001 Full Committee Action (Tape #2, Side A: Meter No. 5.5-50.7 - 4 of 6)

Senator Nething reopened the hearing on HB1218.

Committee members reviewed the bill; discussion; Senator Robinson moved AS AMENDED, DO PASS. Senator Lindaas seconded the motion. Roll call vote: 13 yes; 0 no; 1 absent and not voting. Floor assignment was back to judiciary committee, Senator Carolyn Nelson.

Date: 3-26-01

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2118

Senate Appropriations Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Senator Holmberg Seconded By Senator Lindaas

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist					

Total Yes 13 No 0

Absent 1

Floor Assignment Senator Carolyn Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1218, as amended, Appropriations Committee (Sen. Nething, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1218

House Bill 1218

testimony by
Gail Hagerty
District Judge

Mr. Chairman and Members of the Committee:

I support House Bill 1218 and am requesting your favorable consideration.

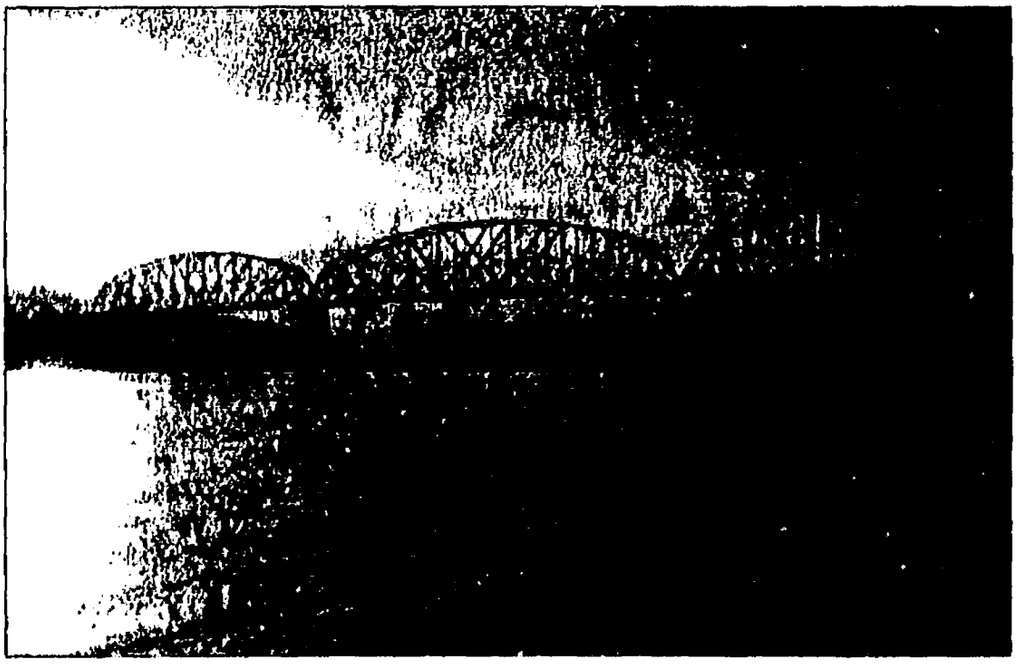
The bill would allow people who are convicted of third and fourth DUI offenses to serve their minimum mandatory sentence by completing or graduating from drug court. This is not an easy way out. To successfully complete drug court, a defendant will have appeared in court on a weekly or bi-weekly basis, will have been the subject of intense probation supervision for at least a year, will have been tested frequently to determine whether drugs or alcohol are being used, will have successfully completed a long-term treatment program, and will be acting and living responsibly.

The pilot drug court program in Burleigh and Morton Counties is the result of a planning grant obtained by the Department of Corrections. For almost a year, a group consisting of corrections officials, judges, prosecutors, defense attorneys, treatment providers and law enforcement officers met and discussed and planned the drug court program.

The reason the concept has the support of all those people is because it works. Instead of seeing chemically dependent offenders appear in court and in corrections centers over and over and over again, we want to do something that works - that takes the offender out of the criminal justice system. All over the country, drug courts have proven they work. And the program costs less than incarceration.

In Burleigh and Morton Counties, we are using existing resources to staff our pilot program. We hope to report to you that the program has proven effective and economical. We know that if we can reduce the rate of recidivism, will make the community a better and safer place.

SOUTH CENTRAL JUDICIAL DISTRICT DRUG COURT



.....CONNECTING PEOPLE,
AGENCIES, AND COMMUNITIES

The South Central Judicial District Drug Court was developed through the cooperation and support of the following agencies and individuals:

- South Central Judicial District
- North Dakota Supreme Court
- North Dakota Department of Human Services
- West Central Human Services
- North Dakota Department of Corrections & Rehabilitation
- Burleigh County State's Attorney's Office
- Morton County State's Attorney's Office
- Mandan Police Department
- Morton County Sheriff's Department
- Bismarck Police Department
- Burleigh County Sheriff's Department
- North Dakota Highway Patrol
- Metro Area Narcotics Task Force
- Defense Counsel-Rod Feldner
- Defense Counsel-Kent Morrow
- Defense Counsel-Steve Balaban

We also want to acknowledge the State of Kentucky from whom we borrowed their ideas regarding format of the policy manual and participant handbook.

*Ed Gall of Mandan took the picture on the front cover.

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APPENDIX: DRUG COURT FORMS:

- A: AGREEMENT TO PARTICIPATION
- B: DRUG COURT SCREENING FORM
- C: REQUEST FOR ADMISSION
- D: CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

SOUTH CENTRAL JUDICIAL DISTRICT DRUG COURT

North Dakota's courts have become increasingly clogged with drug-related cases. Jails and prisons are full of drug offenders. Incarceration alone is not effective enough to disrupt the cycle of drug use and the related criminal activity. Many offenders never receive treatment, continue to abuse substances and continue to commit crimes in order to pay for their addictions. In an effort to reduce recidivism and provide help to drug offenders a drug court diversion program was found in Miami, Florida, the summer of 1989.

In December 1999, the South Central Judicial District Drug Court Team met for the first time. This was subsequent to receiving a federal planning grant that would lay the groundwork for the implementation of the adult drug court, the first of its kind on the state level in North Dakota.

MISSION STATEMENT
SOUTH CENTRAL JUDICIAL DISTRICT

THE MISSION OF THE SOUTH CENTRAL JUDICIAL DISTRICT DRUG COURT IS TO MANAGE AN IMMEDIATELY RESPONSIVE ALTERNATIVE SENTENCING PROGRAM FOR CHEMICALLY DEPENDENT OFFENDERS.

THE PROGRAM SEEKS TO REDUCE RECIDIVISM BY HOLDING OFFENDERS RESPONSIBLE FOR THEIR BEHAVIOR, STOPPING THE ABUSE OF ALCOHOL AND DRUGS AND INTRODUCING AN INDIVIDUAL TO A CONTINUUM OF SERVICES. WE SEEK TO REHABILITATE OFFENDERS AND INCREASE EFFECTIVE UTILIZATION OF LAW ENFORCEMENT, TREATMENT, AND JUDICIAL RESOURCES.

