

**SECOND ENGROSSMENT  
with Conference Committee Amendments  
REENGROSSED HOUSE BILL NO. 1302**

Introduced by

Representatives K. Koppelman, Keiser, Kiefert, Klemin, Ruby, Delmore

Senators Hogue, Luick, Lyson, Dotzenrod, O'Connell

1 A BILL for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and  
2 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to  
3 the twenty-four seven sobriety program; to amend and reenact subsection 3 of section  
4 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2,  
5 39-08-01.3, 39-08-01.4, 39-20-01, 39-20-01.1, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05,  
6 subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North  
7 Dakota Century Code, relating to driving while under the influence and city penalties; to provide  
8 for an underage drinking prevention program; to provide for a legislative management study; to  
9 provide a penalty; and to provide appropriations.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1.** A new subsection to section 27-20-10 of the North Dakota Century Code is  
12 created and enacted as follows:

13 If a child is subject to informal adjustment for a violation of section 39-08-01 or  
14 equivalent ordinance, or if a child is found to have an alcohol concentration of at least  
15 two one-hundredths of one percent by weight at the time of performance of a test  
16 within two hours after driving or being in physical control of a motor vehicle, the  
17 juvenile court shall require the child to participate in the twenty-four seven sobriety  
18 program under chapter 54-12 for up to nine months.

19 **SECTION 2.** A new subsection to section 27-20-31 of the North Dakota Century Code is  
20 created and enacted as follows:

21 If a child is adjudicated delinquent for a violation of section 39-08-01 or equivalent  
22 ordinance, or if a child is found to have an alcohol concentration of at least two  
23 one-hundredths of one percent by weight at the time of performance of a test within  
24 two hours after driving or being in physical control of a motor vehicle, the juvenile court

1           shall require the child to participate in the twenty-four seven sobriety program under  
2           chapter 54-12.

3           **SECTION 3. AMENDMENT.** Subsection 3 of section 29-06-15 of the North Dakota Century  
4 Code is amended and reenacted as follows:

5           3. If a law enforcement officer has reasonable cause to believe an individual has violated  
6 a lawful order of a court of this state which requires the individual to participate in the  
7 twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31,  
8 the law enforcement officer may immediately take the individual into custody without a  
9 warrant. An individual taken into custody under this subsection may not be released on  
10 bail or on the individual's personal recognizance unless the individual has made a  
11 personal appearance before a magistrate.

12           **SECTION 4. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota  
13 Century Code is amended and reenacted as follows:

14           7. The period of suspension imposed for a violation of section 39-08-01, 39-08-01.2, or  
15 39-08-01.4 or equivalent ordinance is:  
16           a. Ninety-one days if the operator's record shows the person has not violated  
17 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding  
18 the last violation.  
19           b. One hundred eighty days if the operator's record shows the person has not  
20 violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years  
21 preceding the last violation and the violation was for an alcohol concentration of  
22 at least eighteen one-hundredths of one percent by weight.  
23           c. Three hundred sixty-five days if the operator's record shows the person has once  
24 violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years  
25 preceding the last violation.  
26           d. Two years if the operator's record shows the person has at least once violated  
27 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding  
28 the last violation and the violation was for an alcohol concentration of at least  
29 eighteen one-hundredths of one percent by weight.

1 e. Two years if the operator's record shows the person has at least twice violated  
2 section 39-08-01 or equivalent ordinance within the ~~five~~seven years preceding  
3 the last violation.

4 f. Three years if the operator's record shows the person has at least twice violated  
5 section 39-08-01 or equivalent ordinance within the ~~five~~seven years preceding  
6 the last violation and the violation is for an alcohol concentration of at least  
7 eighteen one-hundredths of one percent by weight.

8 **SECTION 5.** A new subsection to section 39-06.1-10 of the North Dakota Century Code is  
9 created and enacted as follows:

10 If an individual has a temporary restricted driver's license with the restriction the  
11 individual participates in the twenty-four seven sobriety program under chapter 54-12,  
12 the individual may operate a motor vehicle during the suspension periods under this  
13 section.

14 **SECTION 6. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

17 1. Except as provided under subsection 2, if the director has suspended a license under  
18 section 39-06.1-10 or has extended a suspension or revocation under section  
19 39-06-43, upon receiving written application from the offender affected, the director  
20 may for good cause issue a temporary restricted operator's license valid for the  
21 remainder of the suspension period after seven days of the suspension period have  
22 passed.

23 2. If the director has suspended a license under chapter 39-20, or after a violation of  
24 section 39-08-01 or equivalent ordinance, upon written application of the offender the  
25 director may issue ~~for good cause~~ a temporary restricted license that takes effect after  
26 thirty days of the suspension have been served after a first offense under section  
27 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven  
28 sobriety program under chapter 54-12, the director may issue a temporary restricted  
29 license that takes effect after fourteen days of the suspension have been served if the  
30 driver is not subject to any unrelated suspension or revocation. The director may not  
31 issue a temporary restricted license to any offender whose operator's license has

1           been revoked under section 39-20-04 or suspended upon a second or subsequent  
2           offense under section 39-08-01 or chapter 39-20, except that a temporary restricted  
3           license may be issued ~~for good cause~~ in accordance with subsection 5 if the offender is  
4           participating in the twenty-four seven sobriety program under chapter 54-12 or if the  
5           offender has not committed an offense for a period of two years before the date of the  
6           filing of a written application that must be accompanied by a report from an  
7           appropriate licensed addiction treatment program or if the offender is participating in  
8           the drug court program and has not committed an offense for a period of three  
9           hundred sixty-five days before the date of the filing of a written application that must  
10          be accompanied by a recommendation from the district court. The director may  
11          conduct a hearing for the purposes of obtaining information, reports, and evaluations  
12          from courts, law enforcement, and citizens to determine the offender's conduct and  
13          driving behavior during the prerequisite period of time. The director may also require  
14          that an ignition interlock device be installed in the offender's vehicle.

15          3. The director may not issue a temporary restricted license for a period of license  
16          revocation or suspension imposed under subsection 5 of section 39-06-17 or section  
17          39-06-31. A temporary restricted license may be issued for suspensions ordered under  
18          subsection 7 of section 39-06-32 if it could have been issued had the suspension  
19          resulted from in-state conduct.

20          4. A restricted license issued under this section is solely for the use of a motor vehicle  
21          during the licensee's normal working hours, or as provided under subsection 5, and  
22          may contain any other restrictions authorized by section 39-06-17. Violation of a  
23          restriction imposed according to this section is deemed a violation of section 39-06-17.

