

# North Dakota Attorney General 24/7 Sobriety Program



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## Introduction

The North Dakota 24/7 Sobriety Program is a statewide program. It provides an alternative 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 other offenses in which alcohol or controlled substances are involved. Offenders may be referred by courts as a condition of bond or pre-trial release and/or as a condition of sentence or probation. Some offenders are parolees referred by the North Dakota Parole Board. Under the program, second or subsequent DUI offenders are ordered to abstain from alcohol and to report to twice-daily alcohol testing. Offenders who test positive for breath alcohol are taken into custody and brought back before the referring court. Offenders who fail to report for a test may be rearrested and/or incarcerated. The North Dakota 24/7 Sobriety Program is pertinent to a study of transdermal alcohol monitoring because some offenders may be ordered to participate in remote electronic alcohol testing using transdermal monitoring as an alternative to reporting in person to the testing site.

North Dakota is the 19th largest state by area in the U.S. (Infoplease, 2007). It is the third least populous State, with about 646,850 residents as of 2009 (U.S. Census Bureau, 2011). Much of North Dakota is rural, and agriculture is the largest industry, although petroleum and food processing are also major industries (NETSTATE.COM, 2011). The per capita personal income in 2009 was \$40,727, ranked 24th in the Nation (Bureau of Economic Analysis, 2010b). Age and gender distributions in North Dakota approximate the national average. According to the 2006-2008 American Community Survey, the racial and ethnic composition of the State was as follows: White: 90.7 percent (Non-Hispanic Whites: 89.8%), Black or African American: 0.9 percent, Native American: 5.3 percent, Asian: 0.8 percent, Pacific Islander: 0.1 percent, some other race: 0.6 percent, Two or more races: 1.5 percent, Hispanic or Latino (of any race): 1.8 percent.

## History of Program

In 2007, the North Dakota Legislative Assembly, via Senate Bill 2003, section 11, authorized the Attorney General to establish a pilot program in one or more judicial districts of the state. The program involves coordination between state, county, and municipal agencies. The attorney general, in cooperation with law enforcement agencies, the judiciary, the North Dakota Department of Corrections and Rehabilitation, and the North Dakota Department of Transportation, was authorized to develop guidelines, policies, and procedures, and to establish user fees. On January 1, 2008, a pilot program began operation in 12 counties in the South Central Judicial District. In 2009, the Legislative Assembly authorized the attorney general to expand the 24/7 Sobriety Program to all judicial districts in the State, which was implemented by August 2010.

The North Dakota 24/7 Sobriety Program is based on a similar program developed in South Dakota. That program was the subject of a case study written under a NHTSA project titled *An Evaluation of Intensive Supervision Programs for Serious DWI Offenders* (NHTSA, 2011). As part of that program, South Dakota was using transdermal monitoring for offenders who had difficulty getting to the testing facilities twice a day.

## Program Information

### Offenders

#### *24/7 Sobriety Program*

The types of offenders assigned to the 24/7 Sobriety Program include those arrested for second or subsequent DUI 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.

In some cases, offenders are referred by courts, which may order an offender to participate in the program as a condition of bond or pre-trial release and/or may order an offender to participate in the program as a condition of sentence or probation. Additionally, offenders may be electronically monitored for alcohol as required by the North Dakota Parole Board or as a sanction by the supervising officer.

Monitoring periods differ as a function of the offense. The period averages 60 days for offenders assigned to the program as a condition of bond for charges of a first or second DUI or an Actual Physical Control (APC) offense, a third DUI/APC offense within 5 years, a fourth DUI/APC within 7 years, or a fifth or subsequent offense within 7 years.

Offenders ordered to participate in the program, but currently serving, or required to serve, a sentence of imprisonment may not be placed into the program until the offender has completed the sentence.

#### *Transdermal Monitoring*

A minority of offenders assigned to the 24/7 Sobriety Program are considered eligible for remote transdermal alcohol monitoring. Offenders considered eligible are those for which all of the following conditions apply:

- The offender lives in a rural area and it is an unreasonable burden, or it may be dangerous, for the offender to personally report to a law enforcement agency or detention facility for blood alcohol testing.
- Based on prior contact with law enforcement or the courts or the parole board, the offender is known to be at high risk for consumption of alcohol.
- The offender has a revoked or suspended license and does not have a temporary restricted driver's permit or lawful alternative transportation for on-site testing.
- Remote electronic alcohol monitoring equipment is available to the offender.
- The offender is capable of wearing a bracelet and paying the daily monitoring fees and activation and deactivation fees.

#### **Equipment**

The program initially started implementation with SCRAM2 device and has recently been migrated to the SCRAMx bracelet in conjunction with the direct connect technology. North Dakota began the program with equipment loaned to the State from the South Dakota 24/7 Program. A legislative appropriation in 2008 authorized the purchase of 104 SCRAM sets in 2009; in 2010 an additional 87 sets were acquired through surplus funding. To date the State has purchased more than 200 units. The program does not use transdermal monitoring equipment from BI.

