

South Dakota 24/7 Sobriety Program

Introduction

South Dakota, like many other states, experienced an increase in arrests and convictions for Driving Under the Influence (DUI) offenses during the late 1990's and early 2000's. The arrest numbers for repeat DUI offenses increased and so did the number of fatalities associated with DUI.

Enforcement alone was not having the desired impact on reducing recidivism. Incarceration negatively impacted communities and families. In addition to the cost of incarceration, violators lost employment making them unable to support their families, and unable to maintain their role in the family. In addition to societal impacts, these outcomes placed additional financial burdens on local and state governments.

South Dakota 24/7 Sobriety Program

The South Dakota 24/7 Sobriety Program was developed in direct response to the overwhelming need to address repeat impaired driving offenses in South Dakota. The 24/7 Sobriety Program addressed the problem in a nontraditional manner.

The program began as a pilot project in January 2005 under the leadership of former South Dakota Attorney General Larry Long. In 2007, the South Dakota Legislature authorized the creation of a statewide 24/7 Program. The program is now available in all but six of South Dakota's counties.

The 24/7 Sobriety Program's nontraditional approach in reducing recidivism is its emphasis on offender sobriety through intensive testing and monitoring of alcohol and drug consumption, together with swift and certain punishment for infractions. In counties where the program is available, placement on the 24/7 Sobriety Program is a prerequisite for issuance of work permits (also referred to as restricted driver permits) to repeat DUI offenders and to first-time offenders with a BAC of .17% or greater. Placement on the program may also be required as a condition of bond, sentence, probation, parole, and child custody or visitation orders. As the program has matured, many Judges are placing offenders involved in other crimes such as Domestic Violence, Assault, Larceny and others. If the facts indicated that alcohol or drugs were an underwriting influence to the crime, Judges are also using the 24/7 Sobriety Program to address the continued use of alcohol or drugs.

The 24/7 Sobriety Program allows offenders to remain in the community free from incarceration if they totally abstain from alcohol and drugs. In most cases, offenders are able to drive, continue employment, and provide support and remain a valued member of their family.

The 24/7 Sobriety Program monitors abstinence from alcohol and drugs through one or more of the following testing methods:

- Twice a day breath testing (2xPBT)
- Electronic alcohol monitoring through the use of an ankle bracelet
- Urine Analysis (UA)

- Drug Patch
- Ignition Interlock Device (Intoxalock) – Added to the program in 2012.

Most program participants are required to demonstrate sobriety by submitting to a breath test twice daily at a twelve-hour interval in the presence of a law enforcement officer or employee. Generally, between the hours of 7:00 AM to 9:00 AM and 7:00 PM to 9:00 PM, a participant submits to a breath test at the local Sheriff's Office. A participant's bond, parole or probation may be immediately revoked if the participant fails to show up for a test or if the test indicates that the participant consumed any amount of alcohol. In most cases, the infraction will result in immediate incarceration.

A smaller portion of the program participants are placed on electronic alcohol monitoring ankle bracelets. The bracelets provide continuous monitoring for alcohol consumption and provide electronic readings to the contracted vendor. In the event of an alcohol or tampering event, the information is forwarded to the law enforcement agency.

In 2012, Ignition Interlock (Intoxalock) was added to the 24/7 Program. The 24/7 Sobriety Program uses ignition interlock differently as compared to other states utilizing the same tool. In addition to the normal tests required before the offender can start their vehicle and the retests required while operating the vehicle, the 24/7 Program requires the participant to test twice a day during the same time intervals as the 2xPBT testing. The twice a day tests are required whether the participant operated the vehicle that day or not. In addition to preventing them from driving if they have consumed alcohol, it serves the same purpose of 2xPBT without the participant needing to go to the Sheriff's Office to test. Real-time reporting occurs with the ignition interlock device. Unlike the traditional use of ignition interlock devices, an immediate sanction occurs in the form of incarceration should a participant fail to submit a required test or should a test indicate the presence of alcohol.

