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Judiciary Committee
October 27, 2016

[LR506]

The Committee on Judiciary met at 10:00 a.m. on Thursday, October 27, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR506. Senators present: Les Seiler, Chairperson; Laura Ebke; and Patty Pansing Brooks. Senators absent: Colby Coash, Vice Chairperson; Ernie Chambers; Bob Krist; Adam Morfeld; and Matt Williams.

SENATOR SEILER: I believe this is a really important progress...important subject matter we're going to be handling today, so the testimony will be distributed to the other senators who are tied up in other meetings, and appreciate it very much. It's the magic hour and the notices have been published. And so, Your Honor, Lawrence E. Long, would you please come up and make your testimony. And welcome from our great state to the north. [LR506]

LARRY LONG: (Exhibit 1) I'm delighted to be here, Mr. Chairman. Mr. Chairman, my name is Larry Long and I currently serve as a circuit judge in the 2nd Judicial Circuit of the state of South Dakota; that is Minnehaha and Lincoln Counties and comprises the city of Sioux Falls. Those two counties are approximately a quarter of a million people. I am the presiding judge. There are 11 circuit judges and 4 magistrates. And so in addition to a regular caseload, I get to manage ten of my colleagues and that's another story. But I...my career has kind of been at three levels. I grew up in Bennett County, South Dakota, which is 18 miles north of Merriman, Nebraska, in Cherry County, South Dakota. For those of you who know where the Bowring Ranch is, I lived about 15 miles north of there in Martin. My parents ran the newspaper and they were homesteaders out there. After I got out of law school in 1972, I went home and became the county attorney--or in South Dakota what we call the state's attorney. I was the part-time county prosecutor. And I soon learned as a part-time county prosecutor that almost all criminal conduct in Bennett County of any significance was alcohol related. The individual was under the influence of alcohol whenever he did, or she did, whatever it was they did that got them into trouble, whether it was drunk driving or spouse abuse or kidnapping or murder or rape or whatever. There was very little criminal conduct of any consequence that was not alcohol related. And after several years of that, the sheriff and I were trying to figure out a way to deal with that because the sheriff had grown up there, I had grown up there, and one of the things that we knew

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was we knew all the people. I mean it's a typical little town in western South Dakota and we both knew these people and we'd grown up with them and we knew that these were pretty good folks if you can keep them sober. If you can't keep them sober, then they are a source of constant, repetitive criminal conduct when they're drinking. And so...and the only thing we figured out that was reliable was to keep them locked up, and of course that's not a long-term solution and it's not a good solution. And so we were scouting about for some way that didn't cost any money to deal with that recurring problem. And so the sheriff and I came up with an idea and that was that as a condition of release from jail, we would require these people: (a) to quit drinking; and (b) to come in every morning to the sheriff's office and take the breath test and come in every evening and take the breath test and see if that would help, because the promise we made to them is if you pass the test you're free for another 12 hours and if you fail the test we're going to put you in jail for 12 hours. And so we sat down and we test-drove this idea with the judge. And he said, Larry, you're going to fill the jail. And the sheriff piped up and said, Judge, the jail is full now; what have we got to lose? And so the sheriff and I were given the green light to try this out. And what happened was we observed that instantly we had about two dozen people who would queue up in front of the sheriff's office every morning and every evening. And the dispatcher who was there, and we were paying her a salary anyway, would provide the breath testing. Took about ten minutes to test 22 people or 24 people and almost without exception these people would show up on time and they would blow a clean test. And the threat, of course, was the immediate incarceration. And we very rarely had to actually impose that. And we were amazed. But the one thing we knew was we knew these people and we knew that some of these people hadn't drawn a sober breath in 15 or 20 years but they were drawing sober breaths now. And they may have been cheating, they may have been drinking a little between the tests, but they were showing up sober at 8:00 in the morning and they were showing up sober again at 8:00 in the evening. And all we had invested in this program was the cost of the little plastic tubes which were I think at that hour, you know, ten cents apiece or something like that. So we hadn't invested much money in this program but we were able to keep chronically intoxicated and chronically addicted people sober sometimes for three or four months at a time without failure. And so we were just delighted and we started using it primarily for drunk drivers and primarily for domestic violence, because there's a huge correlation between domestic violence and alcohol consumption, and we started to see results we were really happy with and, frankly, we were surprised by that we got those kinds of results. Well, then my career path changed. A friend of mine decided to run for

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attorney general. He called me up and said, Larry, I want you to move to Pierre and help me run the office if I get elected. I agreed to do that and so in 1990, after I had been in Martin for about 18 years, I moved to Pierre and became the deputy in the Attorney General's Office. And so I was off doing other stuff. Well, after about 17 years, my boss decided to run for governor and got a result he didn't like. But I ran for attorney general to replace him and I got a result I did like. So I became the attorney general in 2003 and immediately the new governor convened a work group to deal with what he perceived to be a problem with overcrowding in the local jails and overcrowding in the penitentiary. And so I was asked to serve on this committee and I trotted out my old program in Bennett County which I thought I had used successfully. And I submitted it to the work group and they endorsed it and it went into the report that went to the governor. Well, like most reports that go to governors, it didn't get very far. But I decided I was going to pursue it anyway. And so I went to a judge that I knew in Minnehaha County and I went to a judge that I knew in Pennington County, which is Rapid City, which is our second largest city, and I went to a judge in Winner, South Dakota, which is just north of Valentine, which is a relatively rural area, and I asked them to try this program out for me, because they had all served on the committee and they had all endorsed it and so they had a little bit of self-interest in having it work. And all three of the judges agreed to it. And then I had to go to all the three sheriffs and ask them to perform the testing. And so we put together a pilot program and we asked the judges to impose these sanctions and these bond conditions on one category of people, and that was people who had been arrested for drunk driving who had a prior conviction within ten years. And they agreed to do it for six months and try it out. I didn't have an appropriation so I didn't have any money to spend on this program. And so I went and begged some money from the beer distributors and the distillers. I got some money from Anheuser-Busch and I got some money from Miller and I got some money from the local distributors so that I could provide the sheriff's office with testing devices and tubes. And then we went to the National Highway Traffic Safety Administration because we needed some cash and we convinced them that this was a program worth trying out. And they gave us some money because we anticipated that in Minnehaha and Pennington Counties the volume would be sufficient that they'd have to hire extra help in order to perform the tests. And so we got a little money from NHTSA, we got some money from the distributors, and we launched our pilot. Well, what happened...and we did that in February of 2005 and what happened was we immediately...the judges saw the results that I promised them that they would see. They saw large numbers of people who were chronically alcoholic staying