PROGRAM GOALS

1. **REDUCE INCARCERATION TIME FOR NON-VIOLENT OFFENDERS.**
2. **INCREASE INDIVIDUAL LENGTH OF INVOLVEMENT IN TREATMENT AND OTHER MAINTENANCE PROGRAMS.**
3. **REDUCE RECIDIVISM.**
4. **INCREASE COORDINATION OF LOCAL AND STATE SERVICES.**
5. **IMPROVE FUNCTIONING IN FOUR AREAS MEASURED BY THE ADDICTION SEVERITY INDEX.**

6. REDUCE COSTS TO THE CRIMINAL JUSTICE SYSTEM AND SOCIETY.

Quality Control: In the interest of maintaining quality control of the South Central Judicial District Drug Court a semi-annual team meeting will be held. At the meeting review of the mission statement and goals shall be conducted and re-evaluated using the most recent statistical information. The court shall at all times have an individual on the team that is trained in program evaluation.

KEY COMPONENTS OF DRUG COURTS

1. Drug courts integrate alcohol and other drug treatment services with justice system case planning.

2. Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participant's due process rights.

3. Eligible participants are identified early and promptly placed in the drug court program.

4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

5. Abstinence is monitored by frequent alcohol and drug testing.

6. A coordinated strategy governs drug court responses to participants' compliance.

7. Ongoing judicial interaction with each drug court participant is essential.

8. Monitoring and evaluation measure the achievement of the program goals and gauge effectiveness.

9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court.

PROGRAM OUTLINE

The South Central Judicial District Drug Court is a court-supervised treatment-oriented program and targets non-violent participants whose major problems stem from substance abuse. The Drug Court is a voluntary program, which includes regular court appearances before the Drug Court Judge. Treatment, which includes drug testing, individual and group counseling, and regular attendance at 12-step meetings (Alcoholics Anonymous and Narcotics Anonymous). The probation and the treatment team may also assist with obtaining education and skills assessments and will provide referrals for vocational training, education and/or job placement services. The program length, determined by the participant's progress, will be no less than 1 year. Successful completion and "graduation" from the Drug Court Program may result in having the original charges dismissed or probation terminated early.

ENTRANCE REQUIREMENTS

All participants must voluntarily make application to the drug court, provide a drug screen, and undergo an eligibility and chemical addiction assessment. All candidates must enter the program 15 days from arrest. Candidates may enter the program after 15 days from arrest upon approval by the drug court team.

ENTRY CRITERIA:

DRUG COURT:

1. Must have multiple prior Misdemeanor drug offenses and the current offense must be a Class A Misdemeanor or greater or;
2. Must have multiple prior Felony drug offenses and the current offense must be a Class A Misdemeanor or greater; or
3. This is the first felony and there is a supporting history of substance abuse,
4. Candidates cannot have any prior or current offense that is defined as violent (See definitions of violent offenses under **Violent Offender Prohibition,** pages: 8 & 9 (Note that if current offense is combined with an assaultive charge the prosecutor may pursue the drug court path given that the assault may be dismissed or reduced to a lesser non-violent offense),
5. Candidates must demonstrate a willingness to accept responsibility for their addiction and criminal conduct,
6. Candidate must receive a chemical addiction evaluation and have a chemical addiction diagnosis,

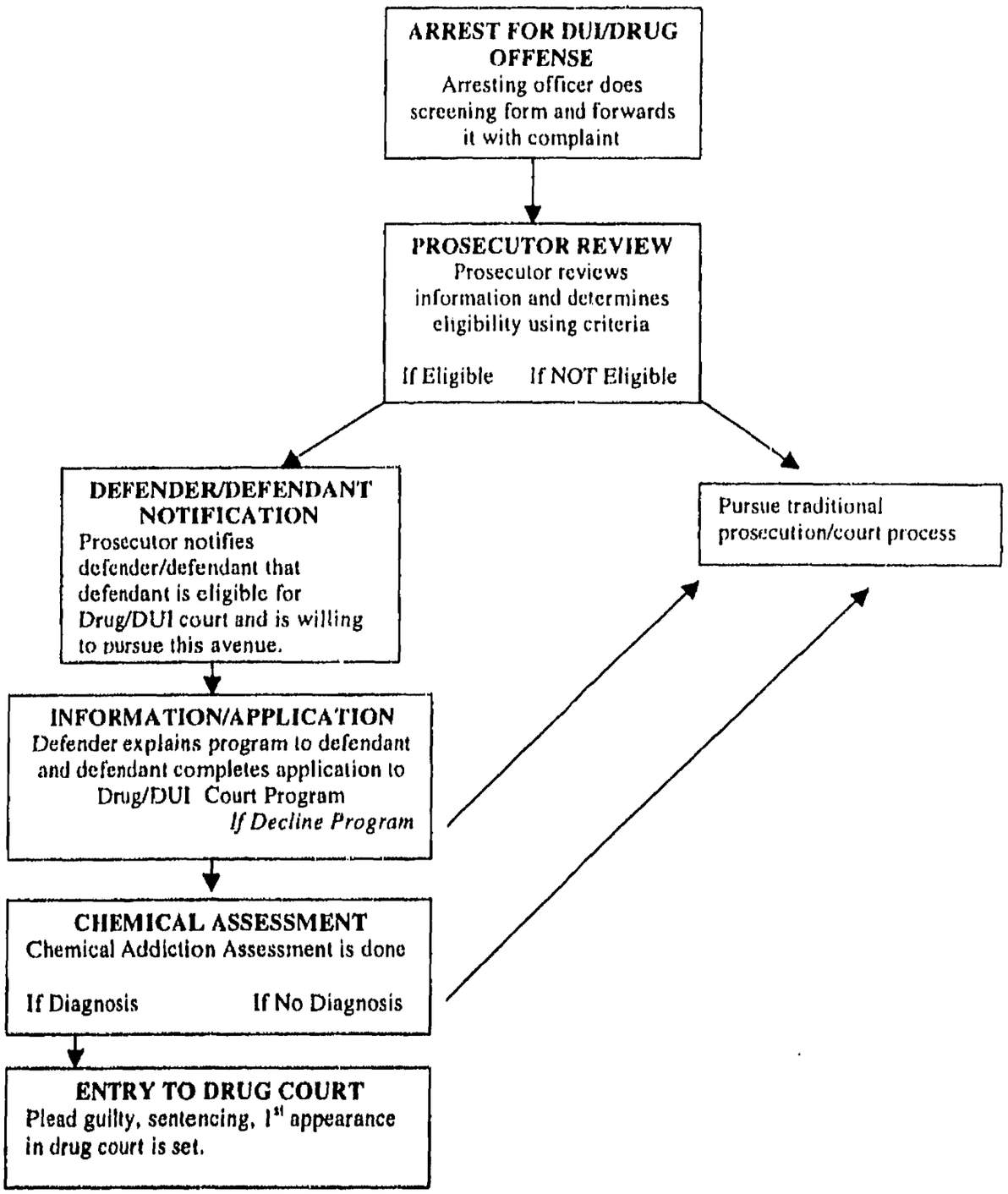
7. Candidates who had previously been in any drug court program are NOT eligible.
8. Candidates are not eligible if the current offense or criminal history includes drug delivery, intent to deliver or manufacturing.