Finally, the participants may also be required to submit regular and/or random urine samples or wear a drug patch for drug monitoring. Similar sanctions are imposed for infractions while placed on these tests.

Key Partnerships

Some key partnerships are necessary to plan and execute the program. In South Dakota, the Attorney General's Office took the lead in establishing the program. Prior to the formal creation of the program, the Attorney General worked closely with the South Dakota Sheriff's Association and the South Dakota Chiefs of Police Association to gain their support. Although both associates recognized the benefit of the concept, they also were skeptical regarding the staffing resources the program might require. Simultaneously, the Attorney General presented the concept to Judges and State's Attorneys across the state. Even with law enforcement agencies willing to test the concept, Judges and prosecuting attorneys had to agree. Judges, Prosecutors, Sheriffs and Police Chiefs were willing to test the concept and six pilot programs were established across the state. Pilot programs commenced in large, medium and small agencies. The pilot programs were an immediate success and soon additional counties were added.

Due to the success of the program in the six pilot counties, the program went from a pilot to a statewide program. This required the creation of state laws and administrative rules to establish

and govern the program. For this step, the South Dakota Legislature would join the list of partners.

Legislative/Administrative Rules to Create the Program

Prior to 2006, individuals convicted of DUI offenses lost their driver's license for 30 days or up to one year, depending on the offense level. During this period of time, the court was statutorily prohibited from granting a defendant a work permit. Nonetheless, defendants still drove during this period of suspension. Understanding that defendants paid little heed to the loss of their driver's license, the Attorney General agreed to loosen the restriction on the granting of work permits, if the permits were conditioned upon the defendant's total abstinence from the use of alcohol and their participation in the 24/7 sobriety program.

Due to the success of the 24/7 Program pilot projects, in 2007 the South Dakota Legislature unanimously passed the 24/7 Program legislative package. This legislation created the 24/7 Sobriety Program by statute, and directed that the program:

“. . . coordinate efforts among various state and local government entities for the purpose of finding and implementing alternatives to incarceration for certain offenses that involve driving under the influence and other offenses involving alcohol, marijuana, or controlled substances. (SDCL 1-11-17)

The 24/7 Sobriety Program statutes authorized the use of the 24/7 program:

1. As a condition of bond or pre-trial release. (SDCL 1-11-20);
2. As a condition of the granting of a suspended imposition of sentence, suspended execution of sentence, or probation (SDCL 1-11-21);
3. As a condition regarding the placement or return of an apparent, alleged, or adjudicated abused or neglected child (SDCL 1-11-22); and
4. By the Board of Pardons and Paroles, the Department of Corrections, or any parole agent as a condition of parole (SDCL 1-11-23).

At its inception, the 24/7 Sobriety Program anticipated that program costs would be paid by the offender. The statutes enacted in 2007 permitted the collection of fees for participation in the program. In addition, the statutes authorized the South Dakota Attorney General to implement rules regarding: (1) the nature, method, and manner of testing; (2) the procedures and apparatus for testing including electronic monitoring devices and ignition interlock devices; and (3) the submission of reports and information by law enforcement agencies.

A full list of statutes and administrative rules may be found on the South Dakota Attorney General's Office website at: <http://apps.sd.gov/atg/dui247/index.htm>

Implementing the Program – Challenges/Lessons Learned

Attorney General Larry Long's first challenge was to convince law enforcement, Judges and Prosecutors of the benefits of the program. Next, a pilot program had to be implemented. This

included the challenge of working out the logistics for testing, documenting, equipment and other aspects of putting it all together. The final challenge involved implementing the program statewide and passing the necessary legislation.