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sober for months at a time and they were pretty excited by that because that's something different than what they had seen in the past. And so what started to happen was we started to get calls from other judges and calls from other sheriffs saying, Larry, we want to be part of this program, okay, can you provide our sheriff with gear, can you provide him with testing devices and tubes? And we figured out a way to do that. Or we would get a call from a sheriff saying, my judge is on my case in order to, you know, implement this program in our county, and so can you get me fixed up because I got the judge giving me a hard time. And so we were able to accomplish that. So by the end of 2005, we had ten counties in our program and we only had programmed for three. But we developed some data and the data showed that large numbers of people were being in the program and they were staying sober for significant lengths of time and we developed some data. And so in 2007 we took our data and we prepared a legislative package and we went to our legislature and said here's what we want to do with this program and here's our data; we believe this thing will work. We also developed a package where the participant is required to pay the fees and the participants were charged \$1 for each test, so it cost them \$2 a day to participate, and that's kind of how we got started. The...we ran into some problems. South Dakota, as you know, is a state which demographically is not unlike Nebraska. There's a couple of big cities and then there's large, substantial rural areas. And so we needed to develop a program that would work in the rural areas. We knew it would work in Rapid, we knew it would work in Sioux Falls, because we were doing it. But in the very rural areas where there's maybe a sheriff and one deputy or a sheriff and a clerk, they didn't have the personnel to do twice-a-day testing and so we were looking for an alternative and we hit upon an ankle bracelet that served our needs. It's not quite as effective as twice-a-day testing because...and I'll get to that in a minute. But it served our needs. And so we went to NHTSA and asked them for some money and they bought 100 bracelets for us. We put those into operation. But one of the things NHTSA said is, look, we'll buy the bracelets for you but we're not going to pay the daily fees for you; you're going to have to figure out a way to do that. And because I didn't have an appropriation, I sat down with the judges and they said, well, let's make the participant pay the daily fees. And the daily fees at that hour were about \$5 a day. And so the judges as a condition of allowing an individual to wear a bracelet rather than twice-a-day testing would require them to pay the additional fee which at that hour was about \$5 or \$5.50, something like that. So that's how we got into the participant-pay business, and it was largely as a result of me not having an appropriation at the time. And we ran into another problem. We immediately noticed that people

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were showing up and testing clean and the testers were saying, Larry, these folks are on something; they're not on alcohol but they're on something. And so it became clear that some of our participants were switching from alcohol to some other drug. Most of it was marijuana but we would occasionally see methamphetamine or cocaine or heroin. And so we incorporated into the program a testing for drugs. And of course the UAs are...urinalysis was the preferred model because you can get an instant result from a UA and you can impose the sanctions immediately which becomes a significant thing. And so we incorporated urinalysis testing as part of our operation. The next thing we ran into of course was again the rural counties. So UA testing is more labor intensive even than alcohol testing. And so...and one of the things about UA testing is you have to provide an individual to literally watch the subject pee in the cup because if you don't, they'll bring it in their purse, they'll bring it in their pocket, they'll get their sober brother-in-law to pee in a cup for them and they will bring that in, and so you just have to have somebody watch. And that created even more challenges for the rural areas. And so as an alternative for the rural areas we adopted the use of what is called the sweat patch or the drug patch. And it's a patch that it looks like a great-big Band-Aid and you wear it on your arm or on your back for seven to ten days. It collects the emissions from your sweat glands. And of course people who are using drugs or alcohol, they sweat it out. That's part of the way the body gets rid of the poison. And those patches can be analyzed chemically to determine if an individual is using alcohol or opiates or methamphetamine or barbiturates or several of the prescription drugs. And it's not as effective because you can't get the immediate sanction. You don't get an immediate result and, consequently, you can't impose an immediate sanction. But it's certainly a responsible way to keep track of these folks and to make sure that they are following the rules. And so we adopted that. And when we had those things in place, we went to the legislature and we got legislative authorization to incorporate the program at the preadjudication phase that is the bond phase which is where we had been working. Then we also got authority to allow the judges to use it at postconviction where they're on...where the defendants are on probation. We also got authority to use it for parole, for people who have been in the penitentiary and are getting out. And of course alcohol or drug abuse is a substantial reason why people get parole revoked and go back into the system. And so the parole system uses it. And also then at the governor's request we modified state law to allow judges who are presiding over abuse and neglect cases--in other words, where the little kids are being abused or neglected--and so that gives a judge the authority to place the parents or the caregivers of young children in the

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program as a condition of allowing the children to be placed back in the home because, again, there's a huge correlation between alcohol or drug abuse and child abuse or child neglect. And so the...in South Dakota we use the program for a variety of things all related to either alcohol or drug abuse. Now the principles that we think drive this are, first of all, you need to test these folks often enough so they know they'll get caught, so they...and the second thing is you need to make it crystal clear to them that there's going to be a sanction imposed as soon as we can possibly impose it after they are caught in violation. And we believe that the...that that is consistent with the successful programs in drug court; we believe it's successful...consistent with the successful programs in DUI court. And the analogy I like to use to demonstrate that is the analogy of an electric fence. I mean, how many of us have touched an electric fence? How many of you have purposely done it the second time? I mean, electric fences do exactly what we try to do. We try to impose a sanction as soon as possible after the violation is determined, but we don't want to impose a serious sanction. We just want to make it uncomfortable enough so that the individual is discouraged from doing it again. And that has really been successful. We average for every 100 tests that are administered on a twice-a-day basis, 99 of those tests are going to be clean; in other words, for every 100 individuals who come into the sheriff's office in the morning, 99 of those people are going to show up on time and they're going to blow a clean test. Now that does not mean that they don't sometimes cheat and drink between events. That happens. But if they're cheating regularly, we're going to catch them eventually. And then they're going to spend the night in the box, like the old Cool Hand Luke movie, you know--you go that way, you spend a night in the box. And so we have tested...since 2005, we've had over 30,000 participants in South Dakota and that success rate has stayed very close, at just over 99 percent. Now...and if you analyze all of that, about 55 or 56 percent of those people will be completely compliant; in other words, they will always show up on time, they will always blow a clean test, they will never, ever fail. That's 55 percent of people who are, frankly, hardcore drinkers by and large. And so we have some stats and I think you folks, I have not submitted that stuff, but I think it's been submitted to you in your materials. We have internal studies that show that people who have spent 30 days in our program at the DUI-2 and -3 and -4 level are about 50 percent less likely over two and three and...over one, two, and three years to be rearrested for DUI, 50 percent less likely than those people who have not participated in our program. And if they've spent 90 consecutive days in our program, they're about one-third less likely to be rearrested for DUI at the 2, 3, and 4 level over those people who did not participate in our program. And so we

