2011 SENATE JUDICIARY

SB 2285

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2285
1/31/11
Job #13687

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to disobedience of a judicial order

Minutes: There is attached testimony

Senator Nething – Chairman

Wayne Stenejhem – Introduces the bill and gives a brief history of the 24/7 Program. He provides a handout on the 24/7 program. He explains that SB2285 is designed to make a violation a Class B misdemeanor if they do not abide by the provisions of the 24/7 program as ordered by a court which would then authorize the law enforcement if they someone in violation to take the person into custody. He mentions that most Judges sign a standing order saying the 24/7 Sobriety program requires participants to appear for twice daily alcohol testing, it is ordered that participants who fail a test be taken into custody immediately and participants who fail to appear for a test be taken into custody if they appear for testing at a later time. He adds how he went down to the Burleigh County Courthouse and talked to some of the participants of the program and with no exceptions on the day he was there people thanked him for turning their lives around. He relates that the purpose of the bail order is not to penalize anyone but to assure compliance with the terms of the conditions of bail that imposed. He says in order for this program to work well there needs to be an immediate consequence and all judges need to be on board.

Cherie Clark – Cass County State's Attorney Office, State's Attorney Association – She talks about the 3 areas that the 24/7 program is utilized in. She provides an amendment She urges a do pass on the bill and the proposed amendments. She said the State's Attorney Association met and asked for this amendment. She said this will give them a tool to arrest.

Senator Sitte – Asks if they have a judge on duty on the weekends.

Clark – States there is an on-call judge. The judges in Cass County are in support of the 24/7 program.

Senator Nething – Asks how this will work in rural areas. He said it seems the offender would have to stay over till Monday when the court is open.

Clark – Responds that is how the program is working and that is how she would like to see it work.

Senator Nething – Relates he would like to see a hearing for the other individuals to testify.

Aaron Birst – Association of Counties – In support of this program and the bill.

Opposed – 0

Close the hearing 2285

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2285
2/14/11
Job #14268
Job # 14496

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to disobedience of a judicial order

Minutes: You may make reference to "attached testimony."

Senator Nething – Chairman

Senator Olafson explains the amendment brought. The committee discusses waiting till the Attorney General comes to explain the amendment.

Tom Trenbeth – Chief Deputy Attorney General – He brings in an amendment and explains the changes. The person who fails to perform under the 24/7 program will be charged with a Class B misdemeanor. He said they are anticipating a loop hole they are trying to close up. He explains that most judges have a bond schedule. They want to make it so the person that violates 24/7 has to see a judge before they can bond out.

Senator Nething – Asks for a scenario where this will apply.

Trenbeth –He explains a person who comes in for alcohol testing twice a day for purpose of being testing for consumption of alcohol and that person fails they will let them sit for 20 minutes and test them again. Upon failing again they are taken into custody until they can see a judge. He explains in some instances that has not been happening or the judge has left orders to see him in court. He says they need immediate circumstances if they violate the 24/7 program, they must know if they don't show up or fail the test they will be going to jail.

Senator Lyson – Said he believes the amendments are necessary. He said there isn't a judge in the state that does not have a bond schedule set up for Class B misdemeanors of a $150.00. Without this amendment the offender can put down the $150 and be gone.

Senator Nething – Replies that this bond schedule wouldn't mean anything.

Senator Olafson – Asks for the options to the magistrate when the individual appears before him.

Trenbeth – Explains the options that the magistrate has.

Senator Nething – Asks him to explain the 24/7 program.

Trenbeth – Gives an explanation of the program. He said S.D. was the initiating state with this program. It was intended for DUI where it is important for the person and the public that the person refrain from consuming alcohol at all.

Senator Olafson moves a do pass on the amendment
Senator Lyson seconds

Discussion

Senator Sitte says she thinks this is too much when we are arresting people without a warrant.

Senator Nething – Reminds that this is not arresting a clean person without a warrant, this person has a record.

Trenbeth – Explains that it based on probable cause and an officer is always able to arrest for a misdemeanor.

Senator Sitte – Asks what if the test is wrong that day.

Trenbeth – Said it is never a sure thing and gives an example.

Senator Nething – Said it doesn't apply to you if you're not in the program.

Senator Olafson – Mentions that this program is a good deal for those arrested.

Verbal vote on the amendment
5 yes, 1 no
Amendment adopted

Senator Olafson moves for a do pass as amended
Senator Lyson seconds
Roll call vote – 5 yes, 1 no

Senator Nething will carry

PROPOSED AMENDMENT TO SENATE BILL NO. 2285

Page 1, Line 19, after the period insert "An individual arrested under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate."

Renumber accordingly

Date: 2/14
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2285

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	1		Carolyn Nelson	1	
Curtis Olafson – V. Chairman	1				
Stanley Lyson	1				
Margaret Sitte		X			
Ronald Sorvaag	1				

Total (Yes) 5 No 1

Absent _____

Floor Assignment Senator

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

Verbal vote

Date: 2/14/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2285

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson – V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte		X			
Ronald Sorvaag	X				

Total (Yes) 5 No 1

Absent _____

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

SB 2285: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2285 was placed on the Sixth order on the calendar.

Page 1, line 19, after the underscored period insert "An individual arrested under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate."

Renumber accordingly

2011 HOUSE JUDICIARY

SB 2285

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2285
March 15, 2011
15435, 15457

☐ Conference Committee

Committee Clerk Signature D Renner

Minutes:

Chairman DeKrey: We will open the hearing on SB 2285.

Wayne Stenehjem, Attorney General: Support (see attached 1,2,3,4,5). We instituted a program in our office that I am very proud of; I hope it will deal with a situation that exists in the state of ND about which we cannot be very proud. As you all know, ND is the safest state in the Union when it comes to homicide, aggravated assaults, burglaries, crimes of violence, but on the other end of the scale, there is that area that I am not proud of and none of us can be proud of; that is the area of impaired driving, driving under the influence. Two years ago in ND, 6,400 North Dakotans were arrested for driving under the influence of alcohol and a third of them; fully a third of them were repeat offenders; people who have been arrested before and now they are back in being arrested again. We struggled with methods to deal with that over the years; I started to visit with a friend of mine who was the Attorney General of South Dakota. Those of you who have been here before know about the program, but I would like to outline what the 24/7 sobriety program is. The Attorney General of SD had been a prosecutor in a small county in South Dakota, and he was seeing the same people back in court time after time, back in jail for violations of the driving under the influence law, and he felt something needed to be done about it. He approached the judges and sheriffs with his idea for a program that he called the 24/7 Sobriety Program. That program provides that anybody arrested for a second DUI offense in 10 years, will have imposed upon them, as a condition of bail, a requirement that the individual not consume any alcohol. This is for 2nd offenses only, not to consume any alcohol, and to assure compliance with that provision, they are required to go in and be tested in the morning and tested again in the evening, to make sure that they have not consumed any alcohol. In SD, initially some of the sheriffs and judges were very skeptical. They said you're going to fill up our jails, these people are never going to show up, it is not going to work. The AG, then state's attorney, said humor me, let's see how it works. To everyone's amazement, the people who came in and participated in the program, stayed alcohol-free. I visited with them about how we could institute that same program here in ND, and four years ago you authorized a pilot program here in ND where we could start here in this judicial district with a similar program. The judges here in this

