

# Intensive DWI Supervision in Urban Areas — Feasibility Study



U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

★★★★★  
**NHTSA**  
[www.nhtsa.gov](http://www.nhtsa.gov)

## DISCLAIMER

This publication is distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration, in the interest of information exchange. The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the Department of Transportation or the National Highway Traffic Safety Administration. The United States Government assumes no liability for its contents or use thereof. If trade names, manufacturers' names, or specific products are mentioned, it is because they are considered essential to the object of the publication and should not be construed as an endorsement. The United States Government does not endorse products or manufacturers.

### Suggested APA Format Citation:

Fisher, D. A., McKnight, A. S., Fell, J. C. (2013, November). *Intensive DWI supervision in urban areas—Feasibility study*. (Report No. DOT HS 811 861). Washington, DC: National Highway Traffic Safety Administration.

**Technical Report Documentation Page**

1. Report No. DOT HS 811 861		2. Government Accession No.		3. Recipient's Catalog No.	
4. Title and Subtitle Intensive DWI Supervision in Urban Areas—Feasibility Study				5. Report Date November 2013	
				6. Performing Organization Code	
7. Author(s) Deborah A. Fisher, A. Scott McKnight, James C. Fell				8. Performing Organization Report No.	
9. Performing Organization Name and Address Pacific Institute for Research and Evaluation 11720 Beltsville Drive, Suite 900 Calverton, MD 20705-3111				10. Work Unit No. (TRAIS)	
				11. Contract or Grant No. DTNH22-11-D-00226 TO 0003	
12. Sponsoring Agency Name and Address National Highway Traffic Safety Administration 1200 New Jersey Avenue SE. Washington, DC 20590				13. Type of Report and Period Covered FINAL REPORT Sep. 21, 2011 – Mar 30, 2013	
				14. Sponsoring Agency Code	
15. Supplementary Notes Task Order Manager—Brian Chodrow					
16. Abstract Drivers with prior convictions for driving while impaired (DWI) carry a higher risk of future DWI arrests and crash involvement. In response, communities have developed various strategies to address the drinking-driving problems of DWI offenders by assisting them in making positive behavioral changes to reduce their likelihood of recidivism. One program model developed to monitor offender drinking involves having an offender report twice daily to a law enforcement office for alcohol breath testing at 12-hour intervals. To date, these 24/7 sobriety programs have been used in rural States and communities; however, the program model is being considered for implementation in additional locales. The purpose of this project was to conduct a feasibility study to gather data on whether the 24/7 program model can be applied in urban locales, and if so, what changes might be necessary. In Phase 1 of the study, structured discussions were held with State and local officials in Montana; North Dakota; South Dakota; and Fremont County, Wyoming, to develop a complete description of the history of 24/7 programs in rural areas. In Phase 2, information from Phase 1 was used to conduct discussions with local officials in two urban areas—Washington, DC, and Fairfax County, Virginia—to obtain their impressions about whether and how a 24/7 program could be operated in their jurisdictions. Urban officials reserved judgment about whether such a program would affect offender drinking, impaired driving, and crashes, though most believed it would help identify those who are alcohol-dependent and assist in connecting them with needed resources. Despite potential benefits, officials were generally cautious but somewhat open to the prospects regarding program feasibility. This tempered reaction was a function of concerns about practical issues of implementation and broader concerns about the value of and need for twice-daily testing programs in urban locations.					
17. Key Words DWI/DUI recidivism, alcohol monitoring, intensive supervision probation, 24/7 sobriety program				18. Distribution Statement Document is available from the National Technical Information Service <a href="http://www.ntis.gov">www.ntis.gov</a>	
19 Security Classif. (of this report) Unclassified		20. Security Classif. (of this page) Unclassified		21 No. of Pages 73	22. Price

## **List of Acronyms**

---

AA	Alcoholics Anonymous
AG	attorney general
APPA	American Probation and Parole Association
BAC	blood alcohol concentration
CSOSA	Court Services and Offender Supervision Agency
DSP	DUI Supervised Probation
DUI	driving under the influence
DWI	driving while intoxicated
g/dL	grams per deciliter, the measure of a BAC
H.B.	house bill
IPR	Injury Prevention Resources
ISP	Intensive Supervision Probation
MDMA, “Ecstasy”	methylenedioxymethamphetamine
MPD	Metropolitan Police Department
MT DOJ	Montana Department of Justice
NCSA	National Center for Statistics and Analysis (a division of NHTSA)
NHTSA	National Highway Traffic Safety Administration
NIAAA	National Institute on Alcohol Abuse and Alcoholism
PBT	preliminary breath tester
PCP	phencyclidine
PSA	Pre-trial Services Agency
TAM	transdermal alcohol-monitoring
TOM	Task Order Manager
VASAP	Virginia Alcohol Safety Action Program

## **Executive Summary**

---

A driver with a prior conviction for driving while impaired (DWI) carries a higher risk of future DWI arrest, as well as involvement in both alcohol-related and non-alcohol-related crashes (Gould & Gould, 1992; Perrine, Peck, & Fell, 1988). Repeat DWI offenders are overrepresented in fatal crashes. Although drivers with prior DWI arrests within the past 3 years comprise only 2.1% of drivers on the roads, drivers with prior DWI convictions in the past 3 years account for 8.0% of the intoxicated drivers in fatal crashes (Fell, 2013). As outlined in *A Guide to Sentencing DWI Offenders* (NHTSA & NIAAA, 2006), the key to reducing DWI recidivism is certain, consistent, and coordinated sentencing and compliance monitoring. To accomplish this, States and communities have devised many variations of DWI offender supervision and probation programs to deal with offenders' drinking and drinking-driving problems. These programs focus on public safety, offender accountability, and behavioral change.

Over the past several years, jurisdictions in four rural States—Montana, North Dakota, South Dakota, and Wyoming—have implemented 24/7 sobriety programs that provide tools for monitoring alcohol use by impaired-driving offenders, many of whom are required by judicial or court orders to abstain from alcohol for specified periods, such as while awaiting their trial or while on probation. The 24/7 model was initially designed to be used with offenders who each had at least one previous conviction for DWI or the offense of driving under the influence (DUI) of alcohol or drugs. In some jurisdictions, the program is now applied to other offenses, such as assault and child abuse, if alcohol or drugs are deemed to be related to the underlying offenses. Generally, 24/7 alcohol-testing programs require offenders to report twice daily to central facilities (e.g., a sheriff's office) to take breath tests for a reading of their blood alcohol concentrations (BACs) at approximately 12-hour intervals—once in the morning (usually between 7 and 9 a.m.) and once in the evening (usually between 7 and 9 p.m.) over 2 to 6 months. Offenders are considered to be in violation of the programs if they provide positive breath samples, fail to appear for testing at the designated time, or fail to pay program-related fees on time. Because the 24/7 program has been implemented in rural States where offenders often have to travel long distances to test at a central facility, States also provide for the use of alternative testing methods, most often transdermal alcohol-monitoring (TAM) technologies. An offender typically pays \$1 to \$2 per breath test (\$2 to \$4 a day) and \$5 to \$10 a day for TAM in an effort to make programs self-funded through offender fees. Two evaluations in South Dakota indicate that the 24/7 program is effective in reducing DWI recidivism (Kilmer, Nicosia, Heaton, & Midgette, 2012; Loudenburg, Drube, & Leonardson, 2010).

To date, these 24/7 sobriety programs have been used in rural States and communities; however, the program model is being considered for implementation in additional States and communities. The purpose of this study was to conduct a feasibility assessment and gather data on whether the 24/7 program model can be applied in urban locales, and if so, what changes might be necessary to scale it to meet the challenges of more densely populated jurisdictions. This study was conducted in two phases: Phase 1 involved developing comprehensive descriptions of existing 24/7 programs in rural areas, and Phase 2 comprised the feasibility study in two urban jurisdictions.

In Phase 1 of this study, extensive structured telephone discussions were conducted with State and local officials in Montana; North Dakota; South Dakota; and Fremont County, Wyoming, to develop complete descriptions of the history of 24/7 programs in rural areas. The information obtained during the telephone contacts included program activities, resources, costs, offender populations, challenges, modifications, and guidance for officials in urban areas in implementing a program. In Round 1, a statewide contact that was familiar with the program and could provide a broad overview was contacted. In Round 2, telephone discussions were conducted with local officials in two jurisdictions per State—typically, the county that pilot-tested the program before statewide implementation and the most populous county that provided the best proxy to urban locales. In Round 2, structured discussions via telephone were held with a representative from the States’ attorneys general offices and local county officials (e.g., judge, prosecutor, sheriff, and parole/probation officer). Following the Round 2 data collection, case studies were developed for each of the four rural programs.

Common themes were distilled from the case studies. During operation of the programs, which varied from about 1 year to 8 years, the core of the programs (twice-daily breath testing) had remained constant. Logistical issues (parking at testing facilities, accommodations for nontraditional work schedules) and growth in the programs’ offender populations had resulted in minor programmatic adjustments. In addition to natural learning curves, processes had become streamlined over time as agencies and stakeholders involved in operating the programs had worked to coordinate and modify tools as necessary (e.g., violation report forms). Overall, the percentage of failed tests reported was low—typically about 0.5 to 1% and slightly higher (around 2 to 3%) when no-shows were considered. Although most programs did not have extensive cost data, most program officials perceived that program costs were being covered by offenders’ fees, especially as existing staff were often serving as testers. The evaluations in South Dakota found reductions in recidivism for most groups of DUI offenders (e.g., from 74 to 31% for second and fourth offenders, respectively), and one study showed a 12% reduction in recidivism and a 9% reduction in domestic violence arrests. Other than South Dakota, no outcome data were available from other programs. Officials’ perceptions of the benefits of the program included holding offenders’ accountable to judicial orders for bond and probation; reducing drinking, leading to probable increases in public safety and more responsible behavior by the offenders (e.g., appearing in court at appointed times); helping to identify offenders with serious drinking or drug problems as a function of increased monitoring; facilitating the process of drinking cessation in some offenders; and helping offenders remain productive members of the community by staying out of jail, keeping their jobs, and participating in family life.

Rural officials provided guidance for other officials considering implementing 24/7 sobriety programs. Consistent suggestions included the following: (a) the importance of starting small via pilot testing; (b) building the program slowly, using existing programs as a guide but remaining flexible to account for local realities; (c) planning to allow for growth of the program; and (d) the value of including all potentially-involved agencies in planning, both to foster buy-in from those agencies and to plan all aspects of the implementation as thoroughly as possible. Jurisdictions should understand legal limitations in their States on judges, to modify conditions of bond, and on law enforcement, to incarcerate without a hearing for violations of the program. Legislation may be necessary to give officials sufficient authority to operate 24/7 sobriety programs as designed by States current operating them.

In addition to developing comprehensive program descriptions, the data from Phase 1 were used to inform the development of protocols for the Phase 2 feasibility study. In Phase 2, in-person structured discussions were conducted with local officials in two urban areas—Washington, DC, and Fairfax County, Virginia—to obtain their impressions about whether and how 24/7 programs could be

operated in their jurisdictions. Information was collected from officials in the two urban locales (e.g., judge, prosecutor, law enforcement official, and representatives of agencies providing probation or parole services). Questions to be answered by the feasibility studies included the following:

1. Can the 24/7 program model be scaled and applied in an urban setting?
2. What are the challenges and concerns of transferring such a program to a more populous setting?
3. Are there policy implications?
4. What impacts might there be on the logistics of operating the program?
5. Are there aspects of program implementation that might be facilitated by operating it in an urban locale?
6. How might the 24/7 program be structured in an urban setting? Will there be substantial changes?
7. What level of resources (staff, equipment, budget, etc.) would be needed for the monitoring agency to supervise offenders?

Officials in both urban jurisdictions indicated a continuing interest in learning about proven, problem-solving tools that might assist them in dealing more effectively with public-safety issues, such as impaired driving. Additionally, some were at least somewhat familiar with the 24/7 program concept, and officials were generally interested in the experiences of their rural counterparts in operating a 24/7 program. For the most part, urban officials reserved judgment about whether such a program would affect offender drinking, impaired driving, and crashes, though most said it was difficult to imagine there would not be some benefit. Many believed the program would help identify those offenders who are dependent on alcohol and assist in putting offenders in touch with relevant programmatic resources, such as treatment and supervision.

Despite these potential benefits, officials in both urban locales were generally cautious but somewhat open to the prospects regarding the program's feasibility in their jurisdictions. This tempered reaction was a function of two sets of factors: (a) concerns about practical issues associated with implementation and (b) broader concerns about the value of and need for a twice-daily testing program for urban locations.

Responses to the question about their general sense of the feasibility of a twice-daily testing program typically elicited a list of perceived practical challenges to implementation, some of which may be able to be addressed successfully and others which may not. As might be expected, urban officials voiced concerns about many logistical issues—staffing, parameters of testing, costs, reciprocity, and so forth. The prominence and weight given to these concerns may, in part, have resulted from officials contemplating having to operate a 24/7 program within the current context of their agencies' budgets, equipment, staffing, and other resources. When discussions moved beyond these initial concerns regarding their own agencies' responsibilities, discussants were more optimistic about the prospects for collaboration with other entities and support for twice-daily testing programs from the public. Given that the appropriate groundwork had been laid for such a program (i.e., required legislation was passed, funding to support program costs, issues of reciprocity worked out), officials expressed varying degrees of enthusiasm about their agency's willingness to participate. Across the two sites, prosecutors, while noting the substantial difficulties with implementation, expressed the most interest and willingness to use the program if it were available to them.

Ambivalence about twice-daily testing also seemed to be based on broader philosophical concerns about the need for and appropriateness of a 24/7 program for urban locations. For example, officials in the District of Columbia noted that programs were already in place to supervise individuals, both before their trial and during probation/parole. The pre-trial supervision agency conducts some breath testing of its clients, and the probation agency tests for alcohol via urinalysis. Likewise, the Virginia Alcohol Safety Action Program in Fairfax County provides some alcohol testing of its program participants. None of these agencies tests participants with any frequency approaching twice daily. They are testing participants occasionally to ensure that they are not coming to meetings under the influence, rather than to monitor alcohol consumption and to help ensure that participants are staying sober. Thus, it may have been unclear to urban officials the extent to which a twice-daily program would provide unique benefits in terms of offender monitoring. Although officials in rural jurisdictions often reported that the 24/7 program filled a void in their communities (which often had little or no offender supervision both before trial and during probation), such a program model may be seen as somewhat redundant with existing services in urban locales. Other philosophical concerns included those surrounding due process for program violators who would be incarcerated before a hearing with a judge (this was also mentioned as a concern by some rural judges), and the perceived emphasis of 24/7 programs on punishment rather than assessment and getting offenders needed services. Officials in both urban jurisdictions also noted that the notion of taking officers “off the streets” to conduct testing would be problematic.



## **Table of Contents**

---

List of Acronyms .....	ii
Executive Summary .....	iii
Introduction.....	1
Intensive Supervision of DWI Offenders .....	1
24/7 Sobriety Programs.....	4
Evidence of Effectiveness of 24/7 Programs .....	5
Feasibility of 24/7 Programs in Urban Locales .....	5
24/7 Programs in Rural Areas.....	7
Methods.....	7
Program Identification and Selection.....	7
Data Collection .....	7
Case Studies .....	9
Montana 24/7 Sobriety Program.....	9
North Dakota 24/7 Sobriety Program .....	17
South Dakota 24/7 Sobriety Program .....	23
DUI Supervised Probation Program: Fremont County, Wyoming.....	28
Results.....	34
Summary of Core 24/7 Program Model.....	34
Evolution in 24/7 Program Concept .....	35
Cost Issues .....	36
Effectiveness .....	37
Perceived Benefits .....	37
Issues for Officials Involved in 24/7 Programs .....	38
Guidance for Urban Areas from Rural Programs .....	41
Feasibility of 24/7 Programs in Urban Areas .....	43
Methods.....	43
Results.....	45
Fairfax County .....	45
Washington, DC.....	49

Summary .....	55
Study Limitations.....	56
Conclusions.....	58
References.....	59
<b>Table:</b>	
Table 1. Guidelines for the Community Supervision of Impaired-Driving Offenders.....	2

## **Introduction**

---

Most adults in the United States drink alcohol and drive motor vehicles. Despite the attendant risks, the two behaviors are often combined, which increases the likelihood of traffic crashes. Based on responses from 6,999 U.S. licensed drivers in a 2008 nationally representative telephone survey, it was estimated that 85.5 million drinking driving trips (in which an individual drove a motor vehicle within 2 hours of drinking alcohol) were taken by Americans in the 30 days prior to the survey (Drew, Royal, Moulton, Peterson, & Haddix, 2010). Estimates from the same National Survey of Drinking and Driving conducted in 2001 indicated that nearly 94 million trips annually (or 11% of all drinking-driving trips) in the United States are made by alcohol-impaired drivers with blood alcohol concentrations (equal to or higher than the illegal limit of .08 grams per deciliter (The Gallup Organization, 2003). Finally, a nationwide roadside survey of nighttime weekend drivers indicated that 2% of randomly selected U.S. drivers had illegal BACs (Lacey et al., 2009). Alcohol-impaired driving crashes resulted in 9,878 fatalities in 2011, accounting for 31% of traffic fatalities in the United States that year (NCSA, 2012). Alcohol-impaired driving crashes injure an additional 200,000 Americans and cost \$130 billion in societal costs in the United States annually (Zaloshnja & Miller, 2009).

Each year for the past decade, an estimated 1.4 million drivers were arrested for driving while impaired or driving under the influence (FBI, 2008). This number reflects only those apprehended by the police. However, research indicates that detection and apprehension of impaired drivers is rare, with less than 1 arrest for every 300 trips by drivers with illegal BACs (.10 g/dL at the time of the study; Beitel, Sharp, & Glauz, 2000; Hause, Voas, & Chavez, 1982).

DWI recidivism remains a serious problem on our roadways across the Nation. About a third of the drivers arrested for DWI are repeat offenders (Fell, 1995). A driver is considered a repeat offender if the driver has been charged more than once with an alcohol-related offense (DUI, DWI, implied-consent refusal, test failure, administrative license action, or a zero-tolerance violation, etc.). DWI recidivists carry higher risk of future DWI arrests, as well as involvement in both alcohol-related and non-alcohol-related crashes (Gould & Gould, 1992; Perrine, Peck, & Fell, 1988), especially fatal crashes (Fell & Klein, 1994). They constitute anywhere from 20 to 47% of drivers arrested for DWI, depending upon the State examined (Fell & Klein, 1994). Drivers with prior DWI arrests are overrepresented in fatal crashes by a factor of 1.62, or are 62% more likely than those without prior DWI arrests to be in a fatal crash. Similarly, those with prior DWI arrests are more likely to be drinking drivers in fatal crashes by a factor of 2.38 among drivers with low BACs (.01 to .07) at the time of crashes to a factor of 3.81 among drivers with higher BACs (.08+) at the time of crashes (Fell, 2013). Given their greater involvement in fatal crashes and, particularly as drinking drivers in fatal crashes, repeat offenders cause a disproportionate amount of harm to society in terms of injuries and economic costs (Fell, 1992).

### **Intensive Supervision of DWI Offenders**

As outlined in *A Guide to Sentencing DWI Offenders* (NHTSA & NIAAA, 2006), keys to reducing DWI recidivism are certain, consistent, and coordinated sentencing and compliance

monitoring. In one study, trained counselors interviewed DWI recidivists about the reasons they continued to drink and drive even after a DWI conviction. The counselors also asked the recidivists what countermeasures had positive effects on their behavior. Many of these repeat offenders reported need for thorough alcohol use assessment, self-commitment to dealing with alcohol problems, personalized treatment and education plan, and continued contact with caring individuals, which included those in authority (such as judges), to reinforce lifestyle changes (Wiliszowski, Murphy, Jones, & Lacey, 1996). DWI courts also emphasize these principles (Fell, Tippetts, & Ciccel, 2010).

NHTSA has specified the following six factors as important when dealing with DWI offenders in attempts to facilitate reduction in recidivism (NHTSA & NIAAA, 2006):

1. Evaluate offenders for alcohol-related problems and recidivism risk.
2. Select appropriate sanctions and remedies for each offender.
3. Include provisions for appropriate alcohol use treatment in the sentencing order for offenders.
4. Monitor the offender’s compliance with sobriety, sanctions, and treatment.
5. Act swiftly to correct noncompliance.
6. Impose vehicle sanctions (e.g., vehicle immobilization, impoundment, and alcohol ignition interlock devices; Voas, 1999; Voas & DeYoung, 2002), when appropriate.

Factors 4 and 5—monitoring of offender compliance and swift action to correct noncompliance—also dovetail with the guidelines of the American Probation and Parole Association that probation services should follow to reinforce compliance of impaired-driving offenders under community supervision (Dunlap, Mullins, & Stein, 2008, Table 1; NHTSA, 2007). Most impaired-driving offenders are under some form of community supervision at some point during their sanctioning periods.