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think our recidivism numbers are, frankly, better than I ever hoped when we started this. The...and of course internal analysis is always a little suspect, but you're going to hear in more detail than from me. The RAND Corporation has kind of adopted us. They have...we've given them access to our data over the 30,000 people who have been through the program in 11 years. And they've done two studies and they're doing at least one more. And in their first study they determine that in the counties in South Dakota where 25 percent of the eligible participants were actually assigned to the program, that there was a 12 percent decrease in those counties of DUI arrests and there was a 9 percent decrease in domestic violence arrests, which we are delighted with, frankly. And then their more recent study basically utilized that basis and they did a mortality study in South Dakota. And I don't pretend to understand how they did this, but basically what they did was they studied the counties where there had been the highest percentage of participation and they decided that in those counties where there had been significant participation in the 24/7 Program, there was a 4.2 percent overall reduction in the mortality rate in those counties from all causes. And it was like 8 percent among women in those counties. And so exactly why that is they were not able to say, and I suspect their next study is trying to figure that out. But from a public health perspective, this is a result that we never expected and it was...I mean we started just trying to empty some beds in the Bennett County Jail. I mean that's really all we started with and that's the only goal I really ever had was to keep some people sober who needed to be sober and to empty some beds in the county jail. But we have really kind of discovered that there are some long-term significant benefits for doing this widespread. And I think I'm probably running out of time. I asked for one handout to be handed out and this is one of my favorite charts. The...we test about...statewide there is about 2,500 people a day in South Dakota who are part of the program. About 1,400 of them are on twice-a-day testing; about half that amount is...are wearing bracelets. The rest of those folks are...some of them are in...are wearing...some of them are using an interlock device in their vehicle, and then there's a significant number that are on UA testing regularly and several of them are wearing drug patches. But if you total all those numbers together, it's about 2,500 people that we are supervising on a daily basis. And that's significant because of the chart that I've handed out. The chart that I've handed out shows the number of people killed on South Dakota highways as a result of alcohol-related traffic fatalities from 2000 through 2015. The five charts in blue are the five years before implementation of the program. And the average annual death loss for those five years, 2000 through 2004, was 83. In the 11 years since the program was implemented, that

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number now averages 54. And we didn't see this coming either, frankly. So I suspect I'm close to out of time and...but this program, when I got to the legislature, I didn't have to lobby this very hard. I just showed them the data and they signed on. Now, and the one last thing is, how much money does it cost? When I started, I asked for an appropriation of \$350,000 and that was to buy equipment and hand it out to local law enforcement to do the testing. Next year I asked for \$400,000 and I spent it on the same thing: was equipment to local law enforcement to do the testing. The daily fees under South Dakota law are remitted back to the sheriffs' offices to defray their costs and after that they have to buy their own equipment and they have to pay their own salaries and they have to do all that. But I promised the legislature I'd never ask for an FTE and I never did. And I think my predecessor has never asked for an FTE either because the program at the prices we are charging has been self-sustaining. And so other than the \$750,000 that I got in the first two years, I don't think the legislature has stuck another nickel into this. So I'll stand by for questions. [LR506]

SENATOR SEILER: Your Honor, I have a couple questions. One is, has your law been tested in court? [LR506]

LARRY LONG: Yes, a couple of times. The...I have that citation with me but there's a case out of Montana. The state of Montana has adopted this program pretty much the way we run it and there was a facial challenge under the Fourth Amendment to whether or not it was a violation of the constitution to impose these sanctions pretrial. And the Montana Supreme Court approved the 24/7 Program in Montana as against that facial Fourth Amendment challenge. [LR506]

SENATOR SEILER: Super. Your western South Dakota is very similar to ours. And do you have problems with people for distances coming in twice or is that where you're using the interlock? [LR506]

LARRY LONG: That's why we...that's essentially why we adopted the bracelets. [LR506]

SENATOR SEILER: Okay. [LR506]

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LARRY LONG: And so that...you will find as you implement this program, you will find that everybody has an excuse why they can't come in and test--you know, my uncle died, you know, whatever. But...and most of the excuses are bogus, to be perfectly candid. But there are a few where people have serious job-related issues or they have distance issues. You know, when gas is \$4 a gallon and you have to drive 40 miles to the test site twice a day, that becomes expensive in and of itself; even when it's \$2 it's expensive. So the use of the bracelets, we adopted those to deal with that reality. And in addition, there is the interlock devices which serve the same function. And so that's how we tried to deal with it. [LR506]

SENATOR SEILER: My last question is, is there anything in your law right now that you would change to modify it? That's kind of an unfair question. But if you get home and think of something that you think ought to be modified, I'd appreciate it if you'd send us a letter. [LR506]

LARRY LONG: I would. And, Mr. Chair, I have not looked at your proposed legislation so I can't comment on that. [LR506]

SENATOR SEILER: Okay. [LR506]

LARRY LONG: But I think our current rules are working pretty well. [LR506]

SENATOR SEILER: Okay. Senators? Thank you...go ahead, Laura. [LR506]

SENATOR EBKE: Well, no, I think this is a great program with a lot of potential. I'm wondering if you've seen any instances of creativity by law enforcement and others to help accommodate some of these distance problems that you're talking about. We heard one story at an earlier meeting about, for instance, a sheriff's deputy as part of their regular rounds, you know, through the district or through the county stopping at a Walmart parking lot or something like that and having somebody blow, meet them there and blow. Do you have any anecdotal evidence of that happening? [LR506]

LARRY LONG: I don't have anecdotal evidence of that happening. The next presenter might. I will, if I can,... [LR506]

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SENATOR EBKE: Oh, please. [LR506]

LARRY LONG: ...I will share with you one of my favorite anecdotes though. One of the TV stations in Sioux Falls one day was looking for a...to do a spot on the 24/7 Program and they called me and they said, Larry, we'd like to interview a couple of participants. And I said, well, why don't you go down to the sheriff's office and pull a couple people out of line. And they did. And one of the people they pulled out was a woman and she was in her, I think, late 40s, early 50s. And she was charged with DUI, fourth offense, which is a...which if she got convicted would expose her to five years in the penitentiary. And they said, well, how has this changed your life? And she said, well, you know, I've been on the program now for six months, I've been sober for six months. She said, you know, when I, you know, when I lost control of my drinking, she said, my husband divorced me and kids have disowned me and it's been problematic in my family. But she said, since I have been sober this time I got an invitation to my son's high school graduation and I got an invitation to my wife...or my daughter's wedding. And she said, without this program I wouldn't have gotten either of those things. And that kind of success is hard to measure but it's real, I mean, it's out there. And we're doing a lot of good in families like that that's hard to quantify. So I don't...the other anecdotal thing I will tell you, and I suspect that Mr. Myers may have a similar story, there are a lot of people who test twice a day who graduate out of the program and there's a substantial percentage of those people who come back and say, can I stay in the program, this is really helping me and I'm not sure I can stay sober without it, can I keep coming and testing? And I think that's a compliment to the program. [LR506]

SENATOR EBKE: One other question. You kind of touched on, you know, the more serious offenses and, you know, being exposed to potential of five years in the penitentiary or whatever. What have the numbers...have the numbers changed in South Dakota in terms of those who are convicted and sentenced to time in the penitentiary and spend time in the penitentiary based on the alcohol and drug convictions? [LR506]