judicial district immediately said they were interested in participating in the program; signed up for it; the 12 or 13 counties in this judicial district were the pilot program. I came back last session with the statistics that showed the program was working very well here in ND and you authorized an individual in my office to administer a state-wide adoption of a 24/7 program. You also authorized expenditures for money to buy some of those Scram bracelets like you see Lindsay Lohan wearing from time to time, and we purchased about 100 of those, and those are useful in rural areas because it is difficult for some folks to get into the sheriff's office to be tested. We got a grant for another 100 of those bracelets, because they proved to be very popular; the grant was from the National Highway Traffic and Safety Administration. We're in the process of obtaining additional bracelets. The problem is that, for years, we as policy-makers, enforcers, and US policy-makers have been telling people if you continue to drink and drive, we are going to stop you from driving. How well has that worked? You don't have to do much but read the newspapers and see the number of people arrested driving under suspension, driving under revocation; the list goes on and on. We need to tell people, if you don't quit drinking and driving, we are going to stop you from drinking because we can do that. We have the technology; that's what the 24/7 program is designed to do. The judges have found the program to be beneficial. They use it for cases beyond just driving under the influence; for cases of domestic violence, child abuse and neglect, where alcohol is a contributing factor and also for drug court participants.

Chairman DeKrey: What does this do, sense alcohol.

Wayne Stenehjem: Yes, it will sense the perspiration around your ankle and it will send information off two or three times a day. You just have to go near the telephone with a modem on it, which then sends it to the offices in Boulder, CO. They will send an e-mail back to the law enforcement office and tell them if there have been any violations. It can tell if you have tampered with it or tried to remove it. It can tell if you have tried some of the innovative urban myths; for example, at one point, word went around that if you took a piece of chicken skin and poked that down in there between the sensor and your leg, that you could defeat the sensor, you cannot.

Chairman DeKrey: Did they call him up and ask him why he had eaten raw chicken.

Wayne Stenehjem: It is very good technology and it's getting better and better. When we started the program, you had to have two of those sensors on it, now they are back to one and they are developing a similar system that will hopefully be able to detect drug use. For now, it's for alcohol. Again, the person who is on the program pays to be on that program, or pays a $1 in the morning and a $1 in the evening to be on the Alcan-sensor, where you go in and blow into the tube at the courthouse. The beauty of the program is the bottom line of all of this; that people show up. I think the statistics are that about 98% of the time, the people actually come in and blow clean tests. That is absolutely incredible when you consider that some of these people are two, three, four, five times offenders. In fact, when we

started the program here in this judicial district, Judge Wefald jumped the gun in getting involved with the program, and he put an individual on the program. His name was Craig Irwin, and he will be familiar to anybody in this area because he was a 14 time violator. He had 14 arrests for driving under the influence. The judge decided to let him out on bail and put him on the program. I was a little nervous but to my surprise, and maybe to his too, he was on the program for about for about 8 weeks and never had a drink of alcohol. He let my office know, that was the first time in the last several decades, that that had been the case, except when he was in jail. It's a program that I think is really, as time goes on, going to assist with dealing with this very serious problem here in ND. The bottom line though of all this is that it works because the consequences are certain and immediate. You are on the program, you blow a "hot" test. If there is any alcohol in the Alcan-sensor or on the scram bracelet that you are wearing, you are immediately taken into custody. That is critical to the success of the whole program because for a lot of these people who have drug or alcohol issues, if you impose as a condition of bail, no alcohol; first of all, no one checks up on them or very rarely, and then if they are found to be in violation, there might be an order to show cause three/four months down the road; for a lot of these people they don't care what is going to happen to them in three months, they want to know what is happening tonight. Under this program, if there is any violation, they are immediately taken into custody, and they will sit there until they have an opportunity to come before the judge and explain to the judge why they were in violation of the condition of bail that was imposed. This program, and why we are here today, has been enormously successful. Law enforcement likes the program. Prosecutors like the program, even offenders eventually appreciate the program. I went down to the Burleigh County Courthouse, for example one day, to witness the people that are coming in for the tests and I was a little nervous that I might not be the most popular guy in the courthouse that day. As these people came in, one by one, they said to me, thank you for getting this program inaugurated, or they said that they had needed something like this a long time ago and I appreciate the opportunity to be sober. There was one woman on the bracelet, she'd been on it for a year; she had lost her family, lost her job, all kinds of horrible consequences happening to her. She had been on the program for a year, had not violated once, and she said I'm back in school, I'm getting my family back, I haven't had a drink in a year. They said it was time to take me off the program, and she started to cry. She wanted to stay on the program, she was willing to pay just for the opportunity to stay on it. That's, I hope, success. We are looking at studies of long-term recidivism; SD is three or four years ahead of us, and they have preliminary studies in that state that indicates that the long-term recidivism is positive; that the effect of this program in SD, the same program we have, has been very beneficial and perhaps has led to a decrease in the number of people in prison in SD. We are doing a similar study on the program here in ND. But here is the problem. The problem is that it requires that there be widespread or unanimous participation by law enforcement, by the judiciary and by others who are involved in the program. While just about every judge in ND likes the program and is happy to participate in it, there is at least one or two that I can think of, who say bail is not for the purpose of punishing anybody or accomplishing this kind of thing and we aren't going to put

them on the program. If they are in violation, we are going to do an order to show cause, so they can come in in three months and we'll deal with them then rather than taking them into immediate custody. Other judges say, well that's not exactly the case, bail isn't only to assure appearance at your next court appearance, but it's also to ensure public safety in the meantime, and also the fact that someone isn't drinking, makes it more likely they will show up for their court hearing. I worked with individuals from the county where this seems to be the most problem and the solution they came up was what you have in front of you, in this bill. That is to make a violation of the terms of participation in 24/7, a class B misdemeanor in which case, law enforcement under current law, can make an arrest and take the person in and have them brought in before the court at the next occasion. Whether there are some other options, I'm happy to look at that. I would suggest, that as I visit with some of the judges, there might be some other options that we can look at but the bottom line has to be, that the consequences are immediate and certain. Without that component, this program won't work. With it, I think that we will see the kind of success that SD has seen and the success that we've seen here in ND; I am convinced that there are people who would otherwise have been out drinking and driving, and were averted from killing one of our constituents. There are some people here to further explain some of the statistics on the program if you wish. Individuals from the state's attorneys and Cass County sheriff are here. I am happy to answer any questions and to work with this committee on addressing this very serious issue.

Rep. Koppelman: Is this used only in cases of bail, or is it used in cases of probation, etc. as well.

Wayne Stenehjem: When the legislation started out, this program was a pilot project. It was a pilot project right here in this judicial district and it was only for second time DUI offenders as a condition of bail. We wanted to start out slowly. But I knew that something would happen; I strongly suspected something would happen and that was that the judges would really start to like it and they would expand it and say that there are instances where I am now sentencing somebody and I would like the option if it's indicated to sentence them to community service, plus stay on the 24/7 sobriety program and so they will do it in those cases and there are instances where it's not just DUI any more. Judges are seeing that there are cases of domestic violence, child abuse and neglect where alcohol might be an issue, or drugs might be an issue; but they can put them on the program too. All we want, is our citizens who shouldn't be using drugs or alcohol, not to abuse drugs or alcohol. There is a patch that we will be looking at to expand the program, that is tamper-evident, that will detect the typical illegal drugs of misuse so you can see if they aren't supposed to be using one drug or another, if they are.