Not all testing sites are identical and the most notable lesson learned since the program's inception is the need for flexibility. Law enforcement agencies in South Dakota may include a Sheriff and one Deputy or agencies with 500+ personnel. Each site is unique depending on whether it is located in an urban or rural setting. Larger agencies have more staffing to accomplish the testing. Smaller agencies may only have one individual testing the participants. It was a significant challenge to create standards, policies and procedures with which every agency could comply while allowing enough flexibility for the agencies to determine how they would meet those standards.

Since this is an offender pay program, collecting fees is vital to the continuation of the program. At one point early on; numerous accounts started showing delinquent balances. As a result, members of the Attorney General's staff had to focus on the collection of fees to prevent the program from going into a negative balance.

When the 24/7 Sobriety Program started, the responsibility of running the program was distributed among staff in the Attorney General's office. Each dealt with a specific portion of the program. The disadvantage to this was two-fold. First, the staff members already had full time responsibilities with no one person looking at all aspects of the program. Second, confusion existed at testing sites when issues arose as to who to contact. In January 2011, a full time coordinator was assigned to the program and is responsible for operating the program. The coordinator acts as a liaison between the testing sites and vendors. This position monitors accounts and the overall budget for the program, maintains and purchases equipment, and addresses any problems the testing sites might experience.

Flexibility is necessary in both legislation and administrative rules that establish and govern the program. Having to return to the Legislature for minor changes to the program creates issues, especially if the changes are needed immediately. If the program is run out of the Attorney General's Office, the Attorney General needs the authority to make timely decisions and implement changes that impact the operation of the program.

Vendor Providers

Twice a Day PBT – The State of South Dakota maintained a contract with Intoximeter to provide potable digital PBT devices (also known as FSTs) for law enforcement personnel. The additional PBTs necessary for the program were purchased off the state contract.

Alcohol Monitoring Bracelets – At the time the program began, only one vendor existed that provided an alcohol monitoring bracelet, namely Alcohol Monitoring Systems (AMS), Denver, Colorado. The Attorney General's Office entered into a contract with AMS to purchase the bracelets. The contract also provided for the supplies, maintenance and monitoring associated with the bracelets. When a violation is observed by AMS or maintenance is due on a bracelet, AMS contacts the assigned 24/7 testing site.

Ignition Interlock (Intoxalock) – The Attorney General has specific authority to select the ignition interlock device. Consumer Safety Technology (CST), Des Moines, Iowa, responded to a request for proposal and they were subsequently selected as the ignition interlock provider. The

ignition interlock device, Intoxalock, provides real-time notification of violations along with GPS tracking of an offender's vehicle. CST conducts the monitoring and advises the assigned testing site of violation or needed maintenance.

Drug Monitoring – There are two types of drug testing methods used for drug monitoring. The most common is the urinalysis. The samples are taken at the test site and a preliminary test is conducted. If a positive reading is observed, the sample is sent to the state lab for further analysis. Some 24/7 Program testing sites utilize Redwood Toxicology Laboratory, Santa Rosa, California for the analysis.

The second type of drug testing is a drug patch. The patch is adhered to the skin, generally the upper shoulder, with an adhesive cover that will show any tampering (removal and replacement). The patch absorbs chemicals excreted by the body through perspiration. After seven to ten days the patch is removed and sent to the vendor for analysis. The Drug Patch vendor is Pharmchem, Inc., Ft. Worth, Texas.

Monitoring Participant Testing, Reporting Violations and Imposing Sanctions

The key to the success of the 24/7 Sobriety Program is its swift and immediate sanctions for violations. The immediate sanctions appear to work best with the twice a day PBT testing. If an offender provides a positive test, commonly referred to as a "hot" test, they are required to be monitored for fifteen minutes. At the end of the fifteen minutes they are retested. If they test clean, the test is considered a pass and they are released. If the results of the second test are positive, it is considered a failure and the offender is immediately incarcerated. If the offender is on the program only to maintain a Work Permit, the Work Permit is revoked but the offender is not incarcerated.

Once incarcerated, an offender appears before a judge who determines if the offender will be released back to the program, incarcerated for a specific time or any other options available to the judge.