**Table 1. Guidelines for the Community Supervision of Impaired-Driving Offenders**

Guideline 1	Investigate, collect, and report relevant and timely information that will aid in determining appropriate interventions and treatment needs for DWI offenders during the release, sentencing, and/or supervision phases.
Guideline 2	Develop individualized case or supervision plans that outline supervision strategies and treatment services that will hold DWI offenders accountable and promote behavioral change.
Guideline 3	Implement a supervision process for DWI offenders that balances supervision strategies aimed at enforcing rules with those designed to assist offenders in changing behavior.
Guideline 4	Where possible, develop partnerships with programs, agencies, and organizations in the community that can enhance and support the supervision and treatment of DWI offenders.
Guideline 5	Supervision staff should receive training that will enhance their ability to work effectively with DWI offenders.
Guideline 6	Assess the effectiveness of supervision practices on DWI offenders through both process and outcome measures.

Source: Dunlap et al., 2008.

According to APPA, community supervision of DWI offenders should focus on public safety, offender accountability, and behavioral change. To accomplish this, States and communities have devised many variations of DWI offender supervision and probation programs with a variety of components.

Intensive supervision probation programs typically involve close supervision of offenders' behavior through frequent contacts with a probation officer to monitor offender drinking and promote abstinence. A review of the literature indicates that the alcohol-monitoring strategies currently in use by ISP programs in both urban and rural areas are:

1. Unannounced visits by probation officers to the offender's home to obtain breath tests and verify sobriety;
2. Randomized requirements to report for BAC testing where the offender must call in every day and determine whether on that day, he or she will need to report for testing;
3. Home confinement with scheduled or random BAC testing;
4. Transdermal alcohol-monitoring devices, such as ankle bracelets, that measure offenders' BAC hourly;
5. An ignition interlock device to test the offender who, in addition to blowing into the unit whenever starting the vehicle, must also blow at times while operating the vehicle; and
6. Small portable photo-breath-test units that can require the offenders to provide several tests during the day to ensure abstinence.

Methods 1 to 3 have been used for some years and are widely applied throughout the country. Methods 4 to 6 are relatively new and have not been fully evaluated. Nevertheless, they are being widely tested by the States, and more than 18,000 TAM units are currently in use by the courts.

ISP programs for offenders convicted of DWI vary considerably around the United States. There are State "systems" that provide standard guidelines to counties and local communities within the State, and there are numerous local county and community programs that appear promising in reducing DWI recidivism. Wiliszowski, Fell, McKnight, and Tippetts (2010) prepared case studies for two State programs (Nebraska and Wisconsin), four individual area ISP programs ("Staggered Sentencing for Multiple DWI Convicted Offenders" in Minnesota; "Serious Offender Program" in Nevada; "DWI Enforcement Program" in New York; and "DUI Intensive Supervision Program" in Oregon) and two rural programs ("24/7 Sobriety Project" in South Dakota; "DUI Supervised Probation Program" in Wyoming). These ISP programs revealed certain common features:

- Screening and assessment of offenders for their alcohol/substance abuse problem;
- Close monitoring and supervision of the offenders, especially the monitoring of their sobriety;
- Encouragement by officials to complete the program requirements successfully; and
- Jail for noncompliance.

ISP programs provide convicted DWI offenders with support and individualized case supervision through ongoing contact with probation officers or case managers to help offenders deal with their substance use problems by connecting them with appropriate services (e.g., treatment, aftercare, employment). In ISP programs, alcohol monitoring is one component and is accomplished in various ways, including the breath testing of offenders twice a day. In contrast, stand-alone, twice-daily alcohol-monitoring programs modeled on the South Dakota 24/7 Sobriety Program are more

circumscribed interventions for DWI offenders focused exclusively on substance use testing and, when necessary, sanctions. Such programs do not involve ongoing contact with a probation officer or case manager and close supervision of an offender's life circumstances more generally as occurs in ISP programs. Rather, 24/7 sobriety programs are substance-use testing programs operated by law enforcement and applied to offenders both pre- and post-conviction to help ensure their compliance with court orders for bond or probation. Although judges also often order offenders to participate in activities such as treatment, victim impact panels, community service and so forth, such requirements are in addition to but not part of the 24/7 program.

## **24/7 Sobriety Programs**

In their court orders, judges often require repeat- or high-BAC offenders to abstain from the use of alcohol as a condition of their probation or while they are awaiting their trials. However, in the past, no effective program existed to ensure compliance with sobriety. In the early 1980s, Larry Long, the prosecutor in Bennett County, South Dakota, hypothesized that if he could find a way to keep most of the alcohol offenders sober, it might be better and more cost-effective than sending them to jail. As an alternative to jail for repeat offenders, Long offered them a program in Bennett County where they came to the Sheriff's Office twice a day for alcohol breath-testing. Upon becoming the South Dakota Attorney General, he convinced the South Dakota legislature to provide funding to pilot-test the program in four counties beginning in January 2005. The 24/7 program requires defendants arrested for a second or subsequent DUI offense to appear at the local sheriff's office twice a day between 7 and 9 a.m. and 7 and 9 p.m. for breath tests. Those who fail to appear for testing or whose breath test shows consumption of alcohol have their bonds or probations revoked. As an alternative to the breath test, offenders instead can choose to wear TAM devices that use electrochemical sensing technology to test perspiration at the surface of the skin for the presence of alcohol. Drug patches and urinalysis testing also are sometimes used to monitor offenders' other drug use status. The term 24/7 has been applied to programs modeled after the one in South Dakota that establish ongoing, twice-a-day alcohol monitoring of DWI offenders.

Following the lead of South Dakota, two States—North Dakota and, more recently, Montana—have passed legislation establishing statewide 24/7 sobriety programs. Sheriffs in each county decide whether to participate in the programs and the logistics of how the program will be operated (where testing will be conducted, the testing times, etc.). In these programs, offenders appear at the local sheriff's office each morning and evening for breath testing. Among the key features of a 24/7 sobriety-monitoring program that make it of special interest are:

1. It makes use of existing police facilities and standard police equipment—handheld preliminary breath-test devices. No expensive computer or testing equipment is needed.
2. It is low cost (\$1 to 2 per test; \$2 to 4 per day) compared to \$5 to 10 per day for TAM devices, and the cost is paid by the offender.
3. It may replace some or all of the jail time for multiple DWI offenders, thereby reducing jail costs.
4. It is applicable to all types of alcohol offenders, not just DWI offenders.
5. It can be imposed as a condition of bond so it can be applied close to the time of arrest rather than months later when the trial occurs.

Of particular interest is the significance of having an offender breath tested in the police station where, if the test is positive, the individual will be immediately jailed. In remote alcohol-monitoring

systems, a warrant must be issued and served before an offender can be brought into court for sanctioning. Thus, the procedure involving testing at a centralized facility provides the best application of deterrence theory in that a significant penalty immediately follows the offense.

### ***Evidence of Effectiveness of 24/7 Programs***

Although 24/7 sobriety programs are relatively new and their use has been confined to rural communities, preliminary evidence from a few evaluations suggest that twice-daily alcohol monitoring holds promise for reducing DWI recidivism. An evaluation report by Loudenburg, Drube, and Leonardson (2010) examined the program's effects on DUI first offenders and repeat offenders. The DUI recidivism rates after 3 years for 24/7 first offenders (with BACs  $\geq .17$  upon arrest) was not different from those of similar offenders not on 24/7 (14.3% compared to 14.8%, respectively). However, there was a significant 74% reduction in recidivism after 3 years for DUI second offenders (3.6% versus 13.7% for comparison offenders), a 44% reduction in recidivism for DUI third offenders (8.6% versus 15.3% for comparison offenders), and a 31% reduction in recidivism for DUI fourth offenders (10.7% versus 15.5% for comparison offenders). Although assumed to be a contributing factor, no direct association between the 24/7 program and reductions in impaired-driving fatal crashes or crashes in general have been found to date. According to the 24/7 program coordinator, South Dakota's campaign to reduce fatal crashes has included numerous approaches: increased DUI patrols, sobriety checkpoints, and an extensive DUI public education and information program, in addition to the 24/7 program.

In addition to the Loudenburg, Drube, and Leonardson study, the RAND Corporation recently conducted an independent evaluation of the South Dakota 24/7 program. According to Kilmer, Nicosia, Heaton, and Midgette (2012), there was a 12% reduction in repeat DUI arrests and a 9% reduction in domestic violence arrests associated with the adoption of the 24/7 program.

### ***Feasibility of 24/7 Programs in Urban Locales***

As noted previously, monitoring sobriety is often one component of ISP programs, but it also may be used as a stand-alone program to enforce court orders for sobriety. This latter model of a stand-alone, twice-daily alcohol-testing program is the focus of this report. The 24/7 concept developed in South Dakota and in use in several western States has gained popularity among prosecutors and judges and has shown initial promising results in terms of reducing DWI recidivism. Although much remains to be learned about the 24/7 program (e.g., whether it results in reduced jail time and lower rates of offender recidivism), the program model is being considered for implementation in additional States and communities. Currently, information about the program is confined to large western States that are overwhelming rural, frontier, or both. Thus, important questions remain unanswered about whether and how this program model could be applied in more densely populated locations such as urban areas.

The current study was undertaken to address the issue of whether the 24/7 concept can be scaled up to urban settings. The study was conducted in two phases. In Phase 1, extensive information was collected from existing 24/7 programs in rural States to gather current information on program activities, resources, costs, offender populations, outcomes, challenges and modifications, and guidance for urban officials in implementing a twice-daily alcohol-monitoring program. The results of Phase 1 were used to inform the next phase, the assessment of feasibility. In Phase 2, data were collected via discussions with local officials in two jurisdictions—Washington, DC, and Fairfax County, Virginia—to gather information on urban officials' perceptions about the benefits, challenges, required changes, and expected outcomes of implementing a 24/7 program in urban areas.

The purpose of the feasibility study was to assess whether the 24/7 program model could be transferred to an urban location and, if so, what modifications and resources might be necessary to apply it to a more populous setting.



## **24/7 Programs in Rural Areas**

---

### **Methods**

#### ***Program Identification and Selection***

The first task was to identify jurisdictions that are currently operating twice-daily alcohol-testing programs for DWI offenders. First, the NHTSA Task Order Manager sent an e-mail to each NHTSA Regional Administrator describing the project and asking them to provide information and contacts for any States in their region who might have 24/7 or similar programs for DWI offenders. Responses to these e-mails were forwarded to the research team for follow-up. Additional efforts to identify relevant programs were made via a request to the executive director of the Governor’s Highway Safety Association to e-mail the governor’s representatives or coordinators for highway safety describing the research project and requesting information on the existence of any 24/7 or similar programs. Similarly, a request was made to the Mothers Against Drunk Driving Public Policy Office to send an e-mail to all of its chapters and affiliates describing the study and asking about any 24/7 programs in their States and communities. Finally, the research team reviewed prior projects conducted for NHTSA on ISP programs for relevant program information. Based on information provided by the aforementioned sources, a list of potential 24/7 alcohol-monitoring programs was compiled. All leads on potential 24/7 programs were followed up by telephone calls to the relevant contact people to gather more information about the nature of the programs. Based on the information gathered in these follow-up contacts and in consultation with the NHTSA TOM, four programs were selected as being appropriate. The four programs to be included in this task were the 24/7 sobriety programs in Montana, North Dakota, South Dakota, and the DUI Supervised Probation Program in Fremont County, Wyoming.

#### ***Data Collection***

Following the identification of relevant 24/7 programs, two rounds of structured telephone discussions were conducted to gather information to (a) document characteristics of 24/7 or similar alcohol-monitoring programs for DWI offenders and (b) develop recommendations on further information that would be necessary to complete the feasibility study. To document current 24/7 programs, information was gathered from the sites regarding legislation establishing the program, administrative rules, costs, staffing, participant enrollment, monitoring equipment, and program structure. In addition to the two rounds of discussions, information sent by the programs and accessed by online searches was used to supplement the data from officials.

#### **Round 1**

For the first round of structured discussions, a key official with extensive knowledge of the program statewide was identified and contacted. The purpose of the initial discussion was to gather qualitative information and process data on the following issues:

- **Who** – Which States, counties, or communities are conducting the 24/7 program?
- **What** – What methods of alcohol monitoring are being used in addition to 24/7 twice a day breath testing?
- **Where** – Where exactly is the 24/7 strategy being conducted (town, city, county, community, State)? Where are the specific BAC testing facilities?
- **When** – When did the program start? Is it ongoing? Have there been changes?
- **How** – How is the strategy implemented and conducted? How many officials does it take? How is the program structured? How many law enforcement officers are used for the BAC testing? How many offenders participate in the program? How many breath tests are conducted and with what outcomes? How much does the program cost the jurisdiction and offenders?
- **Evidence** – Is there any evidence of success? Is the program reducing DWI recidivism? Is there evidence that impaired driving is decreasing associated with the program? Is there evidence of any other impacts?

## **Round 2**

Information gleaned from the Round 1 data collection was used to develop discussion guides for use in telephone contacts with a representative from the States' attorneys general offices and local officials involved in program implementation: judges, prosecutors, sheriffs, and parole/probation officers. The purpose of the second round of structured discussions was to gather more in-depth information from key stakeholders directly involved in operating the programs in local communities and establishing the programs at the State level.

For each of the three States with statewide 24/7 programs, two counties were identified—the county that pilot-tested the program and the most populous county to provide the closest comparison to urban jurisdictions. In South Dakota, although the 24/7 program was pilot tested in Bennett County, it is a small county that currently has only 20 active offenders in the program, many of whom are testing in locations in other counties. In addition, Bennett County only conducts breath testing via preliminary breath-test units and does not use any other alcohol-monitoring technologies typically used by 24/7 programs (e.g., TAM). In contrast, Pennington County, which includes Rapid City, has 547 active program participants and uses other alcohol-monitoring tools. As a result, the 24/7 sobriety program coordinator in South Dakota suggested that given the study's objectives, Pennington County would provide more appropriate data than Bennett. Thus, our final sample of local communities were located in Montana—Lewis and Clark County (pilot test) and Yellowstone County (most populous); North Dakota—Burleigh County (pilot test) and Cass County (most populous); and South Dakota—Minnehaha County (most populous) and Pennington County (substitution for pilot county). In addition, discussions were also held with officials in Fremont County, Wyoming.

To identify appropriate local officials, solicitations were made to the Round 1 State-level contact, the States' traffic safety resource prosecutors, and local officials who had participated in the first several Round 2 telephone discussions (e.g., a prosecutor who provided names of potential judges). These sources were supplemented with online searches. Structured discussions were conducted with representatives of States' attorney general offices and local community officials and information gleaned from these discussions was used to enhance the case studies developed in Round 1.

## **Case Studies**

### ***Montana 24/7 Sobriety Program***

#### **History and Overview**

The 24/7 Sobriety Program was authorized when the Montana legislature passed H.B. 106 (“The 24/7 Sobriety Act”), which went into effect on October 1, 2011. The law establishes a statewide program housed in the Montana Department of Justice and administered by the attorney general to implement twice-daily alcohol-testing programs at the county level. The law provides for alcohol testing from the time of arrest until completion of the sentence for those convicted or charged with a second or subsequent offense of DUI or driving with excessive alcohol concentration. Before passage of the legislation, some sporadic local attempts had been undertaken to conduct alcohol testing of offenders who had committed alcohol-related offenses. The program established under H.B. 106 represents the first organized attempt in Montana to enforce sobriety among repeat DUI offenders. The program adopts the 24/7 model used in South Dakota, and officials from South Dakota have helped introduce the program in Montana through trainings for law enforcement agencies.

The 24/7 Sobriety Program is based on two important assumptions. The first is that any person who has a second DUI within a 5-year period is not dealing effectively with his or her drinking and driving and potentially has an alcohol abuse problem. The objective was to develop a program that allows a person to address the issue with drinking and driving while maintaining the ability to drive, stay employed, and be active in the community. Program officials note that experience has shown that suspending the driver’s license of an offender is not effective and is largely impractical, especially in a large, rural State such as Montana. The second assumption is that local control over the program is important. The law provides for local sheriffs to decide whether to have a program and how to run it. The law also provides for judicial discretion in sentencing. This was deemed important because many Montanans who are involved in the criminal justice system (offenders, law enforcement, and judges) likely have had prior contact and know each other personally. Thus, there is a feeling that judges are in a good position to assess the appropriate sanctions or conditions of bond or probation for different offenders. Montana’s 24/7 Sobriety Program is not part of an intensive supervision program but is a stand-alone program of alcohol testing to enforce sobriety.

Under the State’s DUI law, every offender receives an alcohol assessment. Depending on results of the assessment, a first-time offender may be required to complete a chemical dependency education course (or occasionally treatment). For all second and subsequent offenses, participation in a chemical dependency education program, a treatment program, or both is required. Because of this requirement in DUI sanctions, all (or nearly all) repeat offenders who are participating in the 24/7 program after their cases have been adjudicated also have treatment included in their post-conviction orders, not as part of the 24/7 program.

#### **Program Description**

If a county sheriff chooses to participate in the program, the MT DOJ assists in creating and administering the program. Specifically, under H.B.106 the attorney general is charged with adopting rules to:

- Provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

- Establish reasonable participating and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;
- Provide for the establishment and use of local accounts for the deposit of fees collected pursuant to these rules; and
- Require and provide for the approval of a sobriety program data-management technology plan that must be used by the department and participating counties to manage testing, data access, fees and fee payments, and any required reports.

Since initial discussions with officials in South Dakota that served as the impetus for similar efforts in Montana, the Montana attorney general's office has been actively involved in fostering the program even before passage of H.B. 106. Initially, the attorney general's office worked to identify a county for a pilot program to see if data could be obtained to show that a program could be conducted with existing staff and other resources. This was seen as important as the legislature had been unlikely to pass bills with large fiscal notes attached to them, especially in recent years. Following the pilot program and drafting of the legislation that became law, the attorney general's office put together administrative rules, worked with major vendors to develop uniform contracts for counties regardless of size, and traveled around the State to conduct education and training events. No funding was provided from the attorney general's office or the legislature to communities for program start-up costs, although some counties may have received support from local DUI task forces funded by drivers' reinstatement fees.

County sheriffs decide whether their counties will operate 24/7 programs. The sheriffs also decide where and when testing will occur and who can conduct the testing. Overall, the concept has been positively received by sheriffs across the State as a tool for ensuring public safety. The primary reasons for lack of adoption in counties not currently operating a program include not having connected yet with the attorney general's office (particularly counties with small sheriff's office staffs and large land areas where scheduling training has not occurred yet but will in the future) and, for some counties with few DUI offenses per year, a concern that participation would not be practical.

The legislation authorizing a statewide 24/7 program was implemented relatively recently; therefore, the program is in its infancy. As of January 2013, the program has been operating for just over 2 years in Lewis and Clark County, half of that as a pilot project, which then transitioned into a regular program under the new State law. Of Montana's 56 counties, 22 are currently operating programs and 17 counties have completed training and are in the early stages of implementation; most of the remaining counties are preparing to implement programs in the near future.

Statewide estimates are that use of the 24/7 program for offenders who meet the eligibility criteria is high—often in the range of 90 to 100% of offenders. Lower rates of participation in a 24/7 program are usually reported by counties that are early in the process of program implementation where not all judges may be aware of the programs and/or not all prosecutors know to request them. This suggests that participation may partially be a communication/education issue.

Program participation, particularly on the post-conviction side, is related to whether the DUI is a misdemeanor (first to third offense) or a felony (fourth or higher offense) and which court processes the offender. One prosecutor who has worked in both a city and county attorney's office reports that 24/7 is used regularly as a condition of bond and as a condition for suspended sentences (all but the mandatory minimum) for all second and third DUI offenses. In felony cases, however, participation in court-ordered 24/7 may occur on the pre-trial side but is rare on the post-conviction side, partly because felony offenders are typically removed from the community shortly after conviction to participate in treatment or alcohol diversion programs. Thus, to date the 24/7 program has been used

much less often as a court-ordered requirement of sentence with felony offenders. Felony cases are initially processed in the courts of limited jurisdiction (city, municipal, and justice courts) for arraignment and bond, but then are transferred to State district courts, where district court judges preside. Information from parole/probation officers who supervise felony cases post-conviction, however, indicates that making 24/7 participation a requirement after treatment appears to be increasingly a part of judges' orders for probation. The use of 24/7 post-conviction also appears to differ somewhat based on which court has jurisdiction over the DUI offense. Offenders arrested by city police are processed in municipal court where 24/7 is frequently used as part of sentence. Offenders driving outside city limits and arrested by sheriff's deputies or troopers from the Montana Highway Patrol are processed in justice court where use of 24/7 as part of sentencing is not as common.

Currently, the law applies to repeat DUI offenders. The 24/7 program is also routinely applied by judges who use it as mandatory for those charged with or convicted of aggravated DUI, which includes first offenders with BACs at arrest of  $\geq .16$  or driving on a suspended license because of a prior breath-test refusal. (Some judges will order once a day alcohol testing on the first offense of aggravated DUI.) Judges have substantial judicial discretion in setting conditions of bond to ensure public safety and that an offender appears in court for trial. Thus, some courts in Montana have further broadened the application of alcohol monitoring to offenses beyond DUI, such as domestic violence and vehicular battery when alcohol and/or drugs were involved in the underlying offense. (Some officials considered these instances of applying twice-daily monitoring to non-DUI offenders and first-time DUI offenders to be technically outside of the State's 24/7 program and did not include such offenders as program participants, whereas other officials included all offenders in the count of participants.) Officials anticipate that, as more counties and more judges use the program, it will increasingly be applied beyond DUI to offenders who have other problems related to substance abuse.