Rep. Onstad: I know your jurisdiction doesn't cover the tribal courts, but do you ever get an opportunity to discuss successful program that they might adopt.

Wayne Stenehjem: I sure have. I have visited with the tribal judge at Standing Rock and some others. I made a presentation at another reservation in ND because we're hopeful that they will see the kind of success that we've seen here and be eager and willing to help them in any way we can to adopt similar programs.

Rep. Klemin: I understand from your testimony that not all judges, most but not all judges are in favor of this program, so this bill kind of gets to those judges that don't want to take people into immediate custody. I also heard that there are some defense attorneys who aren't too enthusiastic about this and have raised constitutional issues relating to this program. Do you have any response to those concerns.

Wayne Stenehjem: It's not necessarily that the judges don't support the program. They see it having more limited authority that they might have to have somebody come in to custody immediately even though the other 40 judges in ND don't see that as an issue and have a very simple way to deal with it. Yes, there are defense attorneys that might not like it. I will tell you, there are a lot of defense attorneys, on the flip side, that do like it a lot because they can go in when their client is about to be sentenced and say, your honor, my client has been sober for three months and for the first time in many years, he's starting to deal with his issues and that's something that impresses judges. Yes, there are some defense attorneys who may want to challenge, for whatever constitutional issues they may see, to challenge the statute. I will tell you, I will be there to defend the constitutionality of this program.

Rep. Klemin: Thus far, we haven't actually had a constitutional challenge.

Wayne Stenehjem: We started to have one and it kind of went away because the issue went away. SD has not had an issue with it, not had a problem. I think they have litigated it as well.

Rep. Delmore: If I refuse to do the 24/7, I can spend the time in jail. I have a right to say "sorry I'm not a candidate, I don't want to do this", do I not.

Wayne Stenehjem: You don't have to get out on bail, that's correct. Actually, that's why I think that part of the answer as to what the judges' might have concerns with, when you're on the program, you sign a contract; an agreement, that I am going to participate in the program. If I fail, or don't do things properly, this is what is going to happen; they've signed their name to it. Just as a matter of contracts, this could be dealt with like that, it seems to me that way. The second option is you don't have to be on the program, you can wait in jail until your trial. If after trial, you tell the judge you don't want to participate, I'm sure the judge will think of some other creative ways to deal with your sentencing.

Rep. Delmore: Do you know what the average length of time is for people on the program.

Wayne Stenehjem: I do know people who know the answer to that question.

Rep. Delmore: I will wait for them. Also, the number of violators possibly.

Wayne Stenehjem: I will provide that information to you.

Chairman DeKrey: Thank you. Further testimony in support.

Tristan Van de Streek, Asst. Cass County State's Attorney: Support (see attached 6,7).

Rep. Delmore: Can you tell me approximately how many people in Cass County are on this program and the number of violators that there would be out of that pool.

Tristan Van de Streek: I don't know specifically how many are in Cass County. I think we have someone here that can give precise figures. What I can tell you, is that the number of violators are very small, compared to the total.

Rep. Delmore: What is the cost of the bracelet, if I do that rather than $1 in the morning and $1 at night.

Tristan Van de Streek: I think it's $5/day. The sheriff actually administers the program. I suspect that the vast majority of our people just go to the county jail, where it's run out of. Most of the people in Cass County live in Fargo, and it's all really close to the county jail.

Rep. Klemin: Are there any other circumstances under which you can have a warrantless arrest for a violation of bail.

Tristan Van de Streek: Absolutely, DUI, in fact. If you look at 39-06-15, it sets forth the instances where a warrantless arrest is authorized and the big one for misdemeanors are DUI and domestic violence. You know, a lot of times, law enforcement gets dispatched to a scene of domestic violence. Once the incident is over, they can figure out what happened. Usually misdemeanor arrests have to occur in the presence of the office for an arrest to be authorized, but with DUI's and domestic violence, this body has authorized the arrest as a public policy decision for misdemeanors that don't occur in the officer's presence. Of course, felonies can be arrested on probable cause whether they occur in the presence of the officer or not.

Chairman DeKrey: Thank you. Further testimony in support.

Paul Laney, Cass County Sheriff: Support (see attached 8).

Rep. Koppelman: I understand the reason for the bill, and how it would fix things. I support that. I'm curious, when you talked about the program being successful,

does it work at all in Cass County now with the current status quo, or have you not been able to really make it work.

Paul Laney: It certainly has hindered us. The judges have fixed it in the sense now that what we have to do every time a hot test is blown, which isn't that often so I don't think the judges are getting upset with us waking them up at that time of night, if we have to. Right now, the times aren't too conducive, on a Saturday morning at 7:00 a.m. they don't want us calling, but we do. That's the system. Initially we were seeing hotter tests and things happening because we had that drag time. We would document it, send it to Tristan or Sheree up in the State's Attorney office, they would do their job, and 5-7 days later they would appear in court. We saw more of a problem right at the beginning. We met with the judges and said that this is not 24/7, I in good faith as the sheriff was not going to say that we were a 24/7 agency when we were not promoting what the Attorney General was showing with the 24/7 program. They agreed that we would go with this for now until we can get some kind of a solution. So now we basically have it set up right there, we document everything, we have the paperwork there; it's time-consuming, they have to fill it out each and every time, then they have to track down the judge, call him, get the order, and then go through the process; where this would alleviate it. Right now if someone commits a misdemeanor in my presence, we can deal with it. That's well defined in current law. This is just another step in that. The judge has already given you the order, you've agreed to it when you signed the contract which says you will not violate this, so when they step in, they blow a hot test, we do a second test to make sure it's a hot test. If they fail, we take them into custody and then they can go and explain to the judge the next day as to why they violated his/her order.

Chairman DeKrey: Thank you. Further testimony in support.

Wayne Stenehjem: They made a good point, there may be other options in dealing with this. In the meantime, I can get you a power point that kind of gives you the figures; I won't go through all of that today.

Chairman DeKrey: Just e-mail it to us.

Wayne Stenehjem: Okay, and if you have any questions on it, we will be happy to come back.

Chairman DeKrey: Thank you. Any testimony in opposition. We will close the hearing. Let's take a look at SB 2285.

Rep. Delmore: I move a Do Pass on SB 2285.

Rep. Koppelman: Second the motion.

13 YES, 0 NO 1 ABSENT DO PASS CARRIER: Rep. Koppelman

The Committee came back on 2:15 pm.

Chairman DeKrey: We need a motion to bring the bill back to committee. I haven't signed the report yet, so we can bring it back to the committee.

Rep. Delmore: I move that we reconsider our actions on SB 2285.

Rep. Hogan: Second the motion.