The concept of swift and immediate sanctions is lessened with the use of alcohol monitoring bracelets and ignition interlock devices since the person isn't in the presence of law enforcement personnel when violations are detected. For those devices, violations are electronically transferred to a monitoring website. The vendor monitoring the site confirms the violation and notifies the 24/7 testing site. The 24/7 testing site will either contact the offender and request that they present themselves to the jail or law enforcement personnel will go out and arrest the violator.

Measuring and Evaluating Program Results

From the start, the Attorney General knew it would be important to track data in order to determine if the program was successful in changing behaviors. There have been two extensive and ongoing studies of the South Dakota 24/7 Sobriety Program. The first extensive scientific study was conducted by Mountain Plains Evaluation, LLC, in Salem, South Dakota. The study conducted by Mountain Plains Evaluation, LLC focused on the twice a day PBT testing aspect of the program. Their latest study, dated November 9, 2012, includes data from the beginning of the program through 2011. Mountain Plains is currently evaluating the use of the alcohol

monitoring bracelet and will be reviewing the use of ignition interlock. The study along with other studies can be viewed on the South Dakota 24/7 Sobriety Program website:

<http://apps.sd.gov/atg/dui247/247stats.htm>

The second major study of the program is being conducted by RAND Corporation. Additional information regarding the RAND study can be found on their website:

http://www.rand.org/pubs/research_briefs/RB9692.html

A complete copy of the RAND study was published in the *American Journal of Public Health* (Dec. 2012). The title of the article is "Efficacy of Frequent Monitoring With Swift, Certain, and Modest Sanctions for Violations: Insights From South Dakota's 24/7 Sobriety Project." A copy can be obtained on their website:

<http://ajph.aphapublications.org/>

Mountain Plains Evaluation, LLC

The conclusion of the recent study states:

"Although it is important to continue to study future data, the findings demonstrate that the program is very successful in addressing DUI offender sobriety while individuals are on the program. These findings demonstrate that 24/7 Sobriety Program PBTx2 participants have lower recidivism rates when compared to individuals who do not participate in the 24/7 Sobriety Program. For repeat offenders, even minimal days of participation in the 24/7 Sobriety Program positively impact recidivism rates. Individuals with at least 30 days of program participation demonstrate an even greater reduction in recidivism. These reductions in recidivism far exceed the rates reported in the literature for traditional approaches to DUI offenders..."

RAND Corporation

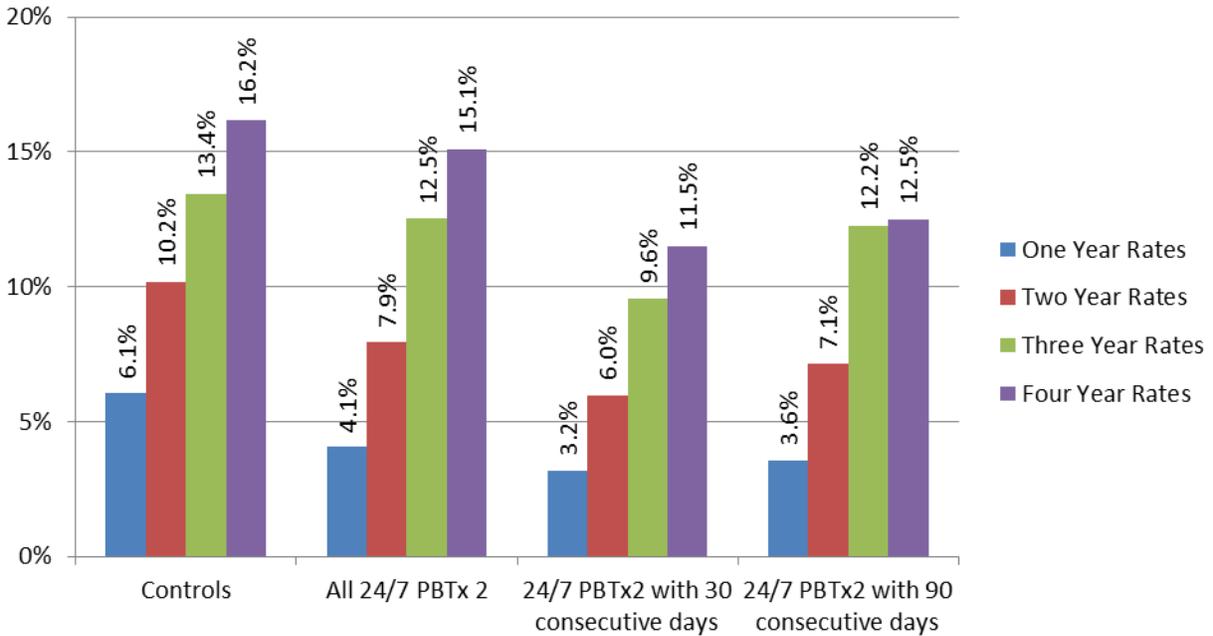
RAND's press release describing the study stated:

Examining the first six years of South Dakota's 24/7 Sobriety Project, researchers found that frequent alcohol testing with swift and moderate sanctions for those caught using alcohol reduced county-level repeat DUI arrests by 12 percent and domestic violence arrests by 9 percent. There was mixed evidence about whether the program reduced traffic crashes.

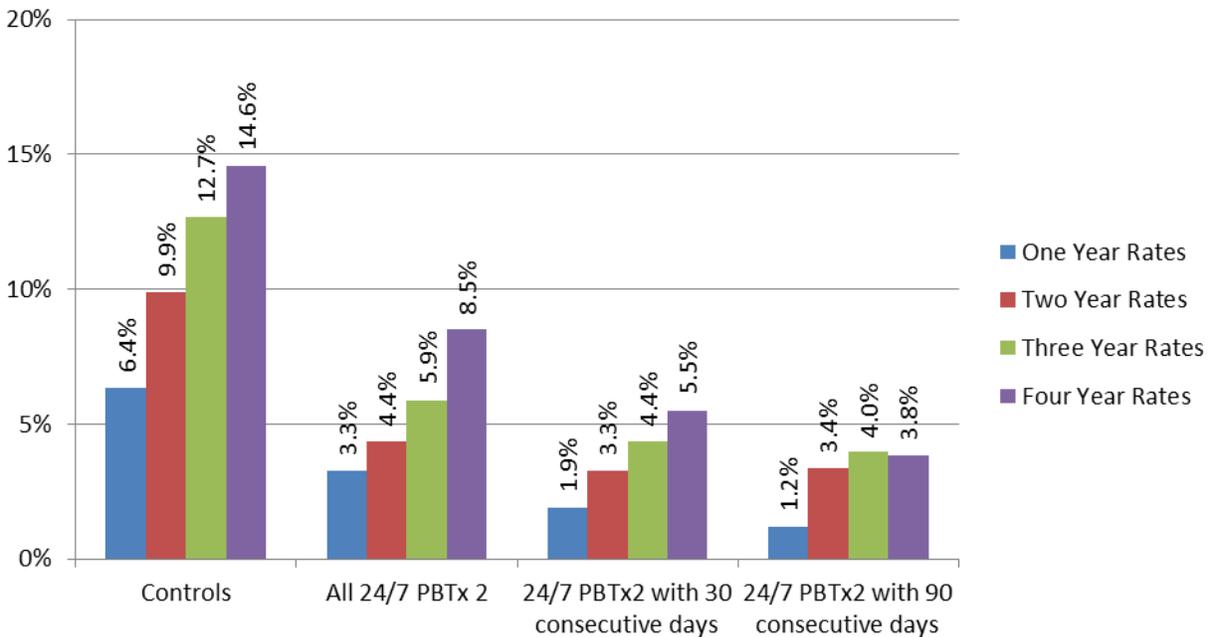
"The South Dakota 24/7 Sobriety Project is reducing both repeat DUI and domestic abuse arrests at the county-level," said Beau Kilmer, the study's lead author and senior policy researcher at RAND, a nonprofit research organization. "The results suggest that frequent alcohol testing with swift, certain and modest sanctions for violations can reduce problem drinking and improve public health outcomes."