LARRY LONG: I don't know that I've seen any data about that. One of...I forgot to mention, one of the things that we did when we did the legislative package was we expanded the program beyond drunk drivers. And so in South Dakota the judges can use the program on any offense that's before them if there is some nexus to the use of alcohol and drugs. And one of the things

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that has allowed the judges to do is to get people out of jail, out of pretrial confinement if the judge thinks that...if the judge is convinced that this individual actually is addicted to alcohol or is addicted to drugs and would behave themselves if they were being monitored, then it allows the judge to do that. And that has been successful, so we have seen some reduction in county jail populations. I'm not sure that I can tell you with definiteness that we have seen reduction at the DOC level, but county jail populations have gone down. [LR506]

SENATOR EBKE: Okay. Thanks. [LR506]

SENATOR SEILER: Thank you very much for your trip and your information. It was very helpful. [LR506]

LARRY LONG: Well, thank you, Mr. Chairman. I appreciate the opportunity. [LR506]

SENATOR SEILER: Thank you, Your Honor. Bill Mickelson, will you take...come up and tell us about your consulting and your...the 24/7 Program. [LR506]

BILL MICKELSON: (Exhibits 2-6) Thank you, Mr. Chairman. Members of the committee, my name is Bill Mickelson. I served 40 years in state government with the Highway Patrol with then-Governor Bill Janklow, and then 10 years with Attorney General Larry Long. And it was with my tenure with General Long, now Judge Long, that I assisted in the development, implementation, and the direction of the 24/7 Sobriety Program. The judge gave you the history behind the program and I'm not going to add anything to that. It's just a few things that I want to touch upon. Driver's license reinstatements: We had mandatory minimums just like about every other state in the country as far as driver's license revocations and reinstatements. And we saw and had it demonstrated in South Dakota year after year after year, these scofflaw violators that were driving with revoked and suspended licenses. And along comes the 24/7 Sobriety Program and Judge Long had the foresight to go to the legislature and have those mandatory minimums revisited and because we wanted people who were driving anyway to be licensed and we wanted them monitored on a daily basis to make sure that they were compliant with sobriety. And he was successful with the legislature at having that done. So now we have a situation in South Dakota where driver's licenses can be reissued from the bench and on condition of successful

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participation in the 24/7 Sobriety Program. And it's worked quite well. We're able to monitor the insurance requirements and we're able to monitor those people at least twice a day irrespective of what vehicle they're driving. We're sleeping better at night knowing that they're being monitored. And I credit Judge Long for that. One of the things, the mantras that 24/7 goes by, and Judge Long often references this, is the old mantra was: If you don't stop drinking and driving, we're going to make you stop driving. And we were penalizing people with a revocation of their driver's license; 24/7 comes along and says, if you don't stop drinking and driving, we're going to make you stop drinking. And that makes a lot more sense to everyone. And it's something that's doable because we've demonstrated that it's doable. The question was asked about bed space. As of October 1, since we implemented the program in South Dakota, just the twice-a-day testing now, 42,843 participants have been placed on the program in 12 years. We've administered almost 9 million breath tests. We've got a pass rate of 99.1 percent. And divide the 9 million in half, that's 4.5 million days that these people weren't taking up bed space in jails. Now the reality is, whether you've got 600 inmates or you have 300 inmates, you still have institutional cost, but there are substantial cost savings that we have been able to demonstrate. The next phase of the RAND study will be a cost-benefit analysis on the 24/7 Sobriety Program and absolutely we will share that with you when it's published. What I do now, since my retirement, is work with other states all across the United States, develop 24/7 sobriety programs. I have met several times with the sheriffs and police association in Nebraska. I assisted Mike Myers in Omaha to set up their demonstration program, and been working with other places in Nebraska to try to launch programs as well. The federal highway bill, the FAST Act, contained markup language from Senator Thune in South Dakota, who chairs Commerce, (Science), and Transportation, grant funding for each state in the country. And Fred Zwonechek is your highway safety director and is very familiar with the 24/7 Sobriety Program and, in fact, was successful in awarding grants to Mike (Myers) and a few other places and helps us on a national basis with other states who are interested in writing grants and receiving grant funds for 24/7. So he's going to be a great resource if a bill is passed and some of these counties are looking for some start-up money. So there are funds available for start-up. With that, Mr. Chairman, I'll stand by for any questions. [LR506]

SENATOR SEILER: Thank you for your participation and your study and your good work you're doing across the state. [LR506]

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BILL MICKELSON: Thank you, Mr. Chairman. [LR506]

SENATOR SEILER: Michael Myers. [LR506]

MICHAEL MYERS: Good morning. I'm Michael Myers. I'm the community corrections manager for the Douglas County Department of Corrections in Omaha and I'm here to tell you about our own experience locally with 24/7. We...Sheriff Tim Dunning learned of this program, I believe in some part due to some interactions with Bill Mickelson, and brought it to our local Criminal Justice System Management Council. And there was a lot of intrigue about beginning this program. And so we...that council established a committee to begin looking at the possibility of launching it in Douglas County. That planning process began in 2013 and it continued into the early months of 2014 until we finally launched the program. And we visited our neighbors to the north on a couple of occasions to see how the program works in Sioux Falls, South Dakota. We came away very impressed with the efficiency of the program and the personal nature of the program. Despite the fact that, you know, there's some pretty significant numbers of folks that go through the twice-a-day breath testing and the program as a whole, that personal interaction that we noticed among the participants and the breath-testing staff, for somebody like me who comes from a human services background, I found to be quite powerful because there was that relationship that was being established even in just brief interactions because they were seeing them so often. In Douglas County we currently have two testing protocols. We have the twice-daily testing. We have two testing windows per day: between 6:00 and 8:00 in the morning and 6:00 and 8:00 at night. We also utilize for those individuals for which the twice-a-day testing is not practical due to how far away they live from our testing site or because of a work schedule or some other obligation that at our discretion we believe is a legitimate obstacle, we will utilize the SCRAM bracelets provided by Alcohol Monitoring Systems. We basically modeled our program, lock, stock, and barrel, after what we learned in South Dakota. The principles of swift and certain sanctions is one that is effective. You know, any psychology 101 class will tell you that behavior management works when consequences are delivered as close in time to the behavior you want to influence as possible. So we do a 12-hour for a first violation, 24-hour for a second violation. And if you're continuing to drink, for third and subsequent violations on a program that is designed to prohibit drinking, you get to explain yourself to the judge and the judge will make the determination as to whether you...when you're released and continue on the