DUI COURT:

1. Entry criteria for the Drug Court component sections 4 through 8 also apply to the DUI Court.
2. Including the current offense, the candidate must have 3 or more DUIs and the current offense must be a Class A Misdemeanor or Class C Felony.
3. The current or prior DUI offenses cannot have included injury to someone other than the candidate.

ENTRANCE PROTOCOL

Throughout the entry process, the prosecutor is the conduit to entrance to the program.



AGREEMENT TO PARTICIPATION

The Agreement To Participation (Refer to Appendix A---) outlines the basic rules of the program and sanctions that may be imposed by a Drug Court Judge for failure to abide by the conditions of Drug Court. Each participant must sign the form prior to admission. The Agreement of Participation is in addition to the conditions of probation ordered by the court on Appendix A of the Judgment of Conviction.

ALCOHOL TESTS AND DRUG SCREENS

Alcohol and Drug Screening is a major component of the Drug/DUI Court program to determine drug abuse patterns and to monitor participants progress. Drug and alcohol tests are conducted on a frequent and random basis.

Upon evaluation a full drug screen (marijuana, methamphetamine, cocaine, and opiates) shall be conducted by the evaluation facility. This will be done to establish a program entry baseline. If the test is positive for marijuana, the test will be sealed and probation will be notified. Probation will forward the test for confirmation and get a reading level. If the test is positive for the other three drugs, a case-by-case decision will be made as to send for reading levels due to the fact that these drugs typically metabolize within 96 hours.

If the first marijuana test is positive, the following marijuana tests (if positive) will be sent for reading levels until a field test indicates negative. Reading levels should continue to drop over time until the THC is fully eliminated from the system. Increase in levels indicates new usage.

Positive drug and alcohol tests will result in sanctions up to termination from the program.

Failure or refusal to provide a urine sample or breath test will count as a positive test.

ASSESSMENT

All candidates for Drug Court must undergo assessment to establish drug dependency and history of drug use. The Addiction Severity Index (ASI) is administered by West Central Human Services Treatment Staff. Treatment staff may do a full assessment including family, work, social, mental, physical

assessment. Further tests may be administered to better formulate a treatment program for the candidate.

All assessments will be conducted in an expedited manner once the referral from the court or prosecutor has been made. A written report shall be sent to the court and/or prosecutor within 3 working days of the assessment.

TREATMENT

An initial treatment plan will be developed by the treatment team following an overall assessment of problems and needs. The plan will act as a guide for the initial treatment phase. The plan will be maintained by the treatment provider and will be updated as the individual progresses through the program.

Counseling: Substance abuse counseling can comprise individual, group, and family formats. As part of the treatment plan, all participants must participate in all recommended counseling. They are designed to develop self-awareness, realize self-worth, and develop the strength to practice self-discipline. The sessions will include problem identification and alternative solutions. Attendance at counseling sessions is mandatory and will be reported to he judge as part of the progress report. Prior permission must be obtained to be excused from a counseling session.

Twelve-Step Meetings: Attendance is required at 12-step meetings such as Narcotics and/or Alcoholics Anonymous at least 2 times per week or as decided by the Drug Court team. Proof of attendance will be reported to the treatment counselor.

Sponsor: An individual must obtain a self-help sponsor. A sponsor in a 12-step group must have at least one year of sobriety who can assist the participant on a personal level with sobriety, personal problems, working the steps, etc.

TYPES OF DRUG COURT REFERRALS

Referrals to the program may come from the arresting officer, jail officials, defense attorney, and state's attorney.

VIOLENT OFFENDER PROHIBITION

Federal regulation defines "violent offender" as:

A person who either –

1. Is charged with or convicted of an offense, during the course of which offense or conduct

   A. The person carried, possessed, or used a firearm or dangerous weapon;
   B. There occurred the death of, or serious bodily injury to any person; or
   C. There occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A), (B), or (C) is an element of the offense or conduct of which or for which the person is charged or convicted; or
2. Has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm, 42 U S.C. § 3796ii *et seq.*

The statute's definition of violent offender specifically limits prior offenses that cause a person to be categorized as a "violent offender" to felony crimes of violence. If a person has a prior misdemeanor conviction, even though threatened or actual use of force; or use, possession, or carrying a firearm or dangerous weapon occurred during the offense, the person is not a violent offender according to the statute. Therefore, the offender is eligible for the drug court program as long as his or her current offense does not fall within the violent offender definition.

SUPERVISION OF PARTICIPANTS

Participants in the program will be supervised by the North Dakota Department of Corrections-Division of Field Services. Participants will be supervised pursuant to court ordered conditions of supervision and department policy, in addition to Drug Court program requirements. In addition to the ASI used by treatment staff for assessing services required, Field Services will conduct a LSI-R (Levels of Service Inventory-Revised) to assess risk and need.

Participants are required to have approved stable housing and employment or participate in educational/vocational training. Participants who are not in an educational or vocational activity may be required to complete community service hours to meet the 40-hour work week criteria. When coordinating with outside agencies, participants are requested to sign a Release of Confidential Information. Participants are required to fulfill obligations as delineated on their weekly calendars, including drug testing, documentation of AA/NA attendance. Progress is verified, documented, and reported to the Drug Court Judge during conferencing sessions before each Court session.

Supervision of participants consists of face to face meetings in the probation office, participant's home, place of employment, treatment facility, and other locations. Other contacts include collateral contacts with employers, family, and friends, telephone calls, and treatment contacts.

Participants are required to show proof of payments of child support, court fines, restitution, and any other costs ordered by the Court. Proof of payment may be in the form of a copy of a money order, cancelled check, or court receipt. Proof of employment and income may be in the form of a check stub.

The probation department will be responsible for case management and coordination. They will coordinate efforts with the treatment provider to assure all needs and areas are addressed and to avoid duplication of services.

Throughout the program, participants appear in Court on a regular basis. Drug Court staff provides notes on each participant for each court session. The Drug Court Judge reviews the participant files and participants are held accountable for successes and failures.

OUTLINE OF PROGRAM PHASES

The Drug Court program consists of three phases and can be completed in as little as 12 months.