Chairman DeKrey: Voice vote, motion carried. We now have the Bill before us. The Attorney General brought an amendment to me that he wanted placed on the bill, and somehow there must have been a miscommunication because that was the first I had heard about it, and I haven't talked to anybody else in the committee that knew about it either. Since the judges had problems with arresting a person, this amendment says that they can arrest them but they don't have to take them into custody, and so then that clears up the legal issue for some of the judges who are having a problem with that.

Rep. Hogan: I move the Attorney General's amendment.

Rep. Steiner: Second the motion.

Ken Sorenson, Attorney General's office: We are dealing with the judges and we wish they would have gotten back to us sooner with what they wanted. What they wanted is what we have in the amendment. The amendment basically removes the class B misdemeanor provisions for violation of a judicial order out of the bill, and it leaves effectively the last two sentences in there about law enforcement that has reasonable cause to believe that a person has violated an Order, may take the individual into custody without a warrant. This tracks our present warrant and arrest statutes. It allows them to detain the person until they can be taken before a magistrate. This is what the judges wanted, Cass County State's Attorney's office is good with it and so is the Attorney General.

Rep. Delmore: Reasonable cause would more than likely mean that whatever device or check that they were using came back faulty, would there be any other reason.

Ken Sorenson: Well, that's one ground for taking them into custody, that they may have blown a positive on the portable breath test. They might have violated some condition of the bond beside testing positive, and this would also give them authority. They might have a different provision besides the "hot" breath test. They might have a positive UA or positive drug test based on the patch. All of those would give them grounds for taking them into custody.

Rep. Klemin: Why are we taking out the Class B misdemeanor. We had a lot of testimony this morning from the sheriff as to why that was a good penalty to have in there.

Ken Sorenson: The reason that SB 2285 showed up in the first place is that we were looking to get some statutory authority to detain a person who's violating, for the person because of the problems that were indicated in the testimony of the Asst. Cass County State's Attorney and Cass County Sheriff. This would give them the authority and nobody really wanted a 24/7 violation to be a criminal violation. That is kind of what we came up against at first working with the State's Attorneys Association. As the Attorney General alluded to, the judges were unhappy that now 24/7 was entering into the criminal arena; removing the criminal violation out of there, but will still have the authority, under 29-06-15 as amended to detain a person until they can be brought before the magistrate.

Chairman DeKrey: Just a note for the committee, there are two pages. The second page is the actual amendment that we put on the Floor here. The other sheet is just how it would read once it's placed into the bill.

Rep. Klemin: Are you going to explain this to Sheriff Laney and others as to how this will work. They seemed to think that was kind of important.

Ken Sorenson: They already know about this and are fine with it. In fact, this is pretty much what they wanted. It was even the testimony of the Assistant Cass County State's Attorney in Senate Judiciary that they wanted this authority to detain but even with the language about the violation of a judicial order in there, it was really not their intention to prosecute but they wanted that authority and that's what the judges were looking for.

Rep. Koppelman: So, you've spoken with Sheriff Laney and Mr. van de Streek since this morning.

Ken Sorenson: Yes. Immediately following the hearing on this bill, Sheriff Laney, Tristan van de Streek, the Burleigh County Sheriff, all met with the AG in his office and talked about what we are going to do.

Rep. Koppelman: There's agreement among them all.

Ken Sorenson: Yes.

Rep. Hogan: The judges agree with this now.

Ken Sorenson: We've actually only had one conversation with one judge, in particular, and that was Judge Bruce Haskell, who was opposed to the bill because it did make it a criminal violation of the 24/7 program. So we called him right away and told him what we were going to do and he said that he liked that.

Rep. Hogan: Do you think the Cass County judges will be okay with it.

Ken Sorenson: I'm relying on the Cass County State's Attorney's office and they think that they will be okay with this.

Rep. Kretschmar: Is this like a hog house amendment.

Ken Sorenson: It's pretty close. If you look at the original bill, basically the amendment replaces 12.1-10-05 with reference to 29-06-15 and it keeps in what would be the last two lines in the substantive part of the bill about the law enforcement officers' authority to take a person into custody without a warrant and to detain them until they can appear before a magistrate. So that part is still in there, and the emergency clause stays in there.

Rep. Klemin: Well I think I can agree with Rep. Kretschmar that really you should make this a hog house amendment because that is basically what it is, wouldn't it be a lot cleaner to do it that way, rather than all of this piecemeal stuff.

Ken Sorenson: That is always one I wrestle with, do I just want to take the language, "A bill for an act" and replace it, and I could have done that. But we already had an engrossed Senate bill and I tactically chose to do that approach; either way would have worked. It would have been easier to do a hog house.

Chairman DeKrey: We try a voice vote on the AG's amendment. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended on SB 2285.

Rep. Koppelman: Second the motion.

11 YES 0 NO 3 ABSENT DO PASS AS AMENDED

CARRIER: Rep. Koppelman

Date: 3/15/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2285

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad		
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No Ø

Absent 1

Floor Assignment Rep. Koppelman

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

11.8214.02001
Title.03000

Adopted by the Judiciary Committee

March 15, 2011

YK
3/15/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2285

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 29-06-15 of the North Dakota Century Code, relating to arrests without a warrant; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 29-06-15 of the North Dakota Century Code is created and enacted as follows:

If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3/15/11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2285

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.8214.02001 03000

Action Taken: ☑ Do Pass ☐ Do Not Pass ☑ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle			Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad		
Rep. Brabandt	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Koppelman

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

Vote 1 was reconsidered in afternoon session.

REPORT OF STANDING COMMITTEE

SB 2285, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2285 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 29-06-15 of the North Dakota Century Code, relating to arrests without a warrant; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 29-06-15 of the North Dakota Century Code is created and enacted as follows:

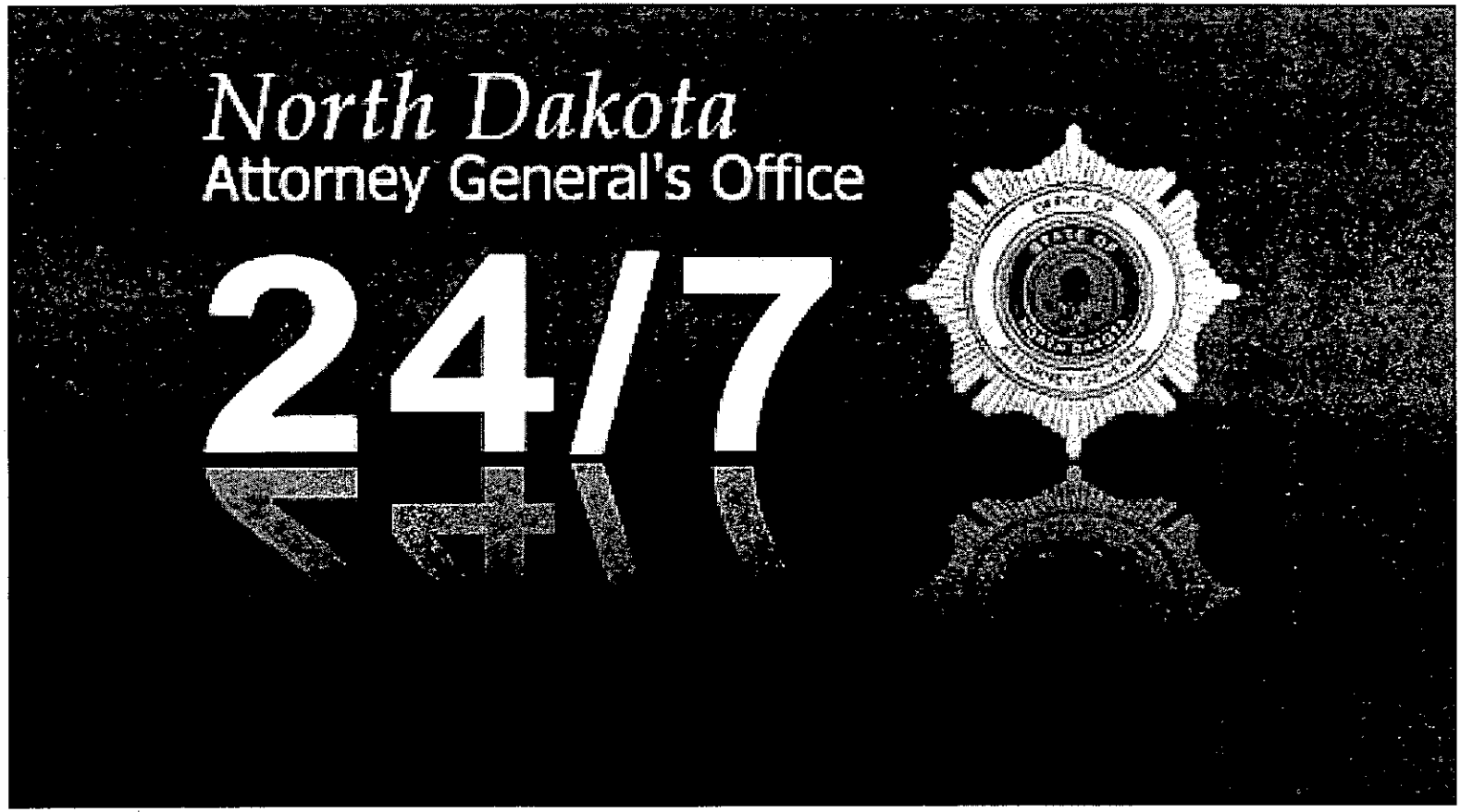
> If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 TESTIMONY

SB 2285



January 31, 2011
SB 2285

HISTORY: 60th Session

The 60th Legislative Assembly, in Section 11 of Senate Bill 2003, authorized the Attorney General to establish a sobriety program pilot project in one or more judicial districts of the state.

The sobriety program involved coordination among state, county, and municipal agencies. The Attorney General, in cooperation with Law Enforcement, the Judiciary, the Department of Corrections and Rehabilitation, and the Department of Transportation Traffic Safety Division, was authorized to develop guidelines, policies and procedures, and to establish user fees for a sobriety program pilot project.

Guidelines for Pilot Program

Three conditions of bond:

1. If a defendant is charged with a second or subsequent offense in violation of NDCC 39-08-01 or equivalent ordinance, a Court may condition any bond or pre-trial release that the defendant not consume any alcoholic beverages and may also order the defendant to participate in a sobriety program in which the defendant will submit to twice-per-day breath testing seven days per week through an on-site breath test, or if the defendant is eligible for electronic alcohol monitoring;
2. The Court may also order as a condition of bond for a defendant charged with a first offense of NDCC 39-08-01 or equivalent ordinance that the defendant participate in the sobriety program if in the Court's discretion, participation is appropriate;
3. The Court may also order participation in the sobriety program as a condition of probation under a sentence for conviction of a violation of NDCC 39-08-01 or equivalent ordinance.

HISTORY: 61st Session

The 61st Legislative Assembly, in House Bill 1306, authorized the Attorney General to expand the sobriety program pilot project to all judicial districts across the state.

The sobriety program was expanded to implement procedures as alternatives to incarceration for offenders charged with, or convicted of, driving under the influence of alcohol or controlled substances, domestic violence, abuse or neglect of a child, or for other offenses in which alcohol or controlled substances are involved. The sobriety program was expanded to include twice-per-day breath alcohol testing, electronic monitoring, and random drug testing by law enforcement.

The sobriety program with cooperation of the Department of Transportation was approved to grant a temporary restricted driver's permit to sobriety program participants to drive to and from the testing site.

Guidelines for State Wide Program

Conditions of bond, pre-trial, and post conviction

1. The sobriety program is established to implement procedures as alternatives to incarceration for offenders charged with, or convicted of:

    a) Driving under the influence of alcohol or controlled substances;
    b) Domestic violence;
    c) Abuse or neglect of a child;
    d) Or for other offenses in which alcohol or controlled substances are involved.

Guidelines for State Wide Program

Conditions of bond, pre-trial, and post conviction

2. The sobriety program is to enforce compliance with the sobriety guidelines by the following means:

   a) Sobriety testing twice per day seven days per week;
   b) Electronic monitoring , including home surveillance and remote electronic alcohol monitoring;
   c) Urine testing and drug patch testing
   d) And establish fees, all of which are not subject to 28-32.

1/1/08 – Present COUNTY/LOCATION OF TESTING

*includes both current *and* discharged participants

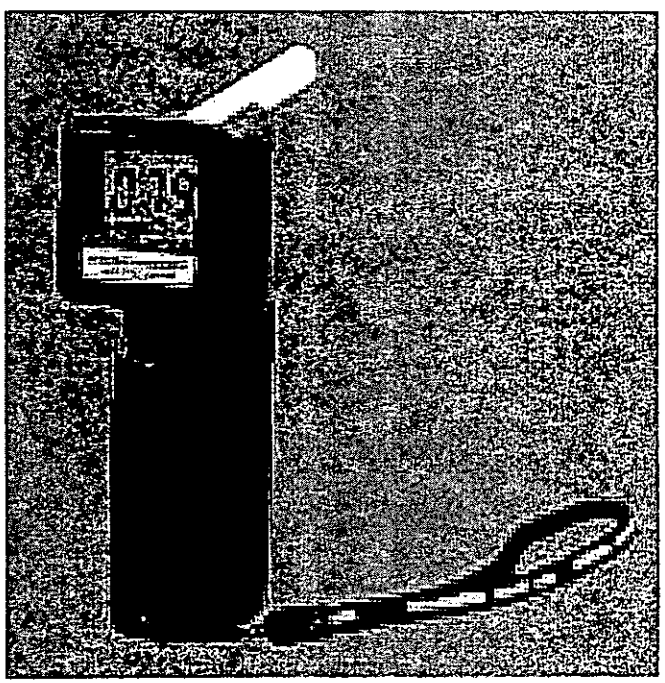
Testing County	Participants	Percent
Adams	0	0.0
Barnes	0	0.0%
Benson	0	0.0%
Billings	1	0.0%
Bottineau	0	0.0%
Bowman	0	0.0%
Burke	0	0.0%
Burleigh	535	42.0%
Cass County Jail	76	6.0%
Cavalier	2	0.0%
DOCR	15	1.0%
Dickey	1	0.0%
Divide	0	0.0%
Dunn	0	0.0%
Eddy	0	0.0%
Emmons	2	0.0%
Foster	0	0.0%
Golden Valley	0	0.0%
Grand Forks County CC	115	9.0%
Grant	0	0.0%
Griggs	0	0.0%
Hettinger	0	0.0%
Kidder	8	0.5%
Lake Region	33	3.0%
LaMoure	0	0.0%
Logan	7	0.5%
McHenry	0	0%
McIntosh	12	1.0%
McKenzie	2	0.0%
McLean	27	2.0%
Mercer	37	3.0%
Morton	230	18.0%
Mountrail	0	0.0%
Nelson	0	0.0%
Oliver	4	0.0%
Pembina	1	0.0%
Pierce	0	0.0%
Ransom	1	0.0%
Renville	0	0.0%
Richland	0	0.0%
Rolette	3	0.0%
Sargent	0	0.0%
Sheridan	6	0.5%
Sioux	0	0.0%
Slope	0	0.0%
Stark	9	0.5%
Steele	0	0.0%
Stutsman	11	1.0%
Towner	0	0.0%
Traill	7	0.5%
Walsh	2	0.0%
Ward	107	**8.0%**
Wells	1	**0.0 %**
Williams	22	**2.0%**
TOTAL	**1277**	100%