24          5. If an offender has been charged with, or convicted of, a second or subsequent  
25          violation of section 39-08-01 or equivalent ordinance, or if the offender's license is  
26          subject to suspension under chapter 39-20 and the offender's driver's license is not  
27          subject to an unrelated suspension or revocation, the director shall issue a temporary  
28          restricted driver's ~~permit~~ license to the offender ~~only for the purpose of~~  
29          participation upon the restriction the offender participate in the twenty-four seven  
30          sobriety program ~~upon~~ under chapter 54-12. The offender shall submit an application  
31          to the director for a temporary restricted license along with submission of proof of

1 financial responsibility and proof of participation in the twenty-four seven sobriety  
2 program by the offender to receive a temporary restricted license. If a court or the  
3 parole board finds that an offender has violated a condition of the twenty four seven-  
4 sobriety program, the court or parole board may order the temporary restricted driver's-  
5 permit be revoked and take possession of the temporary restricted driver's permit. The  
6 court or the parole board shall send a copy of the order to the director who shall record  
7 the revocation of the temporary restricted driver's permit. Revocation of a temporary  
8 restricted driver's permit for violation of a condition of the twenty four seven sobriety-  
9 program does not preclude the offender's eligibility for a temporary restricted driver's  
10 license under any other provisions of this section.

11 **SECTION 7. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or**  
14 **substances not to operate vehicle - Penalty.**

- 15 1. A person may not drive or be in actual physical control of any vehicle upon a highway  
16 or upon public or private areas to which the public has a right of access for vehicular  
17 use in this state if any of the following apply:
- 18 a. That person has an alcohol concentration of at least eight one-hundredths of one  
19 percent by weight at the time of the performance of a chemical test within two  
20 hours after the driving or being in actual physical control of a vehicle.
  - 21 b. That person is under the influence of intoxicating liquor.
  - 22 c. That person is under the influence of any drug or substance or combination of  
23 drugs or substances to a degree which renders that person incapable of safely  
24 driving.
  - 25 d. That person is under the combined influence of alcohol and any other drugs or  
26 substances to a degree which renders that person incapable of safely driving.
  - 27 e. That individual refuses to submit to any of the following:
    - 28 (1) A chemical test, or tests, of the individual's blood, breath, or urine to  
29 determine the alcohol concentration or presence of other drugs, or  
30 combination thereof, in the individual's blood, breath, or urine, at the  
31 direction of a law enforcement officer under section 39-06.2-10.2 if the

1 individual is driving or is in actual physical control of a commercial motor  
2 vehicle; or

3 (2) A chemical test, or tests, of the individual's blood, breath, or urine to  
4 determine the alcohol concentration or presence of other drugs, or  
5 combination thereof, in the individual's blood, breath, or urine, at the  
6 direction of a law enforcement officer under section 39-20-01; or

7 (3) An onsite screening test, or tests, of the individual's breath for the purpose  
8 of estimating the alcohol concentration in the individual's breath upon the  
9 request of a law enforcement officer under section 39-20-14.

10 The fact that any person charged with violating this section is or has been legally  
11 entitled to use alcohol or other drugs or substances is not a defense against any  
12 charge for violating this section, unless a drug which predominately caused  
13 impairment was used only as directed or cautioned by a practitioner who legally  
14 prescribed or dispensed the drug to that person.

15 2. ~~Unless as otherwise provided in section 39-08-01.2, an~~An individual who operates a  
16 motor vehicle on a highway or on public or private areas to which the public has a right  
17 of access for vehicular use in this state who refuses to subject to a chemical test, or  
18 tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an  
19 offense under this section.

20 3. An individual violating this section or equivalent ordinance is guilty of a class B  
21 misdemeanor for the first or second offense in a ~~five-year~~seven-year period, of a  
22 class A misdemeanor for a third offense in a ~~five-year~~seven-year period, of a class A-  
23 misdemeanor for the fourth offense in a ~~seven-year~~ period, and of a class C felony for  
24 a ~~fifth or subsequent offense in a seven-year period~~C felony for any fourth or  
25 subsequent offense regardless of the length of time since the previous offense. The  
26 minimum penalty for violating this section is as provided in subsection 45. The court  
27 shall take judicial notice of the fact that an offense would be a subsequent offense if  
28 indicated by the records of the director or may make a subsequent offense finding  
29 based on other evidence.

30 ~~3.4.~~ Upon conviction of a second or subsequent offense within ~~five~~seven years under this  
31 section or equivalent ordinance, the court ~~must~~may order the motor vehicle number

1 plates of all of the motor vehicles owned and operated by the offender at the time of  
2 the offense to be impounded for the duration of the period of suspension or revocation  
3 of the offender's driving privilege by the licensing authority. The impounded number  
4 plates must be sent to the director who must retain them for the period of suspension  
5 or revocation, subject to their disposition by the court. The court may make an  
6 exception to this subsection, on an individual basis, to avoid undue hardship to an  
7 individual who is completely dependent on the motor vehicle for the necessities of life,  
8 including a family member of the convicted individual and a coowner of the motor  
9 vehicle, ~~but not including~~ or if the offender is participating in the twenty-four seven  
10 sobriety program.

11 4.5. A person convicted of violating this section, or an equivalent ordinance, must be  
12 sentenced in accordance with this subsection. For purposes of this subsection, unless  
13 the context otherwise requires, "drug court program" means a district court-supervised  
14 treatment program approved by the supreme court which combines judicial  
15 supervision with alcohol and drug testing and chemical addiction treatment in a  
16 licensed treatment program. The supreme court may adopt rules, including rules of  
17 procedure, for drug courts and the drug court program.

18 a. (1) For a first offense, the sentence must include both a fine of at least ~~two~~  
19 ~~hundred fifty~~ five hundred dollars and an order for addiction evaluation by an  
20 appropriate licensed addiction treatment program.

21 (2) In addition, for a first offense when the convicted person has an alcohol  
22 concentration of at least sixteen one-hundredths of one percent by weight,  
23 the offense is an aggravated first offense and the sentence must include a  
24 fine of at least seven hundred fifty dollars and at least two days'  
25 imprisonment.