Phase I: Minimum of 4 months

Minimum Requirements:

1. To attend one Drug Court session per week.
2. To provide a minimum of two alcohol/and or drug tests per week.
3. To report to the assigned probation officer as instructed.
4. To attend and provide documentation of two AA/NA meetings per week.
5. To attend and participate in all assigned group, family, and/or individual counseling sessions.
6. To meet financial obligations: i.e. court costs, restitution, child support, etc., as decided on by the Drug Court Team.
7. To maintain Drug Court Team approved stable housing.
8. To maintain Drug Court Team approved employment, training, or education and a 40-hour work week.
9. To obtain and maintain a 12-step sponsor.
10. If offense is DUI to view a victim impact panel videotape.
11. To have 60 continuous days of sobriety.

Phase II: Minimum of 4 months

Minimum Requirements:

1. To attend one Drug Court session every two weeks.
2. To provide a minimum of one alcohol/and or drug test per week.
3. To report to the assigned probation officer as instructed.
4. To attend and provide documentation of two AA/NA meetings per week.
5. To attend and participate in all assigned group, family, and/or individual counseling sessions.
6. To meet financial obligations: i.e. court costs, restitution, child support, etc., as decided on by the Drug Court Team.
7. To maintain Drug Court Team approved stable housing.
8. To maintain Drug Court Team approved employment, training, or education and a 40-hour work week.
9. To obtain and/or maintain a 12-step sponsor.
10. To have 120 continuous days of sobriety.

Phase III: Minimum of 4 months

Minimum Requirements:

1. To attend one Drug Court session every 3 weeks.
2. To provide two alcohol/and or drug tests per month, which reflect no use of drugs or alcohol.
3. To report to the assigned probation officer as instructed.
4. To attend and provide documentation of two AA/NA meetings per week or as determined by the Drug Court Team.
5. To attend and participate in all assigned group, family, and/or individual counseling sessions.
6. To meet financial obligations: i.e. court costs, restitution, child support, etc., as decided on by the Drug Court Team.
7. To maintain Drug Court Team approved stable housing.
8. To maintain Drug Court Team approved employment, training, or education and a 40-hour work week.
9. To obtain and maintain a 12-step sponsor.
10. To have 120 continuous days of sobriety.
11. To complete an exit interview and have an established plan for aftercare.

INCENTIVES

Incentives reward participants for positive steps toward attaining a drug and crime free lifestyle. The most powerful incentive is the dismissal of charges for the diversion participant and conditional discharge for the probationer. Other incentives may include:

- Promotion to the next phase
- Certificates
- Tokens
- Applause
- All-Star Selection (Gets to leave court early)
- Acknowledgement from the bench
- Decreased supervision
- Personal achievements of obtaining GED
- Decrease frequency of court attendance
- Early termination from probation
- Charge dismissed at graduation
- Incentives for group on a whole-coffee/donuts
- Graduation (Invite family, friends, arresting officer/agency)

When participants successfully meet all the drug court obligations, formal graduation ceremonies are conducted. This provides the opportunity for the graduates to be recognized for their accomplishments in the presence of the Drug Court staff and Judges, their peers, family and friends, police and community officials, and other distinguished guests. The graduates may be presented with a momento.

SANCTIONS

Each participant must abide by the conditions of Drug Court and failure to do so may result in the Drug Court Judge imposing sanctions including, but not limited to:

- Residential Treatment
- Halfway House Placement
- Community Service
- Increased Groups/Adjust Treatment Plan
- Antabuse
- Home confinement

- Imprisonment in the detention center
- Termination from the program
- Curfew
- Day Reporting
- Electronic Monitoring
- Research/Report Writing
- "Day in the Box" (Sit in courtroom for a day and observe court, take notes, and provide report to judge).

The Drug Court Judge may employ a wide range of graduated sanctions as a result of program violations. When the Judge imposes sanctions, it is the responsibility of the participant to comply as ordered and the responsibility of the Drug Court staff to make arrangements as needed to verify compliance.

GRADUATION

Graduation is viewed as a significant milestone for the offender and the program. Every effort will be made to make this a ceremonious occasion. At drug court, graduation members of the team shall be present. In addition, others that may be invited are family, friends, arresting officer, representatives from agencies involved with the drug court program, etc.

TERMINATION

Regardless of the method by which a participant enters the Drug Court, termination may occur for various reasons including, but not limited to:

- Noncompliance with rules and procedures
- Arrest and/or conviction on new charges (case by case basis)
- Failures to appear as scheduled for court, jail, or treatment
- Participant voluntarily decides to petition the Court for termination

PROBATION TERMINATION

In the event, an individual is terminated from the Drug Court program; a record of the termination shall be made. The probation officer will work with the prosecutor to draft a petition to revoke probation and the case shall be assigned to a non-drug court judge for hearing.

AFTERCARE

To be added

STATISTICAL REPORTING

Outcome evaluation is essential to the program and the South Central Judicial District Drug Court recognizes the value of evaluation. Since the inception of the planning team, a program evaluator has been a member. The evaluation design is an ongoing process. Currently it is our goal to do our first full evaluation after 18 months of operation. We will be selecting a control group randomly and continuously as we proceed to acquire participants into the program. This will allow us to account for external factors that influence a control group such as shifts in department policy and philosophy as well as economic and social changes.

To follow is a list of datafields that will be collected for analyzation. These fields are subject to additions and deletions as the program evolves:

Age at start	Program and grant
Arrest or conviction after graduation (four categories)	Program and grant
Arrest or conviction while in program (four categories)	Program and grant
ASI scores	
Axis one and two assessment	Addiction, personality disorder
Bench warrants	Program and grant
Date entered drug court	Date of guilty plea
Date exit drug court (and reason)	
Date of arrest	
Date of birth	
Date of GED	
Date released from jail	
Days drug free after graduation (if available)	(offender self report)
Earn GED or voc training	Program and grant
Employed at entry	40 hours constructive
Employed at graduation (or exit)	
Ethnicity	See required categories
Gender	
Level (misdemeanor or felony)	
LSI-R score at entry and exit	
Name	
Offense(s)	
Sanctions that cost (jail, hh, day rpt, ems, tx.....)	Sanction, days, unit cost, total cost
State identification number	
Total days in program	

"Well done is better than well said" Benjamin Franklin

APPENDIX "A"