BENEFITS

- Parents, Spouses, and Children are safer
- Public is safer
- Defendant will spend less time in jail
- Treatment prospects improve
- Defendant's employer happy
- ALMOST NO COST TO TAXPAYER

The Alco-Sensor FST and/or CMI SD-5 are the newest instruments in their companies product lines. Offering both direct and passive sampling, these instruments produce fast, reliable, accurate results in a package that is designed so that the operator has maximum control over the subject during sample collection.

S-D5



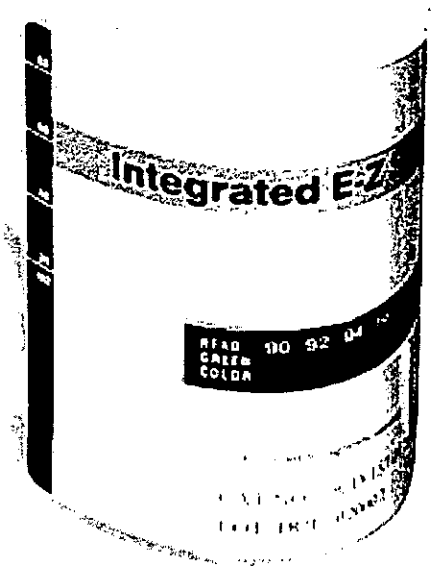
SCRAM STATS

January 1, 2008 through January 10th, 2011

- 197 participants;
- 12,597 total monitoring days for an average of 64 days per participant ;
- 164 were fully complaint during monitoring period 83.0%;
- 33 non-compliant clients 17.0%;
- 7 clients had a total of 8 confirmed drinking events 4.0%;
- 27 clients had a total of 53 confirmed tampers 16.0%;
- 1 client had both confirmed drinking and tamper events.

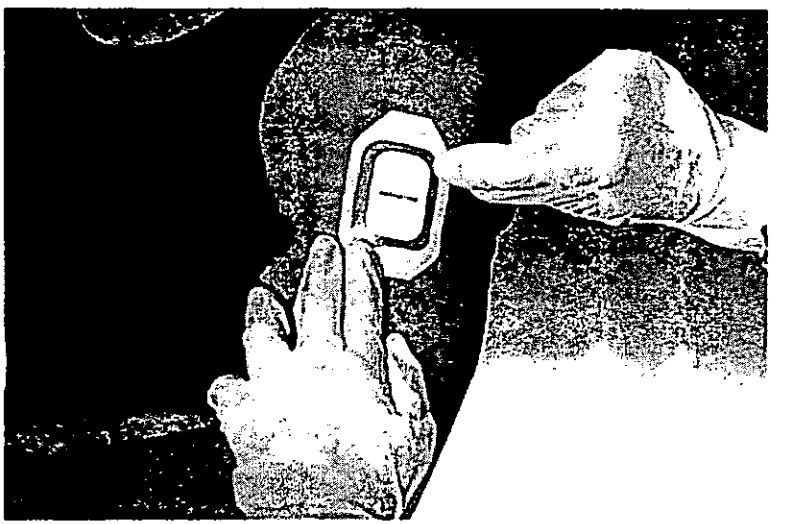
DRUG URINALYSIS (Redwood Toxicology)

- Detection of drugs through urine test
- Detectable drugs
  - Cocaine
  - Opiates
  - Amphetamines
  - Marijuana
  - OxyCodone
  - PCP
  - Antidepressants
  - Ecstasy



DRUG PATCH (Pharmacheck)

- Detection of drugs
- through sweat test
- Detectable drugs
  - Cocaine
  - Opiates
  - Amphetamines
  - Marijuana
  - OxyCodone
  - PCP
  - Antidepressants
  - Ecstasy



Current Numbers/Statistics

- As of 01/31/11
  - 1277 total participants
  - 240 active
  - 787 graduated
  - 170 failed
  - 80 re-offended

Current Numbers/Statistics

- Present and Successful PBT tests versus No shows and failed PBT tests
- **98.7 % Success rate**

Total PBT tests: 92,351

  - Present and Successful PBT tests: 89,485
  - No Shows and Failed PBT tests: 1,148
    - 514 failed tests; 634 no shows
- SCRAM Bracelets available to BCI= 104

(2)

PROPOSED AMENDMENT TO SENATE BILL NO. 2285

Page 1, Line 19, after the period insert "An individual arrested under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate."

Renumber accordingly

In District Court
South Central Judicial District
State of North Dakota

ORDER

The 24/7 Sobriety Program requires participants to appear for twice daily alcohol testing. It is ORDERED that participants who fail a test be taken into custody immediately and participants who fail to appear for a test be taken into custody if they appear for testing at a later time. A warrant will be issued for participants who fail to appear within 24 hours.

Dated: January 20, 2010.

Gail Hagerty, Presiding Judge

Sonna Anderson, District Judge

Bruce Haskell, District Judge

Donald Jorgensen, District Judge

David Reich, District Judge

Bruce Romanick, District Judge

Thomas Schneider, District Judge

Robert Wefald, District Judge

2

Promise To Appear

I,_____
(Name of Individual)

_____
(Mailing Address, City, State & Zip)

Telephone#_____ Work#_____

D.O.B._____ SSN#_____

HEREBY PROMISES TO APPEAR AT _____Court,

_____
(County, City, State)

On The Charge Of: _____

Case No. (s) _____

On the _____Day Of _____, 20____, At_____a.m./p.m.

☐ If 2nd or subsequent offense of 39-08-01 or equivalent in 5 years, the individual shall be placed on the 24/7 Sobriety Program. Report to the Sheriff's Office the following business day. Burleigh County Sheriffs Department, 514 E. Thayer Ave. Bismarck, ND. Phone # 701-222-6651.

Signature: _____

Date: _____ Time: _____

Witness: _____

Clerk's Use Only
Bond Posted: $_____
Date Stamp: _____

3

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota)
Plaintiff,)
vs.)
_____) Criminal Case No: _____
Defendant.)