26 b. For a second offense within ~~five~~ seven years, the sentence must include at least  
27 ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility,~~ of which  
28 forty-eight hours must be served consecutively, ~~or thirty days' community service;~~  
29 a fine of at least ~~one thousand~~ one thousand five hundred dollars; ~~and~~ an order for addiction  
30 evaluation by an appropriate licensed addiction treatment program; and at least

- 1 twelve months' participation in the twenty-four seven sobriety program under  
2 chapter 54-12 as a mandatory condition of probation.
- 3 c. For a third offense within ~~five~~seven years, the sentence must include at least  
4 ~~sixtyone~~ hundred twenty days' imprisonment ~~or placement in a minimum security~~  
5 ~~facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~at  
6 least two thousand dollars; ~~and~~ an order for addiction evaluation by an  
7 appropriate licensed addiction treatment program; at least one year's supervised  
8 probation; and participation in the twenty-four seven sobriety program under  
9 chapter 54-12 as a mandatory condition of probation.
- 10 d. For a fourth or subsequent offense ~~within seven years,~~ the sentence must include  
11 at least one hundred eighty days' year and one day's imprisonment ~~or placement~~  
12 ~~in a minimum security facility, of which forty-eight hours must be served~~  
13 ~~consecutively;~~ a fine of ~~one~~at least two thousand dollars; ~~and~~ an order for  
14 addiction evaluation by an appropriate licensed treatment program; at least two  
15 years' supervised probation; and participation in the twenty-four seven sobriety  
16 program under chapter 54-12 as a mandatory condition of probation.
- 17 e. The ~~execution or~~ imposition of sentence under this section may not be  
18 ~~suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an~~  
19 offense subject to this section.
- 20 f. If the offense is subject to subdivision a or b, a municipal court or district court  
21 may not suspend a sentence, but may convert each day of a term of  
22 imprisonment to ten hours of community service for an offense subject to  
23 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district  
24 court may suspend a sentence, except for sixty days' imprisonment, under  
25 subsection 3 of section 12.1-32-02 on the condition that the defendant first  
26 undergo and complete an evaluation for alcohol and substance abuse treatment  
27 and rehabilitation and upon completion of the twenty-four seven sobriety  
28 program. If the offense is subject to subdivision d, the district court may suspend  
29 a sentence, except for one year's imprisonment, under subsection 3 of section  
30 12.1-32-02 on the condition that the defendant first undergo and complete an  
31 evaluation for alcohol and substance abuse treatment and rehabilitation. If the

1 offense is subject to subdivision c or d, the district court may suspend a  
2 sentence, except for ten days' imprisonment, under subsection 3 or 4 of section  
3 ~~12.1-32-02~~ on the condition that the defendant first undergo and complete an  
4 evaluation for alcohol and substance abuse treatment and rehabilitation. If the  
5 defendant is found to be in need of alcohol and substance abuse treatment and  
6 rehabilitation, the district court may order the defendant placed under the  
7 supervision and management of the department of corrections and rehabilitation  
8 and is subject to the conditions of probation under section 12.1-32-07. The district  
9 court ~~shall~~may require the defendant to complete alcohol and substance abuse  
10 treatment and rehabilitation under the direction of the drug court program as a  
11 condition of probation in accordance with rules adopted by the supreme court. If  
12 the district court finds that a defendant has failed to undergo an evaluation or  
13 complete treatment or has violated any condition of probation, the district court  
14 shall revoke the defendant's probation and shall sentence the defendant in  
15 accordance with this subsection.

16 f.g. For purposes of this section, conviction of an offense under a law or ordinance of  
17 another state which is equivalent to this section must be considered a prior  
18 offense if such offense was committed within the time limitations specified in this  
19 ~~subsection~~section.

20 g.h. If the penalty mandated by this section includes imprisonment or placement upon  
21 conviction of a violation of this section or equivalent ordinance, and if an  
22 addiction evaluation has indicated that the defendant needs treatment, the court  
23 may order the defendant to undergo treatment at an appropriate licensed  
24 addiction treatment program under subdivision g of subsection 1 of section  
25 12.1-32-02 and the time spent by the defendant in the treatment must be credited  
26 as a portion of a sentence of imprisonment or placement under this section. A  
27 court may not order the department of corrections and rehabilitation to be  
28 responsible for the costs of treatment in a private treatment facility.

29 i. If the court sentences an individual to the legal and physical custody of the  
30 department of corrections and rehabilitation, the department may place the  
31 individual in an alcohol treatment program designated by the department. Upon

1           the individual's successful completion of the alcohol treatment program, the  
2           department shall release the individual from imprisonment to serve the remainder  
3           of the sentence of imprisonment on probation, which may include placement in  
4           another facility or treatment program. If an individual is placed in another facility  
5           or treatment program after release from imprisonment the remainder of the  
6           individual's sentence of imprisonment must be considered time spent in custody.

7    5-6. ~~As used in subdivision b~~subdivisions b and c of subsection 4, the term "imprisonment"  
8           includes house arrest. As a condition of house arrest, a defendant may not consume  
9           alcoholic beverages. The house arrest must include a program of electronic home  
10          detention ~~in which~~and the defendant is tested at least twice daily for the consumption  
11          ~~of alcohol~~shall participate in the twenty-four seven sobriety program. The defendant  
12          shall defray all costs associated with the electronic home detention. ~~This subsection~~  
13          ~~does not apply to individuals committed to or under the supervision and management~~  
14          ~~of the department of corrections and rehabilitation.~~For an offense under subdivision b  
15          or c of subsection 5, no more than ninety percent of the sentence may be house  
16          arrest.

17    7. ~~As used in this title, participation in the twenty-four seven sobriety program under~~  
18          ~~chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and~~  
19          ~~requires sobriety breath testing twice per day seven days per week or electronic~~  
20          ~~alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for~~  
21          ~~all twenty-four seven sobriety program fees and the court may not waive the fees.~~

22    8. An individual who operates a motor vehicle on a highway or on public or private areas  
23          to which the public has a right of access for vehicular use in this state who refuses to  
24          submit to a chemical test, or tests required under section 39-06.2-10.2, 39-20-01, or  
25          39-20-14, is guilty of an offense under this section.

26          **SECTION 8. AMENDMENT.** Section 39-08-01.2 of the North Dakota Century Code is  
27          amended and reenacted as follows:

28          **39-08-01.2. Special punishment for causing injury or death while operating a vehicle**  
29          **while under the influence of alcohol.**

30          4. ~~If an individual is convicted of an offense under chapter 12.1 16 and the conviction is~~  
31          ~~based in part on the evidence of the individual's operation of a motor vehicle while~~

1 under the influence of alcohol or drugs, the sentence imposed must include at least  
2 one year's imprisonment if the individual was an adult at the time of the offense.