DRUG COURT AGREEMENT OF PARTICIPATION

NAME:_____ SS#:_____ DOB:_____

1. **Drug Treatment and Counseling:** I will attend drug treatment and participate in group, family, and/or individual counseling.
2. **Refrain from Further Possession or Use of Drugs/Alcohol:** I will not possess and/or use illicit drugs or alcohol and agree to submit to frequent and random drug/alcohol testing to detect the presence of illicit drugs or alcohol. I understand that results of my tests shall be admissible as evidence in Drug Court.
3. **Housing:** I understand that stable housing is necessary for my recovery and must be approved by the Drug Court staff. I agree to comply with recommendations and restrictions.
4. **Refrain from Further Violation of Law:** I will not violate laws and I understand that any violation or arrest must be reported to the Drug Court staff within 12 hours.
5. **Employment/Education/Job Training:** I agree to maintain approved employment and/or attend any education or job training programs to which I am referred. I will inform the Drug Court staff prior to changing employment. I will maintain a 40-hour work week. The 40-hour work week does not include treatment unless it is day treatment. The 40-hour week only includes work, school, or community service hours.
6. **Agreement to Make All Scheduled Appearances:** I will provide for my own transportation and shall appear as scheduled for Drug Court sessions and all other appointments.
7. **21 Day Opt Out:** I agree that within 21 days of entry into the Drug Court program I or the Drug Court Staff may choose to terminate participation in the Drug Court Program.
8. **Costs Related to Program:** I agree to pay all costs for my participation in Drug Court as set by Treatment and the Court after consideration of my financial resources.
9. **Exchange of Information:** I understand Drug Court data is confidential and I will not discuss the program or disclose participant information without the approval of the Drug Court staff. I understand the Drug Court staff will make reports to the Judge concerning my progress in treatment and the psychologist-patient/counselor-patient privileges shall not apply. I agree to release information and permit communication with outside agencies to assist in fulfilling the requirements of the Drug Court program.
10. **Medical Issues:** I agree to seek medical attention when appropriate and follow through with the recommendations. Any prescribed drugs will be reported to the Drug Court staff.
11. **Disclosure of Program Information:** I understand for purposes of study or review of this program, some otherwise confidential information may be disclosed to third parties, but that under no circumstances will this statistical data include my name, address, or other personal identifying information.
12. **Confidentiality of Drug Court Participation:** I understand that any statements or disclosures I make during the course of my participation in treatment, counseling or court proceedings, in regard to drug use or drug seeking behavior shall be held confidential. If I am terminated from this program, the fact of my participation, the results of any testing, any statements I made during the course of the program, and the reason(s) for termination shall be privileged subject to appropriate waivers of said privilege.
13. **Participants Not Asked to Inform on Others:** The Court agrees that no defendant participating in this program will be requested to be an informant or encouraged to disclose information concerning any third parties as a condition of entry or completion of this program.
14. **Appropriate Behavior Among Participants:** I agree to respect the opinions and feelings of other program participants and understand verbal or physical threats or abuse will not be tolerated. I agree not to engage in any romantic or sexual relationships with other Drug Court participants while actively involved in the program.
15. **Site Visits:** I understand site visits to my home and place of employment will be conducted by Drug Court Staff and/or law enforcement officers.
16. **Incarceration:** I understand that I may be incarcerated as a sanction for violations of the participant agreement and I agree to comply with the incarceration.
17. **Conditions of Supervision:** I agree to abide by all other conditions of supervised probation as contained in Appendix A of the Judgment of Conviction.

Participant:_____ **Date:**_____

Witnessed by:_____ **Date:**_____

APPENDIX "B"

DRUG COURT SCREENING FORM

SOUTH CENTRAL JUDICIAL DISTRICT DRUG COURT PROGRAM

This form must be completed by the investigating officer, to the best of that officer's knowledge, before the offender will be admitted to _____County Jail.

_____
Name of Offender

	Check One Yes	No
1. Does the offender have any prior convictions for a violent offense in this or any other state? If yes, offender was convicted of:_____ In what jurisdiction:_____ NOTE: If answer to question is Yes, Offender is ineligble.	____	____
2. Does this offense that the offender is arrested for or charged with involve a crime of violence against a person? If yes what is the charge and jurisdiction?_____ _____	____	____
3. Does the arrest or charge involve drug trafficking or manufacturing?	____	____
4. Does this arrest involve the commission of a felony?	____	____
5. Does the offender admit to or appear to have an alcohol or drug abuse addiction, or is the offender known to have an alcohol or drug abuse addiction problem?	____	____

Any additional information or opinion that the investigating officer may feel is pertinent to eligibility for Drug Court may be added below:

_____
_____
_____
_____
_____
_____
_____

This form must be included with the reports and forwarded to the State's Attorney.

_____
Signature of Officer Agency Date

**See backside of this form for a definition of Violent Crime.*

VIOLENT OFFENDER PROHIBITION

Federal regulation defines "violent offender" as:

A person who either –

1. Is charged with or convicted of an offense, during the course of which offense or conduct

   A. The person carried, possessed, or used a firearm or dangerous weapon;
   B. There occurred the death of, or serious bodily injury to any person; or
   C. There occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A), (B), or (C) is an element of the offense or conduct of which or for which the person is charged or convicted; or

2. Has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm, 42 U.S.C. § 3796ll *et seq.*

The statute's definition of violent offender specifically limits prior offenses that cause a person to be categorized as a "violent offender" to felony crimes of violence. If a person has a prior misdemeanor conviction, even though threatened or actual use of force; or use, possession, or carrying a firearm or dangerous weapon occurred during the offense, the person is not a violent offender according to the statute. Therefore, the offender is eligible for the drug court program as long as his or her current offense does not fall within the violent offender definition.

APPENDIX "C"

REQUEST FOR ADMISSION INTO THE SOUTH CENTRAL JUDICIAL DISTRICT DRUG COURT PROGRAM

I, _____, state under penalty of law, that on
(Print Name)
_____ I was accused of/charged with the following
(Date)
offense(s):_____

_____.

I have no felony convictions in any state for delivery, intent to deliver, or manufacturing of a controlled substance. I have no convictions for a violent offense as defined on the back of this form. I have not been involved in a motor vehicle collision that resulted in injury or death to another person while under the influence of alcohol or drugs.

I need substance abuse treatment and want to participate in the drug court program. I have the read the entire contents of this document, understand everything in this document, and am willing to follow the requirements of the drug court program if I am admitted into the program.

_____ _____
Name (Signature) Date

YOU MUST EITHER GIVE THIS FORM TO THE JAIL STAFF OR BRING IT TO YOUR FIRST COURT APPEARANCE AND DELIVER IT TO THE JUDGE

DO NOT WRITE BELOW THIS LINE (FOR PROSECUTOR AND COURT CLERK'S ONLY)

Form received by State's Attorney_____ _____.

Participation in the Drug Court Program is ___ Approved ___ Denied

_____ _____
State's/Assistant State's Attorney Date

_____ _____ _____
File Number Court Date & Time Clerk's Initials

APPENDIX "D"

CONSENT FOR DISCLOSURE OF CONFIDENTIAL SUBSTANCE ABUSE INFORMATION: DRUG COURT REFERRAL

South Central Judicial District Drug Court

I, _____, DOB:_____hereby consent to
(First and Last name)
communication between West Central Human Service Center, and Judge Bruce Haskell, Gail Hagerty, and Court Reporter Mary Richer, Burleigh County State's Attorney's Office Morton County State's Attorney's Office (Circle appropriate office), the North Dakota Department of Corrections-Division of Field Services, and

_____.
Defense Counsel

The purpose of, and need for, this disclosure is to inform the court and all other named parties of my eligibility and/or acceptability for substance abuse treatment services and my treatment attendance, prognosis, compliance and progress in accordance with the drug court program's monitoring criteria.