Offenders sentenced to the program are required to report for BAC testing twice a day, typically from 7 to 9 a.m. and from 7 to 9 p.m. The exact times and places for alcohol testing are at the discretion of the local sheriff; however, the legislation does designate that there be at least one testing location in a participating county and that the testing should occur at approximately 12-hour intervals. Most sheriffs have located the testing program in their county's jail. Lewis and Clark County (which includes the State's capital of Helena) uses two testing locations: (a) the Lewis and Clark County Detention Center and (b) the Helena Pre-Release Center. Flathead County spans about 100 miles and does not have a centralized population area; because of its geography, there are four separate testing locations.

Alcohol testing is conducted primarily using PBTs; however, some offenders use TAM. Many program officials believe that it is important for offenders to appear in person twice a day at a central facility for alcohol monitoring. Thus, although judges ultimately have discretion in setting conditions of bond and probation, there has been a concerted effort in Montana to use in-person testing and reserve TAM assignment for those offenders for whom geographic issues represent an impediment to in-person testing. H.B. 106 allows that after the mandatory or "hard" driver's license suspension period has elapsed (45 days for a second DUI; 90 days for a third or subsequent offense), an offender who has been court-ordered to the 24/7 Sobriety Program may be granted a restricted probationary license upon successful completion of a court-approved chemical dependency treatment program and proof of insurance. Data from Lewis and Clark and Yellowstone counties indicate that among offenders who report to a BAC testing site, about 40% drive themselves, 33 to 50% rely on a family member or friend to drive them, and 4 to 24% walk or ride a bike.

The counties across the State with 24/7 programs use a variety of staff to conduct the BAC testing. In Lewis and Clark County, detention officers working at the jail serve as testers, and private sector employees conduct the testing at the Helena Pre-Release Center. Other counties are also using dispatchers, sworn deputies, and program administrators.

Failure of the BAC test occurs when any amount of alcohol is detected (BAC > .00). The penalty for a positive BAC reading is that bond (or suspended sentence for those on probation) is immediately revoked, new criminal charges may be laid, and the individual is taken directly to jail. A judge then decides how long the offender must remain locked up (anywhere from a few hours to several weeks) and whether to raise the bond amount or reinstate the remaining jail sentence. Failure to show up for a BAC test results in the issuance of an arrest warrant and then the dispatching of a law enforcement officer to bring in the offender. The current no-show rate statewide is about 2% of total tests required.

One State-level official indicated that in Yellowstone County, which has been operating a 24/7 program since October of 2011, there have been two legal challenges regarding the constitutionality of the program. One challenge came up in municipal court and the other in the justice court. In both cases, the constitutional challenges were based on the theory that the 24/7 program amounted to an unreasonable search and seizure. In both cases, the courts upheld the constitutionality of the program.

There is currently no drug testing component of the 24/7 Sobriety Program in Montana.

### **Data on Offenders in Program**

Data compiled across the State by the attorney general's office indicate that:

- About 87% of participants in Montana's 24/7 program are DUI offenders (of which 90 to 95% are repeat offenders), and 13% are in the program for offenses other than DUI.
- The majority of offenders (about 80%) enter the program pre-trial as a condition of bond; 16% participate in the program post-sentencing—5% as a condition of probation, 1.3% as a condition of parole, and 10% as some other form of post-conviction requirement—and 3 to 4% are unknown.
- Between October 1, 2011, and mid-September 2012, 1,363 offenders participated in the State's program: 923 (67.7%) reported twice daily for BAC testing, and the remaining 440 (32.3%) used TAM.
- As of mid-September 2012, across the State's 22 counties that are operating programs 350 offenders are currently being monitored (235 reporting twice daily for breath-testing and 115 using TAM).
- The amount of time offenders are assigned to the 24/7 program ranges from 20 days to a year or more, with most at 60 days or 6 months.
- According to State law, treatment is required on second and third DUI offenses; thus, nearly all multiple misdemeanor DUI cases participate in 24/7 at least pre-trial and are required to attend treatment. Felony offenders may be on 24/7 pre-trial but then shortly after conviction must enter in-patient treatment for 6 to 13 months.

### **Program Outcomes**

Because the program has been operating for just over 2 years in the pilot county and less than 1 year in most of the remaining participating counties, no program evaluation data exist on outcomes. However, reported success rates of BAC tests passed have been quite high. For nearly 1 year since the

law was implemented (October 1, 2011, through September 22, 2012), 112,282 BAC tests were administered statewide as part of the program. Of these, 111,900 (99.7%) were passed and 382 (0.3%) were failed. When the number of no-shows for testing is factored in, the reported success rate is 97.5%. During the one-year pilot test in Lewis and Clark County, the rate of BAC-negative tests was 99.0%.

Despite its recent implementation, the 24/7 program in Montana has been credited with several improvements in the system. First, the program has brought greater attention to the issue of problem drinkers. Not only has there been more widespread awareness among the public, but there also has been a cultural shift among law enforcement away from the model of putting people in jail to solve a problem to a new focus on keeping offenders in the community by setting up conditions that promote the desired change in behavior. The cultural shift in law enforcement may have paved the way for the introduction of the 24/7 program rather than having resulted from its implementation. Regardless, the program's acceptance and expansion through strong bipartisan support in the State legislature and among many of the State's law enforcement agencies has further reinforced this approach to dealing with impaired drivers. Second, the program holds offenders accountable for their actions and provides a smooth and efficient mechanism for ensuring that they are adhering to one of the most common requirements of DUI offenders' release from jail—staying sober. This forced sobriety not only protects the public, but it also benefits offenders and their families by allowing them to keep their jobs and stay in the community while they await trial or after they have been convicted of their second or subsequent DUI offense. While allowing offenders to maintain a normal life, the twice-daily testing provides a constant reminder about drinking-driving issues and the consequences of offenders' actions. Anecdotal reports from some offenders are that participating in the program caused them to stop drinking altogether or stop drinking excessively—some offenders even report benefits in other areas of their life, such as not gambling. Some offenders report that the inconvenience of reporting twice daily for testing, and the resulting desire to avoid the program in the future, has been sufficient incentive to ensure that they do not drink and drive. Such reports coupled with the low violation rates create a sense that behavioral change is occurring. Third, the program is perceived as having cost savings (\$4 per day for breath testing versus \$65 per day for jail) and as being self-funded (although little cost data are currently available). Overall, the program is seen as succeeding in its two main goals: (a) reduce the population of inmates and (b) reduce the number of impaired drivers on the road.

### **Program Costs**

Offenders who report for twice-daily breath tests pay \$2 per test or \$4 per day. Those using TAM pay \$8 to \$10 per day plus a \$50 installation fee. Data on annual or total costs to offenders are not readily available and depend on how long offenders must be monitored. As noted earlier, some offenders may be monitored for periods as short as 3 weeks, whereas other offenders may be on the program for a year or more. The most common lengths of program participation are 60 days (which would cost an offender \$240 for twice-daily breath testing) and about 6 months (which would translate to \$720 for twice-daily breath testing). There are no provisions for indigent offenders. The average BAC of a DUI offender is .17 g/dL. Officials believe that the amount of drinking required to achieve that level of intoxication regularly would cost offenders significantly more than \$4 per day, which is the daily cost of testing via a PBT.

Costs to jurisdictions of operating the program are harder to determine. Although most counties' officials report the costs for PBT mouthpieces and rent (if necessary to lease a location for a testing facility), they do not appear to have firm estimates to account for the staff's time to conduct testing. As a result, most counties' officials report that costs were "pretty minimal" as current jail or sheriff's

department staff were doing the testing. Because those officers would be on the job anyway, officials do not perceive any additional cost associated with testing process.

Part of the annual costs to jurisdictions is the difference in costs of incarceration pre- and post-program implementation. In the case of Montana, all DUI offenders have to serve a mandatory minimum of jail time depending on which offense they are currently facing (1 day for first offense, 7 days for second offense, 30 days for third offense). Thus, the overall number or proportion of offenders who serve *some* amount of jail time before and after 24/7 remains unchanged. Whether the amount of time in jail has changed since program implementation is hard to say. An official with the attorney general's office indicated that the number of days being served is probably less since the program began because offenders are posting bond and being released from jail sooner, both on the pre-trial and post-conviction sides. However, a county attorney indicated that the 24/7 program does not really get people out of jail sooner on the pre-trial side because even without the program most offenders would be released on bond while awaiting trial. It is also difficult to determine how program violations have affected the number of days of incarceration. Some officials noted that before the program, there was no strict alcohol monitoring, and thus revocations (of bond, of suspended sentences) were not as frequent. Others noted, however, that although a substantial number of offenders may fail at least one breath test, the sense is that judges might put an offender in jail for a relatively short time (i.e., a day or two) and then back on the 24/7 program rather than sending offenders back to jail for the remainder of the pre-trial period or the suspended sentence. Data on total annual days of incarceration for 24/7 violations were only available for the pilot county, Lewis and Clark. The numbers suggest that, at least initially, judges may be letting offenders who violate program requirements sit in jail longer than a few days. In 2011, there were 54 arrests for program violations and 518 days served in jail (about 9.6 days on average), and in 2012 (through September 13, 2012), there were 48 arrests and 241 days of jail time served (about 5.0 days on average).

Another reason that the 24/7 program may be reducing jail costs relates to coverage of medical costs. In the State, when offenders are incarcerated, the county pays the costs of all their prescription medications and hospital visits. Currently, at least six counties have reported a reduction in medical costs for those incarcerated. Specifically, in Butte-Silver Bow County, officials looked at the data for 1 month and estimated that their medical savings were \$5,000 a month. Based on these initial estimates, the attorney general's office has requested that counties further examine the potential cost savings.

Impressions about whether the program is self-sufficient vary across counties. For Montana's most populous county, which is using existing jail staff to conduct testing, there is a sense that even if an additional staff person were hired as a tester, the county would still not be losing money. For most counties, however, there is a feeling that the program is not yet self-sufficient. For many of the State's counties with large populations, it is expected that programs will be self-sufficient in time and, in some, even revenue producing. This will be countered by more sparsely populated counties, where the program may never be self-sufficient or revenue producing but worthwhile from a public-safety perspective.

## **Challenges**

Because the attorney general's office has been responsible for administering the program and working directly with the counties to get the program established, officials from that office could address issues regarding statewide implementation. Officials noted several challenges:



- Dealing with geography—in a large, rural State, long distances that often must be traveled affect the rate at which education and training can be delivered, and thus the rate of program adoption across the State;
- Overcoming reluctance—implementing a new program model may involve changing the status quo and seem daunting at first, given that most agencies’ staff members have full schedules;
- Addressing misconceptions—before implementation, officials expressed concerns about the inability of offenders to stay sober and causing the jails to be overcrowded, or offenders being unable to pay program fees; experience during the pilot program, however, helped assuage these concerns.

Although at this time the program has only been in place for 1 to 2 years, individual counties have also noted some challenges. As noted by State officials, practical issues of implementation can arise, such as parking, staffing, and communication among different entities (e.g., courts, prosecutors, law enforcement). In the pilot county, parking emerged as a logistical issue because the county’s courthouse is an old building that was not designed to accommodate activities not directly tied to court business. On days when a trial or jury selection is occurring, additional people coming to the courthouse for testing can result in parking problems. As a result, the county moved the alcohol-testing program to an unused bus shelter. In Yellowstone County, there have been two legal challenges to the constitutionality of the program. In both cases, the jurisdiction prevailed and the court ruled that judges have wide discretion in setting conditions of bond, which may include the 24/7 program. Although there are no reports of issues with staffing, a potential challenge with 24/7 programs is the requirement that testers be onsite every day of the week, including weekends and holidays, which may require changes to staff schedules.

## **Lessons Learned**

From the limited time the program has been conducted in Montana, some early lessons have been learned. First, there is widespread intolerance regarding repeat DUI offenses, and officials are willing and eager to try something new to deal with the problem. The biggest issue in getting a program established in a county is getting local officials to make a decision. If there are positive attitudes, then questions and concerns can be addressed more easily. Alternatively, if county officials are more ambivalent, getting a program started is much more difficult. Investing time in education and developing positive attitudes about the program before implementation facilitates program adoption and implementation.

Second, communication is critical to success. Given the involvement of many different entities in the program—for Lewis and Clark County, the collaboration involved the State’s attorney general, the county attorney’s office, the Helena City attorney’s office, the county’s sheriff’s office, the Helena police department, Montana Highway Patrol, Helena municipal court judges, and the county’s judges—good coordination among entities is critical. Counties with the most successful programs to date are those that involved representatives from all entities coming together in the planning process and maintaining open lines of communication to ensure that potential problems can be addressed early. Good coordination ensures that there is clarity of roles and responsibilities and procedures are properly implemented. The attorney general’s office encourages counties starting programs to have monthly meetings with all stakeholders during the planning phase and for some time thereafter to ensure adequate opportunities to work out all programmatic problems.

Third, while encouragement and assistance from State-level entities is important, it is also vital to have these come from local officials. Cross-jurisdiction peer-to-peer assistance is invaluable when trying to solve problems (e.g., when sheriffs, prosecutors, or judges in a county in the process of implementing a program can call for advice from their counterparts in a county with an established program).

Fourth, along with regular testers, it is often a good idea to have others trained in administering breath tests should there be a backlog of offenders. In Lewis and Clark County, problems have not arisen with testers being busy and offenders having long waits to be processed. However, the county's program coordinator noted that booking new detention center residents takes precedence over alcohol testing. If detention officers become overwhelmed, the program coordinator works outside the jail door and can assist with offenders' testing.

### **Potential Issues for Transferring to an Urban Area**

Officials familiar with the 24/7 Sobriety Program in Montana suggested some potential issues with transferring this model to an urban area.

- Rural jurisdictions may be more appropriate for the broad judicial discretion, as provided in Montana's law, because so many people in individual counties across the State know one another. Thus, judges may be able to make more individualized bond and sentencing orders based upon personal knowledge of offenders. In an urban setting, judges would be less likely to have personal knowledge of an offender and would have to rely more on other sources (e.g., pre-trial or presentencing assessments) in making decisions about 24/7 monitoring. To the extent that twice-daily monitoring emerges as an effective strategy for enforcing abstinence or sobriety and reduces impaired-driving recidivism, it may be desirable to have it applied to all DUI offenders, rendering the issue of personal knowledge of offenders moot.
- As has arisen in Lewis and Clark County, urban jurisdictions may find that there are negative impacts on traffic and parking during testing times, given that the windows for testing largely overlap with peak rush-hour times at the beginning and end of workdays. The Lewis and Clark county sheriff is making plans to move the testing program from the jail to an unused bus station, as the county courthouse was not designed to house other functions. Urban officials will need good estimates of the potential number of offenders to be tested at each facility to ensure that there is adequate space for testing and that other activities are not disrupted by the processing of offenders.
- The rate of growth in program participation is likely to be even faster in urban locales than it has been in rural jurisdictions. Thus, urban officials will need to plan from the start for expansion, including arranging for additional testing sites and logistical issues with staffing and parking. In addition to more testing locations, sites may need larger testing windows to accommodate the larger population of urban offenders.
- Related to the logistical issues, locating testing facilities close to public transportation will not only help with issues, such as parking, but will make testing locations more accessible to offenders, many of whom do not have a valid driver's license. Compared to rural locales, a significantly different and potentially higher percentage of the population is likely to be served by public transportation in urban areas.
- Jurisdictional issues may be somewhat more complicated in urban areas. If agencies with larger budgets are used to functioning more autonomously, there may be issues with collaboration. Additionally, in urban areas there may be more crossover and shared

responsibilities among agencies, which may make it more difficult to decide which single agency will direct the effort.

- Although a pilot test may be possible to conduct without legislation, some officials noted that full implementation of a 24/7 program could be challenging without legislation. If not legislated as a priority, the application by judges of twice-daily testing could be low or inconsistent. Low or inconsistent offender participation rates, in turn, could create problems, such as difficulties estimating how much money would be generated by offender fees, potential underfunding of the program, and inequities in the treatment of offenders by the courts. Some officials also noted the importance of not only making 24/7 participation mandatory rather than discretionary (for both bond and sentencing), but also specifying in the law mandatory minimum lengths of time for post-conviction participation that cannot be negotiated by defense attorneys.

## ***North Dakota 24/7 Sobriety Program***

### **History and Overview**

The North Dakota 24/7 Sobriety Program is based on the program developed in South Dakota. In 2007, the North Dakota Legislative Assembly, via Senate Bill 2003, section 11, authorized the attorney general to establish a pilot program of twice-daily breath tests for alcohol offenders in one or more judicial districts of the State. 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 operating in 12 counties in North Dakota's South Central Judicial District (Burleigh, Emmons, Grant, Kidder, Logan, McIntosh, McLean, Mercer, Morton, Oliver, Sheridan, and Sioux counties). The following year, the legislative assembly authorized the attorney general to expand the 24/7 Sobriety Program to all judicial districts in the State via House Bill 1306. Statewide implementation was completed by August 2010, so all counties in North Dakota are considered to be participating. The extent of participation varies across counties and has changed over time as some counties have increased usage of the program slowly.

Sheriffs, judges, and probation/parole officers involved in the program report that the amount of effort required to run the program has been reduced over time. After an initial period, lines of communication were established and procedures were streamlined, so workloads related to the program are much smaller.

### **Program Description**

The North Dakota 24/7 Sobriety Program was established by the North Dakota attorney general's office. Because program assignment is at the discretion of judges, any offender could technically be considered eligible for participation in the program. In practice, offenders assigned to the 24/7 Sobriety Program are those whose offense involved alcohol use, drug use, or both. Typically, these include those persons arrested for a second or subsequent DUI offense 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. Statewide figures for the proportions of program participants with various offenses were not available. An official in Burleigh County, North Dakota, estimates that "well over half" of the offenders in that county are assigned to the program because of a drinking-driving offense.

Offenders are referred to the program before trial as a condition of bond or pre-trial release, and following conviction as a condition of sentence, probation, or parole. Generally, offenders are assigned to the program on the orders of judges, who often make those assignments at the recommendation of prosecutors who may be more familiar with the offenders' backgrounds. Offenders are most likely to be assigned to the program pre-trial as a condition of bond or post-trial by probation or parole agents rather than being sentenced to the program by judges. Defense attorneys will occasionally request the program for their clients, sometimes in an attempt to have bond reduced in exchange for program participation. The request to have clients placed in the program may be honored if deemed appropriate by prosecutors and judges. For some offenses, the program is considered mandated by statute. These offenders can only avoid program participation by opting to remain incarcerated instead. This happens rarely. Also rare are cases in which offenders, given the option of reduced bond in exchange for program participation, have chosen to pay the full bond to avoid being in the 24/7 program.

Each county in North Dakota has a single testing station, generally at the sheriff's office in the town that is the county seat. There are 44 testing stations in the State. Tests are typically conducted by "testing-site officers." To provide flexibility, multiple officers are trained to give tests, but in practice, only one person may be the primary tester, and others will conduct tests when a substitute is needed. Testing-site officers are generally sheriffs, although according to the law that created the program, they could be peace officers, correctional officers, or test-site operators designated by a sheriff or correctional facility administrator to conduct the tests. Testing-site officers conduct breath, drug-patch, and urinalysis testing; install TAM equipment; collect program fees from offenders; and enter offender information into a Sobriety Program Information System. Officers began the program using one device to conduct breath tests but are in the process of changing to another, which is considered better suited to performing the number of tests being conducted.

Offenders in the program may also be tested for drug use. Not all offenders who participate in daily alcohol breath tests are tested for drugs, and some offenders may report for drug testing only. Assignment to one or the other type of testing is at the discretion of the judge who assigns offenders to the program. Based on House Bill 1306, urinalysis or drug patches can be used to test for cocaine, opiates, amphetamines, marijuana, oxycodone, phencyclidine (PCP), antidepressants, and methylenedioxymethamphetamine (MDMA, "Ecstasy"). The patch is more widely used than urinalysis because of cost differences and program officials' preference to avoid handling urine. Offenders using the patch come in to submit the patch for testing and get a replacement every 10 to 14 days.

Violations of the program include positive BAC on breath tests, positive tests for drug use, missing tests, or arriving late for tests. A measurement of .007 or more is considered a positive breath test for the purposes of the program. If the offender provides a positive test, a second test is conducted. If the second test is also positive, that is considered a violation of the program. If an offender fails to appear for a scheduled test, or appears late, the testing-site officer notifies the prosecutor and the court, and a bench warrant may be issued to take the offender into custody. Tardy offenders may be taken into custody at that time. If an offender is on supervised parole or probation, the testing-site officer notifies the offender's supervising parole and probation officer of program violations. Participants whose licenses are suspended or revoked must arrange transportation to the testing site. An official in Burleigh County, North Dakota, estimates that about half of all participants have a restricted license that allows them to drive to the test facility. Most of the remaining participants receive rides from friends or relatives. A few offenders walk, take public transportation, or ride bicycles. Some 24/7 offenders are assigned for non-driving offenses and, therefore, have no restrictions on their driving.