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program or not. Fred Zwonechek and the Nebraska Office of Highway Safety were referenced earlier and they have been...that office has been a tremendous support to Douglas County. And I believe...I can't speak for them, but I have every indication to believe that they would be a statewide advocate as well. They have provided us grant funding each year that we started the...since we've begun the program. And the encouraging thing is that, by and large, it is now in Douglas County completely sustained by participant fees. We drew...we had a grant period just conclude and we drew very little. I think we...actually for the first 11 months we drew no funds from the grant. The program was completely self-sustaining. We bought some equipment in the 11th month of the program and that was the only expense that the grant incurred. So it didn't take us long to become self-sufficient. We have gradually lowered the eligibility requirements to be on the program. We started with only felony DUIs and a third offense and above and only as a condition of bond. We have since added second offenses as an eligible offense. And similar to what Judge Long said, any crime that there is an intersection with alcohol, the judges can place the individual on the 24/7 Program. Whether that's a, you know, a domestic violence incident or an assault, a bar fight or whatever, the only...what we ask for is that there's a pattern, that there's at least one other alcohol-related offense in the person's history. We don't want to oversupervise people who might not require that level of supervision. So by and large, we have been dealing with the hardcore DUI offenders who have multiple offenses in their...during the course of their lives. After our planning period, our first participant entered the program in April of 2014, so we've been at this, you know, about two and a half years now in Douglas County. During that time we've had 459 participants, administered nearly 70,000 breath tests. There have been 425 combined breath test violations, whether that's a total of either a positive alcohol test or a no-show. That's a 99.4 percent compliance rate for people showing up and having a clean alcohol test upon the administration of the test. We have done nearly 15,000 days of SCRAM monitoring and we've had 49 SCRAM violations during that two and a half years. That's a 99.7 percent compliance rate with the SCRAM testing protocol. We have yet to participate in a scientific analysis of our data, though I believe that that's probably on our horizon in partnership with the RAND Corporation as well. But recently I tasked some of our staff to go through the records of the individuals who had been on the program and had completed the program to see how we are...you know, because the program compliance is great. You know, the 99-plus percent is...that makes...to me, that makes the program worthwhile in and of itself. But the long-term impact is probably just as important, and knowing what happens when the program is complete. So we

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looked at 204 participants, or all of the participants who had completed the program by the end of last year. So they...in order to be included in this analysis, they had to have been off of the program for at least eight months. We ran this data as of September 1 of this year. We reviewed local, state...local and statewide data. We did not do the national NCIC checks just because of the labor-intensive time that it would take to do that. But we did...my intuition tells me that, you know, that that check, checking across the nation probably wouldn't have impacted the data significantly. But our local and statewide review we found that eight individuals out of those 204 had been charged with a subsequent DUI offense. That...those individuals...those 204 participants had been off of the program for an average of 14 months. And Bill and others are probably a bit more adept to speaking to how this compares nationally, but I did have some information from them that that is, you know, about half of what one would expect without this program. Our DUI recidivism rate in an average 14 months out from the program was 3.1 percent and I believe nationally it's a little...it's somewhere between 6 and 7 percent. So we are seeing, as Judge Long said, that 50 percent reduction in DUI, you know, recidivism at certain benchmarks; we are seeing a very similar result in Douglas County here in Nebraska as well. So we have some additional next steps that we are preparing. We are actively working on currently developing protocols to incorporate drug testing into our model. We currently up to this point have only tested for alcohol. I think we would get greater buy-in from the rest of the criminal justice system, Probation, and others that would like to have that included. So we're looking at ways to do that. There are some emerging technologies in that regard...may not be emerging anymore. They're out there and marketed, you know, to minimize the impact of having to, you know, have same-gendered staff and all of the obstacles that come with urinalysis. We will probably use urinalysis but there's also saliva tests as well, swabs that will give you a rapid result. And so those are the things we're exploring right now. And then...and we'll work probably over the next couple of months to implement those protocols in Douglas County as well. We also have had conversations with Parole Administration, Probation to utilize it more extensively than what they have to this point. And the problem-solving courts, especially, you know, drug court, we have...and young adult court, those programs will probably be more on board once we get the drug-testing protocols put in place as well. And another step as we grow the program, right now this is...up till now this has kind of been...other than we have some part-time breath technicians that come in and administer the tests during the testing times, this program in Douglas County has been operated kind of as every...several other people's other duty is assigned in their job

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description. And that has worked. It's kept our cost down. At some point we'll get to a threshold where the program is large enough and takes enough that we'll have to hire its own administrator to run that. In terms of some of the...you know, the data is impressive, but there's also some stories that I think are equally persuasive for the benefit...that demonstrate the benefits of this program. We had a gentleman who was in the program and he was facing his fifth DUI. So he was on track to take up one of the very precious prison beds, you know, in our state. And he was able to maintain his sobriety for several months on the program. He actually told his story to a local TV station in Omaha. He talked about how through his previous journeys in the criminal justice system he was able to roll the dice, you know, understand if I got tested on...you know, if I did a test this week, chances are, this weekend I'm not going to, you know, have to do it again and would roll the dice and skirt around; even talked about how he did inpatient treatment never with the idea of actually getting sober, but just to appease, you know, his family and, more specifically, the courts; and how he was able to actually continue using and drinking while he was an inpatient. And he said this was the program that finally made him face a lifelong addiction to alcohol. And he was an electrician. He had no license while he was on the program. He lived in the western portions of Omaha and our testing site is downtown. He actually moved to downtown to be, you know, within walking distance or bike-riding distance of the testing site. He got work downtown at a construction site doing electrical work. And he for the first time took his sobriety seriously, became involved in AA and other treatment programs. And the fact that he was sober enabled him to amend his life in a way that would promote the success of those other programs. Those...you know, I am a, you know, licensed mental health practitioner. And if somebody is not sober first, the services that you provide, the likelihood of them being successful or the degree that they're going to be successful is greatly diminished. So the end result for this individual is that he is a taxpayer; he is his...he was allowed to plead to a lesser charge by the judge after he had demonstrated several months of sobriety and, in addition to that, all the other positive steps that he took in his life. So he did not fill a prison bed and he is working today as an electrician and a contributing member of society. And we have lots of stories like that where we have seen individuals who have embraced the program. They don't always embrace it the first day. Okay, this is not...this isn't...this program is an irritation to be on. I mean you have to show up twice a day, Saturday, Sunday, holidays, Christmas, your birthday. It's not an easy program to comply with. And so the first...frequently within the first week or two of somebody's participation they are not appreciative of the inconvenience that we're causing

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them. But by and large, those attitudes soften, the relationships get formed, and we see...and they start seeing benefits of the sobriety in their lives and start thinking clearly, you know, for some of them, for the first time in many years. And so we've...it's been a...24/7 has been a great addition to our menu of options for offenders in Douglas County. We continue to hope to expand it in terms of who we serve in the program and how we serve them in the program. We also...one of the things that, you know, that I think would be of benefit in terms of legislation is while it has...the judicial implementation has kind of evened out and we haven't had so many issues recently but initially there's a lot of...you know, anytime something new is introduced to the system, there is a lot of personalities that need to get on the same page, you know, including several different judges in our jurisdiction, you know, the county attorney's office, the public defender's office. Legislation that would kind of set some guidelines and standards to be a reference point for consistency I think would be an advantage to new programs as they start. Like I said, we kind of waded through those issues and muddled along with the judges and had to do a lot of outreach. And it still probably isn't applied, you know, consistently, as consistently as we'd like, but it's made great strides. And Douglas County will make itself available to host any community that wants to come in and observe the program, provide the policies and documents that we use to run the program, because we believe that it's...it is saving lives and that's an endeavor worth sharing. I'll take any questions. [LR506]

