

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0334

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1072 - 02/12/2007

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to create a statewide 24/7 sobriety program, establish the
2 24/7 sobriety fund, and to make an appropriation therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby established a statewide 24/7 sobriety program to be administered
5 by the Office of the Attorney General. The program shall coordinate efforts among various state
6 and local government entities for the purpose of finding and implementing alternatives to
7 incarceration for certain offenses that involve driving under the influence and other offenses
8 involving alcohol, marijuana, or controlled substances.

9 Section 2. There is hereby established in the state treasury the 24/7 sobriety fund. The fund
10 shall be maintained and administered by the Office of the Attorney General to defray costs of
11 operating the 24/7 sobriety program, including purchasing and maintaining equipment and
12 funding support services. The Office of the Attorney General may accept for deposit in the fund
13 money from donations, gifts, grants, and user fees or payments. Expenditures from the fund
14 shall be budgeted through the normal budget process. Unexpended funds and interest shall



1 remain in the fund.

2 Section 3. Each county, through its sheriff, may participate in the 24/7 sobriety program. If
3 a sheriff is unwilling or unable to participate in the 24/7 sobriety program, the sheriff may
4 designate an entity willing to provide the service. If twice a day testing is ordered, the sheriff,
5 or designated entity, shall establish the testing locations and times for each county but shall have
6 at least one location and two daily testing times approximately twelve hours apart.

7 Section 4. The court may condition any bond or pre-trial release upon participation in the
8 24/7 sobriety program and payment of associated costs and expenses.

9 Section 5. The court may condition the granting of a suspended imposition of sentence,
10 suspended execution of sentence, or probation upon participation in the 24/7 sobriety program
11 and payment of associated costs and expenses.

12 Section 6. The court may condition the placement of a child pursuant to § 26-8A-22 or 22-
13 8A-26 on participation in the 24/7 sobriety program and payment of associated costs and
14 expenses.

15 Section 7. The Board of Pardons and Paroles, the Department of Corrections, or any parole
16 agent may condition parole upon participation in the 24/7 sobriety program and payment of
17 associated cost and expense.

18 Section 8. The Office of the Attorney General, pursuant to chapter 1-26, may promulgate
19 rules for the administration of this Act to:

- 20 (1) Regulate the nature and manner of testing;
- 21 (2) Provide for procedures and apparatus for testing including electronic monitoring
22 devices;
- 23 (3) Set participation and user fees; however, user fees for twice a day testing shall not be
24 less than one dollar per test; and

1 (4) Require the submission of reports and information by law enforcement agencies
2 within this state.

3 Section 9. All user fees collected under this Act shall be distributed as follows:

4 (1) All user fees collected in the administration of twice a day testing shall be paid into
5 the treasury of the proper county, or collected by the entity designated by the sheriff,
6 the proceeds of which shall be applied and used only to defray the reoccurring costs
7 of twice a day testing including maintaining equipment, funding support services and
8 ensuring compliance;

9 (2) All user fees collected as a result of the administration of the 24/7 sobriety program
10 other than those collected by the county, or entity designated by the sheriff, for twice
11 a day testing, shall be deposited in the 24/7 sobriety fund created by section 2 of this
12 Act.

13 Section 10. There is hereby appropriated from the general fund the sum of three hundred
14 forty-five thousand dollars (\$345,000), or so much thereof as may be necessary, to the Office
15 of the Attorney General, for the purpose of implementing the provisions of this Act.

16 Section 11. The attorney general shall approve vouchers and the state auditor shall draw
17 warrants to pay expenditures authorized by this Act.

18 Section 12. That § 32-23-23 be amended to read as follows:

19 32-23-23. Any driving permit issued by the court to any person, who has been convicted of
20 a violation of § 32-23-1 within the last ten years or any driving permit issued pursuant to § 32-
21 23-2, if that person had 0.17 percent or more by weight of alcohol in that person's blood, shall
22 be conditioned on the person's total abstinence from the use of alcohol, the person's participation
23 in the 24/7 sobriety program created by this Act, and payment of associated costs and expenses.

24 The court shall immediately revoke the permit upon a showing of proof by a preponderance of

1 the evidence that the person has violated this condition. The provisions of this section shall
2 become effective on January 1, 2008.

3 Section 13. That § 26-8A-22 be amended to read as follows:

4 26-8A-22. On completion of the dispositional phase of the proceeding, the court shall enter
5 a final decree of disposition. If the final decree of disposition does not terminate parental rights,
6 the decree shall include one or more of the following provisions which the court finds
7 appropriate as the least restrictive alternative available:

8 (1) The court may place the child in the custody of one or both of the child's parents, a
9 guardian, a relative of the child or another suitable person, or a party or agency, with
10 or without protective supervision, or the Department of Social Services, subject to
11 the conditions and the length of time that the court deems necessary or appropriate.
12 If the court returns custody to the child's parent, guardian, or custodian, such return
13 of custody may be with supervision during which the court may require the parent,
14 guardian, custodian, and any other adult residing in the home, to cooperate with
15 home visits by the department and may require the parent, guardian, custodian, and
16 any other adult residing in the home, to submit, at the request of the department, to
17 tests for alcohol, marijuana, or any controlled drug or substance. If the adjudication
18 of abuse or neglect was related to the use of alcohol, marijuana, or any controlled
19 drug or substance, the parent, guardian, or custodian, and any other adult residing in
20 the home, may be required, in those areas where such testing is available, to submit
21 to regular tests for alcohol, marijuana, or any controlled drug or substance. If a
22 positive test for alcohol, marijuana, or any controlled drug or substance is obtained,
23 or the person fails to submit to the test as required, the department may immediately
24 remove the child from the physical custody of the parent, guardian, custodian, or any