BOND ORDER

THE COURT ORDERS:

____ 1. Defendant is released on the Defendant's promise to appear.

____ 2. Defendant must post bond of $_____ cash (☐ or by surety company bond) with the court to ensure future court appearances and compliance with the conditions of bond.

____ 3. Defendant may be released in an unsecured bond in the amount of $_____.

____ 4. Defendant may be released if the Defendant posts 10% of a $_____ bond in cash.

____ 5. Defendant will be held without bond.

____ 6. Defendant must appear at all court proceedings.

____ 7. Defendant must fill out an application for a court-appointed attorney before release.

____ 8. Defendant shall stay in regular contact with the defendant's attorney as directed by the attorney.

____ 9. Defendant shall notify the Court of the name of the defendant's attorney by _____.

____ 10. Defendant shall notify the Clerk of the Court and the defendant's attorney of any change of address within 24 hours of the time of the change of address.

____ 11. Defendant may not leave (☐ State of North Dakota) (☐ Burleigh and Morton Counties) (_____) without prior permission from the Court.

____ 12. Defendant must have written permission to stay at a local address before release.

____ 13. Defendant may not initiate contact, either directly or indirectly, with _____

____ 14. Defendant shall not possess or consume alcoholic beverages.

____ 15. Defendant shall comply with all conditions of probation.

____ 16. Defendant shall submit to random drug testing as required under N.D.C.C. 19-03.1-46. Defendant shall immediately obtain from the Clerk's Office a copy of the Notice to Defendant which contains all necessary information regarding random drug testing requirements.

____ 17. _____.

____ 18. Defendant shall participate in the **24/7 Sobriety Program**. [☐ Defendant shall participate in twice per day breath testing.] [☐ Defendant shall participate in electronic monitoring.]. [☐ Defendant shall submit to drug or urinalysis testing].

Defendant shall immediately obtain from the Clerk's Office/Sheriff's Office, a copy of the Breath Testing Requirements or Electronic Monitoring Requirements, which contain information regarding the 24/7 Sobriety Program. Defendant shall responsible for any and all fees associated with this program. These Requirements are made a part of this order.

Defendant shall have no federal, state, tribal, or local law violations while subject to this order. If the defendant violates any of the conditions of bond, a warrant for the defendant's arrest will be issued and the bond may be revoked or forfeited and the defendant held in custody while this case is pending. Additional criminal charges may also be brought.

Dated: _____.

BY THE COURT:

_____
Defendant's Signature

_____
District Judge

4

STATE OF NORTH DAKOTA IN DISTRICT COURT

COUNTY OF Case No.

State of North Dakota,

Plaintiff,

vs.

_____,

Defendant.

The defendant is charged with a violation of Section 39-08-01 of the North Dakota Century Code, and it appears that the offense would be a second or subsequent offense. The Court will not accept a waiver of first appearance / dispositional conference unless the defendant is participating in the 24 / 7 Sobriety Program.

Dated _____.

BY THE COURT:

_____

District Judge

I agree to participate in the 24 / 7 Sobriety Program beginning _____.

I understand information about the requirements of the program is available from the Sheriff's Department.

_____

Defendant

5

In Municipal Court
South Central Judicial District
State of North Dakota

ORDER

The 24/7 Sobriety Program requires participants to appear for twice daily alcohol testing. It is ORDERED that participants who fail a test be taken into custody immediately and participants who fail to appear for a test be taken into custody if they appear for testing at a later time. A warrant will be issued for participants who fail to appear within 24 hours.

Dated: January 21, 2010.

Hon. William Severin

CASS COUNTY
GOVERNMENT

State's Attorney

Birch P. Burdick

Assistant State's Attorneys:

Mark R. Boening
Tracy J. Peters
Leah J. Viste
Reid A. Brady
Kara Schmitz Olson
Gary E. Euren
Kimberlee J. Hegvik
Cherie L. Clark
Tristan J. Van de Streek
Ryan J. Younggren
Renata J. Selzer
[redacted]ya Johnson Martinez

Victim/Witness Coordinators:

Brenda Olson-Wray
Debbie Tibiatowski
Lori Lawson

Check Division/ Restitution:

Josi Schultz
Charlotte Eversvik

Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

PH: 701-241-5850
Fax: 701-241-5838

TESTIMONY of TRISTAN VAN DE STREEK

ASSISTANT CASS COUNTY STATE'S ATTORNEY

BEFORE THE HOUSE JUDICIARY COMMITTEE

March 15, 2011

Chairman DeKrey and other members of the Committee, I greatly appreciate this opportunity to testify in support of SB 2285, which will ensure that the 24/7 program continues to be successful in Cass County and throughout the State. There is no doubt that alcohol is the leading contributor to criminal activity in this state. Nearly every crime on the books is caused by or exacerbated by alcohol. The 24/7 program is a vital tool in responding to alcohol fueled crime and has a proven track record of success. Law enforcement cannot keep people from driving or fighting with significant others, but through the 24/7 program we can make sure that they are sober when it happens.

Cass County does not implement the 24/7 program in the way it was envisioned or authorized by the legislature. As I understand it in most of the state, the judiciary authorizes warrantless arrests immediately upon a violation of the program. This is not the case in Cass County.

When someone violates the program in Cass County the law enforcement officer administering the program makes a call to an on-call judge who then authorizes the arrest. Our judges do not believe that the law authorizes a warrantless arrest for a violation of the conditions of bail. This results in a great deal of extra work for law enforcement because additional paperwork has to be prepared on every violation.

If this bill does not pass, our judges may no longer be willing to be on-call during the testing process to immediately authorize the arrest of a violator. If this happens the program will lose its immediacy and be much less effective, if it is kept in place at all.

This is not just a problem for Cass County either. The judges currently presiding in the other judicial districts where the program is properly implemented will not be presiding forever. There is no guarantee that the judges who eventually replace them will continue to implement the program in the manner it is currently implemented. There is also no guarantee that the judges presiding here in Bismarck and elsewhere won't be persuaded by the legal reasoning of the judges in Cass County. I am told that this is already happening in Ward County, but do not have any firsthand knowledge. If the reasoning of the Cass County judges takes hold, the whole program is imperiled.

24/7 is a vital law enforcement tool with a proven track record. I strongly urge that SB 2285 be given a "do pass" recommendation so that the people of this state can be assured that its successes will continue.

