

**Interim Judiciary Committee
Presented by Sally Holewa
State Court Administrator
December 11, 2013**

Senator Hogue and members of the interim Judiciary Committee, thank you for an opportunity to come before the committee to share some concerns the court system has regarding the recent changes to the Driving Under the Influence statutes.

Through discussions with district court judges and the juvenile court directors, I am aware of several areas of concern regarding the implementation of these changes. Those concerns fall into two areas:

Issues related to adult drug court:

1. The statute allows judges to sentence offenders to drug court. It could be argued that if so ordered, the drug court must accept them into the program. This conflicts with the current model for drug courts, which requires the drug court team to screen applicants to determine if they meet the criteria for drug court and that the program has the capacity to add new participants.
2. The statute expands the number of people referred to drug court, but the state does not have the capacity to handle the increased number of participants. Drug court is not available in every area of the state. The number and location of drug courts is limited because of a lack of available treatment and probation resources in some areas of the state. Drug courts cannot be successful unless they include local intensive probation supervision and a treatment component.
3. The statute contains language referring to rules of court related to drug court; however there are no rules related to drug court. Instead, the prior law required that the Supreme Court approve drug court programs.
4. The minimum length of jail time a defendant must serve was lengthened from 10 days to 60 days imprisonment for a 3rd violation or 1 year for a 4th or subsequent violation. This length of time is counter to two of the key

components of drug court, which are early entry into drug court and access to treatment.

I have attached a list of the key components for drug courts. Judge Gail Hagerty, who is a district court judge in the South Central Judicial District, will provide more detailed information about the concerns related to adult drug court and some proposed changes to the statute that would address those concerns.

Juvenile Court issues related to 24/7 program

1. The juvenile court is concerned with the mandatory use of the 24/7 sobriety program for first time offenders when there may be no indication that the child is likely to repeat the offense. Requiring the program when it may not be something a child needs may have unintended consequences such as missing part of the school day, loss of employment or other disruptions to activities that generally have a positive influence on a child's behavior . It may also negatively impact the parent because alcohol offenses automatically result in a juvenile's driver's license being canceled and public transportation is limited to just a few major cities in the state. Having to take time off from work twice a day to drive the child into town will exact a financial cost and may put the parent's employment at risk. We believe a better approach is to allow the court the discretion to order the 24/7 program for a first offense while still mandating its use for a second or subsequent alcohol-related offense.
2. Part of the effectiveness of the 24/7 program comes from its use of immediate detention in the event of a failure to report or a failed test, and the statute requires that law enforcement immediately take any individual they believe is not complying with the program requirements into custody. However, most alcohol-related offenses in the juvenile court are treated as unruly offenses that are handled informally.¹ If they are not charged with a delinquency offense, the child cannot be placed in secure detention. Instead

¹ Unruly offenses are those acts that are against the law because of the age of the person at the time the act is committed, for example use of tobacco by a person under age 18, use of alcohol by a person under age 21, truancy, and disobedience of a parent or guardian. When cases are handled informally, the juvenile and his parents meet with juvenile court personnel and are given the opportunity to admit to the charges and accept conditions of probation with no formal charges or conviction being entered in the district court. Juvenile court offices are located in Bismarck, Bottineau, Devils Lake, Dickinson, Grafton, Grand Forks, Fargo, Jamestown, Minot, Valley City, Wahpeton and Williston.

of taking the child into custody, a better practice would be for the 24/7 program administrator to send a violation report to the juvenile court.

Jim Ganje, staff attorney with the office of state court administrator, will review the changes to statute that we are proposing to address the concerns of the juvenile court. In addition, Cory Pedersen, the juvenile court director for the south central and southwest judicial districts, is present and available to answer any questions you may have about juvenile court.

KEY COMPONENTS OF DRUG COURTS

- I. Drug courts integrate alcohol and other drug treatment services with justice system case planning.
- II. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- III. Eligible participants are identified early and promptly placed in the drug court program.
- IV. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- V. Abstinence is monitored by frequent alcohol and drug tests.
- VI. A coordinated strategy governs drug court responses to participants' compliance.
- VII. Ongoing judicial interaction with each drug court participant is essential.
- VIII. Monitoring and evaluation measure the achievement of the program goals and gauge effectiveness.
- IX. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- X. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court.