Generally, offenders who violate the program are taken into custody immediately. Program officials stated that offenders' knowledge that if they violate the program, they will immediately go to jail is one of the most important aspects of the program. Sometimes, a court hearing may be necessary before offenders can be incarcerated. For failure to appear for testing, it may be necessary to obtain a warrant to find and arrest the offender. This may take several days. Usually, however, those who fail to appear for a test will be apprehended when they appear for a subsequent test. Judges are informed of violations. It is up to the discretion of individual judges whether violators remain in jail or are released relatively quickly and given additional opportunities to participate in the program.

Offenders assigned to the program as a condition of probation or parole may also have other conditions that could include community service, day reporting, adherence to a curfew, home confinement, house arrest, electronic monitoring, assignment to a residential halfway house, or participation in an intensive supervision program.

According to program guidelines, when determining program participants' eligibility for TAM officials consider the following factors:

- 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 BAC 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 onsite testing.
- Remote electronic alcohol-monitoring equipment is available to the offender.
- The offender is capable of wearing a bracelet and paying the daily monitoring and activation/deactivation fees.<sup>1</sup>

As of March 2012, the North Dakota Bureau of Criminal Investigation had 294 TAM bracelets available for use by offenders assigned to TAM. North Dakota does not use home breath-testing equipment as part of its program. In general, the approach to use of TAM has been that offenders will *not* be assigned to it unless they qualify, with the assumption that it is preferable to have offenders appear in person for tests. Some officials, however, expressed the opinion that the program would benefit from greater access to and use of TAM equipment and possibly the use of home alcohol-monitoring equipment.

North Dakota has developed a Web-based application for use in administering the program. The application stores participant information such as name, date of birth, gender, address, eye and hair color, weight, contact information, employer information, program status, TAM-related information, payment balance, and test results. Program officials at the State level have offered to provide a copy of the database and Web programming for use by jurisdictions or other States interested in using it as part of their own 24/7 sobriety program.

---

<sup>1</sup> Sobriety Program Guidelines: [www.ag.state.nd.us/TwentyFourSeven/OtherInfo/Programguidelines.pdf](http://www.ag.state.nd.us/TwentyFourSeven/OtherInfo/Programguidelines.pdf)

## **Data on Offenders in Program**

As of June 2012, 3,703 offenders had participated in the program since its inception in 2008. Of these, 408 were active, 2,531 had graduated, 589 failed to graduate, and 175 reoffended while on the program. Of all scheduled tests from the beginning of the program until May 7, 2013 (N=321,386), 96.4% were successful. In .5% of the cases, offenders failed the test, and in 1.0%, offenders failed to appear for the test. For 2.1% of scheduled tests, offenders were excused because they had made prearrangements to miss a test with a verifiable excuse or they missed a test but later provided valid proof to excuse the absence.

Few offenders are assigned to drug testing. An official in Burleigh County estimates that, of the 944 participants in the county since the program started, about 6 had been monitored for drugs (using a patch) and only 1 tested positive for drugs.

## **Program Outcomes**

Neither the State nor the counties participating in the program have conducted research into the effects of the program on recidivism. Most officials believe that offenders are generally less likely to drive under the influence of alcohol while on the program. They are uncertain as to whether there is any effect on recidivism after offenders have left the program or on reduction of alcohol-involved crashes in their area. Officials have listed the benefits of the program as including increased public safety; increased safety of parents, spouses, and children of offenders; less time spent in jail by offenders; improved treatment prospects for alcohol-dependent offenders; less disruption to businesses due to absenteeism caused by alcohol problems and incarceration; and most of the costs of the program are borne by the offenders.

Officials report that the period of relative sobriety enforced by the program is useful in getting some offenders to think more clearly and to begin making decisions that are more responsible. The increased substance-use monitoring of offenders has been useful in identifying offenders with more serious alcohol problems and directing them to an intervention that is more aggressive. Officials report that defense attorneys were initially against the program but subsequently found that their clients were easier to work with while on the program due to their relative sobriety.

Officials have no data on the cost of incarceration for offenders who have been removed from the program due to violations or incarceration cost savings for offenders who have successfully remained in the program. Some officials reported that mandatory sentences for some offenders are sometimes reduced significantly for program participation, which suggests that jurisdictions must be experiencing some reduction in costs associated with incarceration. Because relatively few offenders violate the program and because jail stays associated with violations are relatively short (1-2 days), the costs of incarceration related to program violations are likely relatively small.

Researchers from the RAND Drug Policy Research Center have been collecting data on offenders in the program to conduct a study of program outcomes. RAND released a report on 24/7 in November 2012; however, analyses were limited to data from South Dakota's program. North Dakota State University has reportedly been working on a study related to the North Dakota program.

## **Program Costs**

Breath tests are \$1 each (\$2 per day). Offenders must pay one week's fees (\$14) in advance in cash. Offenders participating in urinalysis testing pay a fee of \$5 per test. If the offender has a positive urine test, the defendant pays \$12.50 for laboratory confirmation of the urine test. Each defendant participating in drug-patch testing pays a fee of \$40 per drug-patch test. Offenders assigned to TAM

pay \$5 per day for monitoring plus a \$25 installation fee and a \$25 deinstallation fee. There is no indigent fund; however, offenders who can show hardship may obtain a waiver of fees.

Officials could not provide specific numbers for costs of administering the program but can say that the costs paid to local testing stations by offenders participating in the program offset the costs of administering the program. Thus, they consider the program as self-sufficient.

Most of the effort required to operate the program is expended by the sheriffs involved in testing, administration, and handling of program violators. Burleigh County has been one of the most active counties in the State using the program. Burleigh County contains Bismarck, and is the second most populous county in North Dakota after Cass County (which contains Fargo). Burleigh County was 1 of the 12 counties participating in the pilot program and, as of March 2012, has conducted about one third of all tests since the program began. The testing facility there has about 50 offenders appearing twice a day for breath tests. Tests are conducted for an hour in the morning and an hour in the evening. One staff person is dedicated to conducting the testing during these times. Staff time for testing is therefore about 2 hours per day, 7 days per week. An additional 30 minutes is spent each day entering breath-test data into the database. These figures do not include time spent on offenders assigned to TAM devices. Offenders using drug patches are rare and only come in every 10 to 14 days. Changing a drug patch takes about 15 minutes. Sheriffs in Cass County report similar workloads related to test administration. Judges, prosecutors, probation officers, and parole officers in Burleigh and Cass Counties report that, once the program was established and procedures were streamlined, they spent relatively little time involved in tasks related to the program.

## **Challenges**

Following are the primary challenges to the program:

- Obtaining and sustaining cooperation of judicial, corrections, and law enforcement personnel necessary to assign offenders to the program.
- Turnover in staff, as well as requirements for periodic recertification, have created a challenge in ensuring that staff remain sufficiently well trained.
- Unwillingness of some judges to assign offenders to the program and among some law enforcement agencies to providing testing.
- Inconsistencies in the way the program is used by judges, which complicates program administration for sheriffs. Multiple officials suggested that, although it is important to allow judges' discretion in assigning offenders to the program, guidelines for judges on setting requirements for participation might be useful.
- Inconsistencies in the nature and timing of sanctions, due to differences in how offenders are assigned to the program, can result in an appearance of unequal treatment of offenders charged with the same offense. There have been concerns as to whether the emphasis on immediate incarceration for program violators constitutes lack of due process.
- Challenges to the immediate incarceration of violators. Probation officers in one county began the program with the practice of taking program violators directly to jail. This practice was challenged, with the result that probation violators had to have a court hearing before they could be incarcerated. A solution was for probation officers to have judges provide a court order to assign offenders to the program. As with those assigned to the program as a condition of bond, offenders on probation who violate the program when it is court-ordered can be incarcerated immediately.

- Lack of access to defense counsel. Program participants who violate the program in the evening will have difficulty reaching defense attorneys after hours. This sometimes results in cases in which offenders spend the night in jail, then go to a court hearing in the morning before their lawyer can be contacted and arrangements made to have counsel present.
- Inability of some offenders to participate. Some prosecutors reported that there are offenders who might benefit from the program but whose work schedules and/or distance from testing sites preclude twice-daily testing. When this situation is coupled with a lack of enough TAM equipment, prosecutors will allow offenders to be unmonitored rather than force them to participate in twice-daily testing that risks their employment. Increased access to TAM equipment or use of home alcohol-testing equipment was suggested as a potential solution to this problem.
- Undetected drinking by offenders. Officials acknowledged that it is possible for offenders to drink alcohol undetected by drinking relatively small amounts and timing drinking so they are alcohol-free by the time of the next test. They believe, however, that many offenders will ultimately be caught due to drinking more or later than is possible to pass the test. Those who manage to avoid detection are likely drinking far less than they would be were they not participating in the program.

## **Lessons Learned**

It is important to maintain consistency throughout the different jurisdictions administering the program, making certain everyone operates under the same guidelines. Consistency can best be maintained by facilitating communication throughout the program among all agencies involved in the program.

It is beneficial to start the program with a pilot test to establish procedures and modify them as necessary based upon experience before attempting to use the program with a large number of people. Even after the program has been established statewide, procedures can be streamlined and communication can be improved at the local level to improve the way the program functions locally.

When educating officials about the program, attempts should be made to reach not just those who *will* be involved, but also those who *may* be involved in program implementation (e.g., judges and prosecutors who do not normally handle DUI cases but may fill in for those who do).

## **Potential Issues for Transferring to an Urban Area**

Officials believe the program will likely work wherever it is attempted as long as the program has access to the necessary staff, equipment, and means to impose consequences immediately. North Dakota program officials identified the following issues that might affect the success of a twice-daily breath-testing program in an urban environment:

- The sheer number of offenders who may be assigned to the program may be a barrier, either because too many offenders may be converging on a testing facility or due to the costs of providing additional facilities to reduce the number of tests at a single facility.
- Urban programs may benefit by reduced travel distances to testing facilities, though that benefit may be countered by issues related to population density (e.g., traffic and parking problems).
- In North Dakota, putting violators in jail has not resulted in jail overcrowding. If the program results in overcrowding in an urban environment, it is unlikely to be feasible.



- If, for a 24/7 program in an urban environment, it becomes necessary to test in a location other than at the jail facility, it will be necessary to transport violators to jail from remote testing locations. This would increase the cost of the program, possibly making it too costly. It would also lose the advantage of allowing offenders at the testing facility to see violators taken immediately to jail.
- Officials in rural jurisdictions believe that it is significantly easier for them to find offenders with warrants for their arrest due to failure to appear for testing than it would be for officials in urban environments.
- Prior to implementation in an urban environment, officials need to find a place to pilot test it. Implementation should take place gradually so that officials involved in the program can learn and refine procedures with a subset of the number of offenders who may be eligible for the program. The number of participants can be expanded later by increasing the number of judges, courts, and jurisdictions using the program and the types of offenses for which the program is assigned.

## ***South Dakota 24/7 Sobriety Program***

### **History and Overview**

The South Dakota 24/7 Sobriety Program is a sobriety-monitoring program aimed toward repeat DWI or DUI offenders, first DUI offenders with very high BACs, and similar offenders who have had repeated convictions related to alcohol abuse. The program was initiated in the early 1980s by the prosecutor in Bennett County at the time, Larry Long. Long felt that if he could find some way to keep most of these alcohol offenders sober, it might be better and more cost-effective than sending them to jail. He noted that 72% of male offenders in jail and 66% of female offenders in jail were diagnosed with alcohol dependence. As an alternative to jail for these repeat offenders, Long offered them a program in Bennett County where they came to the Sheriff's Office twice a day (at about 7 a.m. and 7 p.m.) for alcohol breath testing. If the offenders provided no positive BAC samples during a specified period, they were released from probation. If they had any positive BACs, they went to jail for a few days.

When Long became the South Dakota attorney general, he convinced the South Dakota legislature to provide a small amount of funding to pilot test the program in Minnehaha, Pennington, McCook, and Tripp counties beginning in January 2005. A compliance rate of 99% for the twice-daily breath testing was reported for the pilot test (i.e., 99% of breath tests were negative). The average period that an offender participated in the 24/7 program was about 4 months for offenders who had no positive BAC tests or detected drug use. The pilot test was considered successful and the South Dakota legislature adopted H.B. 1072 in 2007, which established the 24/7 program statewide. The legislation provides guidance and provides for administrative rules promulgated by the Attorney General for counties wishing to participate in the program. In 2008, H.B. 1065 and H.B. 1067 revised some of the provisions and appropriated \$400,000 to defray some of the costs of the program. The program is now operating in 60 of the 66 counties in South Dakota (only Shannon, Sully, Todd, Jones, Buffalo, and Hutchinson counties have chosen not to use the 24/7 program to date). In 58 of the 60 counties that are using the 24/7 program, offenders report to the county sheriff's offices for testing. In two counties (Tripp and Walworth), the sheriff's office declined participation so local police agencies in each county are administering the twice-daily breath testing program instead. There is one sheriff's office in each county, with the number of sheriff's officers ranging from 1 or 2 in the smaller counties, to up to 200 or more in the larger counties. The two largest counties and two smaller

counties have hired and trained civilians to help administer the twice-daily breath testing. A few counties have two testing facilities. The number of offenders appearing each day for the twice-daily breath testing ranges from 1 or 2 in small counties to 400 or more in Minnehaha County. An official estimated that it takes about 20 seconds to administer a breath test. Due to limited staffing resources, there is one sheriff's office that only uses TAM devices and does not conduct twice-daily testing.

During an offender's hearing, a judge may assign the 24/7 program as a condition of bond or sentencing. Depending upon the circumstances, judges may also require these offenders to undergo treatment, attend victim impact panels, or perform a certain number of hours of community service. The only alternative to the 24/7 Sobriety Program is to serve the original jail sentence.

Although judges mainly use the 24/7 program as an alternative to jail, probation officials also report using 24/7 as a sanction to modify behavior and serve as a short-term transition to sobriety. Probation officials report that the 24/7 program makes it easier to monitor offenders' behaviors.

## **Program Description**

Offenders with at least one prior DUI conviction within the past 10 years are eligible for the 24/7 program. First DUI offenders with BACs of .17 or greater or those who have lower BACs but are diagnosed with a drinking or substance abuse problem are also eligible. Felony offenders sentenced to long jail terms are typically not eligible for the program. Any offender applying for a work permit to drive to and from work must enroll in 24/7 to receive that permit. Eligible offenders are normally sentenced to jail but can avoid some jail time if they agree to the requirements of the 24/7 program, which include no consumption of alcohol, no visiting bars, and breath tests each day at 7 a.m. and 7 p.m. To accommodate some offenders' work schedules, two counties use a second testing facility with different reporting times. If the offenders have indications of other drug abuse, the judge can include periodic urinalysis tests and drug-patch tests. If offenders miss or fail any of the tests, warrants for their arrest are issued and they are sent back to jail until a judge decides how to handle their cases. Multiple violations of the program result in offenders serving their original jail sentence.

Some of the more egregious offenders (with three or more prior offenses) may be required to serve a jail sentence before assignment to the 24/7 program. The program also includes domestic violence offenders, fitness-for-child-custody offenders, and any other nonviolent offenses where the judge may consider alcohol as a contributing factor. (Note: South Dakota does not have a public intoxication law.)

After sentencing, offenders may be assigned a court services officer. All offenders must agree to:

- Twice-daily breath tests around 7 a.m. and 7 p.m.;
- Urinalysis tests when directed (usually every 10 days);
- Drug-patch testing when determined (every 10 to 20 days or so);
- Pay for each assigned test: \$1 for each breath test, \$10 for each urinalysis test and \$40 for each drug-patch test; and
- Pay a participation fee of \$1 per day up to a \$30 limit.

Offenders who cannot appear twice a day for breath tests (because of their working hours, the distance they must travel in rural counties, and other legitimate reasons) must agree to wear a TAM ankle bracelet instead. This includes offenders from out-of-state if that State has a TAM program. If offenders use TAM units, they agree to pay \$5 a day to cover the rental costs and an additional \$1 a day participation fee (total of \$6 a day). Funds collected for the breath tests plus \$1 per day for each

active TAM device remain with the local sheriff's office. These funds can only be used for 24/7 program expenses. The \$1 per day participation fee for the first 30 days of twice-daily breath testing and \$1.80 per day per active TAM bracelet goes into the South Dakota 24/7 fund. True indigent offenders who cannot afford the testing costs are generally deemed not eligible for 24/7.

Failures registered with TAM are treated the same as breath-test failures—the offender goes back to jail until a judge decides on his or her case. This could be anywhere from a few hours to 2 to 4 days, depending upon the judge. Recently, a small number of offenders agreed to have an alcohol ignition interlock installed on their vehicles. They are required to use the interlock twice a day at specified times and download the BAC results to a Web site that the local sheriff's office can monitor daily. Offenders pay for installation and daily fees associated with the interlock.

Some offenders are issued a work permit (or restricted license) that allows them to drive only to and from work, school, and the breath-testing facility. Some offenders get rides from family or friends to the breath-testing facilities, and a few offenders use public transportation.

Offenders also sign agreements to:

- Not possess or consume any controlled drug or substance, nor be knowingly present where other persons are doing so;
- Not consume alcohol or enter a bar or establishment where alcohol is offered for sale and consumed on the premises; and
- Not consume any of the following for at least 30 minutes before the PBT testing: mouthwash, toothpaste, cough syrup, carbonated beverages, and food or tobacco products.

### **Data on Offenders in Program**

A report by the office of the attorney general in South Dakota revealed the following statistics:

- From February 2005 to December 2011, 20,483 offenders provided twice-daily breath tests. Of the 4,390,000 breath tests administered, the pass rate was 99.3%. A breath-test failure is considered a BAC reading above .00. If a low BAC is detected (.01 or .02), a second test is administered 15 minutes later. If the second test is .00, the offender has passed the test.
- From 2007 to 2011, there were 15,582 no-shows for 3,547,099 tests for a no-show rate of 0.4%. These offenders usually appear for the next scheduled test and are arrested at that time. If the offender does not appear for 1 or 2 days, a warrant is issued for his or her arrest.
- From July 2007 to December 2011, 2,153 offenders provided urinalysis testing. Of 52,809 tests administered, the pass rate was 96.9%.
- From February 2007 to December 2011, 109 offenders were required to wear a drug patch. Of 1,179 tests from the drug patch, the pass rate was 86.6%.
- From November 2005 to December 2011, 3,659 offenders were on TAM devices (524,516 days monitored). There were 77.2% who were fully compliant (no drinking events detected; no tampering) while on the bracelet. There were 337 confirmed drinking events and 1,185 confirmed tampering events.

A report by Loudenburg, Drube, and Leonardson (2010) provided the following statistics:

- In 2009 (the most current year with complete data available), of the 5,295 offenders in the 24/7 program, 75% were male and 25% were female. Almost two-thirds (63%) were 21 to 40 years old.
- In 2009, 59% of the offenders in the program were enrolled for DUI offenses: 14% for a first DUI offense at BACs  $\geq .17$ ; 25% with two DUI offenses; 15% with three DUI offenses; 4% with four DUI offenses; and 1% with five or more DUI offenses. The other 41% of the offenders were assigned to the program for domestic violence and other alcohol-related crimes.
- Some judges wean 24/7 offenders from twice-daily testing to once-a-day testing. In 2009, 73% of the offenders were on twice-daily breath testing at some point, 5% were ordered to once per day breath testing, 11% were ordered to be on a TAM device, 10% were ordered for a urinalysis, and 1% were ordered to be on the drug patch.
- In 2009, most of the offenders were monitored for twice-daily breath testing for 31 to 60 days (25%) or for 91 to 180 days (24%). Some (13%) were monitored for 181 to 365 days.
- In 2009, more than half (54.5%) of the offenders passed all of their breath tests. Of the 45.5% that had failures, 19% failed one test, 12% failed two tests, 5% failed three tests, and 9% failed four or more tests. Offenders with chronic breath-test failures or no-shows are typically assigned to a TAM device. If they continue to have drinking events on TAM, they are sent to jail to serve their original sentence.

## **Program Outcomes**

According to the study conducted by Loudenburg et al. (2010), the DUI recidivism rates after 3 years for 24/7 first offenders (with BACs  $\geq .17$  upon arrest) was 14.3% compared to 14.8% for similar offenders not on 24/7 (no significant difference). However, there was a significant 74% reduction in recidivism after 3 years for DUI second offenders (3.6% for the 24/7 offenders versus 13.7% for comparison offenders), a 44% reduction in recidivism for DUI third offenders (8.6% versus 15.3%), and a 31% reduction in recidivism for DUI fourth offenders (10.7% versus 15.5%).