ND 24/7 Sobriety Program
Current Participant Counts

Run Date: 3/14/2011

Active — **Total Active: 241**

Site	Count	Secondary Count
Billings County Sheriff's Office	1	0
Burleigh County Jail	55	0
Cass County Jail	11	1
Dept.of Corrections	18	0
Dickey County Sheriff's Office	1	0
Emmons County Jail	1	0
Grand Forks County Correctional Center	14	0
Kidder County Sheriff's Office	1	1
Lake Region Law Enforcement Center	6	0
LaMoure County Sheriff's Office	1	0
Logan County Sheriff's Office	4	0
McIntosh County Jail	2	0
McKenzie County Sheriffs Office	1	0
McLean County Jail	2	0
Mercer County Jail	4	0
Morton County Jail	34	0
Mountrail County Sheriffs Office	1	0
Pembina County Sheriff's Dept.	1	0
Rolette County Sheriff's Office	3	0
Stark County Sheriff's Office	16	1
Stutsman County Corrections	6	0
Traill County Sheriff's Dept.	3	0
Walsh County Sheriff's Dept.	1	1
Ward County Sheriffs Office	45	0
Wells County Sheriff's Office	1	0
Williams County Sheriffs Office	8	0

ND 24/7 Sobriety Program

Run Date: 3/14/2011

Current Participant Counts

Completed (Failed) **Total Completed (Failed): 206**

Site	Count	Secondary Count
Burleigh County Jail	96	1
Cass County Jail	7	0
Dept.of Corrections	3	0
Grand Forks County Correctional Center	41	0
Kidder County Sheriff's Office	2	0
Lake Region Law Enforcement Center	2	0
McIntosh County Jail	1	0
McLean County Jail	10	0
Mercer County Jail	2	0
Morton County Jail	31	1
Sheridan County Sheriff's Office	1	0
Stark County Sheriff's Office	1	0
Stutsman County Corrections	1	0
Ward County Sheriffs Office	8	0

ND 24/7 Sobriety Program

Run Date: 3/14/2011

Current Participant Counts

Completed (Graduated) **Total Completed (Graduated): 984**

Site	Count	Secondary Count
Burleigh County Jail	433	8
Cass County Jail	46	0
Cavalier County Sheriff's Office	1	0
Dept.of Corrections	10	0
Emmons County Jail	2	0
Grand Forks County Correctional Center	74	0
Kidder County Sheriff's Office	5	2
Lake Region Law Enforcement Center	20	0
Logan County Sheriff's Office	5	0
McIntosh County Jail	10	0
McKenzie County Sheriffs Office	1	0
McLean County Jail	18	3
Mercer County Jail	35	5
Morton County Jail	204	2
Oliver County Sheriff's Office	4	0
Ransom County Sheriff's Office	1	0
Rolette County Sheriff's Office	0	1
Sheridan County Sheriff's Office	6	0
Stark County Sheriff's Office	5	1
Stutsman County Corrections	8	1
Traill County Sheriff's Dept.	4	0
Ward County Sheriffs Office	67	2
Williams County Sheriffs Office	25	0

ND 24/7 Sobriety Program
Current Participant Counts

Run Date: 3/14/2011

Removed **Total Removed: 103**

Site	Count	Secondary Count
Adams County Sheriff's Office	1	0
Burleigh County Jail	25	1
Cass County Jail	30	1
Cavalier County Sheriff's Office	1	0
Grand Forks County Correctional Center	3	0
Kidder County Sheriff's Office	1	0
Lake Region Law Enforcement Center	11	0
Logan County Sheriff's Office	1	0
McIntosh County Jail	1	0
Mercer County Jail	2	0
Morton County Jail	3	0
Stark County Sheriff's Office	4	0
Traill County Sheriff's Dept.	1	0
Walsh County Sheriff's Dept.	2	0
Ward County Sheriffs Office	17	0

Count	The number of participants currently active in the program and the site is their primary testing site.
Secondary Count	The number of participants that are testing at the site, but it is not their primary site.
Total	Totals exclude secondary test site counts.
Active	The participant is currently participating in the program.
Active (Reinstated)	The participant is returning to the program after having been in a Removed (Reoffended) status.
Removed (Reoffended)	The participant has gone AWOL (but no warrant has been issued) or reoffended (and is in jail so can not test). This is a temporary designation. They will eventually be reinstated or completed.
Completed (Failed)	The participant is being permanently removed from the program because of their failed tests or has a warrant issued because of no shows (AWOL).
Completed (Graduated)	The judge says the participant is done or they are put in jail on other charges (and NOT returning to the program), or they transfer to another site to test.

Testimony-- SB 2285
Paul D. Laney
Cass County Sheriff

You have before you a bill that will greatly enhance the ability for law enforcement officers to support the 24/7 program. This program has been in existence for only a few years, but the impact is major. As a law enforcement officer who is sworn to protect and serve the citizens of North Dakota, I have found it frustrating that we cannot stop people from driving under the influence. The 24/7 program has given us the ability to combat this issue. While we cannot stop them from driving, we can stop them from drinking. When the individual must meet law enforcement twice a day and give a breath sample, they know their chances of getting caught are almost assured if they are drinking. The biggest deterrent in this program is the immediacy of the action. If you blow a "hot" test, you are given a second test. If you fail the second test, you are immediately taken into custody and must appear before the court to explain your action.

If this bill is approved, it will allow for the immediate arrest of the violator for a misdemeanor committed in the presence of an officer. It is well within the parameters of defined law and allows this successful program to continue successfully.

In 22 years of law enforcement I have seen many programs come and go. I truly believe the 24/7 program is innovative, creative and will be a strong tool in assisting in the fight against chemical dependency in the future. Whether the program is utilized by the courts, or used by DOCR parole and probation agents as a tool of probation, the program works successfully. I believe as local and state leaders, this is what we strive for daily. We have quickly come to realize, THIS PROGRAM WORKS! I ask that you support SB 2285 and give it a DO Pass.

11.8214.02001
Title.03000

Adopted by the Judiciary Committee

March 15, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2285

Page 1, line 1, after "A BILL" replace the remainder of the bill with " for an Act to create and enact a new subsection to section 29-06-15 of the North Dakota Century Code, relating to arrests without a warrant; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 29-06-15 of the North Dakota Century Code is created and enacted as follows:

If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state requiring the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL 2285

Page 1, line 1, replace "amend and reenact" with "create and enact a new subsection to" and replace "12.1-10-05" with "29-06-15"

Page 1, line 2, replace "disobedience of a judicial order" with "arrests without a warrant"

Page 1, line 4, replace "**AMENDMENT.** Section 12.1-10-05" with "A new subsection to section 29-06-15"

Page 1, line 5, replace "amended and reenacted" with "created and enacted"

Page 1, line 6, remove Lines 6 through 14

Page 1, line 15, remove "sections 54-12-27 through 54-12-31 is guilty of a class B misdemeanor."

Page 1, line 17, replace "person" with "individual"

Page 1, line 18, after "program" insert "authorized in sections 54-12-27 through 54-12-31", replace "arrest" with "take", after "individual" insert "into custody"

Page 1, line 19, remove "and take the individual into custody", replace "arrested" with "taken into custody"

A BILL for an Act to create and enact a new subsection to section 29-06-07 of the North Dakota Century Code, relating to arrests without a warrant; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 29-06-15 of the North Dakota Century Code is created and enacted as follows:

If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state requiring the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL 2285

Page 1, line 1, replace "amend and reenact" with "create and enact a new subsection to" and replace "12.1-10-05" with "29-06-15"

Page 1, line 2, replace "disobedience of a judicial order" with "arrests without a warrant"

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Page 1, line 15, remove "sections 54-12-27 through 54-12-31 is guilty of a class B misdemeanor."

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Page 1, line 18, after "program" insert "authorized in sections 54-12-27 through 54-12-31", replace "arrest" with "take", after "individual" insert "into custody"

Page 1, line 19, remove "and take the individual into custody", replace "arrested" with "taken into custody"