3 2. ~~If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in-~~  
4 ~~part on the evidence of the individual's operation of a motor vehicle while under the~~  
5 ~~influence of alcohol or drugs, and the violation caused serious bodily injury, as defined~~  
6 ~~in section 12.1-01-04, to another individual, that individual is guilty of a class A~~  
7 ~~misdemeanor and the sentence must include at least ninety days' imprisonment if the~~  
8 ~~individual was an adult at the time of the offense.~~

9 3. ~~The sentence under this section may not be suspended unless the court finds that~~  
10 ~~manifest injustice would result from imposition of the sentence. Before a sentence~~  
11 ~~under this section applies, a defendant must be notified of the minimum mandatory~~  
12 ~~sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the~~  
13 ~~jury found the elements that create the minimum sentence.~~

14 1. An individual is guilty of criminal vehicular homicide if the individual commits an  
15 offense under section 39-08-01 or equivalent ordinance and as a result the individual  
16 causes a death of another individual to occur, including the death of an unborn child,  
17 unless the individual who causes the death of the unborn child is the mother. A  
18 violation of this subsection is a class A felony. If an individual commits a violation  
19 under this subsection, the court shall impose at least three years' imprisonment. If the  
20 individual violates this section after having been previously convicted of a violation of  
21 section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least  
22 ten years' imprisonment. An individual may not be prosecuted and found guilty of this  
23 and an offense under chapter 12.1-16 if the conduct arises out of the same incident.

24 2. An individual is guilty of criminal vehicular injury if the individual violates section  
25 39-08-01 or equivalent ordinance and as a result that individual causes substantial  
26 bodily or serious bodily injury to another individual. Violation of this subsection is a  
27 class C felony. If an individual violates this subsection, the court shall impose at least  
28 one year's imprisonment. If the individual violates this section after having been  
29 previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent  
30 ordinance, the court shall impose at least two years' imprisonment.

1       3. The sentence under this section may not be suspended unless the court finds that  
2           manifest injustice would result from the imposition of the sentence. Before a sentence  
3           under this section applies, a defendant must be notified of the minimum mandatory  
4           sentence. The elements of an offense under this section are the elements of an  
5           offense for a violation of section 39-08-01 and the additional elements that create an  
6           offense in each subsection of this section.

7       **SECTION 9. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9       **39-08-01.3. Alcohol-related traffic offenses - ~~Ignition interlock devices and the~~**  
10 **~~seizure~~Seizure, forfeiture, and sale of motor vehicles.**

11       A motor vehicle owned and operated by a ~~person~~an individual upon a highway or upon  
12 public or private areas to which the public has a right of access for vehicular use may be seized,  
13 forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of  
14 sentencing if the ~~person~~individual is in violation of section 39-08-01, 39-08-01.2, or 39-08-01.4,  
15 or an equivalent ordinance and has been convicted of violating section 39-08-01 or an  
16 equivalent ordinance at least one other time within the ~~five~~seven years preceding the violation.  
17 ~~The court may also require that an ignition interlock device be installed in the person's vehicle~~  
18 ~~for a period of time that the court deems appropriate.~~

19       **SECTION 10. AMENDMENT.** Section 39-08-01.4 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21       **39-08-01.4. Driving while under the influence of alcohol while being accompanied by**  
22 **a minor - Penalty.**

23       It is a class A misdemeanor for an individual who is at least twenty-one years of age to  
24 violate section 39-08-01 if the violation occurred while a minor was accompanying the individual  
25 in a motor vehicle. If an individual has a previous conviction for a violation of section  
26 39-08-01.4, a violation of this section is a class C felony.

27       **SECTION 11. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29       **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

30       1. Any individual who operates a motor vehicle on a highway or on public or private  
31 areas to which the public has a right of access for vehicular use in this state is deemed

1 to have given consent, and shall consent, subject to the provisions of this chapter, to a  
2 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the  
3 alcohol concentration or presence of other drugs, or combination thereof, in the  
4 individual's blood, breath, or urine. As used in this chapter, the word "drug" means any  
5 drug or substance or combination of drugs or substances which renders an individual  
6 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean  
7 any test to determine the alcohol concentration or presence of other drugs, or  
8 combination thereof, in the individual's blood, breath, or urine, approved by the  
9 director of the state crime laboratory or the director's designee under this chapter.

10 2. The test or tests must be administered at the direction of a law enforcement officer  
11 only after placing the individual, except individuals mentioned in section 39-20-03,  
12 under arrest and informing that individual that the individual is or will be charged with  
13 the offense of driving or being in actual physical control of a vehicle upon the public  
14 highways while under the influence of intoxicating liquor, drugs, or a combination  
15 thereof. For the purposes of this chapter, the taking into custody of a child under  
16 section 27-20-13 or an individual under twenty-one years of age satisfies the  
17 requirement of an arrest.

18 3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota  
19 law requires the individual to take the test to determine whether the individual is under  
20 the influence of alcohol or drugs; that refusal to take the test directed by the law  
21 enforcement officer is a crime punishable in the same manner as driving under the  
22 influence; and that refusal of the individual to submit to the test ~~determined appropriate~~  
23 will directed by the law enforcement officer may result in a revocation for a minimum of  
24 one hundred eighty days and up to ~~four~~three years of the individual's driving  
25 privileges. The law enforcement officer shall determine which of the tests is to be  
26 used.

27 4. When an individual under the age of eighteen years is taken into custody for violating  
28 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt  
29 to contact the individual's parent or legal guardian to explain the cause for the custody.  
30 Neither the law enforcement officer's efforts to contact, nor any consultation with, a  
31 parent or legal guardian may be permitted to interfere with the administration of

1 chemical testing requirements under this chapter. The law enforcement officer shall  
2 mail a notice to the parent or legal guardian of the minor within ten days after the test  
3 results are received or within ten days after the minor is taken into custody if the minor  
4 refuses to submit to testing. The notice must contain a statement of the test performed  
5 and the results of that test; or if the minor refuses to submit to the testing, a statement  
6 notifying of that fact. The attempt to contact or the contacting or notification of a parent  
7 or legal guardian is not a precondition to the admissibility of chemical test results or  
8 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

9 **SECTION 12. AMENDMENT.** Section 39-20-01.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.**

- 12 1. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~If the driver of a vehicle is  
13 involved in ~~an accident~~a crash resulting in the death of another ~~person~~individual, and  
14 there is probable cause to believe that the driver is in violation of section 39-08-01 ~~or~~  
15 ~~has committed a moving violation as defined in section 39-06.1-09, the driver must be~~  
16 ~~compelled by~~a policelaw enforcement officer shall request the driver to submit to a  
17 chemical test or tests of the driver's blood, breath, or urine to determine the alcohol  
18 concentration or the presence of other drugs or substances, or both.
- 19 2. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~If the driver of a vehicle is  
20 involved in ~~an accident~~a crash resulting in the serious bodily injury, as defined in  
21 section 12.1-01-04, of another ~~person~~individual, and there is probable cause to believe  
22 that the driver is in violation of section 39-08-01, a law enforcement officer ~~may~~  
23 ~~compel~~shall request the driver to submit to a test or tests of the driver's blood, breath,  
24 or urine to determine the alcohol concentration or the presence of other drugs or  
25 substances, or both. ~~The methods and techniques established by the director of the~~  
26 ~~state crime laboratory must be followed in collecting and preserving a specimen or~~  
27 ~~conducting a test.~~
- 28 3. If the driver refuses to submit to a chemical test or tests of the driver's blood, breath,  
29 or urine and exigent circumstances are not present, the law enforcement officer shall  
30 request a search warrant to compel the driver to submit to a chemical test or tests of

1           the driver's blood, breath, or urine to determine the alcohol concentration or the  
2           presence of other drugs or substances, or both.