1 other adult residing in the home whose test was positive or who failed to submit to
2 the test, without prior court order subject to a review hearing, which may be
3 telephonic, within forty-eight hours excluding Saturdays, Sundays, and court
4 holidays. As used herein, any controlled drug or substance means a controlled drug
5 or substance which was not lawfully prescribed by a practitioner as authorized by
6 chapters 22-42 and 34-20B;

7 (2) The court after determining that a compelling reason exists to place the child in
8 another planned permanent living arrangement rather than with a relative or with a
9 legal guardian other than the department may place the child in the custody of the
10 department or a child placement agency, with or without guardianship of the child,
11 until the child attains the age of majority or until an earlier date or event as
12 determined by the court;

13 (3) The court may order that the child be examined or treated by a physician or by a
14 qualified mental health professional or that the child receive other special care and
15 may place the child in a suitable facility for such purposes under conditions that the
16 court deems necessary or appropriate. On completion of the examination, treatment,
17 or hospitalization and on a full report to the court, the court shall conduct a
18 supplemental dispositional hearing or hearings and shall make disposition of the
19 child as otherwise provided in this section or, if the evidence shows need, the court
20 may consider termination of parental rights as an appropriate possible alternative in
21 keeping with the best interests and welfare of the child.

22 If disposition of the child under this section involves the removal from or nonreturn of the
23 child to the home of the child's parents, guardian, or custodian and placement of the child in the
24 custody of the department for placement in foster care, the court shall include in the decree a

1 written judicial determination that continuation of the child's placement in the home of the
2 child's parents, guardian, or custodian would be contrary to the welfare of the child and that
3 reasonable efforts were made by the department to prevent or eliminate the need for removal
4 of the child from the home. In no case may a child remain in foster care for a period in excess
5 of twelve months from the time the child entered foster care without the court holding a
6 permanency hearing and making a dispositional decree. The court shall review the child's
7 permanency status and make a dispositional decree every twelve months thereafter as long as
8 the child continues in the custody of the department. The court shall determine whether the state
9 has made reasonable efforts to finalize the permanency plan that is in effect. That determination
10 shall be included in the dispositional decree.

11 Section 14. That § 26-8A-26 be amended to read as follows:

12 26-8A-26. If an adjudicated, abused, or neglected child whose parental rights have not been
13 terminated has been in the custody of the Department of Social Services and it appears at a
14 dispositional or review hearing that all reasonable efforts have been made to rehabilitate the
15 family, that the conditions which led to the removal of the child still exist, and there is little
16 likelihood that those conditions will be remedied so the child can be returned to the custody of
17 the child's parents, the court shall affirmatively find that good cause exists for termination of the
18 parental rights of the child's parents and the court shall enter an order terminating parental
19 rights. If the court does not find at the hearing, which shall be conducted in the same manner
20 as a dispositional hearing, that good cause exists for termination of parental rights, the court may
21 make further disposition of the child as follows:

- 22 (1) Return custody of the child to the child's parents, guardian, or custodian, with or
23 without supervision during which the court may require the parent, guardian,
24 custodian, and any other adult residing in the home, to cooperate with home visits by

1 the department and may require the parent, guardian, custodian, and any other adult
2 residing in the home, to submit, at the request of the department, to tests for alcohol,
3 marijuana, or any controlled drug or substance. If the adjudication of abuse or neglect
4 was related to the use of alcohol, marijuana, or any controlled drug or substance, the
5 parent, guardian, or custodian, and any other adult residing in the home, may be
6 required, in those areas where such testing is available, to submit to regular tests for
7 alcohol, marijuana, or any controlled drug or substance. If a positive test for alcohol,
8 marijuana, or any controlled drug or substance is obtained, or if the person fails to
9 submit to the test as required, the department may immediately remove the child
10 from the physical custody of the parent, guardian, custodian, or any other adult
11 residing in the home whose test was positive or who failed to submit to the test,
12 without prior court order subject to a review hearing, which may be telephonic,
13 within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used
14 herein, any controlled drug or substance means a controlled drug or substance which
15 was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-
16 20B;

- 17 (2) Continue foster care placement of the child for a specified period of time, and, if the
18 child is sixteen years of age or older, direct the department to determine the services
19 needed to assist the child to make the transition from foster care to independent living
20 and, if appropriate, provide a plan for independent living for the child;
- 21 (3) Place the child in the custody of the department or a child placement agency, with or
22 without guardianship of the child, in another planned permanent living arrangement
23 following a determination that a compelling reason exists that the placement is more
24 appropriate than adoption or with a relative or with a legal guardian other than the

1 department and under a court-approved plan that determines visitation rights of the
2 child's parents, guardian, or custodian. Under this subdivision, the court may retain
3 jurisdiction of the action and proceedings for future consideration of termination of
4 parental rights if termination of parental rights is the least restrictive alternative
5 available in keeping with the best interests of the child.

6 In no case may a child remain in foster care for a period in excess of twelve months from
7 the time the child entered foster care without the court holding a permanency hearing and
8 making a dispositional decree setting forth one of the above options. The court shall review the
9 child's permanency status and make a dispositional decree every twelve months thereafter as
10 long as the child continues in the custody of the department. The court shall determine whether
11 the state has made reasonable efforts to finalize the permanency plan that is in effect. That
12 determination shall be included in the dispositional decree.