Although assumed to be a contributing factor, no direct association between the 24/7 program and reductions in impaired-driving fatal crashes or crashes in general have been found to date. According to the 24/7 program coordinator, South Dakota's campaign to reduce fatal crashes has included numerous approaches: increased DUI patrols, sobriety checkpoints, and an extensive DUI public education and information program, in addition to the 24/7 program.

The RAND Corporation conducted an independent evaluation of the South Dakota 24/7 program using data from 2005 through 2010 from counties that had adopted the program versus those that had not. According to the study, there was a 12% reduction in repeat DUI arrests and a 9% reduction in domestic violence arrests, but no significant changes in traffic crashes associated with the adoption of the 24/7 program (Kilmer et al., 2012).

## **Program Costs**

The 24/7 program received an initial \$400,000 from the State legislature for start-up costs when the program went statewide. PBTs were purchased for each participating county. Some counties hired civilians to administer the breath tests. The tubes for the PBTs were purchased by each county sheriff's office at about 3 cents each.

Because the offenders are paying for the breath tests, the TAM system, and drug tests, the 24/7 program is reportedly self-sufficient. Offenders participating in twice-daily testing pay \$1 for each breath test, \$10 for each urinalysis test, \$40 for each drug-patch test, and a participation fee of \$1 per day up to a \$30 limit. Offenders using TAM pay \$6 a day (\$5 for TAM plus the \$1 participation fee). Few offenders are considered to be indigent and unable to pay the fees (<1%). The sheriff's office in at least one county waives the fees for those few who are unable to pay. Although the collection rate for fees is high in most counties, one county did report a collection rate of only 66%.

It can be conservatively estimated that the 24/7 program has saved South Dakota the \$70 per day in costs for 400,000 jail days (20,000 offenders in the program times an average of 20 days in jail for the repeat and high-BAC offenders). This has resulted in a cost-benefit of \$400,000 (initial cost)/\$28,000,000 (savings in jail costs) or a benefit of \$70 saved for every \$1 spent on the 24/7 program.

## Challenges

The South Dakota 24/7 program coordinator has indicated the following challenges:

- The inconsistency of the judges has presented some challenges. Some administer jail sentences immediately upon a test failure or a no-show. Others give the offenders second and third chances before they give them jail sentences. Some judges put offenders in jail for the remaining time of their original sentence for a single test failure.
- Judges also used to waive the 24/7 established fees for many offenders. Administrative rules were changed and now only the county sheriff or the State attorney general can waive any 24/7 fees.
- In the pilot test for using alcohol ignition interlocks, the first interlock version did not perform properly in the minus 20- and 30-degree weather in some parts of South Dakota. This is a potential issue if interlocks are to be used for remote testing under the 24/7 program. The new vendor appears to have overcome the low-temperature problem.

## Lessons Learned

The 24/7 program is a *sobriety* program and not an *abstinence* program. Although some offenders remain abstinent, a few continue to drink in moderation during the twice-daily testing. Offenders who continue to drink do not reach very high BAC levels; otherwise, they would fail some breath tests. Although total abstinence is the desired goal while on the program, officials recognize minimal alcohol consumption between tests is possible for those testing twice a day. Because TAM involves constant monitoring, minimal consumption of alcohol is more likely to be detected.

The South Dakota 24/7 program coordinator expressed the belief that twice-daily breath testing may be more effective than TAM in reducing recidivism because offenders must be face-to-face with a law enforcement officer in the sheriff's office, with jail just a few feet away. Some offenders witness other offenders who fail tests and immediately go to jail. This may be a powerful deterrent to many offenders.

A reported disadvantage for TAM is the delay from when a drinking event occurs to when the TAM data are transferred to a TAM monitor and when a report of a TAM violation is provided to program officials. In a jurisdiction in which the TAM unit downloads and transfers data daily, this process could result in a situation where a 7 a.m. or 7 p.m. breath test could reveal a positive BAC

hours before the TAM system reports it. In a jurisdiction in which downloads are less frequent than daily, the delay would obviously be even longer.

### **Potential Issues for Transferring to an Urban Area**

- Rush-hour traffic may severely hinder offenders from reporting on time to their law enforcement facility for their twice-daily breath testing (at 7 a.m. and at 7 p.m.). Different times in the day may have to be set up for the testing. According to the South Dakota 24/7 program coordinator, the sheriff's office has the authority to modify the testing times. Modifications are made for offenders whose work schedules or other obligations do not allow them to test at the "normal" times. The only "rule" for scheduling is that the testing be 12 hours apart.
- Police facilities may be overburdened with numerous offenders reporting for the breath testing. Reporting times and reporting facilities will need to be carefully scheduled. On the other hand, it only takes about 20 seconds for an officer to administer a breath test. The Minnehaha County sheriff's office, the largest in South Dakota, tests 400 or more offenders each morning and evening without a significant strain on their staffing or facility.
- There may not be adequate jail facilities for offenders who fail tests, which was a worry in South Dakota. In most counties, however, so few breath tests are failed (<1%) that it turned out not to be an issue. In contrast, some counties reduced the jail time for failures and no-shows to 12 hours for a first offense because of overcrowding.
- Due to greater caseloads in urban areas, several days or weeks may pass before an offender is brought before a judge due to a failed or missed test. On the other hand, judges sometimes can decide on a sanction for a failed test during telephone conversation with the sheriff's office.

### ***DUI Supervised Probation Program: Fremont County, Wyoming***

#### **History and Overview**

In 2004, the county attorney in Fremont County, Wyoming, and Injury Prevention Resources (IPR), a nonprofit organization providing public health and safety services throughout the county, designed the DUI Supervised Probation (DSP) program. The purpose of the program was to create a mechanism for providing intensive supervision to offenders who had violated the State's DUI law. Before creation of the DSP program, nearly all DUI offenders in Fremont County were placed on unsupervised probation after conviction. Without oversight, many offenders did not comply with court orders—by 2001 more than half of those convicted of DUI did not abide by one or more conditions of their probation—and the perception became widespread that there were no real consequences for DUI. Because of the lack of monitoring, the DUI problem increased, as did the proportion of second and subsequent offenders. For several years before the establishment of the DSP program, two judges in Fremont County had been ordering DUI offenders to be breath tested twice-daily during the pre-trial period as a condition of bond, but there was a sense that it was important for this monitoring to be expanded to hold offenders responsible for sobriety longer (i.e., through the probation period). Thus, the DSP program was established to provide this mechanism for expanded supervision and alcohol testing for those convicted of misdemeanor DUI in Wyoming.

Alcohol monitoring of offenders involves several entities in Fremont County and the State. The DSP program managed by IPR (the subject of this case study) provides court-ordered supervised

monitoring to misdemeanor DUI offenders (those convicted of up to three DUI offenses within 10 years) who are required to participate in alcohol testing as a condition of probation. (Other than under limited circumstances, such as when an offender is using TAM pre-trial, IPR does not supervise offenders on bond.) Felony DUI offenders (four or more convictions within 10 years) are supervised post-conviction (i.e., during their suspended sentence or parole) by the Wyoming Department of Probation and Parole. Offenders for whom twice-daily alcohol testing is required as a condition of bond (typically only misdemeanor cases, as those facing felony charges rarely receive bond while awaiting trial) are supervised and monitored for alcohol by either the Fremont County Alcohol Crisis Center in Riverton, or the Fremont County Detention Center in Lander. (These sites also provide testing for DSP program participants.)

Prosecutors in Fremont County routinely request twice-daily testing as a requirement for bond for those charged with a repeat misdemeanor DUI offense or a first offense with a high BAC (> .15) because it is believed that offenders are most vulnerable to reoffending during the pre-trial period. Officials indicate that most offenders with misdemeanor charges are being monitored for alcohol for about 10 to 12 months total—about 4 to 6 months while awaiting trial and another 6 months or so following conviction. The length of monitoring for those convicted of multiple DUI depends on the results of the State-mandated substance abuse evaluation required for all DUI offenders. For multiple offenders, the evaluation must be conducted before conviction and available for sentencing. For first-time DUI offenders, the evaluation may be conducted either prior to sentencing or post-conviction as a condition of probation.

Wyoming has no statewide legislation establishing a traditional twice-daily alcohol-testing program, as was developed in neighboring rural and frontier States of Montana, North Dakota, and South Dakota. Instead, the DSP program was developed by a previous county attorney and IPR officials. Participation in alcohol monitoring is not a mandatory sanction required by law for repeat DUI offenders. Thus, clients are assigned to the program solely at the discretion of judges and the request of the prosecuting attorney.

The DSP program provides an intermediate level of monitoring between unsupervised probation and DWI/drug court. It is an ISP program that uses twice-daily testing as one component of the alcohol-monitoring function it provides. The program is designed as an individualized, comprehensive, and long-term program. Clients are required to meet frequently and face-to-face with their assigned probation agent throughout the length of their probation. Abstinence from alcohol and illegal drugs is required, and clients must be employed full time, attend school full time, or perform community service. Participation in the DSP program also involves obtaining a substance-abuse evaluation, completing treatment, attending victim impact panels, paying fines and fees, and often completing a DUI-education course and regularly attending Alcoholics Anonymous (AA) meetings. A DSP probation agent's main objective is to balance supervised strategies aimed at enforcing rules with those designed to assist clients in changing behavior.

## **Program Description**

Offenders enter the program either as the result of a judicial or court order (penalties are at the discretion of judges) or a plea bargain. Eligible offenders are adults (aged 18 and older) who have no pending charges for violent offenses and who are not currently supervised by any other agency. Most DSP participants are typically drivers convicted of DUI for the second time within 5 years and ordered by the court into the DSP program. Offenders who refuse to report to the program or who, during program participation, refuse to comply with any additional requirements imposed because of program violations are typically sentenced to the remaining portion of their original jail term. A

prosecutor in Fremont County indicated that, among impaired-driving offenders eligible for alcohol monitoring, annually about 98% participate in the program and only 2 to 3% opt for jail because they know they are going to fail their tests. The prosecutor also noted that with multiple offenders, there is usually a request from prosecutors for alcohol testing and judges are hard pressed to deny it. Rarely, when offenders live in the outer reaches of the county where TAM may not be an option, judges have allowed an offender not to participate in monitoring.

The DUI offender population of the program consists of 65% repeat DUI offenders, 30% first-time offenders with BACs of .15 or higher, and 5% first-time offenders with BACs below .15 or a DUI conviction due to drugs other than alcohol. Currently, the program includes only impaired-driving offenders; IPR does not provide supervised probation for individuals convicted of other non-traffic-related alcohol offenses. The core of the program has remained constant since it was established in 2004. There have been some minor adjustments (e.g., the addition in December 2011 of TAM), but there have not been major changes over the past 7 to 8 years.

During the first 3 months, offenders are required to meet with their probation agent at least once a week. Visits may then be reduced to every 2 weeks if the offender remains compliant with all conditions of probation and later (after 9 months of compliance) further reduced to monthly. These in-person visits are supplemented by telephone contacts, as needed.

Alcohol monitoring also occurs in three distinct phases, with every offender placed on twice-daily BAC testing for the first 60 days of probation, followed by 90 days of intense random testing (about 18 to 22 times throughout the period, including mandatory testing on holidays), and finally less-intensive random testing. For the two phases of random testing, each month 25 to 30 offenders are randomly selected by computer and notified of the need to report to IPR within 2 hours to provide a urine sample. Failing to provide a biological sample within the timeframe or having a positive BAC at any phase of program participation is grounds for sanctions.

The DSP program was developed with the understanding that those with impaired-driving problems must make major lifestyle changes that are not always easily accomplished. There is an expectation that offenders may make some missteps; thus, it is necessary to build time into the program to allow for mistakes and enable offenders to overcome those challenges before the desired behavior will be fully adopted. Typically, a first violation results in a warning. A second violation results in extending the twice-daily testing period (or moving an offender back into the twice-daily component if they had progressed to subsequent phases of alcohol monitoring). A third violation of program requirements results in an assignment to TAM. After placement on a TAM device, if the offender still cannot follow the program, he/she is referred back to the court system (also an option on the second and third violations if the offender does not accept the applicable sanction). Referral to court means revoking probation and reinstating the jail sentence, or for offenders who have spent significant time in the program, restarting their probation period. The DSP program provides probation agents substantial discretion to work directly with an offender and use the less severe sanctions (warning, extension of twice-daily testing, and TAM) before returning the offender to the court system. This is seen as consistent with the focus on getting the offender healthy to promote behavioral change (i.e., reducing impaired driving) rather than punishing him/her. Consequently, many program violations are handled by the probation agent, without a judge's involvement. When offenders fail their BAC tests, it is estimated that 99% accept the additional requirements imposed rather than opting for jail time. Program officials report that about 95% of offenders receive a verbal warning at some point in their program participation, 65% violate a second time and have their time in twice-daily testing extended, and about 4% of offenders are required to use a TAM device.



In addition to alcohol, all program participants are randomly tested each month for illegal drugs and prescription pain relievers. To conduct the drug testing, urine samples are collected. When there is a presumptive positive result obtained from the onsite testing, the sample is sent to the State laboratory for further analysis. When samples are positive for alcohol or marijuana, the offender loses credit for the time he/she has already participated in the DSP program. If the sample is positive for other drugs, probation is revoked, the offender goes to jail to serve the original sentence, and new charges may be filed.

The DSP program is currently conducted in four townships in Fremont County—two very rural locales, Dubois and Pavilion, and two bigger towns, Riverton and Lander. There are three BAC testing facilities—one in Lander and two in Riverton. Participants in other locales within the county, including the Wind River Indian Reservation, must report to one of these three facilities. In Lander, BAC testing is conducted by the 7 to 10 sheriff's deputies who work in the detention facility; in Riverton, BAC testing is conducted by two DSP probation agents in one location and five staff at the Fremont County Alcohol Crisis Center who rotate that responsibility. For offenders who report to a BAC testing facility twice daily, about 75% rely on a family member or friend to drive them there. Another 20% walk or ride a bike to the testing facilities, and 2 to 4% rely on public transportation from the reservation. The current no-show rate among program participants is less than 5%.

### **Data on Offenders in Program**

Of the 154 DSP participants active in the program as of February 2012, 114 were in the random-testing phases and 40 were in Phase 1 and being monitored twice daily—13 were in their initial 60-day period in the program, 8 were in extended daily testing because they had a violation during their initial 60-day period, and 19 were receiving sanctions for a drinking violation once they had progressed beyond the daily testing phase. The 40 participants enrolled in twice-daily testing were distributed as follows across three alcohol-monitoring technologies: 15 (37.5%) were reporting to a facility to provide a breath sample via a PBT; 20 (50%) were assigned to TAM (especially serious repeat offenders or those who work out of State), and 5 (12.5%) were providing breath samples via a small alcohol-monitoring device with a camera for use in the home with offenders who do not have vehicles or for whom it would be too difficult to travel to a BAC testing facility. The 114 offenders in Phases 2 and 3 were on random alcohol monitoring and report to IPR to provide a urine sample when notified that they have been selected for testing. Data from the program's first 3 years indicate that the population of offenders in the program is primarily male (76%), young adults aged 22 through 40 (57%), predominantly White (40%) and Native American (53%). Informed estimates suggest that 75 to 80% of program participants have a diagnosis of alcohol dependence and receive some form of treatment from Level 1 (outpatient) to Level III (residential).

### **Program Outcomes**

Data on participants' progress in the DSP program is recorded in a computer database, including all BAC test results, clients' current status in terms of compliance/noncompliance, whether they have ever been noncompliant, and information about the specific requirements an offender failed to uphold (e.g., started drinking again, failed to complete treatment, did not attend victim impact panels or go to AA meetings). Case notes provide specific details, such as reasons for closing out a case—success, failure, and different reasons for failure. These records are stored indefinitely in the event they are ever requested by the court.

Data are not available on the number of BAC tests performed annually or the pass-fail rate. No program evaluation has been conducted to date of the DSP program in Fremont County to document

outcomes, such as reductions in offender drinking and impaired-driving recidivism or the overall prevalence of impaired driving in the county.

Process data and anecdotal evidence suggest that the program has beneficial effects. Evidence of program success is suggested by the 79% average compliance rate maintained over the first 5 years (Injury Prevention Resources, 2013). The average compliance rate is the ratio of those who successfully completed the program (upholding all requirements by the end of participation even if missteps occurred along the way) to those who entered the program. As noted earlier, the philosophy of the program is to try to create long-term sustainable behavioral change during an offender's participation. By the end of that period, if offenders have complied with all requirements, then the program is seen as having succeeded and it is hoped that the likelihood of their reoffending has been reduced once they are no longer being supervised.

In addition to the compliance rate, officials note other program benefits including:

- Keeping offenders accountable to remain in compliance with court-ordered requirements for probation;
- Teaching personal responsibility and discipline;
- Maintaining sobriety; and
- Providing offenders with a legitimate excuse for not drinking with others.

Anecdotal reports from program participants when they complete the exit interview indicate that the structure provided—both the meetings with the probation agents and the enforcement of sobriety through alcohol and drug testing—are deemed by offenders to be helpful in making required behavioral changes and successfully complying with court-ordered probation.

## **Program Costs**

Estimated costs of the program for offenders are \$2 per day if reporting for twice-daily testing, \$4 per day if using the in-home breath-testing device, and \$5.50 per day for TAM devices. Provisions are made for indigent clients. Most reside in Set Free Church, a short-term facility for homeless residents, an area homeless shelter, or the Fremont County Alcohol Crisis Center. Accommodations for indigent clients are made so that they can postpone paying for BAC tests until they are employed.

The twice-daily alcohol-monitoring portion of the program is considered largely self-sufficient regarding costs to the jurisdiction. Clients coming in for breath tests pay \$1 for each BAC test. The tubes purchased in bulk by IPR for breath testing cost less than \$0.25 per tube; thus, 75% of charges to offenders can cover the overhead costs. Offenders using the in-home testing device pay the outside company that manufactures the device, so IPR does not incur the costs of that technology. When the TAM option was instituted in the program, the county received a grant from the State's Department of Transportation for program start-up costs (i.e., purchasing 20 bracelets, staff training). Clients using that technology pay for the cost of monitoring. Because the program uses existing space, the costs of facilities are minimal. Estimates of staff time required to manage the alcohol testing of clients in the twice-daily alcohol-monitoring phase are 4 minutes per day per offender tested with a PBT (currently 15 clients) and 20 minutes (to review data) every 2 weeks per offender using the in-home testing device (currently 5 clients). For offenders using TAM (currently 20 clients), the estimates are 30 to 45 minutes per week per offender to monitor their compliance and 2 to 3 hours plus court time per week per offender who is not in compliance.

There are no estimates currently available on the number of days of incarceration for failed BAC tests. As noted earlier, the percentage of cases of sustained noncompliance—when an offender who fails a BAC test refuses to accept the additional program requirements imposed—is very small (estimated at less than 1%). If an offender refuses to participate in the program from the outset, probation is revoked and he/she serves out the entire jail sentence. Jail costs in Fremont County are \$65 a day.

## **Challenges**

Challenges for the program, and in particular probation agents, concern efforts to assist clients who have recently been convicted of DUI, who often feel distressed and overwhelmed. Most often, new clients report problems with transportation and the economic costs of meeting program requirements.

The geography of Fremont County, which is large and rural, presents a dilemma for prosecutors and judges regarding how to test offenders effectively and even handedly when the population is so widely dispersed and transportation can be a problem. When an offender who lives in one of the more remote regions of the county is not required to participate in testing because of where he/she lives, this can create resentment among those who are required to participate. The challenge posed by long travel distances that may be required to access testing sites may be particularly difficult in Fremont County because there is no statewide program and thus no opportunity for residents to test in nearby neighboring counties as may occur in other rural or frontier States like the Dakotas and Montana.

Because the DSP program is not a traditional 24/7 program with testing conducted by law enforcement, there is no immediate sanction of jail time when offenders do not show up for testing or have a positive breath test. However, probation agents can address violations by imposing additional program requirements on violators. To the extent that being jailed immediately is crucial to changing behavior, the program might be strengthened by the involvement of law enforcement. As noted earlier though, the DSP program emphasis is on promoting and supporting long-term behavioral change, not punishment.

Another challenge is the lack of performance measurements of the program. Thus, although it has been in operation for about a decade, Fremont County's efforts to curb impaired driving among multiple and high-BAC first offenders has no data to gauge its success.

Finally, a challenge noted by several officials regarding the situation in Fremont County overall (i.e., beyond the DSP program) is the divergence among some stakeholders in philosophy about the benefits of twice-daily versus random testing that is reported to have developed over time. Within the last 3 years, some entities involved in supervising offenders have urged judges either to require random rather than twice-daily testing or to set general parameters (e.g., the offender is not to drink alcohol) and allow probation agents to decide how to monitor that requirement. In contrast, other stakeholders believe that the twice-daily testing provides more effective monitoring and makes it more difficult for those who are alcohol dependent to circumvent the program because they cannot successfully control drinking and time it around the 12-hour testing windows.

## **Lessons Learned**

An asset in Fremont County is the good rapport and strong working relationships that IPR staff members, particularly probation agents, have with the judges. IPR and DSP staff also make it a point to develop partnerships with the prosecuting attorney, county clerk, treatment providers, law enforcement, and other probation agencies to help them in their tasks. This, in turn, tends to help other agencies by greatly reducing court time in tracking offenders on probation. Despite the lack of

evaluation data, many officials who have contact with offenders believe that the monitoring works for those addicted to alcohol by enforcing sobriety and providing them an opportunity to think more clearly about how they are conducting their lives and ultimately make better decisions.