3           4. The approved methods of the director of the state crime laboratory or the director's  
4           designee must be followed in collecting and preserving a sample of the driver's blood,  
5           breath, or urine and conducting a chemical test or tests to determine the alcohol  
6           concentration or the presence of other drugs or substances, or both.

7           **SECTION 13. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **39-20-03.1. Action following test result for a resident operator.**

10          If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test  
11 shows that person to have an alcohol concentration of at least eight one-hundredths of one  
12 percent by weight or, with respect to a person under twenty-one years of age, an alcohol  
13 concentration of at least two one-hundredths of one percent by weight at the time of the  
14 performance of a chemical test within two hours after the driving or being in actual physical  
15 control of a vehicle, the following procedures apply:

16          1. The law enforcement officer shall immediately issue to that person a temporary  
17 operator's permit if the person then has valid operating privileges, extending driving  
18 privileges for the next twenty-five days, or until earlier terminated by the decision of a  
19 hearing officer under section 39-20-05. The law enforcement officer shall sign and  
20 note the date on the temporary operator's permit. The temporary operator's permit  
21 serves as the director's official notification to the person of the director's intent to  
22 revoke, suspend, or deny driving privileges in this state.

23          2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by  
24 drawing blood as provided in section 39-20-02 and the individual tested is not a  
25 resident of an area in which the law enforcement officer has jurisdiction, the law  
26 enforcement officer shall, on receiving the analysis of the urine or blood from the  
27 director of the state crime laboratory or the director's designee and if the analysis  
28 shows that individual had an alcohol concentration of at least eight one-hundredths of  
29 one percent by weight or, with respect to an individual under twenty-one years of age,  
30 an alcohol concentration of at least two one-hundredths of one percent by weight,  
31 either proceed in accordance with subsection 1 during that individual's reappearance

1 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law  
2 enforcement agency having jurisdiction where the individual lives. On that notification,  
3 that law enforcement agency shall, within twenty-four hours, forward a copy of the  
4 temporary operator's permit to the law enforcement agency making the arrest or to the  
5 director. The law enforcement agency shall issue to that individual a temporary  
6 operator's permit as provided in this section, and shall sign and date the permit as  
7 provided in subsection 1.

8 3. If the test results indicate an alcohol concentration at or above the legal limit, the law  
9 enforcement agency making the arrest may mail a temporary operator's permit to the  
10 individual who submitted to the blood or urine test, whether or not the individual is a  
11 resident of the area in which the law enforcement officer has jurisdiction. The third day  
12 after the mailing of the temporary operator's permit is considered the date of issuance.  
13 Actual notice of the opportunity for a hearing under this section is deemed to have  
14 occurred seventy-two hours after the notice is mailed by regular mail to the address  
15 submitted by the individual to the law enforcement officer. The temporary operator's  
16 permit serves as the director's official notification to the individual of the director's  
17 intent to revoke, suspend, or deny driving privileges in this state.

18 4. The law enforcement officer, within five days of the issuance of the temporary  
19 operator's permit, shall forward to the director a certified written report in the form  
20 required by the director. If the individual was issued a temporary operator's permit  
21 because of the results of a test, the report must show that the officer had reasonable  
22 grounds to believe the individual had been driving or was in actual physical control of a  
23 motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the  
24 individual was lawfully arrested, that the individual was tested for alcohol concentration  
25 under this chapter, and that the results of the test show that the individual had an  
26 alcohol concentration of at least eight one-hundredths of one percent by weight or,  
27 with respect to an individual under twenty-one years of age, an alcohol concentration  
28 of at least two one-hundredths of one percent by weight. In addition to the operator's  
29 license and report, the law enforcement officer shall forward to the director a certified  
30 copy of the operational checklist and test records of a breath test and a copy of the

1 certified copy of the analytical report for a blood or urine test for all tests administered  
2 at the direction of the officer.

3 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may  
4 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in  
5 lieu of the administrative hearing under this chapter if the individual's driver's license is  
6 not subject to an unrelated suspension or revocation. Notwithstanding any other  
7 provision of law, an individual may not receive a temporary restricted operator's  
8 license until after fourteen days after the administrative hearing on the offense under  
9 this chapter has been waived or held, or after fourteen days of the final appeal,  
10 whichever is longer. The director shall issue a temporary restricted driver's license with  
11 the restriction the individual participate in the twenty-four seven sobriety program upon  
12 application by the individual with submission of proof of financial responsibility and  
13 proof of participation in the twenty-four seven sobriety program under chapter 54-12.

14 **SECTION 14. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**  
17 **testing.**

- 18 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may  
19 be given, but the law enforcement officer shall immediately take possession of the  
20 person's operator's license if it is then available and shall immediately issue to that  
21 person a temporary operator's permit, if the person then has valid operating privileges,  
22 extending driving privileges for the next twenty-five days or until earlier terminated by a  
23 decision of a hearing officer under section 39-20-05. The law enforcement officer shall  
24 sign and note the date on the temporary operator's permit. The temporary operator's  
25 permit serves as the director's official notification to the person of the director's intent  
26 to revoke driving privileges in this state and of the hearing procedures under this  
27 chapter. The director, upon the receipt of that person's operator's license and a  
28 certified written report of the law enforcement officer in the form required by the  
29 director, forwarded by the officer within five days after issuing the temporary operator's  
30 permit, showing that the officer had reasonable grounds to believe the person had  
31 been driving or was in actual physical control of a motor vehicle while in violation of