Below are graphs from the Mountain Plains Evaluation, LLC study:

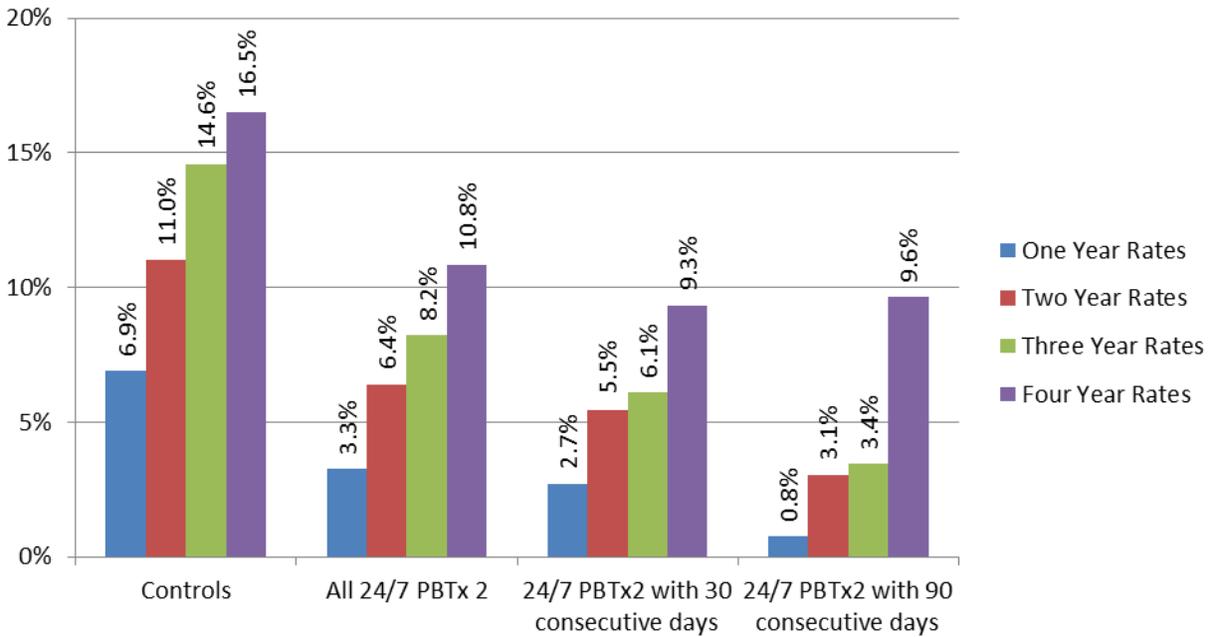
24/7 Program Participants Compared to Controls – DUI 1st to next DUI Offense