Disclosure of this confidential information may be made only as necessary for, and pertinent to, hearings and/or reports concerning:

_____.
List charges, court number

I understand that this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination of my involvement with the drug court program for the above-referenced case, such as the discontinuation of all court supervision upon my successful completion of the drug court requirements OR upon sentencing for violating the terms of my drug court involvement.

I understand that any disclosure made is bound by Part 2 of Title 42 of the Code of Federal Regulations, which governs the confidentiality of substance abuse patient records and that recipients of this information may redisclose it only in connection with their official duties.

I also understand that for research purposes information will be gathered and utilized for program analysis and protection under Part 2 of Title 42 CFR applies.

_____
Date

_____
Name

_____
Signature

_____
Signature of Defense Counsel

Testimony HB 1218
Tuesday January 23, 2001 Judiciary Committee
Prairie Room 2:00 PM
Good afternoon Chairman DeKrey and members of the committee

My name is Susan Beehler, I am married and a working mother of five children from Mandan.

I am not really opposed to HB1218 but I am not really for it either.

When I was 14 my family was hit by a drunk driver, he left the scene of the accident, he was not charged with drunk driving. I spent over 6 months in a neck brace. Driving drunk is a very real issue to me.

I also see it from another point of view. I have been divorced 17 years. My ex-husband was a repeat drunk driver offender. He was an alcoholic. From this perspective I will share with you areas I think should be addressed in this bill. A repeat offender looks at treatment as the easy way out. Why? Because your freedom is not taken away, best of all you can still drink. My ex drank on work release and didn't get caught, he drink while in treatment. His license would be suspended and he would still drive. One night he had two DUI's because he made bail went and drank some more and drove. Repeat offenders need to be kept in jail not released while still under the influence. I believed he received three DUI's that week. He went for treatment for the second time paid for by the courtesy of the taxpayer's money. The judge bought that he was "cured" based on his self-reporting and it won't happen again line. No expert said his alcoholism was in remission, the alcoholic lied he had no intentions of staying sober, so he drank and drove again. I don't know how many DUI's all total he got, probably at least 6 and that doesn't count the ones he plea bargained his way out of. He went through at least 3 treatment programs, eventually moving out of state and continuing on his DUI adventure. His drinking cost a interstate sign, a pickup, cars, trailer homes, gas lines, and damage to a 18 wheeler. For him treatment was a way to beat the system, he knew exactly what to say to the addiction therapists, he told them what they wanted to hear. He laughed at the system, while he poured another drink.

Treatment effectiveness relies on the alcoholic's desire to stop drinking, mandating treatment may work in some cases but most will see it as a way to escape accountability to society for the choice they made to drink and drive. Based on the premise that alcoholism is a disease than we should treat it like diabetes or epilepsy

when it comes to issuing or restricting a license. If a alcoholic has a relapse they should get a doctor's or addiction counselor to determine when it is safe for him to drive if ever again.

Repeat offenders need to be held accountable for their conduct and penalized for their destructive behavior. I believe harsher enforcement needs to come on the second DUI or better yet based on a higher BAC level, say at two times the legal limit. Repeat offenders cost the most to society in terms of loss of life, and property destruction. Plea-bargains are a great tool for this high-risk group, plea bargains should be only able to be used once or when BAC level was low and no property destruction occurred or injuries.

Treatment should be given and paid for by those who seek it, not to avoid penalties. The fines for repeat offenders should be higher, include damages and victim's reimbursement.

As far as what I have seen alcohol testing is not very reliable, since most testing is done during business hours, no problem, don't drink during that time, and the weekends no problem, no supervision. Most offenders will not be able to drive themselves to the treatment center for a random test, so the screening is actually made by appointment, not a random test. Alcoholics can hide there drinking from family members they will surely be able to do a better job of hiding it from a probation officer.

As a society we tolerate heavy drinking and many of us have probably drove after a couple of drinks. Many drivers do not know how many drinks they can drink without being impaired, some think if they only drink beer they will not hit the legal limit.

Education is the key for first time offenders. They should be required to go through a alcohol class, learn the effects, how it is metabolized. The hospitality industry has already developed programs for servers to recognized impaired drivers, a modified class of this type could be a prerequisite to getting your license and be required to go to again, much like the defensive driving course. Part of the written driver's test should include questions on drinking and its effects. Since 21 to 24 years old seem nationally to be a high-risk group, maybe send out pamphlets on drinking and driving like a birthday card when someone turns 21.

Judges should attend sentencing seminars and workshops on hardcore drunk drivers and use all available tools to get them off the road and or drive safely.

Treatment may or may not be the answer for repeat offenders, the progress and the effectiveness of this bill should be monitored closely.

As a taxpayer we many times pick up the tabs for the drunk driver's offense. The offender should be held accountable. How many times will we pay for their treatment? On a fourth offense will they be sentenced to treatment again after already going through treatment on the third offense?

Personally I would rather see a pilot program for some kind of public transit to transport anyone that has drank too much home. Or maybe like the old west, check your guns I mean keys with the bartender and only get them back if you can pass a Breathalyzer test.

A complex problem has no simple solution.

Susan Beehler
663-4728
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NORTH DAKOTA HOUSE OF REPRESENTATIVES

[redacted]esentative Ron Carlisle
[redacted]rict 30
P.O. Box 222
Bismarck, ND 58502-0222

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES:
Appropriations

HB 1218
Information for Judiciary Committee
1/23/01
Drug/DUI Court

What is a Drug/DUI court?

The idea of a Drug Court started in California and Florida in the mid 1980's as a way to more quickly process the great increase in drug possession offenses. It since has evolved into a cooperative effort between public and private agencies to address addiction cases and the resulting criminal behaivior. The Drug/DUI Court is a court-supervised treatment-oriented program and targets non-violent participants whose major problems stem from substance abuse. The Drug Court is a voluntary program, which includes regular court appearances before the Drug Court Judge. Treatment, which includes drug testing, individual and group counseling, and regular attendance at 12-step meetings (Alcoholics Anonymous and Narcotics Anonymous). The probation and the treatment team may also assist with obtaining education and skills assessments and will provide referrals for vocational training, education and/or job placement services. The program length, determined by the participant's progress, will be no less than 1 year. Successful completion and "graduation" from the Drug Court Program may result in having the original charges dismissed or probation terminated early.

Why Drug Court?