SENATOR SEILER: Any questions over...thank you very much. [LR506]

MICHAEL MYERS: Thank you. [LR506]

SENATOR SEILER: Jameson Cantwell. [LR506]

JAMESON CANTWELL: Good morning, Chairman, members of the Judiciary Committee. My name is Jameson Cantwell, and that is spelled J-a-m-e-s-o-n, last name C-a-n-t-w-e-l-l. I'm here as a member of the Nebraska County Attorneys Association as well as a member of the Douglas County Attorney's Office in Douglas County, the location where Mr. Myers was just referencing. I thank you first for the opportunity to speak today. So briefly, my background, I'm a deputy county attorney in Douglas County. I specialize in our three-person motor vehicle prosecution unit, or we affectionately call our DUI unit. So felony-related DUIs go to one of three people and

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we take that position very seriously and we have some very strict standards. So as a member of that unit we deal directly with the 24/7 Program but primarily repeat DUI offenders who we see as dangers to society as the alcoholic that, unfortunately, many of them are. I'd like to talk just briefly about kind of the practical application of 24/7 and why I think it is a benefit. In the amount of DUI-related felonies that we see in Douglas County, it's often hard to know who is taking their sobriety seriously, so pretrial, that is, after they've had a bond setting and before trial. It is easy for repeat drunk drivers to go through the motions, to act like they're taking their sobriety seriously. They'll get a chemical dependency evaluation and provide that to the county attorney and court; they'll start treatment, either inpatient treatment or outpatient treatment. But primarily their sobriety or lack thereof is self-reported. We don't have any proof that they're actually sober. Often they are able to continue drinking alcohol as long as they show up to their meetings on time a couple times a week for outpatient treatment, to go to their AA meetings. There's no check and balance to know if they're actually remaining sober pretrial; 24/7 allows proof of sobriety which has great weight to us. It has as much weight as somebody beginning treatment, going to AA meetings, beginning their path towards sobriety, because we have proof that they're actually showing up. Six months, nine months, even longer in some occasions of twice-daily testing without positive results, meaning positive alcohol results, that has great weight to us when we have people that come to us and say, would you recommend putting us on probation, would you recommend a reduction in charge. We don't know who is taking things seriously without something like the 24/7 Program. Now unlike, I would say additionally, unlike other conditions of bond, 24/7 Program has the teeth to be enforced. Things like a no-contact provision that's put on as a part of the bond, we don't have any way to know that unless the person reports it to us, the witness, the victim on a domestic violence case reports it to us. Remaining in Douglas County or remaining in the jurisdiction, we don't have a way to enforce that unless we find out that they left the jurisdiction. The 24/7 Program can be enforced. If they don't show up, we issue a warrant for their arrest and we go arrest them. If they show up and test positive, they have to sit 12 hours. That's the immediate remedy that we need to both ensure that these people are taking their sobriety seriously, but also it protects society, keeps people off the roads that have these severe alcoholic issues, which as studies have shown the reason why people repeat drinking and driving is because they can get away with it. They get away with it more often than they get caught. A person charged with a felony third-offense drunk driving, I guarantee you, that was not their first, second, and third time that they had driven a vehicle

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drunk. They just hadn't been caught. So the 24/7 Program practically is a huge benefit to a prosecutor's office in knowing who we can trust, in taking things seriously, and who we can...who deserves a break, who deserves maybe to avoid a felony conviction or a reduction in charge or who deserves to be put on probation and who deserves to go to prison. So that's my just practical take on it. I would echo a lot of the benefits that Mr. Myers and the judge already spoke about this morning. And I'd like to leave time open for questions if there are any obviously. And then just as a matter of a couple or a quick anecdotal story, I have had persons that have been on the 24/7 Program and requested to continue on it. One specifically was a repeat drunk driver. He was facing I believe his fifth offense while on probation for a third offense. Okay? So he had severe alcohol issues. He asked the state and the judge if he could be required to participate in 24/7 after his case was already done. The judge practically told him, well, I can only do so much, I can't make you do something that's outside of what our parameters allow. He hinted that you just do it anyway and I won't appeal your sentence. Obviously the judge didn't do it anyway. He was placed on probation for a long measure and able to be on 24/7 during that time. But those are the people that we want to see taking this seriously. The people that don't want to be on 24/7 Program, we know they're not at least showing that they're serious about their alcohol issues. And persons that are on the program but test positive or fail to appear, we know that they're not taking things seriously, at least as compared to the persons we show have these positive results. So with that, I leave it open to questions if there are any. [LR506]

SENATOR SEILER: I have a question. [LR506]

JAMESON CANTWELL: Yes. [LR506]

SENATOR SEILER: On implementation, does that...obviously it wouldn't take place at booking. Does it take place at bond setting or does it take place at the first hearing of plea of guilt? [LR506]

JAMESON CANTWELL: Good question. So it does take place after bond setting, their first time in front of a judge. If it happened to be on a weekend, for example, we have weekend bond setting so a judge is available over the phone. Often they'll set the program up over the weekend. So if Saturday morning a person comes in and they have a third-offense drunk driving, the judge

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can put 24/7 Program on, on a weekend bond. But, yes, that's when it's implemented: right away, which we feel is the best time to do it, as soon as possible. Mr. Myers was mentioning that if there would be something that we could benefit more with, it's more consistency across the board that right away these persons by more of our judges are placed on the 24/7 Program right away, so right away they're seeing sobriety firsthand so that when we get the case--it may be a few weeks, a couple months down the road, as you know criminal cases can last several months--we would hate to have somebody not deal with their sobriety until several months into it and then it's much more difficult, so, yes. [LR506]

SENATOR SEILER: How about when you file your charges, are you filing a transcript of previous DWIs at that time? [LR506]

JAMESON CANTWELL: Say that again, I'm sorry. [LR506]

SENATOR SEILER: When you file your multiple charges, third offense, fourth offense, do you file the previous DWI convictions at that time so the judge has that to look at, at the time he was talking about 24/7? [LR506]