1 section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had  
2 reason to believe that the person committed a moving traffic violation or was involved  
3 in a traffic accident as a driver, and in conjunction with the violation or accident the  
4 officer has, through the officer's observations, formulated an opinion that the person's  
5 body contains alcohol, that the person was lawfully arrested if applicable, and that the  
6 person had refused to submit to the test or tests under section 39-20-01 or 39-20-14,  
7 shall revoke that person's license or permit to drive and any nonresident operating  
8 privilege for the appropriate period under this section, or if the person is a resident  
9 without a license or a permit to operate a motor vehicle in this state, the director shall  
10 deny to the person the issuance of a license or permit for the appropriate period under  
11 this section after the date of the alleged violation, subject to the opportunity for a  
12 prerevocation hearing and postrevocation review as provided in this chapter. In the  
13 revocation of the person's operator's license the director shall give credit for time in  
14 which the person was without an operator's license after the day of the person's  
15 refusal to submit to the test except that the director may not give credit for time in  
16 which the person retained driving privileges through a temporary operator's permit  
17 issued under this section or section 39-20-03.2. The period of revocation or denial of  
18 issuance of a license or permit under this section is:

- 19 a. ~~One year~~hundred eighty days if the person's driving record shows that within the  
20 ~~five~~seven years preceding the most recent violation of this section, the person's  
21 operator's license has not previously been suspended, revoked, or issuance  
22 denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 23 b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven  
24 years preceding the most recent violation of this section, the person's operator's  
25 license has been once previously suspended, revoked, or issuance denied for a  
26 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 27 c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven  
28 years preceding the most recent violation of this section, the person's operator's  
29 license has at least twice previously been suspended, revoked, or issuance  
30 denied under this chapter, or for a violation of section 39-08-01 or equivalent

1 ordinance, or any combination of the same, and the suspensions, revocations, or  
2 denials resulted from at least two separate arrests.

3 2. A person's driving privileges are not subject to revocation under subdivision a of  
4 subsection 1 if all of the following criteria are met:

5 a. An administrative hearing is not held under section 39-20-05;

6 b. The person mails an affidavit to the director within twenty-five days after the  
7 temporary operator's permit is issued. The affidavit must state that the person:

8 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent  
9 ordinance within twenty-five days after the temporary operator's permit is  
10 issued;

11 (2) Agrees that the person's driving privileges must be suspended as provided  
12 under section 39-06.1-10;

13 (3) Acknowledges the right to a section 39-20-05 administrative hearing and  
14 section 39-20-06 judicial review and voluntarily and knowingly waives these  
15 rights; and

16 (4) Agrees that the person's driving privileges must be revoked as provided  
17 under this section without an administrative hearing or judicial review, if the  
18 person does not plead guilty within twenty-five days after the temporary  
19 operator's permit is issued, or the court does not accept the guilty plea, or  
20 the guilty plea is withdrawn;

21 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance  
22 within twenty-five days after the temporary operator's permit is issued;

23 d. The court accepts the person's guilty plea and a notice of that fact is mailed to  
24 the director within twenty-five days after the temporary operator's permit is  
25 issued; and

26 e. A copy of the final order or judgment of conviction evidencing the acceptance of  
27 the person's guilty plea is received by the director prior to the return or  
28 reinstatement of the person's driving privileges; and.

29 ~~f. The person has never been convicted under section 39-08-01 or equivalent~~  
30 ~~ordinance.~~

- 1           3. The court must mail a copy of an order granting a withdrawal of a guilty plea to  
2           violating section 39-08-01, or equivalent ordinance, to the director within ten days after  
3           it is ordered. Upon receipt of the order, the director shall immediately revoke the  
4           person's driving privileges as provided under this section without providing an  
5           administrative hearing.

6           **SECTION 15. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **39-20-04.1. Administrative sanction for driving or being in physical control of a**  
9 **vehicle while having certain alcohol concentration.**

- 10          1. After the receipt of the certified report of a law enforcement officer and if no written  
11          request for hearing has been received from the arrested person under section  
12          39-20-05, or if that hearing is requested and the findings, conclusion, and decision  
13          from the hearing confirm that the law enforcement officer had reasonable grounds to  
14          arrest the person and test results show that the arrested person was driving or in  
15          physical control of a vehicle while having an alcohol concentration of at least eight  
16          one-hundredths of one percent by weight or, with respect to a person under  
17          twenty-one years of age, an alcohol concentration of at least two one-hundredths of  
18          one percent by weight at the time of the performance of a test within two hours after  
19          driving or being in physical control of a motor vehicle, the director shall suspend the  
20          person's driving privileges as follows:
- 21          a. For ninety-one days if the person's driving record shows that, within the ~~five~~seven  
22          years preceding the date of the arrest, the person has not previously violated  
23          section 39-08-01 or equivalent ordinance or the person's operator's license has  
24          not previously been suspended or revoked under this chapter and the violation  
25          was for an alcohol concentration of at least eight one-hundredths of one percent  
26          by weight or, with respect to a person under twenty-one years of age, an alcohol  
27          concentration of at least two one-hundredths of one percent by weight, and under  
28          eighteen one-hundredths of one percent by weight.
- 29          b. For one hundred eighty days if the operator's record shows the person has not  
30          violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years

1 preceding the last violation and the last violation was for an alcohol concentration  
2 of at least eighteen one-hundredths of one percent by weight.

3 c. For three hundred sixty-five days if the person's driving record shows that, within  
4 the ~~five~~seven years preceding the date of the arrest, the person has once  
5 previously violated section 39-08-01 or equivalent ordinance or the person's  
6 operator's license has once previously been suspended or revoked under this  
7 chapter with the last violation or suspension for an alcohol concentration under  
8 eighteen one-hundredths of one percent by weight.

9 d. For two years if the person's driving record shows that within the ~~five~~seven years  
10 preceding the date of the arrest, the person's operator's license has once been  
11 suspended, revoked, or issuance denied under this chapter, or for a violation of  
12 section 39-08-01 or equivalent ordinance, with the last violation or suspension for  
13 an alcohol concentration of at least eighteen one-hundredths of one percent by  
14 weight or if the person's driving record shows that within the ~~five~~seven years  
15 preceding the date of arrest, the person's operator's license has at least twice  
16 previously been suspended, revoked, or issuance denied under this chapter, or  
17 for a violation of section 39-08-01 or equivalent ordinance, or any combination  
18 thereof, and the suspensions, revocations, or denials resulted from at least two  
19 separate arrests with the last violation or suspension for an alcohol concentration  
20 of under eighteen one-hundredths of one percent by weight.