Drug courts have proven themselves to be nationally effective and pose advantages on both micro and macro levels such as:

1. Stop alcohol/drug abuse and related criminal activity.
2. Court supervised treatment.
3. Provide incentives to complete the program.
4. Cost effective: drug court treatment program $1,500-$3,000 vs. incarceration of $20,000 per year.
5. Offenders who do not participate in a drug court are 3 times more likely than drug court graduates to be arrested for new drug offenses or felonies.
6. Four times more likely to violate parole or probation.
7. Recidivism among graduates is 4%.
8. Economic benefits to society are significant for at least three years post treatment.
9. Alleviate pressure on court dockets by reducing the revolving door syndrome.
10. Drug court judges develop greater insight into chemical addiction.
11. By not having to go through the legal process reduces time to prosecutor defense counsel, and the judge.
12. Quick access to treatment.
13. Offender controls outcomes.
14. Communities and state benefit from long term effects of reduced recidivism

What an amendment to 39-08-01 subsection 4 relating to driving under the influence of intoxicating liquor or any other drugs or substances would do:

1. The proposed amendment would briefly define a drug court as a "court supervised treatment program that is approved by the supreme court that combines judicial supervision with alcohol or drug testing and chemical addiction treatment by a licensed treatment program." An essential element of this definition is the approval of the supreme court meaning these programs cannot haphazardly spring up throughout North Dakota without the approval and coordination of the supreme court.

2. Subsection 4-e will require a chemical addiction evaluation and if there were an addiction diagnosis, the person would have to enter treatment under the supervision of the department of corrections in the drug court program. This is an alternative sentence program for the district court only (we are targeting Class A misdemeanors or higher). It will allow a person to enter the program in lieu of serving the minimum mandatory sentence that accompanies the classification of the offense. If the participant fails in the program, a subsequent revocation hearing would be held. If the findings are that the defendant violated the conditions of probation, including the conditions of the drug court program, the defendant would have to be sentenced to the minimum mandatory sentence that was set aside because of their entry to the drug court program. The incentives for the defendant are to complete the program, improve their quality of life by dealing with their addiction, and by completing the program they would not be subject to the minimum mandatory sentence.

What this amendment will not do:

1. This amendment will not completely eliminate the DUI minimum mandatory penalty in North Dakota, as the penalty would still be in effect for those who are not eligible or choose not to participate. It also will not be available in other jurisdictions until we have an opportunity to test this program and coordinate its expansion with the North Dakota Supreme Court.
2. This amendment and the drug court program will not effect any of the drug minimum mandatory penalties in any way. This program targets people who are drug users not dealers or manufacturers.

Why Drug/DUI court committee is proposing this legislation:

1. In order to accurately test this program in North Dakota we need the opportunity to work with a defendant immediately following their arrest and conviction. We are requiring people to be in the program within 14 days of their arrest. Research has shown that one reason the drug court program has

page(s) missing

House Bill 1218

testimony by
Gail Hagerty
District Judge

Mr. Chairman and Members of the Committee:

I support House Bill 1218 and am requesting your favorable consideration. I am aware there will be amendments offered, and believe they will improve the bill.

The bill would allow people who are convicted of third and fourth DUI offenses to serve most of their minimum mandatory sentence by completing or graduating from drug court. This is not an easy way out. To successfully complete drug court, a defendant will have appeared in court on a weekly or bi-weekly basis, will have been the subject of intense probation supervision for at least a year, will have been tested frequently to determine whether drugs or alcohol are being used, will have successfully completed a long-term treatment program, and will be acting and living responsibly.

The pilot drug court program in Burleigh and Morton Counties is the result of a planning grant obtained by the Department of Corrections. For almost a year, a group consisting of corrections officials, judges, prosecutors, defense attorneys, treatment providers and law enforcement officers met and discussed and planned the drug court program.

The reason the concept has the support of all those people is because it works. Instead of seeing chemically dependent offenders appear in court and in corrections centers over and over and over again, we want to do something that works – that takes the offender out of the criminal justice system. All over the country, drug courts have proven they work. And the program costs less than incarceration.

In Burleigh and Morton Counties, we are using existing resources to staff our pilot program. We hope to report to you that the program has proven effective and economical. We know that if we can reduce the rate of recidivism, we will make the community a better and safer place.

North Dakota Department of Transportation

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February 23, 2001

The Honorable Gail Hagerty
District Judge
P.O. Box 1013
Bismarck, ND 58502-1013

Dear Judge Hagerty:

Subject: HB 1218

Last week, we finally received the opinion we were waiting for from the National Highway Traffic Safety Administration. I am enclosing a copy of that opinion concerning repeat intoxicated drivers legislation. It is rather lengthy, because we had been looking at three separate bills.

As you know, we had been promised this opinion earlier and I had hoped to have it so we could take care of everything concerning HB 1218 in the House. But, contrary to the promise of the House Judiciary Committee Chairman, this bill was not held long enough to accomplish that in the House. We did actually receive the opinion in time, but the committee, in its rush to move out bills, did not wait. Now, we will ask for the necessary amendments in the Senate.

I am enclosing a copy of our proposed amendments to HB 1218. We will bring these to the hearing in the Senate and ask that they be adopted. If you have any comments or questions, please let me know as soon as possible. There are really two amendments. The first, which we have previously discussed, would require that the driver serve at least 10 days imprisonment and that cannot be suspended. This meets the federal minimum. The other amendment deals with requiring an addiction evaluation on a fourth or subsequent offense. This appears to be something that was overlooked when the original law was drafted, as the first, second, and third offenses provide for that evaluation. Although we feel it is covered in other sections of the law, as long as we have the appropriate section of the law already in the bill, it may clear up any confusion by adding that requirement to Section 39-08-01(d). Then, anyone looking at the sentencing statute will know what is required. NHTSA pointed this omission out in their opinion.

Thank you for your cooperation in this matter. Working together, we can satisfy everyone. The drug court concept is excellent and we want to see it succeed. At the same time, we need to satisfy federal mandates. Right now, we are juggling several bills with repeat offender implications and they are all proceeding satisfactorily.

Sincerely,

Keith

Keith C. Magnusson
Driver and Vehicle Services Director

01/jam
c: Representative Ron Carlisle

U.S. Department of Transportation
National Highway Traffic Safety Administration

Memorandum

Subject: North Dakota Proposed Repeat Intoxicated Drivers Legislation under Section 164

Date: FEB 12 2001

From: Heidi L. Coleman
Assistant Chief Counsel
for General Law

Reply to Attn. of:

To: Adele Derby
Associate Administrator for
State and Community Services

This is in response to your request that the Office of Chief Counsel (OCC) review a number of pieces of proposed legislation that are currently under consideration in the State of North Dakota and which would amend portions of North Dakota's repeat intoxicated driver laws. Specifically, you request OCC's opinion concerning whether enactment of these proposed bills would enable North Dakota to meet the requirements of the Section 164 program, 23 U.S.C. §164, which was established in the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act, , Public Law 105-178, and its implementing regulations, 23 CFR Part 1275.

On January 27, 1999, this office completed a review of earlier proposed legislation from North Dakota and determined that the proposed legislation would enable the State to demonstrate compliance with the mandatory minimum one-year hard driver's license suspension requirement. We determined, however, that it would not enable the State to demonstrate compliance with the impoundment, immobilization or ignition interlock requirement; the assessment and treatment requirement; or the mandatory sentencing requirement of Section 164.