JAMESON CANTWELL: Absolutely, absolutely. So what the...how our information is filed and...which is what it's prepared for the judge, time of setting, time of bond setting, it'll be charged and shown in the information, DUI, fifth offense, with prior convictions. And then it specifically lists the dates of the prior convictions and the location of the prior convictions, which is very beneficial for judges if they know. Let's say there's four prior convictions, all within the last three or four years. That person is much, much more dangerous comparatively for somebody that may have some 15- or 20-year-old DUI convictions. All need to be taken seriously but, yes, that information is provided up-front at bond setting. And if there are any other specifics that are involved as it relates to alcohol, a county attorney is present at bond setting, every occasion, to relay those. So alcohol being inside a vehicle, for example, that's an additional condition we're going to tell a judge about when setting a bond such as a DUI, so. [LR506]

SENATOR SEILER: Any further questions? [LR506]

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SENATOR PANSING BROOKS: I do. [LR506]

SENATOR SEILER: Senator Pansing Brooks. [LR506]

SENATOR PANSING BROOKS: Thank you. Thank you for coming and thank you to everybody who came here to testify today. It's a really important program it sounds like. And I guess I'm interested, and maybe it was mentioned before, but I want to know if this is tied at all to any programming then within the community. It's just you come in and test and then figure out how you're going to heal yourself pretty much, right, from the addictions of alcohol? [LR506]

JAMESON CANTWELL: Yes, so... [LR506]

SENATOR PANSING BROOKS: This is just a procedural matter, not a...I mean I'm hearing program and I understand the use of program in this. But it's really not a program to help people deal with their addictions; it's a program to monitor and just basically make sure that somebody is taking whatever programs they need to be clean, right? [LR506]

JAMESON CANTWELL: You're absolutely right and I agree with that. So when we refer to it as a program, it's not to a certain extent. Program would be counseling, alcohol treatment through those providers. [LR506]

SENATOR PANSING BROOKS: That's what was confusing. [LR506]

JAMESON CANTWELL: Well, but and when...in effect, though, when we see it, we look at it, as a prosecutor anyway, as a step of a program, because it has that much weight to us anyway... [LR506]

SENATOR PANSING BROOKS: Right. [LR506]

JAMESON CANTWELL: ...seeing somebody is, in fact, sober. [LR506]

SENATOR PANSING BROOKS: However they got there. [LR506]

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JAMESON CANTWELL: Exactly, exactly. And we have to force them to be sober in a lot of circumstances but you're right. It's a first step and it is separate from other programs in the community such as their chemical dependency evaluations and counseling and through their other services. [LR506]

SENATOR PANSING BROOKS: Okay, I understand. Thank you. And I'm just trying to...I had one other question I was going to ask. I think it's really good. I like the fact that I think it was Mr. Mickelson that talked about that rather than stopping the driving, we're trying to stop the drinking. So I do like that portion of it a lot. [LR506]

JAMESON CANTWELL: Yeah, I agree completely. I wrote that down on the second page of my notes. [LR506]

SENATOR PANSING BROOKS: Yeah. [LR506]

JAMESON CANTWELL: He put it in perspective that way that, yes, it's...and that's why I think a benefit of Interlock devices is they're also...people are going to drive anyway. Taking someone's license, it has benefit, but if people drive someone else's car or people drive a car, we'd rather them drive sober with an interlock device... [LR506]

SENATOR PANSING BROOKS: Yes. [LR506]

JAMESON CANTWELL: ...than not. [LR506]

SENATOR PANSING BROOKS: And we need people to be employed and... [LR506]

JAMESON CANTWELL: Exactly, exactly. [LR506]

SENATOR PANSING BROOKS: ...not desperate and not... [LR506]

JAMESON CANTWELL: Exactly. [LR506]

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SENATOR PANSING BROOKS: ...committing further crimes because they can't get to their job and... [LR506]

JAMESON CANTWELL: I agree. I agree. [LR506]

SENATOR PANSING BROOKS: So it's a very, you know, thoughtful new way to handle it. So thank you. [LR506]

JAMESON CANTWELL: You're very welcome. Thank you all for your time. [LR506]

SENATOR SEILER: I have one other question. [LR506]

JAMESON CANTWELL: Oh, yes. [LR506]

SENATOR SEILER: If you see a program or a part of our law that we're probably going to propose that needs to be adjusted, would you contact us to make sure that we can correct any problems you're facing right now? [LR506]

JAMESON CANTWELL: Absolutely, absolutely. And Mr. Myers had mentioned some things that maybe could be adjusted and changed. I'd absolutely be in favor of modifying to continue efficiency throughout the program, or throughout the bond conditions. [LR506]

SENATOR SEILER: Thank you very much for your appearance. [LR506]

JAMESON CANTWELL: Thank you. [LR506]

SENATOR SEILER: Rob Foster. [LR506]

ROBERT FOSTER: (Exhibit 7) Morning, Senator Seiler, Senator Ebke, and Senator Brooks. Thank you for having us here today. My name is Robert Foster, R-o-b-e-r-t F-o-s-t-e-r, and I'm the director of sales at Alcohol Monitoring Systems. I did get hit with food poisoning last night, so there's a slight chance that I might be jetting out of here but I'm going to do my best to sit.

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We're appreciative of the opportunity to comment on your 24/7 Sobriety Program. Alcohol Monitoring Systems manufactures the SCRAM bracelet that has been mentioned and another alcohol-testing device, as well as location-monitoring devices or GPS devices. AMS has been a partner in the 24/7 sobriety programs since 2006. So our flagship product, the SCRAM Continuous Alcohol Monitoring bracelet, is a bracelet that goes on your leg and transdermally tests for alcohol consumption. So every 30 minutes the bracelet takes a test, so that's 48 tests a day, 7 days a week. It samples the perspiration coming off the client's ankle and analyzes that for the presence of alcohol and, thus, provides evidence of sobriety. We call it CAM, Continuing Alcohol Monitoring, so I'll refer to it as CAM. CAM has met both the Frye and Daubert standards of proof over I think it's 32 times now, as well as been upheld in over 100 evidentiary hearings across the country, so it's scientifically validated. So CAM is an effective tool at reducing drinking and, you know, thus reducing drinking and driving. According to a study conducted by NCSC, the National Center for State Courts, repeat offenders who wore the bracelet recidivated by committing another crime at about half the rate as the control group, so it was about 15.7 percent versus 28.6 percent. Unlike other alcohol-testing methodologies, CAM not only deters drinking, but also confirms a participant's daily sobriety. Since the first bracelet was worn in 2002, nearly half a million people have been monitored and we've recorded over 2.4 billion tests. Of those half a million people, 77.6 percent of them have been fully compliant, so no confirmed tampers and no confirmed drinking events. The SCRAM bracelet also produces what we call a sober day rate, 99.3 percent sober days. So think of that in the big picture. We know that 99.3 percent of the people wearing the bracelet today across the country aren't going to have a drink. The South Dakota Attorney General's Office, you know, boasts of the CAM compliance rates currently on their Web site. The current 24/7 coordinator of the SCRAM...of the South Dakota program boasts that the CAM bracelet has a 77 percent full compliance rate compared to twice-daily breath testing which has the 55 percent full compliance rate. So not only does the CAM bracelet provide 46 additional tests per day, but its compliance rate is 22 percent better than that of twice-daily breath testing. We've been a significant partner in the 24/7 sobriety programs around the country since they started. And in South Dakota when Judge Long started using CAM, you know, we were very grateful that he was able to provide that to the clients that weren't able to make it in for the twice-daily breath testing. Initially both North and South Dakota used it for those clients who couldn't feasibly drive to and from the testing center. However, since then, both statewide programs have expanded the use of the CAM bracelet