### **Potential Issues for Transferring to an Urban Area**

The following issues associated with developing a program such as the DSP program in an urban locale were identified:

- Given larger populations in urban areas, more attention would likely need to be paid to transportation issues (time, effort, and cost to offenders of getting to the testing facility). To accommodate offenders in urban locations, authorities may need to have more BAC testing facilities, spread out across the area.
- Related to the potential need for more testing facilities would be the need for staff to conduct testing and possibly bigger or more flexible testing windows to accommodate the larger population of offenders.
- For a program to work well, there needs to be good communication between entities overseeing the program (those managing offenders directly, county attorney, judges) to ensure everyone involved is “on the same page.” Program officials need to know the judges and have clear expectations about what they want if judges are to order offenders into the program. In less densely populated areas, such as rural locales, these working relationships are often facilitated by existing personal relationships because “everyone knows everyone else.” In urban locations, more attention may be needed up front to acquaint those overseeing the program with one another and establish good working relationships with one another if the program is to succeed.

## **Results**

### ***Summary of Core 24/7 Program Model***

Over the past several years, a number of jurisdictions in four rural States—Montana, North Dakota, South Dakota, and Wyoming—have implemented 24/7 sobriety programs to monitor alcohol use by impaired-driving offenders. The 24/7 model was initially designed to be used with offenders who had at least one previous conviction for DWI or DUI. Generally, 24/7 alcohol-testing programs require offenders to report twice daily to a central law enforcement facility to take a breath test for a reading of their BAC at approximately 12-hour intervals—once in the morning (usually between 7 and 9 a.m.) and once in the evening (usually between 7 and 9 p.m.) over 2 to 6 months. Offenders are in violation of the program if they provide a positive breath sample, fail to appear for testing at the designated time, or fail to pay program-related fees on time.

Because the 24/7 program has been implemented in rural States where offenders often have to travel long distances to test at a central facility, States also provide for the use of alternative testing methods, most often TAM technologies. Offenders may be required to participate in a 24/7 alcohol-monitoring program pre-trial as a condition of bond or post-conviction as part of their sentence, suspended jail sentence/probation, or parole. Offenders typically pay \$1 to \$2 per breath test (\$2 to \$4 a day) in an effort to make programs self-funded through offenders’ fees. Two evaluations in South Dakota indicate that the 24/7 program is effective in reducing DWI recidivism, although neither study found reductions in traffic crashes (Kilmer et al., 2012; Loudenburg et al., 2010).

## ***Evolution in 24/7 Program Concept***

### **To Whom the Program Applies**

Although most often applied initially to those charged or convicted of DWI, typically repeat offenders and first offenders with a high BAC (>.15), some programs include those charged with other alcohol-involved offenses. These other offenses may include assault; domestic violence; child abuse or neglect; underage possession of alcohol with a high BAC; vehicular battery; and infrequently, crimes such as burglary, forgery, and arson, if alcohol is deemed related to the underlying charge. Across the three rural States with statewide 24/7 programs, DWI offenders comprise 55% (South Dakota) to 87% (Montana) of the program participants. Some States' 24/7 programs include drug testing of offenders for whom use of a controlled substance is deemed to have been associated with the underlying offense (e.g., impaired driving, assault).

### **How Tests Are Conducted**

Breath tests are conducted using handheld PBTs. A positive breath-test reading is generally any reading above a minimal level considered to be the margin of error for the test device. Offenders who provide positive samples wait a short time (e.g., 10 to 20 minutes) and provide a second sample. Offenders who provide two positive samples are considered to be in violation of the program. Drug tests are typically conducted via drug patches and urine analysis and are paid for by offenders.

### **When Alternative Alcohol-Monitoring Technologies Are Used**

Some States reserve the use of alternative monitoring technologies for those offenders for whom traveling to a central facility twice a day would be impractical or too burdensome for a variety of reasons, including long distance to travel from home to a facility, inability to maintain employment (e.g., shift workers, workers who spend weeks at a time away from home at remote work sites, such as oil fields, or those who frequently travel for work), medical conditions which make travel difficult, and lack of transportation. In general, the policies regarding use of TAM are that offenders must qualify to be allowed to use it. This is largely because program officials see a benefit in twice-daily face-to-face interaction with offenders. Sometimes (depending on the court), the offenders' preferences may also be a factor in whether an alternative to twice-a-day breath testing is used (e.g., an offender may elect to use a TAM device rather than having to report twice daily so long as he/she can pay the attendant fees). Use of TAM may be constrained by the limited availability of TAM units in some locations. Home breath-testing devices are not currently being used widely as part of 24/7 programs. Some officials believe home breath testing could be valuable for offenders who are unable to get to test locations during scheduled times, though this would eliminate the face-to-face interaction. Some jurisdictions are beginning to experiment with using alcohol ignition interlocks on offenders' vehicles to take twice-daily tests (whether or not the offender starts the vehicle) and record the results for examination by officials later.

### **Where Testing Is Conducted**

Generally, 24/7 testing facilities are located at local law enforcement offices, most often the county sheriff's office or detention center where the jail is located. This makes it easy to detain an offender immediately who tests positive for alcohol for a day or more until he/she can see a judge. Immediate incarceration is deemed one of the important features of the program's success. In the three States with statewide programs, there is typically one testing facility in each county, normally the sheriff's office at the county seat. Over time, some jurisdictions have found that locating the

program exclusively at the jail was not optimal for a variety of logistical reasons, including the fact that one location could not handle the number of offenders or caused congestion in parking lots and increased wait times; thus, an additional site was leased to provide additional testing locations.

### **Who Can Conduct Testing**

Some rural States allow not only peace officers (e.g., police officers, State troopers, parole or probation officers, correctional officers) to conduct testing but also trained civilians, such as administrative staff and volunteers. This has become necessary for certain jurisdictions that are handling more than 400 offenders each day.

### **How Offenders Get to Test Locations**

Officials in 24/7 States report that offenders use various forms of transportation to travel to their twice-daily testing facility: (a) many are on a restricted driver's license allowing them to drive only to and from work and the testing facility; (b) friends and family drive some of the offenders; (c) some offenders are in the program for non-driving offenses and have completely valid licenses; (d) some offenders use public transportation if it is available and convenient; (e) some ride bicycles; and (f) some walk.

### **Programmatic Adjustments**

Over time, States and local jurisdictions with 24/7 programs have found it necessary to adapt to changing conditions. Some of the changes made to facilitate program operation include the following:

- Altering laws to facilitate the program.
- Streamlining of processes by agencies to reduce the amount of labor necessary to run the program and to increase communication between officials and agencies involved.
- Increasing the number or size of testing facilities due to overcrowding and public safety issues.
- Adding the TAM device as an alternative to twice-daily breath testing. Alcohol ignition interlocks are starting to be used on the vehicles of some offenders, and these devices are being used as a twice-daily breath-testing substitute. In-home breath-testing devices that identify the specific offender are being used in one local jurisdiction.
- Making changes to increase efficiency (e.g., individual judges changing the nature of bond conditions to eliminate the need for hearings for program violations).

### **24/7 Testing as a Sanction**

Some officials reported that, with the testing infrastructure in place, judges and probation/parole officials sometimes use daily alcohol testing as a sanction for DWI offenders who commit infractions (e.g., probation violations) as a means of punishing those behaviors. Such application of the program for the purpose of sanctioning an offender rather than to monitor drinking to promote sobriety is an extension beyond the scope of the 24/7 program as it was initially designed.

### **Cost Issues**

- One of the goals of 24/7 programs is to be self-sufficient (i.e., paid for by offenders). The fees that are charged to offenders are designed to cover the administrative costs of the

program (e.g., salaries of the officials who conduct the breath tests, the cost of testing equipment, such as breath test tubes and TAM equipment). Adjustments can be made in offender fees and program costs each year to achieve this goal.

- Generally, jurisdictions do not have programs to fund indigent offenders. The costs of breath testing are considered low enough that all offenders can afford them.
- The costs of TAM (at least \$5 to \$10 a day) are considered a barrier to its use for some offenders.
- It is uncertain to what extent the program has affected incarceration costs to jurisdictions as specific data are not available. In some cases, mandatory minimum sentences have been used both pre- and post-program implementation; thus, the number of offenders serving some amount of time in jail is not believed to have changed. For the number of days spent in jail, some jurisdictions report that many offenders may be serving no less time in jail due to program participation, whereas others report that sentences are being reduced due to program participation, thereby lowering incarceration costs. A substantial proportion of 24/7 participants fail a test or do not show up for a test at some point during program participation, resulting in a program violation and 1 to 2 nights in jail. Thus, the reduction in jail costs due to offenders being out on bond may be offset somewhat because some will serve a day or two in jail for each violation.

### ***Effectiveness***

- Programs reported low percentages of failed breath tests (between 1 and 5%), suggesting that offenders appear capable of making changes in their drinking behavior while on the program.
- Officials acknowledged that some offenders, by limiting the amount they drink and by timing their drinking to allow sufficient time to metabolize the alcohol, have been able drink undetected while on the program. Officials believed that some of these offenders will eventually be caught. Many will be forced to drink far less than they would have, had they not been on the program
- Many officials believe that the 24/7 program holds offenders accountable, reduces problem drinking, helps during treatment, and allows offenders to remain productive in the community by keeping their jobs and participating in family activities.

### ***Perceived Benefits***

Although officials in jurisdictions using the 24/7 program do not have access to statistics showing a significant improvement in safety due to the program, they generally believe the program has had the following benefits:

- Holding offenders accountable to conditions set by judges for bond.
- Reducing drinking in program participants, leading to probable increases in public safety and more responsible behavior by the offenders (e.g., appearing in court at appointed times).
- Helping to identify offenders with serious drinking or drug problems because of increased monitoring.
- Facilitating the process of drinking cessation in some offenders by forcing them to be relatively sober for a specified period.

- Helping offenders remain productive members of the community by staying out of jail, maintaining their jobs, and participating in family life.

## ***Issues for Officials Involved in 24/7 Programs***

### **Law Enforcement**

In general, sheriffs who have been operating a 24/7 program in their jurisdictions report that the testing process runs quite smoothly, with breath testing taking no more than 1 to 2 minutes per offender. Handling violations (positive breath tests, no-shows) takes much more time; however, violations (as a proportion of overall tests conducted) tend to be infrequent, often reported in the range of 1 to 2% of tests. Additional time may be spent performing program-related data entry, changing drug-test patches, and working with offenders on TAM. Databases used to track offenders' tests, outcomes, payments, and so forth ease the administrative burden.

- Collaboration among entities involved in program operation is key to smooth functioning and success. Thus, involving all the parties (e.g., judges, prosecutors, probation officers, defense attorneys) early in the initial planning via stakeholder meetings helps ensure that each entity's values are understood and considered, that broad-based buy-in and support are fostered, and that documentation needed to operate the program (e.g., violation forms for reporting no-shows, failed tests, overdue fees; communications about excused absences) are developed in a coordinated fashion that works for each entity and reduces the need to make changes later.
- The program was designed to be operated primarily by sheriffs and to handle offenders who are assigned to the program largely at the judge's discretion. Judges are free not only to assign the program or not, but also to set conditions for the program for each offender. Some sheriffs reported that this led to complications and noted that more clear guidelines for judges at the beginning of the program would be beneficial. Judges reported that they would have been happy to follow guidelines had they been provided.
- As time elapsed and the number of offenders participating in the program grew, some facilities where testing was housed initially proved inadequate, requiring sheriffs to relocate to another facility or add another location for testing. Thinking big and planning for expansion from the start may reduce the need for logistical changes.
- When an offender fails to appear for a test, a warrant must be issued and the offender brought in to face a judge (unless the offender appears at the next testing time, which happens often). Depending on the jurisdiction, the process of obtaining a warrant and bringing in the offender may take 24 hours to a week. This problem has been solved somewhat in some locations by streamlining the related processes. Although the sanction is not as immediate for these offenders, most are apprehended because law enforcement officials in rural locations generally know all of the offenders and where they live or work.
- Sheriffs in one State reported that they began the program using breath-testing devices that were not sufficiently heavy duty for the number of tests being conducted daily; thus, the 24/7 testing sites had to upgrade to devices that were more robust. Jurisdictions interested in adopting 24/7 program should ensure that the testing equipment is suitable for the task.



## **Judges**

For judges, one of the most important aspects of the 24/7 program is that it is designed to be used by judges at their discretion. Because judges in rural communities are likely to be personally familiar with offenders, their situation, and their history, many believe those judges are in a good position to determine the appropriateness of the program as well as other sanctions. The extent to which the 24/7 program has been used is largely a function of judicial buy-in to the concept of alcohol monitoring and judges' willingness to take advantage of it. Judges report that implementation of the 24/7 program has had little effect on their workload.

- Because of pre-implementation planning, changes made to streamline the process since implementation, and efficiencies that occur naturally over time, many judges report that they do not currently spend much time coordinating with other parties involved in operating the 24/7 program. Most of the legwork is undertaken by other parties (e.g., law enforcement and city/county attorneys).
- Judges and others like that the 24/7 program provides a mechanism for ensuring that orders not to drink are followed, whereas before such monitoring, there was no effective way to know if offenders were complying with judges' orders. The program is believed to provide an important tool for controlling offenders' drinking.
- Judges also seem to feel that even though there is little empirical research, daily alcohol-monitoring programs appear to keep people sober, at least for a while, and give them a chance to reevaluate their choices about drinking and to consider lifestyle changes. Many judges report anecdotal accounts of offenders who have dramatically changed their lives after participating in the program (e.g., have stopped drinking, maintained stable employment, been more involved in raising their families).
- Prosecutors often recommend assigning offenders to the program. Some judges reported that they assign few offenders to the program without a recommendation from their prosecutors.
- Judges often respond to violations with increases in bond amount or incarceration without bond until disposition.
- Some judges expressed concern about the program's effects on due process and equal treatment of offenders. Some judges felt that requiring 24/7 program participation pre-trial as a condition of bond violates the assumption of innocence until proven guilty. Another due process concern noted by one judge was that violators go directly to jail (usually for a day or two) before a hearing. There can be cases where offenders who violate go straight to jail (e.g., those on bond), whereas other offenders who violate are released pending their hearing (e.g., those participating as a condition of sentence). This may be considered differential treatment for the same offense.
- Although giving judges a great deal of discretion in applying 24/7 is generally seen as positive, it can also lead to inconsistencies that affect uniformity not only across counties, but also across courts within a county (e.g., differences of opinion about when the program can be imposed, what the penalties should be, and how to deal with an offender who has a violation), potentially leading to differential treatment of offenders. Some judges reported that they would have been happy to follow guidelines had they been provided.

## **Prosecutors**

Although the 24/7 program is used at the discretion of judges, in practice, it is often prosecutors who may be more familiar with the facts of a case and recommend to judges that the program be assigned. Other than requesting 24/7 as a requirement for an offender, prosecutors are generally involved in the process when there is a violation (e.g., requesting judges to increase the cost of bond or revoke suspended sentences). Like judges, prosecutors reported little impact on their current workload attributable to their role in operating a 24/7 program.

- The 24/7 monitoring program is seen as a good tool for prosecutors and judges to identify problem drinkers who need treatment.
- Prosecutors often recommend to the court that an offender be required to participate in the 24/7 program. Judges reportedly usually assign the program when it is recommended and rarely decide to assign it when it is not.
- Prosecutors often decide not to recommend the program if it would be a hardship or interfere with the offender's ability to meet work schedules. Prosecutors suggested that they would request assignment of more people to the program if there were more alternatives (e.g., more testing sites and greater access to TAM and other forms of home alcohol testing).
- Most prosecutors reported spending little time implementing the 24/7 program once it was in operation and all staff had completed training—a few hours per month to deal with issues, such as excusals from testing and violations (i.e., motion to revoke bond or suspended sentence), and to argue bond cases.
- In one State new to the program, the proportion of offenders participating in the 24/7 program pre-trial versus post-conviction is four to one. This is the case because felony offenders (i.e., fourth offense and higher) are nearly always sentenced to in-patient treatment and removed from the community for a substantial period. There is a sense among parole/probation officers who supervise felony offenders in this State that 24/7 program participation will increasingly be part of judges' post-conviction orders for felony DWI cases. There is some feeling from prosecutors that it would strengthen the program to establish mandatory minimum times for program participation as part of a sentence that could not be negotiated by defense attorneys.

## **Parole and Probation Officers**

Some judges reported that they were more inclined to leave the assignment of offenders to probation or parole officers as a condition of probation or parole than to sentence offenders to the program themselves. This results in less program-related workload for judges but more work for probation and parole officers. Nevertheless, probation officers reported the program had relatively little effect on their workload once the system was operating smoothly.

- In some States, parole and probation officers do not deal with misdemeanor DWI offenders but only felony offenders. In one State that is new to the 24/7 program, the only contact probation and parole officers have with court-ordered 24/7 is when a felony non-DWI offender is charged with a misdemeanor DWI offense and, for ease of case management, is supervised on traditional court-ordered 24/7 by his/her probation or parole officer. This situation accounts for a small percentage of their caseloads (less than 10%). However, the number of felony offenders who are court-ordered to 24/7 post-conviction is expected to

increase in the future, as more judges require it as a condition of probation following treatment.

- Sometimes, parole and probation officers use twice-daily alcohol monitoring as a sanction for offenders under their supervision. Use of the existing 24/7 testing facilities to have probationers tested is a convenience rather than constituting assignment to the traditional 24/7 program.
- Probation officers in one State reported spending about 3 to 4 hours per month dealing with 24/7 program business.
- Probation officers in one State reported that they spend less time supervising their probationers who are participating in the 24/7 program because some aspects of monitoring are being conducted by the 24/7 program staff. They also reported that the 24/7 program helps offenders remain sober when they are required to attend treatment.
- Some probation officials believe that offenders should be “weaned” from the 24/7 program, rather than leaving it “cold turkey.” The twice-daily testing should be reduced to once-daily testing for a month or two, and if no failures occur, then offenders should be removed from the testing.

### ***Guidance for Urban Areas from Rural Programs***

Officials in the 24/7 jurisdictions offer the following advice for urban areas considering implementing the program:

- Start small, start slowly. Pick a small area of the jurisdiction to pilot test the procedures.
- Only one judge is needed to implement the 24/7 pilot test.
- Try to involve all the key stakeholders early in the planning process: county or city officials, judges, prosecutors, sheriffs, police, defense bar, and probation/parole officers. Think about the big, broad-based issues (e.g., agency roles and responsibilities) and the practical/logistical issues (e.g., who will manage the PBTs, what are the training needs, how will violators be handled if testers cannot arrest them). Open communication among all parties involved is essential to a smoothly functioning and successful system.
- It is not necessary to reinvent the wheel. Look at existing 24/7 programs and visit with those officials to see how they have set up their programs and worked through the issues, especially in the more populous locales. Although the programs will not transfer exactly, these sites may have valuable experience and resources, such as software programs, that can be shared.
- Try to locate testing facilities near public transportation to avoid issues with parking and offenders who cannot drive.
- Anticipate that there will be roadblocks and barriers. Be flexible and deal with them.
- Drug testing can be tricky. Drug patches and urine tests may be needed. Female sheriff/police officials will need to be responsible for female offenders, especially for urine tests. Some jurisdictions have opted to use drug patches for this reason.
- Investigate the limitations on bond conditions to determine whether judges can order the 24/7 program. The program will not likely be as effective if judges are not empowered to modify bond conditions.

- In urban areas, the program may grow at a quick pace. Be prepared and plan for expansion from the start.

## **Feasibility of 24/7 Programs in Urban Areas**

---

In Phase 2 of the project, a feasibility assessment was conducted to determine the perceived ability to transfer the 24/7 program model to urban areas. The feasibility study involved conducting discussions with local officials in Washington, DC, and Fairfax County, Virginia. The feasibility study was designed to answer the following questions:

1. Can the 24/7 program model be scaled and applied in an urban setting?
2. What are the challenges and concerns of transferring such a program to a more populous setting?
3. Are there policy implications?
4. What impacts might there be on the logistics of operating the program?
5. Are there aspects of program implementation that might be facilitated by operating it in an urban locale?
6. How might the 24/7 program be structured in an urban setting? Will there be substantial changes?
7. What level of resources (staff, equipment, budget, etc.) would be needed for the monitoring agency to supervise offenders?

### **Methods**

The feasibility study was conducted in Washington, DC, and Fairfax County, Virginia. These two urban sites were chosen for practical reasons (e.g., personal contacts with and close proximity to the research team) prior to the award of the contract. As such, these sites represent a small convenience sample.

Participants in the feasibility study were local officials in the two urban sites, in positions typically directly involved in operating a 24/7 program (e.g., judge, prosecutor, law enforcement official, officials with pre-trial services or probation agencies). In-person structured discussions were conducted with officials to discuss the 24/7 alcohol-monitoring model and obtain their opinions on the feasibility of applying the model in their local urban jurisdiction. The results of these discussions were used to identify which characteristics of rural alcohol-monitoring programs could be transferred to urban settings, how they could be applied, what resources would be required to support them, and relevant limitations and challenges.