On January 16, 2001, we received a request to review North Dakota's House Bill (HB)1173 and HB 1218. On January 30, 2001, we received a request to review Senate Bill (SB) 2406. HB 1173 proposes to amend the ignition interlock provisions (North Dakota Century Code (NDCC) 39-08-01.3) of North Dakota law. HB 1218 and SB 2406 propose to amend North Dakota's repeat offender sentencing provisions (NDCC 39-08-01).

In addition, we note that on April 22, 1999, North Dakota enacted HB 1131, which was a revised version of the proposed legislation that we had reviewed on January 27, 1999. This revised bill had not been submitted to the agency for review. However, we have considered this new legislation also as part of this review.

For the reasons described below, it is this office's opinion that, as a result of the enactment of HB 1131, North Dakota law currently meets the mandatory minimum one-year hard driver's license suspension requirement and the mandatory sentencing requirement of Section 164.

It is our opinion further that, if SB 2406 is enacted without change, North Dakota would continue to comply with the mandatory minimum one-year hard driver's license suspension requirement and the mandatory sentencing requirement of Section 164; if HB1173 is enacted without change, North Dakota would meet these two requirements and also the impoundment, immobilization or ignition interlock requirement. However, if HB 1218 is enacted without change, North Dakota would no longer meet the mandatory sentencing requirement of Section 164. Rather, it would comply only with the mandatory minimum one-year hard driver's license suspension requirement.

Requirement 1 - Mandatory minimum one-year hard driver's license suspension.

In our determination dated January 27, 1999, we indicated that North Dakota's current law provides for a mandatory minimum 365-day license suspension for second offenders and a mandatory minimum 2-year license suspension for third or subsequent offenders within a five-year period. NDCC 39-06.1-10(7). None of the proposed bills would amend these provisions of North Dakota's law.

Accordingly, if any of the proposed legislation is enacted without change, North Dakota would continue to meet the mandatory license suspension requirement.

Requirement 2 - Mandatory impoundment or immobilization of, or the installation of an ignition interlock system on, all motor vehicles registered to the repeat intoxicated driver.

In our determination dated January 27, 1999, we indicated that the previously proposed legislation would authorize the impoundment and immobilization of vehicles and the installation of ignition interlock devices; however, it would not require these sanctions, and the agency was unable to determine whether the sanctions would apply to all vehicles owned by the offender. NDCC 39-08-01.3

In addition, we indicated that the previously proposed legislation also would authorize the impoundment of an offender's license plates; however, it would not require this sanction and we found that the provision clearly would apply only to the vehicle used in the commission of the offense, not to all vehicles owned by the offender. NDCC 39-08-01(3).

HB 1173 would provide that the court "must require that an ignition interlock device be installed in all of the person's vehicles for a period of time that the court deems appropriate after the conclusion of the suspension or revocation." NDCC 39-08-01.3, as amended by HB 1173.

Therefore, if HB 1173 is enacted without change, North Dakota would meet the mandatory impoundment, immobilization or ignition interlock installation requirement.

Requirement 3 - An assessment of the degree of alcohol abuse and treatment as appropriate

In our determination dated January 27, 1999, we indicated that the previously proposed legislation would provide for an assessment of alcohol use and/or abuse for second or third offenders and would authorize the court to order treatment if indicated. NDCC 39-08-01(4)(b),(c) and (g). However, we indicated that the proposed legislation did not require an assessment for alcohol use and/or abuse for fourth or subsequent offenders.

North Dakota law currently requires the court to order an addiction evaluation for second or third offenders and would authorize the court to order treatment if indicated. NDCC 39-08-01(4)(b),(c) and (g). HB 1218 would provide that third or subsequent offenders may have their sentence suspended if they undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. NDCC 39-08-01(4)(e), as amended by HB 1218. The proposed legislation provides also that the court "shall require the [third or subsequent repeat offender] to complete alcohol and substance abuse treatment and rehabilitation . . . as a condition of probation." NDCC 39-08-01(4)(e), as amended by HB 1218. While HB 1218, if enacted without change, would authorize evaluations for fourth and subsequent offenders, it still would not require them.

For this reason, North Dakota would continue not to comply fully with the assessment and treatment requirement.

Requirement 4 - A mandatory minimum sentence of not less than 5 days imprisonment or 30 days community service for a second offense; and not less than 10 days imprisonment or 60 days community service for a third or subsequent offense.

In our determination dated January 27, 1999, we indicated that the previously proposed legislation would provide for a mandatory minimum term of 5 days of imprisonment or 30 days of community service for a second offense within 5 years, 60 days of imprisonment for a third offense within 5 years and 180 days of imprisonment for a fourth or subsequent offense within 7 years. NDCC 39-08-01(4)(b)-(d). However, we indicated in that determination that the previously proposed legislation also would provide that the mandatory minimum penalties may be suspended if the offender is convicted of being in actual physical control of (as opposed to driving) a motor vehicle while under the influence of alcohol. Section 39-08-01(4)(e)(1). In addition, the previously proposed legislation would provide that the mandatory minimum sentence may be suspended if the repeat offender is under eighteen years of age except that such offender must be sentenced to a term of 48 hours of imprisonment or 10 days of community service. Section 39-08-01(4)(e)(2). We indicated in our determination dated January 27, 1999, that these exceptions are not permitted under the agency's implementing regulations. These exceptions were not included in HB 1131 which was enacted on April 22, 1999. Therefore, North Dakota law currently meets the mandatory minimum sentence requirement.

SB 2406 would amend North Dakota's current lay by defining the term "imprisonment" to include house arrest which "must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol." NDCC 39-08-01, as amended by SB 2406. The implementing regulations of Section 164 permit house arrest with electronic monitoring as a form of imprisonment. 23 CFR 1275.3(h). Therefore, if SB 2406 is enacted without change, North Dakota would continue to meet the mandatory minimum sentence requirement.

However, HB 1218 would provide that the mandatory minimum penalties may be suspended if the offender undergoes an evaluation for alcohol and substance abuse treatment and rehabilitation and completes treatment as indicated by the evaluation. NDCC 39-08-01(4)(e), as amended by HB 1218. This exception is not permitted under the agency's implementing regulation. Therefore, if HB 1218 is enacted without change, North Dakota would no longer comply fully with the mandatory sentencing requirement.

Transfer of Funds

Any State that has not been determined to be in compliance with the Section 164 requirements by October 1, 2001, will be subject to a transfer of funds. In order to avoid this transfer of funds, North Dakota must either enact conforming amendments to its statutes or submit additional information, such as additional sections of its statutes, regulations, court cases or binding policy directives (such as an Attorney General's opinion), that demonstrates by October 1, 2001, that North Dakota's laws comply with each element of the Repeat Intoxicated Driver requirements contained in 23 U.S.C. 164 and the agency's implementing regulations, 23 CFR Part 1275.

If you have any questions or need additional assistance regarding this matter, please contact me or Chris Cook at 6-1834.

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