

Leah Viste – Assistant Cass County State’s Attorney

House Bill 1302 has excellent provisions for holding DUI offenders accountable. As of December 5, 2013, Cass County had approximately one hundred twenty-eight participants in the twenty-four seven program. Of those, forty-five were submitting to twice daily breath tests, forty-three were wearing ankle bracelets, and forty were wearing patches. I appear today with the benefit of hindsight - five months of practice under the provisions - to suggest three ways to fine-tune the law.

First, provide an opportunity for appropriate offenders to participate and complete drug court by serving shorter periods of incarceration. Offenders currently must serve the entire minimum mandatory periods of incarceration; this effectively precludes their participation in drug court. Indeed, no DUI offender under the new law has participated in Cass County’s drug court. Drug court is rigorous. So offenders will not often (or perhaps ever) choose to serve one hundred twenty days or one year and then participate in drug court. Moreover, drug court is most effective when timely. Thus if an offender has been prosecuted and has served a lengthy sentence, the benefits of drug court dwindle.

Second, avoid potential violations of interstate compact by changing twenty-four seven participation from twelve months to three hundred sixty days. Under the Interstate Compact for Adult Offender Supervision, offenders sentenced to unsupervised probationary periods of one year or longer must have their probation transferred before traveling to, or residing, in another state. In contrast, offenders sentenced to unsupervised probationary periods of less than one year need not have their probation transferred when traveling to, or residing in, another state.

Third, provide for appropriate alternatives to twenty-four seven participation when an offender’s jurisdiction does not provide the program and the court finds that imposing the requirement would create a manifest injustice. Having two interstate highways and a border with MN, Cass County prosecutes many offenders who live in jurisdictions that do not have a twenty-four seven program. Cass County’s twenty-four seven coordinator reports that some jurisdictions – like many counties in SD and a couple in MT – have provided twenty-four seven services for Cass County offenders. But other jurisdictions – like MN – provide no comparable services. Requiring offenders who live in jurisdictions that do not provide services to participate in a twenty-four seven program may result in a manifest injustice as defined by N.D.C.C. 39-01-01(40). For instance, it could require an offender to regularly travel hundreds of miles to participate.

In summary, I commend the Legislature for passing H.B. 1302 and suggest three ways to enhance the law to better serve our state. Thank you.

As of 12/5/13, Cass Co. had approximately 128 participants in the 24/7 Program. Of those, 45 were submitting to twice daily breath tests, 43 were wearing ankle bracelets, and 40 were wearing patches.

The participant's costs are as follows:

breath test \$1/test or \$2/day.

Bracelet \$5/day

patch \$50/2 weeks or \$3.57/day.

	No. of Participants	Cost per day
Twice Daily Breath Tests	45	\$2
Bracelet	43	\$5
Patch	40	\$3.57 (\$50 every 2 weeks)