In preparation for the discussions, data were sought on impaired driving and other alcohol-related offenses, and law enforcement resources in the two locales. The data sought from the two local urban jurisdictions included:

- Impaired driving
  - Number of DWI/DUI arrests for 2+ offenses, first offense with BAC  $\geq .15$
  - Number of convictions for DWI/DUI for 2+ offenses and high-BAC first offense

- Other alcohol-related offenses
  - Domestic violence
  - Child abuse and neglect
  - Assault
  - Minor in possession
- Law enforcement resources
  - Number of police precincts where a PBT is available that is capable of handling the volume of tests required (e.g., 1 test per minute for 2 hours twice a day)
  - Number of jails and other facilities for holding those who fail the breath test and for those who fail to show for testing

These data on impaired driving and law enforcement resources were sought so that estimates could be developed regarding the impact of a 24/7 program in each jurisdiction. Issues, such as how many offenders would be eligible for program participation, how many potential law enforcement facilities would be available for testing, and so forth, could be gauged approximately. These estimates were to be developed to help frame discussions with officials and assist them in assessing the benefits and costs of program implementation in their communities and thus the likelihood that there would be significant interest and support for such a program. These data were received for Fairfax County in time to be included in the discussions with local officials; however, data were not obtained in time for the interviews conducted with DC officials. Many of the questions posed in the discussions, however, did not rely on having quantitative data available and did not appear to prevent officials from addressing issues in the discussion. The one exception was with law enforcement officials, for whom such data would have been useful.

Prior to the Phase 2 data collection, three documents were developed for conducting the in-person discussions with local urban officials: a one-page summary and full-length description of issues derived from the case studies of rural communities' experiences with 24/7 programs, and a structure discussion guide. Topics covered by the discussion guide include:

- |  |  |
|--|--|
| • Officials' opinion of the strategy                       | • Offenders' costs                       |
| • Logistics of applying the strategy to their jurisdiction | • Government costs                       |
| • Legislation that might be necessary                      | • Potential advantages and disadvantages |
| • Resources available for breath testing                   | • Obstacles                              |
|  | • Feasibility                            |

The one-page summary was sent to individuals who were contacted to nominate local officials who would be most appropriate for the discussions. The local officials who were contacted and who agreed to participate in the feasibility data collection were e-mailed the full-length version of the background document (which contained information specific to their job titles and positions) and the discussion guide for use in preparation for the discussion.

## **Results**

### ***Fairfax County***

#### **Background**

Fairfax County is a suburb of Washington, DC, in Northern Virginia. As of the 2010 census, the population of the county was 1,081,726. It is the most populous jurisdiction in Virginia (with 13.5% of the State's population) and the most populous jurisdiction in the Washington DC Metropolitan Area (with 19.8% of the area's population). The county has a total area of 407 square miles, of which 395 square miles is land and 12 square miles is water. Within the county is the city of Fairfax, an incorporated city separate from the county. The county government center is in an unincorporated area of the county, near the city of Fairfax.

The County of Fairfax has a sheriff's department with offices located in the government center. The county also has a police department with headquarters at the government center and eight police substations distributed around the county.

All convicted DWI offenders in the Commonwealth of Virginia must participate in the Virginia Alcohol Safety Action Program (VASAP). This typically includes an alcohol education program consisting of 20 hours of classroom participation over 10 weeks. Offenders are on probation for 1 year and assigned a probation counselor. Offenders are breath tested upon initial intake at VASAP and periodically at one or two of their 2-hour classes. Offenders who screen as alcohol dependent or addicted are referred to a certified treatment facility.

Reportedly, 1,100 to 1,300 arrests for multiple DWI or high-BAC DWI are made each year in Fairfax. Rural 24/7 programs reported that offenders tend to remain on the program from 2 to 6 months. If it is assumed that there are 1,200 DWI offenders eligible for the program each year and that they remain on the program for an average of 4 months, it is estimated that there would be approximately 400 offenders being tested each day. If these were spread evenly across eight police substations, each station would test an estimated 50 offenders twice each day.

#### **General Sense about Feasibility**

Officials in Fairfax were asked for their general impressions about the feasibility of a 24/7-type monitoring program in Fairfax, including what modifications might be necessary and what alternatives might be more feasible.

##### *Necessary program modifications*

Whereas the rural programs involve testing at sheriff's offices at the county seat, Fairfax officials suggested that traveling to Fairfax City for testing would be too inconvenient and take more time than most people have. An alternative would be to go to offenders' local district police substations.

Because all DWI offenders are sentenced to participation in VASAP, VASAP would likely be the agency tasked with supervising offenders on a 24/7-type program. This is different from the rural States, in which there is no similar program for overseeing DWI offenders.

Fairfax officials stated that law enforcement officers would not be permitted to take payments from offenders, but VASAP officials can do so.

Immediate incarceration for violations, which is considered an important part of the rural 24/7 programs, was considered problematic and currently not possible in Fairfax without a change in

legislation. Reported barriers include legal/political difficulties related to incarcerating offenders without a hearing, lack of available facilities to hold offenders, and resources required to transport them to holding facilities. Legislation would likely be necessary to overcome these hurdles.

#### *Viable alternatives that would be more feasible*

Some officials suggested that the current system, involving participation in VASAP, is more feasible and may be sufficiently effective. Fairfax County (and all of Virginia) is beginning to use ignition interlocks more than they have in the past due to legislation mandating their use for all convicted DWI offenders. Interlocks were seen by some as a feasible alternative. Home-testing technologies and other monitoring technologies, such as TAM, were mentioned as potentially viable alternatives. Some officials, however, had doubts as to whether twice-daily testing, or any of the alternatives, could be considered effective because they believed that offenders could find ways to circumvent any of the alternatives and continue to drive while intoxicated.

### **Need for Legislation**

Most officials expressed the belief that State-level legislation would be necessary to (a) allow judges to order offenders to participate in the program, (b) allow law enforcement officers to incarcerate offenders immediately after violating the program, (c) make it possible for offenders to obtain restricted driver license privileges to drive to testing facilities, and (d) establish a system for receiving breath-test payments from offenders and sending it to VASAP to pay for the extra resources necessary to run the 24/7 program.

### **Related Issues**

#### *Facilities*

The Fairfax County sheriff's office is in the city of Fairfax. The area is fairly congested. It would therefore be difficult for offenders to get to the sheriff's office from most parts of the county. Eight district police substations are located throughout the county. Fairfax officials believed that the substations would be a more reasonable location for twice-daily testing. One problem with using these facilities would be that parking is considered limited at five of them. Another hindrance is that only two have facilities to lock up offenders who violate the program. This means that an officer would be required to drive violators to the nearest substation with lock-up facilities.

#### *Staffing*

Fairfax officials believed that law enforcement agencies and VASAP staff would be unable to take on the additional effort of testing without hiring additional staff. They acknowledged that it might be possible to use citizen volunteers or hire non-law enforcement staff (e.g., VASAP) for testing and data entry, but any official action because of a violation (e.g., arrest and transportation) would require law enforcement officers.

A potential problem for the acceptance of the program by law enforcement was that having officers conducting tests, transporting offenders, and engaging in administrative aspects of the program would be considered "taking officers off the street," which would be unpopular with county officials and the public. Even if VASAP officials conducted the tests, law enforcement would still be needed for sanctioning the 1% of offenders (~4 per day) who are BAC positive and who are no-shows.



### *Training*

Officials noted that conducting breath tests and other tasks related to the program would require some training and believed that all officials who might be called upon to participate in the program should be trained. This will reduce the likelihood of problems that might emerge should trained staff become unavailable.

It would also be necessary to educate officials from other agencies involved in the program, so that they are aware of it and use it appropriately.

### *Equipment*

There are an adequate number of PBTs available at police substations, at the sheriff's headquarters, and at the VASAP headquarters. Whether they would be up to the task of conducting the number of tests necessary is unclear. A VASAP official mentioned costs for maintenance of the PBTs, mouthpieces, etc., that would be required.

An issue that arose concerning equipment is whether it would be possible to use PBTs in Fairfax for a twice-daily breath-testing program. The concern is that there have been challenges in the past to the use of PBTs in DWI cases. Officials acknowledged that the circumstances are different in a twice-daily testing program, where it is not necessary to show that offenders are over a given BAC level, but believe there would still likely be a challenge to the reliability of the devices if the results are used to sanction offenders. So a calibration and certification program may be necessary to run a 24/7 program.

### *Costs*

Officials understood that the programs in the rural jurisdictions were generally considered self-supporting after receiving some initial funding for equipment. Some Fairfax officials believed that it would be difficult to make such a program self-supporting in Fairfax because they believed more new staff and facilities would be needed and because there would be offenders who are indigent or "working poor" who are unable to pay even \$2 to \$4 per day. Some suggested that the program might pay for itself if higher offender fees were established.

### *Reciprocity*

Reciprocity is a concern for Fairfax officials because of the number of offenders who drive through Fairfax while commuting to and from Washington, DC, and Maryland. There was also concern about offenders from neighboring counties, though this would probably not be an issue if the program were implemented statewide. Any offender arrested and convicted of DWI in Fairfax County must initially report to the Fairfax County VASAP for intake.

### *Transportation*

Officials believed that transportation to testing facilities would be difficult for offenders. Although Fairfax has public transportation, it is not necessarily configured to get people to places where testing would occur. Using public transportation would likely take enough time, twice a day, to interfere with offenders' ability to work. Traffic was also considered a problem. The distances to be travelled might be significantly shorter in Fairfax than in rural States, but the amount of time spent traveling would not necessarily be shorter.

## *Other*

Officials noted that implementing a 24/7-type program would require creating channels of communication between the agencies involved. For example, probation officers from VASAP would need to know quickly when probationers violated the program. If testing took place at county police stations, and VASAP ran the program, fast and efficient lines of communication between the two would need to be established.

Judges expressed some concern over issues of due process associated with the program. Offenders would probably need to sign agreements to participate in the 24/7 program (or serve their jail sentence) and agree to the sanctioning for positive BACs or for not showing up for testing.

Some officials believed the program would be overly burdensome to some offenders (e.g., to those without licenses who may need significant time to appear at testing facilities twice a day).

## **Perceived Effects on Workload**

Officials expressed the belief that the program could reduce their workload if it resulted in reduced recidivism and, therefore, an overall reduction in DWI offenses in the county. However, at least initially, officials believed it would increase their workload.

## **Potential Interference with or Facilitation from Other Programs**

There was concern that having offenders assigned to both ignition interlocks and a breath-testing program could be problematic because it could be seen as redundant. Additionally, the interlock law sets a maximum BAC of .02 to start a vehicle; however, some 24/7 programs have set lower levels as violation of the program. Under this situation, offenders could “pass” an interlock test but “fail” the 24/7 breath test. This situation was considered confusing and, potentially, a political problem.

One official suggested that it would be hard to identify any single agency whose operations would be substantially affected; however, the additional administrative load on each agency involved in the program would likely have some negative effect. This would be particularly true of the VASAP program should a 24/7 program in Virginia be handled by VASAP.

## **Interest in/Likelihood of Using a 24/7 Program**

A Fairfax County Commonwealth Attorney reported that he would be inclined to use such a program if it were established and functioned smoothly. Although discussions focused on DWI offenders, some officials noted the potential for applying the program to domestic violence and assault offenders would provide a greater incentive to use the program, in addition to using it for drinking drivers.

## **Perceptions Regarding Program Costs**

There was some concern that the program would not pay for itself, or that if it did, it would require significantly higher fees than are charged in the rural jurisdictions. Most officials noted that the program would likely be run through VASAP and that the current revenue for VASAP has not been enough to cover the costs of the existing programs. Increased costs, without sufficient revenue, would be impossible to sustain.

## **Perceptions Regarding Potential Program Effectiveness**

Officials were generally unwilling to guess whether a 24/7-type program would be effective in reducing drinking behavior and recidivism by offenders or in reducing impaired-driving crashes. The 24/7 program has potential, but it would need to be demonstrated as effective in Fairfax County.

## **Perceptions Regarding Stakeholder Collaboration**

There was no consensus on which agencies or types of officials would be more or less willing to participate in the creation and administration of a 24/7-type program. There was general agreement that a significant amount of preplanning would be necessary to establish procedures and agree on which agencies would assume which responsibilities under the program. All officials agreed that increased resources would be needed to implement 24/7 in Fairfax County.

## **Perceptions Regarding Community Support**

Officials generally believed that such a program would be accepted by the community and by community groups concerned with impaired driving, provided they had the impression that the program would improve safety.

## ***Washington, DC***

### **Background**

In 2012, Washington, DC, had an estimated population of 632,323, the 24th most populous jurisdiction in the United States. Commuters from the surrounding suburbs in Maryland and Virginia raise the city's population to more than one million during the workweek. The Washington Metropolitan Area, of which the District is a part, has a population of 5.9 million, the seventh-largest metropolitan area in the country. A locally elected mayor and 13-member city council have governed the District since 1973 when the Congress granted limited home rule provisions; however, the Congress maintains supreme authority over the city and may overturn local laws. According to the U.S. Census Bureau, the District has 68.3 square miles, of which 61.4 square miles is land and 6.9 square miles is water.

Because Washington, DC, is not located in a State, it has no State-level government. Many of the political institutions that govern the District of Columbia are at the Federal level. Law enforcement agencies that arrest impaired drivers include the Metropolitan Police Department, U.S. Park Police, U.S. Capitol Police, and the U.S. Secret Service. Unlike the rural States currently operating 24/7 sobriety programs, Washington, DC, does not have a local sheriff's department. The U.S. marshals function as sheriffs but serve the Federal court system. The courts that handle DWI cases are mostly local district courts, though in some cases, a Federal attorney may handle a DWI case in a local court.

Washington, DC, courts operate with the philosophy that bond should represent the least restrictive conditions for offenders. The courts do not use money bonds. Defendants who are required by the courts to be monitored between arrest and trial are assigned to the Pre-trial Services Agency for monitoring. Offenders on probation or parole are monitored by the Court Services and Offender Supervision Agency.

Many who drive in Washington, DC, are residents of the surrounding States of Maryland, Virginia, and West Virginia, who come to the District to work and for recreation. Washington is also host to many visitors from farther away, who come for work, important events, and tourism. The large number of nonresident drivers results in a high proportion of DWI arrests of nonresidents.

## **General Sense about Feasibility**

Officials noted several major challenges to implementing a 24/7-type program. These challenges included the need for reciprocity with neighboring jurisdictions; the need to coordinate multiple law enforcement agencies, courts, and agencies that operate at both the local and the Federal levels; the need for financial resources to cover the costs to agencies involved in program operation and to provide an indigent fund; and a generally liberal environment under which courts and probation officials would likely not have the power or desire to require offenders to remain abstinent.

Most officials believed legislation would be needed for law enforcement officers to arrest program violators and that, even with such legislation in place, to do so would be legally and politically problematic. Some officials expressed the belief that the political and legal environment in primarily rural States is much less complicated than in urban environments such as Washington, DC, so what is feasible in rural areas is much less so in urban ones. Some officials noted that, of all the offenders they handle, the DWI offenders tend to be more responsible and less “criminalistic,” so judges and other officials are less likely to impose severe or onerous sanctions on them.

### *Necessary program modifications*

Because the District of Columbia has no sheriff’s department, another agency or agencies would need to assume the task of breath-testing program participants. Perhaps the most likely agency would be the MPD, which has seven district stations and three substations.

The MPD does not currently use PBTs, although that is expected to change. With only evidential breath-test devices, it would not be feasible for the MPD to conduct breath tests unless PBTs were purchased separately for the 24/7 program.

The MPD is not authorized to take payments from citizens for program participation. Some other system would need to be instituted to collect program fees and disburse program funds.

Currently, MPD can hold someone for about 10 minutes without it being seen as an arrest. Probation and parole officers, in contrast, have more authority to hold someone and charge him or her than the police do, so it was suggested that it might be better to have probation and parole officers conduct the testing.

Officials believed that it would be necessary to have an indigent fund to operate an offender-paid, breath-testing program in Washington, DC.

### *Viable alternatives that would be more feasible*

Washington, DC, has recently begun establishing an ignition interlock program. Some officials suggested that the use of interlocks might be a feasible alternative to a 24/7-type program. TAM was mentioned as a possible alternative, although it was not considered to be without potential drawbacks.

Officials reported that Washington, DC, tends to focus on providing treatment for people viewed as potentially being addicted to alcohol or drugs. This approach was considered by some as a viable alternative to requiring abstinence and monitoring alcohol and drug use. There was some concern expressed that the institution of a program of abstinence and monitoring might result in a shift toward sanctions for violators rather than treatment.

Another alternative to promote and monitor offender sobriety would be to change the way individuals are processed in the District. Currently, offenders in DC typically are not arraigned for 3 weeks or longer. Thus, there is a relatively long time between the DWI offense and any intervention (e.g., treatment, pre-trial supervision). Officials observed that a benefit of the 24/7 program is that

offenders who violate the program are seen quickly (within 24 to 48 hours). Although the notion of expediting the process of getting offenders in contact with judges and treatment providers was seen as a plus, it would not necessarily require alcohol testing.

## **Need for Legislation**

Officials believed that legislation would be necessary to institute a 24/7-type program. The legislation would be necessary to incarcerate offenders for violations of the program and to establish a system for funding the program through offender fees. Complicating the process would be a possible requirement for the U.S. Congress to be involved.

## **Related Issues**

### *Facilities*

Due to traffic congestion in Washington, DC, and the potentially high number of offenders, officials believed that it would be necessary to have multiple testing stations within the city. A sensible choice would be to use MPD district stations and substations. Whether other law enforcement agencies would participate in testing would depend on their ability and/or willingness to conduct tests themselves or to hand off to the MPD cases that originated with their agencies. Officials suggested that if agencies such as PSA and CSOSA were to assign offenders to twice-daily testing, they might participate in testing at their offices. Officials suggested that testing by agencies other than just the MPD would help spread the burden, making it easier to conduct testing at any given individual location. Offices that are open during the day could handle testing during the day, lessening the burden on locations that are open day and night.

A lack of space and parking were considered barriers to using any of the facilities suggested for testing. Acquiring additional space to be used for testing stations would be complicated by the number of agencies that would be involved, the high cost of space in the District, and how high the decision would need to go (e.g., the Mayor's office or possibly the U.S. Congress).

Another complication to testing at these facilities is related to the security at the entrances to most of them. Often, any available space for testing is located beyond a security station. Passing through security could add a significant burden to the time required for testing, and the system is not designed for the increased number of people who might be passing through for testing.

Yet another concern would be where to hold offenders in the event of a violation. If it were possible to incarcerate them immediately, as the program is designed in rural jurisdictions, officials questioned whether violators would be held in areas in which violent offenders are held, or in areas where intoxicated offenders are held (i.e., the "drunk tank"). The latter would be safer for offenders, but it typically requires police officer supervision to prevent intoxicated arrestees from injuring themselves. Breath-test program violators may or may not be intoxicated, but a decision to put them in the "drunk tank" carries potential negative liability-related consequences. Adding to the complication is the fact that males and females would each need to go to separate facilities.

### *Staffing*

Most officials believed that current staff would be unable to accommodate additional work, so any testing, and certainly the amount of testing given the anticipated number of eligible offenders, would require additional staff. There was concern that whatever time officers spent on a testing program would result in "taking officers off the street," which runs counter to their mission as perceived by the public and the officers themselves.

### *Training*

Some training of officers or other staff tasked with conducting tests would be necessary, as would be training in other aspects of the program, such as data entry and administrative tasks. Agencies would lean toward training all staff who might be involved. Officials acknowledged that training in the use of PBTs requires relatively little time.

### *Equipment*

At the time of discussions with MPD, Washington, DC, did not have PBTs, nor did it have a program for using and maintaining them. Plans were underway to establish a PBT program in the future. CSOSA does not use, own, or maintain breath-testing equipment. Some of the other agencies that might be tasked with testing (e.g., PSA) do own and maintain PBTs.

There is some concern that interested parties (e.g., defense attorneys) might push to use evidential breath testers for a 24/7-type program, given that program participants may be sanctioned based on test results. Using evidential testers would likely be too expensive and time consuming to be practical.

### *Costs*

Officials assumed that the cost to implement and run the program would include labor costs to train staff and potentially to hire additional staff; costs of acquiring, maintaining, and periodically replacing PBTs; and costs of supplies. Predicting the cost of running the program would be difficult without first knowing how it would operate. For example, it is reasonable to assume that there would be a cost per testing station, requiring knowledge about the number of stations to calculate the cost of testing.

It was suggested that there would be people considered indigent and unable to pay the costs of the program. Historically, similar programs in Washington, DC, have been told to establish a mechanism for covering the cost of such programs for indigents.