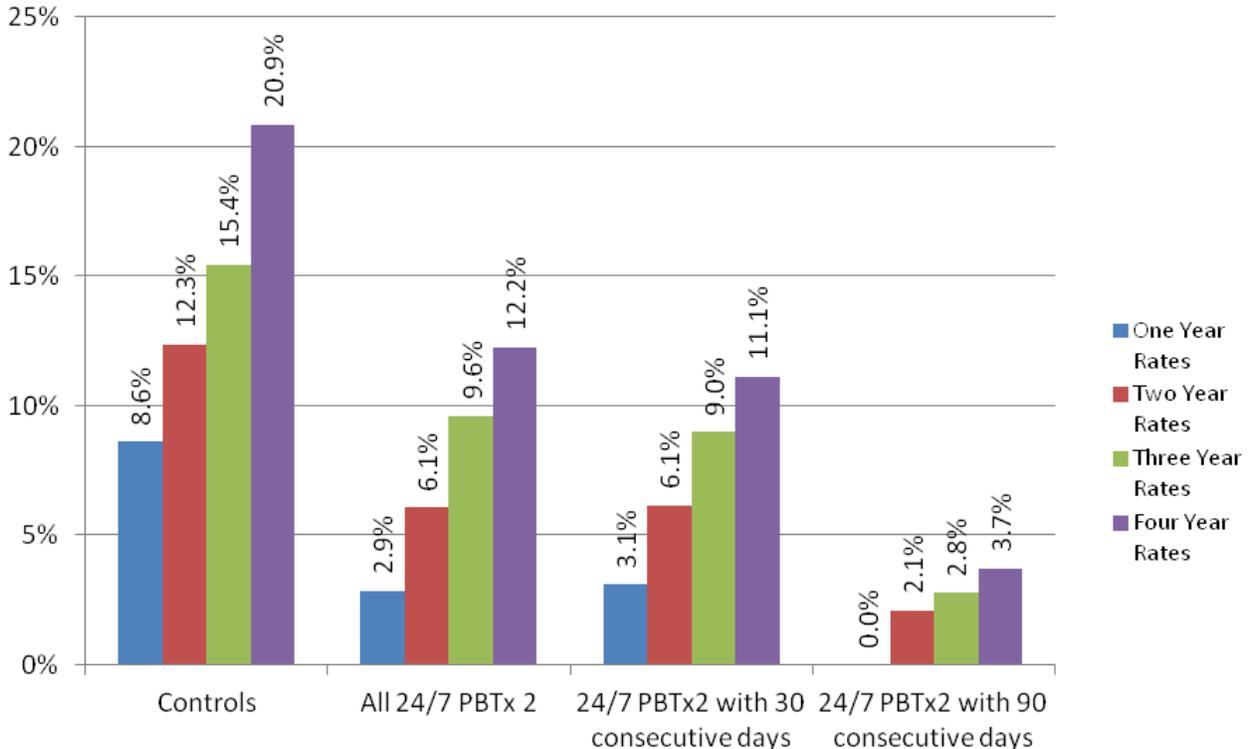
24/7 Participants Compared to Controls – DUI 2nd to next DUI Offense



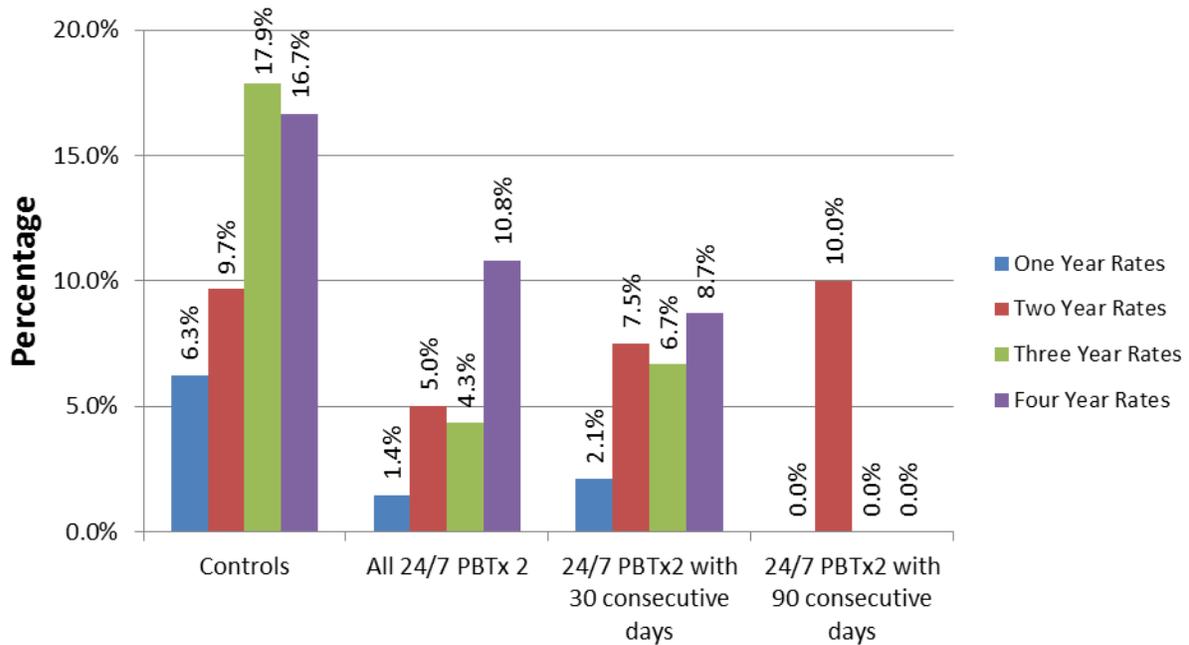
24/7 Participants Compared to Controls – DUI 3rd to next DUI Offense