21 e. For three years if the operator's record shows that within ~~five~~the seven years  
22 preceding the date of the arrest, the person's operator's license has at least twice  
23 previously been suspended, revoked, or issuance denied under this chapter, or  
24 for a violation of section 39-08-01 or equivalent ordinance, or any combination  
25 thereof, and the suspensions, revocations, or denials resulted from at least two  
26 separate arrests and the last violation or suspension was for an alcohol  
27 concentration of at least eighteen one-hundredths of one percent by weight.

28 2. In the suspension of the person's operator's license the director shall give credit for the  
29 time the person was without an operator's license after the day of the offense, except  
30 that the director may not give credit for the time the person retained driving privileges  
31 through a temporary operator's permit issued under section 39-20-03.1 or 39-20-03.2.

1       **SECTION 16. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **39-20-05. Administrative hearing on request - Election to participate in the**  
4 **twenty-four seven sobriety program.**

5       1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or  
6 39-20-04.1, the director shall afford that person an opportunity for a hearing if the  
7 person mails or communicates by other means authorized by the director a request for  
8 the hearing to the director within ten days after the date of issuance of the temporary  
9 operator's permit. Upon completion of the hearing, an individual may elect to  
10 participate in the twenty-four seven sobriety program under chapter 54-12. The  
11 hearing must be held within thirty days after the date of issuance of the temporary  
12 operator's permit. If no hearing is requested within the time limits in this section, and  
13 no affidavit is submitted within the time limits under subsection 2 of section 39-20-04,  
14 and if the individual has not provided the director with written notice of election to  
15 participate in the twenty-four seven sobriety program under chapter 54-12, the  
16 expiration of the temporary operator's permit serves as the director's official  
17 notification to the person of the revocation, suspension, or denial of driving privileges  
18 in this state.

19       2. If the issue to be determined by the hearing concerns license suspension for operating  
20 a motor vehicle while having an alcohol concentration of at least eight one-hundredths  
21 of one percent by weight or, with respect to an individual under twenty-one years of  
22 age, an alcohol concentration of at least two one-hundredths of one percent by weight,  
23 the hearing must be before a hearing officer assigned by the director and at a time and  
24 place designated by the director. The hearing must be recorded and its scope may  
25 cover only the issues of whether the arresting officer had reasonable grounds to  
26 believe the individual had been driving or was in actual physical control of a vehicle in  
27 violation of section 39-08-01 or equivalent ordinance or, with respect to an individual  
28 under twenty-one years of age, the individual had been driving or was in actual  
29 physical control of a vehicle while having an alcohol concentration of at least two  
30 one-hundredths of one percent by weight; whether the individual was placed under  
31 arrest, unless the individual was under twenty-one years of age and the alcohol

1 concentration was less than eight one-hundredths of one percent by weight, then  
2 arrest is not required and is not an issue under any provision of this chapter; whether  
3 the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if  
4 applicable, section 39-20-02; and whether the test results show the individual had an  
5 alcohol concentration of at least eight one-hundredths of one percent by weight or,  
6 with respect to an individual under twenty-one years of age, an alcohol concentration  
7 of at least two one-hundredths of one percent by weight. For purposes of this section,  
8 a copy of a certified copy of an analytical report of a blood or urine sample from the  
9 director of the state crime laboratory or the director's designee, or electronically posted  
10 by the director of the state crime laboratory or the director's designee on the crime  
11 laboratory information management system and certified by a law enforcement officer  
12 or individual who has authorized access to the crime laboratory management system  
13 through the criminal justice data information sharing system or a certified copy of the  
14 checklist and test records from a certified breath test operator, and a copy of a certified  
15 copy of a certificate of the director of the state crime laboratory designating the  
16 director's designees, establish prima facie the alcohol concentration or the presence of  
17 drugs, or a combination thereof, shown therein. Whether the individual was informed  
18 that the privilege to drive might be suspended based on the results of the test is not an  
19 issue.

- 20 3. If the issue to be determined by the hearing concerns license revocation for refusing to  
21 submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a  
22 hearing officer assigned by the director at a time and place designated by the director.  
23 The hearing must be recorded. The scope of a hearing for refusing to submit to a test  
24 under section 39-20-01 may cover only the issues of whether a law enforcement  
25 officer had reasonable grounds to believe the person had been driving or was in actual  
26 physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or,  
27 with respect to a person under twenty-one years of age, the person had been driving  
28 or was in actual physical control of a vehicle while having an alcohol concentration of  
29 at least two one-hundredths of one percent by weight; whether the person was placed  
30 under arrest; and whether that person refused to submit to the test or tests. The scope  
31 of a hearing for refusing to submit to a test under section 39-20-14 may cover only the

1 issues of whether the law enforcement officer had reason to believe the person  
2 committed a moving traffic violation or was involved in a traffic accident as a driver,  
3 whether in conjunction with the violation or the accident the officer has, through the  
4 officer's observations, formulated an opinion that the person's body contains alcohol  
5 and, whether the person refused to submit to the onsite screening test. Whether the  
6 person was informed that the privilege to drive would be revoked or denied for refusal  
7 to submit to the test or tests is not an issue.

8 4. At a hearing under this section, the regularly kept records of the director and state  
9 crime laboratory may be introduced. Those records establish prima facie their contents  
10 without further foundation. For purposes of this chapter, the following are deemed  
11 regularly kept records of the director and state crime laboratory:

12 a. Any copy of a certified copy of an analytical report of a blood or urine sample  
13 received by the director from the director of the state crime laboratory or the  
14 director's designee or electronically posted by the director of the state crime  
15 laboratory or the director's designee on the crime laboratory information  
16 management system and certified by, and received from, a law enforcement  
17 officer or an individual who has authorized access to the crime laboratory  
18 management system through the criminal justice data information sharing  
19 system, or a certified copy of the checklist and test records received by the  
20 director from a certified breath test operator; and

21 b. Any copy of a certified copy of a certificate of the director of the state crime  
22 laboratory or the director's designee relating to approved methods, devices,  
23 operators, materials, and checklists used for testing for alcohol concentration or  
24 the presence of drugs received by the director from the director of the state crime  
25 laboratory or the director's designee, or that have been electronically posted with  
26 the state crime laboratory division of the attorney general at the attorney general  
27 website; and

28 c. Any copy of a certified copy of a certificate of the director of the state crime  
29 laboratory designating the director's designees.