As of December 2010 the North Dakota 24/7 Sobriety Program average daily transdermal monitoring population was 56 offenders. Since the inception of the pilot program in June 2008 there have been a total of 197 offenders who have been monitored by the SCRAM device.

#### **Nature of Transdermal Monitoring Implementation**

The North Dakota Office of Attorney General is responsible for oversight of the 24/7 Sobriety Program and the use of transdermal monitoring with offenders. They work with the North Dakota Department of Corrections and Rehabilitation (NDDOCR), local law enforcement agencies, sheriff departments, NDDOCR locations, and selected correctional facilities. There are currently 12 agencies that have been selected to receive transdermal monitoring equipment and have completed training in the use of transdermal monitoring equipment. The 24/7 Sobriety Program procedures and policies are based on guidelines established by the attorney general's office, executed through a series of Memoranda of Understanding with local law enforcement agencies and implemented via specifically designed training sessions.

#### *Assignment to the 24/7 Sobriety Program*

Pursuant to an order of the court or parole board, an offender in the 24/7 Sobriety Program signs a statement in the presence of the testing site officer or the clerk of the court, or if on supervised probation, in the presence of a parole and probation officer, acknowledging the terms and conditions of the referring court ordering the offender to participate in the program. Offenders who refuse to sign the statement are returned to the referring agency and probations, paroles, etc., are revoked.

The program maintains data about participants in a database called the “Sobriety Program Information System.” At intake, a testing site officer enters the offender’s name, address, date of birth, employment or school information, and photograph into the database. All information in the database is kept current and is kept confidential as required by law. If the offender is already in the database, the testing site officer updates the offender’s information, including an updated photograph. Transdermal monitoring is maintained on AMS servers and accessible through SCRAMNET.

Offenders are responsible for paying fees associated with testing required under the program. Offenders who fail to pay fees are reported to the referring court or to the parole board. The offender may be taken into custody for violation of program requirements. In the offender’s absence, an arrest warrant may be issued. Costs related to lost or damaged equipment are assessed to the offender. Costs related to twice-a-day alcohol and drug testing are paid by the offender to the local law enforcement agency. Offenders on transdermal monitoring pay the clerk of the courts. Those funds are then transferred into the attorney general’s 24/7 sobriety fund. Failure to pay is reported to the referring court or supervising parole and probation officer. Depending on circumstances, these offenders may be taken into custody or arrest warrants may be issued in their absence.

#### *Assignment to Transdermal Monitoring*

A subset of participants in the 24/7 Sobriety Program are assigned to transdermal monitoring. The agency that assigns the offender to transdermal monitoring determines the eligibility of the offender, including the ability to pay. The offender reports to a law enforcement agency or detention facility serving as a testing site. A testing site officer conducts an orientation, advising the offender of the transdermal monitoring program requirements. The offender signs a statement acknowledging the requirements, receives the bracelet, a modem, and other equipment as necessary, and schedules times for data uploading. The officer informs the offender of replacement costs for the equipment, the offender’s responsibility for any damaged, lost, or destroyed and that the offender must be within the range of the remote electronic alcohol monitoring modem at scheduled reporting times.

At each testing site that is using transdermal monitoring, there is one officer who monitors the transdermal monitoring offenders for that site. The numbers of testing sites with monitored offenders and the numbers of offenders per site fluctuate, however, as an example, if there were 11 testing sites across the State using transdermal monitoring at a given time, and 55 offenders being monitored, there would be 11 officers monitoring an average of five offenders each.

Only law enforcement officers and detention officers may remove the transdermal monitoring bracelets. There are several situations where 24/7 personnel may remove the transdermal monitoring bracelets including successful completion of the program, unsuccessful completion of the program, return to custody, or court authorization due to medical situations. Bracelets that require maintenance are replaced in accordance to the manufacturer’s specifications.

#### *Violations*

Violations of the transdermal alcohol monitoring program include positive alcohol detection (over 0.02 TAC, as confirmed by AMS); attempts at obstruction, tampering, damaging, or removal of the bracelet or the supporting equipment; or failure to be in range of the modem at reporting time. Suspected violators are brought in for questioning about termination from the program and/or incarceration. The extent to which any violation of program conditions results in termination is at the discretion of the judge, parole officer, or probation officer.

If the communication equipment fails to upload monitoring data, the testing site officer reports the problem to a law enforcement officer or parole and probation officer as appropriate, who troubleshoots the problem and determines if there has been a violation. Offenders may be required to report to the law enforcement site location to upload transdermal monitoring data and/or to reinforce communication schedules.

The testing site officer reports all violations and communication failures to the supervising court and the prosecutor, or parole and probation officer and enters the incident into the database. In the event of a violation, the court may issue a bench warrant and order the offender be taken into custody. If the offender is on supervised parole or probation, the offender’s supervising parole and probation officer determines whether to modify the terms of supervision or to revoke parole or probation.