### *Reciprocity*

Given its location and the large number of nonresidents who drive in Washington, DC, reciprocity would be a major issue for a 24/7-type program there. Officials point out that nonresident drivers in the city include people from surrounding States who come to the city frequently, as well as visitors from across the United States and around the world. It is common for people convicted of DWI in Washington, DC, to be allowed to address court orders, such as alcohol treatment and driver improvement classes, in jurisdictions outside the city, using service providers more convenient to the offender. In the absence of any agencies in adjacent and nearby States that provide twice-daily breath-testing services, offenders would need to come into the Washington, DC, to take tests, which could be difficult or impossible.

Generally, when a crime is committed in one State, the offenders can be monitored in another State if there is an agreement between States through an Interstate Compact. Washington, DC, has such an agreement with neighboring States for felony but not for misdemeanor DWI. Therefore, even if there were a twice-daily breath-testing service in another State, it would not currently be usable for misdemeanor drinking-driving offenses in Washington, DC.

One official expressed the opinion that reciprocity may be more of an issue for urban jurisdictions than rural, in general, because urban jurisdictions are more likely to attract commuters and visitors who may be coming across State borders. Further, many of the more densely populated

areas of the United States are in the Eastern part of the country where States are smaller and people are more likely to live within an easy drive of a border.

### *Transportation*

As with the rural States operating 24/7 sobriety programs, it is possible that people assigned to a program in Washington, DC, would not have driving privileges. The Washington Metrorail system and Metrobus bus system could be useful for traveling to and from testing. Not all areas of the city or surrounding metropolitan areas are served by the rail system. Some officials believed any testing facility would have to be accessible to the rail system. Using the bus system can be time consuming. It was suggested that the city might be required to pay the transportation costs for indigent offenders assigned to the program.

### *Other*

Because Washington, DC defendants are subjected to the least restrictive conditions of bond, assignment to a 24/7-type program as a condition of bond before the trial likely would be problematic. Judges in Washington, DC are reportedly reluctant to order abstinence as a condition of bond. PSA would not assign a program requiring abstinence to defendants it supervises in the absence of a court order. As part of its minimally restrictive approach, Washington, DC, does not take money from defendants as a condition of bond. Defendants awaiting trial are released on condition that they not violate the law (e.g., do not operate a vehicle after drinking). Therefore, the ability to offer reduced bond and program participation as an alternative to full bond cannot be used as an incentive to get defendants to participate in the program, as is sometimes done in the existing rural 24/7 programs. It was suggested that assigning offenders to the program as a condition of probation or parole would be more feasible than as a condition of bond, because the presumption of innocence is no longer a factor after conviction. An official at CSOSA, the agency that supervises offenders on parole or probation, reported that judges do occasionally order offenders to remain abstinent.

Another potential problem in Washington, DC is that finding offenders with warrants for failure to appear for testing would be difficult because it is so easy for people to get into neighboring jurisdictions where DC officials have no authority.

Because Washington, DC has not been using breath testing, the city has relied upon urine testing. A large proportion of drivers test positive for drugs, primarily PCP, marijuana, and cocaine. This is interpreted as suggesting that the city may have a substantial drugged-driving problem. For that reason, some officials may want a 24/7 sobriety program in the District to include a drug testing component, as it does in some of the rural programs. PSA already conducts drug screening of some individuals. CSOSA also conducts some drug testing.

## **Perceived Effects on Workload**

It is difficult to predict the effect on workload without knowing exactly the nature of the program and the responsibilities of agencies and individuals within the program. The general sense from officials in Washington, DC is that the program might result in reduced workloads for officials if it resulted in reduced recidivism, but not otherwise. Some officials expressed the belief that, even if the workload stayed the same or increased, that would be tolerable if the result was an increase in public safety.

## **Potential Interference with or Facilitation from Other Programs**

Most officials were unaware of any programs with which a 24/7-type program would interfere. One official suggested that the implementation of such a program might result in Washington, DC, moving away from the current emphasis on identifying people in need of treatment and providing it, and toward an emphasis on ordering abstinence and sanctioning people who violate the orders. Other officials believe the program might be useful for identifying people in need of treatment.

## **Interest in/Likelihood of Using a 24/7 Program**

Officials expressed the belief that their agencies and others in Washington, DC were generally forward thinking and willing to adopt new tools if they appeared promising. Officials generally believed that agencies would be interested in using a twice-daily testing program if there was evidence that it was likely to improve the safety of residents of and visitors to the city. Although all officials expressed the belief that the challenges to instituting a 24/7-type program in Washington, DC would be many and significant, they also believed that it could be accomplished if there was enough interest from the entities that would need to get the process started. The enthusiasm shown over the prospect of using a twice-daily testing program varied, with some saying that they are currently disinterested and others saying they would use it frequently. Other officials stated that they were not in a position to decide whether to assign offenders to the program.

Any proposal about using 24/7 in setting conditions of bond or probation would have to be submitted to and approved by the chief judge, who would weigh whether it would be a reasonable allocation of judicial resources. That analysis would examine whether the program is seen as creating an effective problem-solving mechanism and whether assigning offenders to it is an executive versus judicial function.

## **Perceptions Regarding Program Costs**

Officials were uncertain whether the program could be self-supporting if offenders paid only a few dollars per test. This would be increasingly likely were there a requirement that the jurisdiction help pay for travel expenses associated with testing, which in the District's case might be significant (e.g., reimbursement for bus and metro fares and mileage for those coming in from neighboring States to test).

## **Perceptions Regarding Potential Program Effectiveness**

Although officials were not completely certain whether the program would be effective in Washington, DC, the general belief was that any effect would likely be positive. Some believed that the positive effect could be substantial. No one believed there would be a negative effect.

There are times when prosecutors will ask for defendants being monitored by PSA to be provided with treatment *if appropriate*, acknowledging that there may not be enough information available to make that decision. An advantage of a twice-daily breath-testing program would be that violations provide a good indicator of who needs treatment.

## **Perceptions Regarding Stakeholder Collaboration**

As mentioned earlier, officials expressed the belief that stakeholders have a strong interest in public safety, including drinking-driving issues, and are interested in investigating anything that might increase safety. They believed that the necessary representatives of Washington, DC agencies would be willing to meet to discuss the potential implementation of a twice-daily testing program and to help



plan the program and participate in it if it were considered potentially valuable. It was suggested that defense attorneys might be less likely to support a twice-daily breath-testing program because of the additional burdens (e.g., cost, time, inconvenience) it would pose.

### **Perceptions Regarding Community Support**

Officials believed that, generally, community safety advocates and probably the community would be in favor of any program that held promise for improving the safety of the community.

### ***Summary***

Officials in both urban jurisdictions indicated that they are always interested in learning about proven, problem-solving tools that might assist them in dealing more effectively with public safety issues, such as impaired driving. Additionally, some were at least somewhat familiar with the 24/7 program concept, and officials were generally interested in the experiences of their rural counterparts in operating a 24/7 program. For the most part, urban officials reserved judgment about whether such a program would affect offender drinking, impaired driving, and crashes, though most said it was difficult to imagine there would not be some benefit. Many believed the program would help identify those offenders who are dependent on alcohol and assist in putting offenders in touch with relevant programmatic resources, such as treatment and supervision.

Despite these potential benefits, officials in both urban locales were generally cautious but somewhat open to the prospects regarding the program's feasibility in their jurisdictions. This tempered reaction was a function of two sets of factors: (a) concerns about practical issues associated with implementation and (b) broader concerns about the value of and need for a twice-daily testing program for urban locations.

Responses to the question about their general sense of the feasibility of a twice-daily testing program typically elicited a list of perceived practical challenges to implementation, some of which may be resolved and others that may not. As might be expected, urban officials voiced concerns about many logistical issues—staffing, parameters of testing, costs, reciprocity, and so forth. The prominence and weight given to these concerns may, in part, have resulted from officials contemplating having to operate a 24/7 program within the current context of their agencies' budgets, equipment, staffing, and other resources. When discussions moved beyond these initial concerns regarding their own agencies' responsibilities, discussants were more optimistic about the prospects for collaboration with other entities and support for twice-daily testing programs from the public. Given that the appropriate groundwork had been laid for such a program (e.g., required legislation was passed, funding to support program costs, issues of reciprocity worked out), officials expressed varying degrees of enthusiasm that their agency would be willing to participate. Across the two sites, prosecutors, although noting the substantial difficulties with implementation, expressed the most interest and willingness to use the program if it were available to them.

Ambivalence about twice-daily testing seemed also to be based on broader philosophical concerns about the need for and appropriateness of a 24/7 program for urban locations. For example, officials in the District noted that there were already programs in place to supervise individuals both pre-trial and during probation. The pre-trial supervision agency conducts some breath testing of its clients, and the probation agency tests for alcohol via urinalysis. Likewise, the VASAP program in Fairfax County provides some alcohol testing of its program participants. None of these agencies tests participants with any frequency approaching twice daily. They are testing participants occasionally to ensure that they are not coming to meetings under the influence rather than to monitor alcohol consumption and help ensure that participants are staying sober. Thus, it may not have been clear to

urban officials the extent to which a twice-daily program would provide substantial and unique benefits in terms of offender monitoring. Although rural jurisdictions often reported that the 24/7 program filled a void in their communities (which often had little or no offender supervision both pre-trial and during probation), such a program model may be seen as somewhat redundant with existing services in urban locales. Other philosophical concerns included those surrounding due process for program violators who would be incarcerated before a hearing with a judge (this was also mentioned by some rural judges as a concern) and the perceived emphasis of 24/7 programs on punishment rather than assessment and getting offenders needed services. Officials in both urban jurisdictions also noted that the notion of taking officers “off the streets” to conduct testing would be problematic.

## **Study Limitations**

The feasibility study provides extensive information and insights regarding the potential issues faced in transferring the 24/7 program model to urban jurisdictions. Although the information gathered from local urban officials provides an important first step toward understanding some of the relevant issues to be anticipated and possible methods for addressing them, several limitations of the research project should be noted.

First, the sample of urban officials who participated in the structured discussions on feasibility was small. Although these officials represented positions often the most central to the operation of such a program, other officials and community representatives—such as defense attorneys, treatment providers, legislators, and traffic safety advocates—are also important to creating support for program adoption. However, structured discussions were not held with these officials due to the limited scope of this project. Because the types of officials who participated in the feasibility discussions were limited, some issues related to feasibility may not have been uncovered by the data collection.

Second, the sample of discussants was drawn from an even more limited range of urban locales—just two urban jurisdictions that are adjacent to one another. One of the two urban locales, Washington, DC, is a unique jurisdiction as it is not only a city, but also the Nation’s capital. As such, its political/legislative structure is a complex blend of Federal and local control unlike any other urban location in the country. Given the uniqueness of the Washington, DC site and the lack of geographic diversity in urban locales (both sites from the mid-Atlantic region of the country), issues raised in the discussions may not be generalizable to other urban jurisdictions in different parts of the country or issues that would be germane to other urban locales may have been missed. These two sites were selected mostly for convenience (i.e., close proximity to the research team that facilitated the in-person structured discussions).

Third, data on impaired driving and police resources for Washington, DC, which would have been useful in accurately estimating numbers of people who would likely be subject to twice-daily testing, were unavailable at the time of the structured interviews with local officials. For the most part, however, the estimates were relevant to law enforcement that would be operating the program, and not to other officials participating in the program.

Fourth, there was considerable variability across discussants in their familiarity with the 24/7 program concept. For some officials who needed substantial explanations, this shortened the time available for gathering responses to issues raised in the discussion guide. Additionally, given that they had no direct experience with the program, some officials were reluctant to speculate on issues related to feasibility and deferred to others who they felt might be more appropriate to address an issue or were in positions of higher authority.

Fifth, as may be expected, officials sometimes responded to questions of feasibility by focusing on issues directly tied to local issues unique to their jurisdiction that would not necessarily be relevant to their participation in a 24/7 program. For example, law enforcement may have raised concerns about the difficulties attendant to conducting breath testing that could be upheld in court (e.g., ensuring that breath-testing equipment is calibrated so that proof of being over the per se limit was unquestioned). These standards may be unnecessary, and have not proven to be necessary in rural jurisdictions, for a program where the issue is simply the presence of any alcohol in the offender's system.

Finally, although discussants were informed that the purpose of the structured discussions was to explore hypothetically issues of feasibility (i.e., the purpose was not to recruit them or convince them of the value of such a program), some officials' comments regarding program feasibility may have been colored by their sense of apprehension regarding the additional work that such a program might bring to them. On one hand, this could be viewed as a valuable measure of the program's feasibility. On the other hand, an initial reaction to the prospect of taking on additional work may have caused officials not to consider the program as thoroughly as they might have otherwise.

## Conclusions

---

A number of rural jurisdictions have implemented 24/7 sobriety programs that monitor alcohol use by repeat impaired-driving offenders and high-BAC first offenders. Twice-daily testing, where offenders report at 12-hour intervals to law enforcement offices to take a breath test, appears to provide a low-cost method for enforcing court-ordered sobriety and has been shown to reduce DWI recidivism in two studies. Officials with rural 24/7 programs report that alcohol monitoring is associated with benefits, including: (1) identifying alcohol-dependent offenders who need treatment, (2) holding offenders accountable to court orders and teaching responsibility, (3) providing a “cooling off” period for offenders to stop drinking and start thinking more clearly about their life choices, (4) allowing offenders to remain employed and engaged in family and community life, and (5) increasing public safety. Over time, programs have evolved, with changes made to address challenges that have arisen. Refinements to the program include increasing the number of testing facilities and types of individuals who may conduct testing; incorporating additional alcohol testing methods, particularly TAM; and broadening program application beyond impaired driving to other offenses for which alcohol or drugs are seen as related to the underlying offense (e.g., domestic violence).

Given the perceived success of rural programs and the emerging evidence of their effectiveness in reducing impaired-driving recidivism, the question has arisen about the ability to transfer the 24/7 program model to urban locations. Discussions with rural officials suggested that some issues regarding program implementation might be easier to deal with in urban jurisdictions; for example, a larger proportion of the population would likely be served by public transportation. Rural officials also noted a variety of issues that might make program implementation in urban areas more challenging, such as the likely faster rate of growth in the program over time; logistical problems with traffic, parking, jail overcrowding, and ability of facilities to handle the number of impaired-driving offenders; more complicated jurisdictional issues; and complex interagency relations with an increased number of organizations with overlapping roles and responsibilities.

Structured discussions with urban officials from two sites confirmed many of the concerns raised by rural officials about transferring the 24/7 program model. Despite perceived benefits of the program, urban officials expressed apprehension about the feasibility of implementation in their jurisdictions. Some of these concerns would probably be generalizable to other urban locales, particularly logistical issues, such as staffing, parameters of testing, costs, and reciprocity. Some of the constraints were specific to the unique characteristics of a site, most notably the peculiarities of the blend of Federal and local control in Washington, DC. Given that the appropriate groundwork were laid for a 24/7 program (e.g., legislation passed, funding to support program costs, issues of reciprocity worked out), officials expressed varying degrees of support regarding whether their agency would likely be willing to participate. Overall, urban officials expressed a cautious but somewhat open perspective on the feasibility of applying the 24/7 concept to their jurisdictions.

## References

---

- Beitel, G. A., Sharp, M. C., & Glauz, W. D. (2000). Probability of arrest while driving under the influence of alcohol. *Injury Prevention*, 6(2), 158-161.
- Drew, L., Royal, D., Moulton, B., Peterson, A., & Haddix, D. (2010). *Volume I: Summary Report—National Survey of Drinking and Driving Attitudes and Behaviors: 2008*. (Report No. DOT HS 811 342). Washington, DC: National Highway Traffic Safety Administration.
- Dunlap, K., Mullins, T. G., & Stein, M. (2008). Guidelines for the Community Supervision of DWI Offenders. (Report No. DOT HS 810 940). Washington, DC: National Highway Traffic Safety Administration.
- Federal Bureau of Investigation. (2008). *Uniform Crime Report: Crime in the United States, 2008*. Washington, DC: Department of Justice, Federal Bureau of Investigation.
- Fell, J. (1992). Repeat DWI offenders involvement in fatal crashes. *Traffic Tech, NHTSA Technology Transfer Series, 23*. Washington, DC: National Highway Traffic Safety Administration.
- Fell, J. C. (1995). Repeat DWI offenders in the United States. *Traffic Tech, NHTSA Technology Transfer Series No. 85*. Washington, DC: National Highway Traffic Safety Administration. Available at [www.nhtsa.gov/people/outreach/traftech/1995/TT085.htm](http://www.nhtsa.gov/people/outreach/traftech/1995/TT085.htm)
- Fell, J. C. (2013). *Repeat DWI offenders' involvement in fatal crashes: 2010—update of 1992 Traffic Tech*. [Unpublished manuscript]. Pacific Institute for Research and Evaluation. Calverton, MD.
- Fell, J. C., & Klein, T. (1994). Update: Alcohol-related traffic fatalities—United States, 1982-1993. *Morbidity and Mortality Weekly Report*, 43(47), 861-867.
- Gould, L. A., & Gould, K. H. (1992). First-time and multiple-DWI offenders: A comparison of criminal history records and BAC levels. *Journal of Criminal Justice*, 20(6), 527-539.
- Hause, J. M., Voas, R. B., & Chavez, E. (1982). Conducting voluntary roadside surveys: The Stockton experience. In M. R. Valverius (Ed.), *Proceedings of the Satellite Conference to the 8th International Conference on Alcohol, Drugs and Traffic Safety, June 23-25, 1980, Umea, Sweden* (pp. 104-113). Stockholm: The Swedish Council for Information on Alcohol and Other Drugs.
- Injury Prevention Resources. (2013). DUI Supervised Probation (DSP) Program. Riverton, WY: Injury Prevention Resources. Retrieved January, 2013, from <http://www.iprwyoming.org/DSPHome.aspx>
- Kilmer, B., Nicosia, N., Heaton, P., & Midgette, G. (Epub 2012 Nov 15). Efficacy of frequent monitoring with swift, certain, and modest sanctions for violations: Insights from South Dakota's

24/7 Sobriety Project. *American Journal of Public Health*, 103(1), e37-43. doi: 10.2105/AJPH.2012.300989

- Lacey, J., Kelley-Baker, T., Furr-Holden, C. D. M., Voas, R., Romano, E., Torres, P., Tippetts, A. S., Ramirez, A., Brainard, K., & Berning, A. (2009). *2007 National Roadside Survey of Alcohol and Drug Use by Drivers: Alcohol Results*. (Report No. DOT HS 811 248). Washington, DC: National Highway Traffic Safety Administration. Available at [www.nhtsa.gov/Driving+Safety/Research+&+Evaluation/2007+National+Roadside+Survey+of+Alcohol+and+Drug+Use+by+Drivers](http://www.nhtsa.gov/Driving+Safety/Research+&+Evaluation/2007+National+Roadside+Survey+of+Alcohol+and+Drug+Use+by+Drivers)
- Loudenburg, R., Drube, G., & Leonardson, G. (2010). *South Dakota 24-7 Sobriety Program Evaluation Findings Report*. Salem, SD: Mountain Plains Evaluation, LLC.
- National Center for Statistics and Analysis. (2012). *Traffic Safety Facts, 2011 Data: Alcohol-impaired driving*. Washington, DC: National Highway Traffic Safety Administration.
- National Highway Traffic Safety Administration. (2007). *Guidelines for Community Supervision of DWI Offenders*. (Report No. DOT HS 810 940). Washington, DC: National Highway Traffic Safety Administration.
- National Highway Traffic Safety Administration, & National Institute on Alcohol Abuse and Alcoholism. (2006). *A Guide to Sentencing DWI Offenders, 2nd Edition 2005*. (Report No. DOT HS 810 555). Washington, DC: National Highway Traffic Safety Administration, Department of Transportation.
- Perrine, M. W., Peck, R. C., & Fell, J. C. (1988). Epidemiologic perspectives on drunk driving. *U.S. Surgeon General's Workshop on Drunk Driving, December 1988*. Washington, DC: Public Health Service, Office of the Surgeon General.
- The Gallup Organization. (2003). *National Survey of Drinking and Driving, Volume I: Summary Report, Attitudes and Behavior: 2001*. Princeton, NJ: The Gallup Organization.
- Voas, R. B. (1999). The three Rs for controlling the hardcore drinking driver: MADD's program for the repeat DWI offender. *The Prevention Pipeline*, 12(3), 1-6.
- Voas, R. B., & DeYoung, D. J. (2002). Vehicle action: Effective policy for controlling drunk and other high-risk drivers? *Accident Analysis and Prevention*, 34(3), 263-270.
- Wiliszowski, C., Murphy, P., Jones, R., & Lacey, J. (1996). Determine reasons for repeat drinking and driving. (Report No. DOT HS 808 401). Washington, DC: National Highway Traffic Safety Administration.
- Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). An evaluation of three intensive supervision programs for serious DWI offenders. *Annals of Advances in Automotive Medicine*, 54, 375-387.
- Zaloshnja, E., & Miller, T. R. (2009). Costs of crashes related to road conditions, United States, 2006. *53rd Annual Proceedings of the Association for the Advancement of Automotive Medicine* (Vol. 53, pp. 141-153). Barrington, IL: Association for the Advancement of Automotive Medicine.