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beyond those hardship cases. Currently the CAM bracelet is used on roughly 35 percent of the South Dakota clients and 65 percent of the clients in the North Dakota 24/7 Program. In Douglas County here we've been involved with Director Myers and the fantastic pilot and program that he has developed. CAM has been used on 128 participants in Douglas County, Nebraska, providing for 14,672 sober days. Since the technology deters the person from drinking and, thus, prevents drinking and driving, there are great opportunities to expand this in the Nebraska 24/7 Sobriety Program. In addition to the CAM bracelet, we also have what we call SCRAM Remote Breath, which is an unsupervised hand-held breath test that the client is able to take home and you're then able to schedule tests or do on-demand tests of that client. It also takes a GPS point with every test so you know where the device is; and it uses automated facial recognition to compare a baseline photo to the client's photo to ensure that it is that client taking that test. The SCRAM Remote Breath device is starting to be used in the 24/7 sobriety programs. In Brookings County, South Dakota, they've been piloting the Remote Breath since June. To date, ten participants have used the Remote Breath for 90 days with an overall compliance rate of 99 percent. The pilot program has been so successful that South Dakota plans to expand the use of Remote Breath statewide. Question? No. AMS has also developed a 24/7 software solution. It's easy-to-use, comprehensive sobriety case management software that provides real-time oversight of the DUI participants and the sobriety program performance from state to county to court. It's an integrated effort to effectively manage the 24/7 participants and promote long-term sobriety. So we're developing that and rolling it out in the next month or two. Here in Nebraska, AMS partners with a local company, Vigilnet, to deliver services and programs to local law enforcement agencies. Vigilnet is headquartered in Omaha and also operates programs in Pennsylvania, Oregon, and Washington. Since 2006, Vigilnet has successfully partnered with many law enforcement agencies throughout the state, including Nebraska State Probation system and the Nebraska Department of Correctional Services. Vigilnet was also recently selected by Douglas County Community Corrections to provide electronic monitoring services which includes GPS and Remote Breath testing. Vigilnet's local infrastructure in the state allows cities and counties to implement programs that make sense at the local level based on individual jurisdictional needs and resources. Many times these programs are 100 percent self-sufficient on day one and result in zero costs incurred by the city, county, or state for the lifetime of the program. AMS and Vigilnet, we stand together in support of the Nebraska 24/7 Sobriety Program. We believe the program could be further strengthened by mandating longer sentences

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in the program and expanding the use of Continuous Alcohol Monitoring for the reasons we have stated. Earlier this month, the Upper Great Plains Transportation Institute released its report, "The Effects of Legislatively-Mandated Sobriety on First-Time and Repeat DUI Offenders in North Dakota," regarding the North Dakota 24/7 Sobriety Program. According to the report, longer sentencing periods in 24/7 sobriety programs appear to have stronger deterrent effects. Compared to those enrolled in the program for a minimum of one year, participants sentenced to the program for 60 days have a higher average number of impaired driving citations, non-DUI citations, and crashes the longer they are removed from starting the program. So the longer we can keep them in the program and keep them sober, you know, the better, the lower the recidivism rates are. Commend your efforts and we commend your efforts to reduce, you know, the incidents of drunk driving and alcohol-related crime here in Nebraska and stand by for questions. Thank you. [LR506]

SENATOR SEILER: Questions? I have one. On the breath test... [LR506]

ROBERT FOSTER: Yes. [LR506]

SENATOR SEILER: ...that he takes home, how do you know he's on the other end? [LR506]

ROBERT FOSTER: So when you enroll a participant in it, the device takes a baseline photo and so every time the participant takes a subsequent test it's taking a photo and using automated facial intelligence to match it to that photo and it also takes a GPS point. [LR506]

SENATOR SEILER: Okay. I thought maybe you had a fingerprint or DNA. [LR506]

ROBERT FOSTER: (Laugh) Not yet. [LR506]

SENATOR SEILER: Okay. Any other questions? Senator Pansing Brooks. [LR506]

SENATOR PANSING BROOKS: I'm just trying to wade through your testimony here. Thank you for coming. Regarding...I see that South Dakota has a 90-day program. Is that correct? [LR506]

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ROBERT FOSTER: I believe 90 days. [LR506]

SENATOR PANSING BROOKS: That's what you have in paragraph four of your...of...on the second page: "To date..." [LR506]

ROBERT FOSTER: The Remote Breath program. [LR506]

SENATOR PANSING BROOKS: Yeah, Remote Breath program. [LR506]

ROBERT FOSTER: Yes, yes. [LR506]

SENATOR PANSING BROOKS: And then at another point you talk about how the longer, the better basically. So what about other states? Do they have...do you have statistics regarding how long various states are implementing the programs across the nation? [LR506]

ROBERT FOSTER: Yes. Yes. And we can supply you with those statistics. I believe the North Dakota, and I'll get you these times, but I believe it's second and thirds are mandated to the program for 12 months, and it may be fourth and subsequents are 24 months. So that's the North Dakota... [LR506]

SENATOR PANSING BROOKS: I'd be interested in seeing those statistics. [LR506]

ROBERT FOSTER: Absolutely. We'll get you a copy of that. [LR506]

SENATOR PANSING BROOKS: Thank you. [LR506]

ROBERT FOSTER: Yes. [LR506]

SENATOR PANSING BROOKS: But I'd like to compare other states, too, besides just North Dakota if you have data somewhere, if somebody does. [LR506]

ROBERT FOSTER: (Inaudible) Montana. Absolutely. We'll get you that. [LR506]

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SENATOR PANSING BROOKS: Thank you. [LR506]

ROBERT FOSTER: You're welcome. [LR506]

SENATOR SEILER: Anything further? Thank you very much (inaudible)... [LR506]

ROBERT FOSTER: Thank you, Senator. [LR506]

SENATOR SEILER: (Exhibits 8-10)...for coming and appearing before us. We have three letters of support from Phil Tegeler, executive director of The Bridge in Lincoln; Tim Dunning, Douglas County Sheriff; and Matthew Kuhse, Omaha city prosecutor. Now, anybody else in the audience that would like to come up and testify? I think that's a record for the Judiciary Committee. [LR506]

SENATOR PANSING BROOKS: It is. [LR506]

SENATOR SEILER: Thank you very much for coming. This concludes the hearing. [LR506]