AMS prepares a Daily Action Plan delivered electronically to each testing location. Trained and authorized staff also have access to offender data, compliance reports, inventory management reports, and caseload summaries via SCRAMNET.

Daily reports from AMS are received by program officers and are used primarily to determine compliance with the program. They are also used to generate statistics for program analysis.

## **Additional Elements of Program**

### **Interlock**

There is little or no use of alcohol ignition interlocks in North Dakota (Roth, 2010). The use of ignition interlocks is not a part of the 24/7 Sobriety Program.

### **Electronic House Arrest/Monitoring**

None of North Dakota's offenders on transdermal monitoring are also subject to RF house arrest or GPS monitoring.

### **Treatment**

The 24/7 Sobriety Program has not been integrated with any type of treatment program. Courts may impose requirements for participation in treatment programs, but that information is not reported to the 24/7 program; therefore it is unaware of the extent to which transdermal monitoring offenders are also participating in treatment.

### **Drug Testing**

Drug testing is part of the 24/7 sobriety program. Offenders are monitored through the use of patches and urinalysis.

## **Funding**

Most offenders pay all costs of transdermal monitoring, including fees for installation. There is no indigent fund, per se; however, offenders who can show hardship may obtain fee waivers. Offenders pay \$25 for installation, \$25 for de-installation (paid at the time of installation), and \$5 per day for monitoring. All 24/7 Sobriety Program participants, including those assigned to transdermal monitoring, are tested for drug use using urinalysis or drug patches. The urinalysis fee is \$5 per test. A positive urine test results in a \$12.50 fee for laboratory confirmation. Drug patch testing costs \$40 per test, paid in advance each week. No tests are administered before payment is received. Payment records are kept as part of the Sobriety Program Information System database.

Fees collected for testing can only be applied to 24/7 Sobriety Program support services, equipment maintenance and replacement, and compliance. The attorney general's office does billing and collection of transdermal monitoring fees.

Some additional funding for the program was provided by the attorney general's office from January 2008 through the end of July 2009. Since August 2009 the State has provided some additional funding. Funding is primarily used to buy monitoring equipment.

## **Support for Transdermal Monitoring**

Political leadership of the State, including legislators and the attorney general's office, have supported the 24/7 Sobriety Program in general and the use of transdermal monitoring in particular by legislating the program and arranging for funding. The program has the support of the majority of State and municipal judges, though some judges have challenged the constitutionality of transdermal monitoring for pretrial offenders. Law enforcement agencies charged with administering the program have embraced it, although some agencies have opted not to participate as testing offices. Media coverage has been positive. Transdermal monitoring offenders have expressed appreciation for its effect on their ability to make positive changes in their lives. Officials report that offenders have requested to continue being monitored beyond the required period, to help them maintain sobriety.

## **Information on Program Benefits**

No cost-benefit analysis or analysis of effectiveness has been conducted due to the relatively short time since it began. The attorney general's office has been working with the University of North Dakota and other entities to determine the best approach to validating the program. They believe it is too early to determine program effectiveness at the time of this writing.

During the period from January 1, 2008, through November 18, 2010, there have been

- 197 participants
- 12,597 total monitoring days for an average of 64 days per participant
- 164 (83.0%) offenders fully compliant during the monitoring period
- 33 (17.0%) offenders non-compliant
- 7 offenders with a total of 8 confirmed drinking events
- 27 (16.0%) offenders with a total of 53 confirmed tampers
- 1 (1.0%) offender with both confirmed drinking and tamper events

There has been no evidence to suggest that forced abstinence under the 24/7 Sobriety Program has resulted in an increase in use of other drugs by offenders, including those assigned to transdermal monitoring.

To date, no transdermal monitoring offenders have absconded with the equipment. There is no evidence that offenders are drinking without being detected.

## Strengths/Problems/Barriers

### Strengths

A general strength of the program for those administering it is that the technology works well. They report that AMS does a good job of keeping the system upgraded. They consider the system to be user-friendly in terms of installing, using, and removing the equipment. Transdermal monitoring gives accurate and timely information about offenders' alcohol use. Offenders appreciate the ability to use transdermal monitoring as an alternative to twice-daily visits to testing stations. Another strength is that most costs are paid by offenders.

### Problems and Barriers

Program representatives have experienced some barriers to effective use of transdermal monitoring, in the form of resistance to change and lack of sufficient funding at times for additional bracelets. Prior to trial, judges in several locations have challenged the constitutionality of the use of the overall 24/7 program. Some police departments have shown lack of interest in becoming testing offices. These barriers have been partially overcome through training and meetings. Lack of funding has been addressed by finding alternative funding sources. Program representatives report that AMS has been helpful in addressing challenges through ongoing training and other types of support.

So far, there have been no legal challenges regarding the use or accuracy of transdermal monitoring by the 24/7 Sobriety Program.

## Lessons Learned

Program representatives recommend that agencies interested in the use of transdermal monitoring work closely with the vendors who provide it.



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