24/7 Participants Compared to Controls – DUI 4th to next DUI Offense



24/7 Participants Compared to Controls – DUI 5th to next DUI Offense



Assessing the Costs

A distinct aspect of the 24/7 Sobriety Program is that it is totally offender funded. The state Legislature provided funding to start the program with the understanding that the legislature would not provide any further funding. The initial funding was used to purchase a web based program for each site to use in order to establish accounts for the participants and equipment (PBT units, tubes, UA kits, Drug Patches and alcohol monitoring bracelets). During the creation of the statewide program, sheriffs voiced a concern that the 24/7 Program funds might be used for items outside of the program thus making it difficult for the program to be self-sustaining. Based on that concern, the state law specifically states that 24/7 Program fees can only be used for 24/7 Program expenses. The county can't use those funds to purchase snowplows and road graders.

Since the initial funding by the legislature, the program has been totally self-supporting with the fees paid by participants. A portion of the fees remain with the local testing site to be utilized for 24/7 Program related expenses. The remaining fees go to the Attorney General's Office to cover the program's statewide operational costs. The Attorney General's fees are used to pay the daily monitoring fee for the bracelets, support and maintain the 24/7 web based program used by the sites to log and track participant's tests and payment and purchase equipment. The Attorney General's 24/7 Program fund is also used to pay the salary of a full time coordinator and part-time assistant, their office expenses and travel expenses.

Due to the success of this funding concept, the Attorney General has been able to return funding from the AG's 24/7 Fund back to the local sites in the form of quarterly allocations. Since January 2011, over \$700,000 has been returned to Sheriffs' Offices and Police Departments.

Benefits of the South Dakota 24/7 Sobriety Program

The South Dakota 24/7 Sobriety Program has financial, societal and public health related benefits.

Financial

- Reduced incarceration costs when offenders are on the program rather than being incarcerated.
- Offenders are able to maintain employment.
- By maintaining employment offenders are capable of supporting themselves and their families.
- Reduced expenditure of taxpayer funds.
- Reduced cost of prosecuting repeat offenders.
- Reduces costs of alcohol related illnesses.
- The program is entirely offender funded.

Social

- Offenders can be positive contributing members of society.
- Increased likelihood of families staying together when members aren't incarcerated.
- Reduced DUI recidivism is likely to reduce DUI crashes which impact communities on multiple levels.
- Offenders maintain employment.
- Employers have an alcohol-free employee thus increasing productivity.

Public Health

- Reduced health issues associated with alcohol consumption.
- Reduced injuries and deaths associated with repeat DUI offender traffic crashes.
- Reduced injuries associated with alcohol related domestic violence assaults.