30 5. At the close of the hearing, the hearing officer shall notify the person of the hearing  
31 officer's findings of fact, conclusions of law, and decision based on the findings and

1 conclusions and shall immediately deliver to the person a copy of the decision. If the  
2 hearing officer does not find in favor of the person, the copy of the decision serves as  
3 the director's official notification to the person of the revocation, suspension, or denial  
4 of driving privileges in this state. If the hearing officer finds, based on a preponderance  
5 of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or  
6 that the person had an alcohol concentration of at least eight one-hundredths of one  
7 percent by weight or, with respect to a person under twenty-one years of age, an  
8 alcohol concentration of at least two one-hundredths of one percent by weight, the  
9 hearing officer shall immediately take possession of the person's temporary operator's  
10 permit issued under this chapter. If the hearing officer does not find against the  
11 person, the hearing officer shall sign, date, and mark on the person's permit an  
12 extension of driving privileges for the next twenty days and shall return the permit to  
13 the person. The hearing officer shall report the findings, conclusions, and decisions to  
14 the director within ten days of the conclusion of the hearing. If the hearing officer has  
15 determined in favor of the person, the director shall return the person's operator's  
16 license by regular mail to the address on file with the director under section 39-06-20.

- 17 6. If the person who requested a hearing under this section fails to appear at the hearing  
18 without justification, the right to the hearing is waived, and the hearing officer's  
19 determination on license revocation, suspension, or denial will be based on the written  
20 request for hearing, law enforcement officer's report, and other evidence as may be  
21 available. The hearing officer shall, on the date for which the hearing is scheduled,  
22 mail to the person, by regular mail, at the address on file with the director under  
23 section 39-06-20, or at any other address for the person or the person's legal  
24 representative supplied in the request for hearing, a copy of the decision which serves  
25 as the director's official notification to the person of the revocation, suspension, or  
26 denial of driving privileges in this state. Even if the person for whom the hearing is  
27 scheduled fails to appear at the hearing, the hearing is deemed to have been held on  
28 the date for which it is scheduled for purposes of appeal under section 39-20-06.

29 **SECTION 17. AMENDMENT.** Subsection 6 of section 39-20-07 of the North Dakota  
30 Century Code is amended and reenacted as follows:

- 1           6. The director of the state crime laboratory or the director's designee may appoint, train,  
2           certify, and supervise field inspectors of breath testing equipment and its operation,  
3           and the inspectors shall report the findings of any inspection to the director of the state  
4           crime laboratory or the director's designee for appropriate action. Upon approval of the  
5           methods or devices, or both, required to perform the tests and the individuals qualified  
6           to administer them, the director of the state crime laboratory or the director's designee  
7           shall prepare, certify, and electronically post a written record of the approval with the  
8           state crime laboratory division of the attorney general at the attorney general website,  
9           and shall include in the record:
- 10           a. An annual register of the specific testing devices currently approved, including  
11           serial number, location, and the date and results of last inspection.
- 12           b. An annual register of currently qualified and certified operators of the devices,  
13           stating the date of certification and its expiration.
- 14           c. The operational checklist and forms prescribing the methods currently approved  
15           by the director of the state crime laboratory or the director's designee in using the  
16           devices during the administration of the tests.
- 17           d. The certificate of the director of the state crime laboratory designating the  
18           director's designees.
- 19           e. The certified records electronically posted under this section may be  
20           supplemented when the director of the state crime laboratory or the director's  
21           designee determines it to be necessary, and any certified supplemental records  
22           have the same force and effect as the records that are supplemented.
- 23           e.f. The state crime laboratory shall make the certified records required by this  
24           section available for download in a printable format on the attorney general  
25           website.

26           **SECTION 18. AMENDMENT.** Subsection 9 of section 39-20-07 of the North Dakota  
27 Century Code is amended and reenacted as follows:

- 28           9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to  
29           be indigent by the court in the criminal proceeding at issue may subpoena, without  
30           cost to the defendant, the individual who conducted the chemical analysis referred to  
31           in this section to testify at the trial on the issue of the amount of alcohol concentration

1 or presence of other drugs, or a combination thereof in the defendant's blood, breath,  
2 or urine at the time of the alleged act. If the ~~state toxicologist, the director of the state~~  
3 ~~crime laboratory, or any employee of either, or designee~~ is subpoenaed to testify by a  
4 defendant who is not indigent and the defendant does not call the witness to establish  
5 relevant evidence, the court shall order the defendant to pay costs to the witness as  
6 provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual~~  
7 ~~who withdrew the defendant's blood by following the same procedure.~~

8 **SECTION 19. AMENDMENT.** Subsection 10 of section 39-20-07 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 10. ~~A signed statement from the individual medically qualified to draw the blood sample for~~  
11 ~~testing as set forth in subsection 5 is prima facie evidence that the blood sample was~~  
12 ~~properly drawn and no further foundation for the admission of this evidence may be~~  
13 ~~required.~~ A law enforcement officer who has witnessed an individual who is medically  
14 qualified to draw the blood sample for testing may sign a verified statement that the  
15 law enforcement officer witnessed the individual draw the blood sample and the  
16 individual followed the approved methods of the state toxicologist. Further foundation  
17 is not required to establish that the blood sample was drawn according to the  
18 approved method of the state toxicologist.

19 **SECTION 20. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **39-20-14. Screening tests.**

22 1. Any individual who operates a motor vehicle upon the public highways of this state is  
23 deemed to have given consent to submit to an onsite screening test or tests of the  
24 individual's breath for the purpose of estimating the alcohol concentration in the  
25 individual's breath upon the request of a law enforcement officer who has reason to  
26 believe that the individual committed a moving traffic violation or was involved in a  
27 traffic accident as a driver, and in conjunction with the violation or the accident the  
28 officer has, through the officer's observations, formulated an opinion that the  
29 individual's body contains alcohol.

30 2. An individual may not be required to submit to a screening test or tests of breath while  
31 at a hospital as a patient if the medical practitioner in immediate charge of the

1 individual's case is not first notified of the proposal to make the requirement, or objects  
2 to the test or tests on the ground that such would be prejudicial to the proper care or  
3 treatment of the patient.

4 3. The screening test or tests must be performed by an enforcement officer certified as a  
5 chemical test operator by the director of the state crime laboratory or the director's  
6 designee and according to methods and with devices approved by the director of the  
7 state crime laboratory or the director's designee. The results of such screening test  
8 must be used only for determining whether or not a further test shall be given under  
9 the provisions of section 39-20-01. The officer shall inform the individual that North  
10 Dakota law requires the individual to take the screening test to determine whether the  
11 individual is under the influence of alcohol, that refusal to take the screening test is a  
12 crime, and that refusal of the individual to submit to a screening test ~~will~~may result in a  
13 revocation for at least one hundred eighty days and up to four~~three~~ years of that  
14 individual's driving privileges. If such individual refuses to submit to such screening  
15 test or tests, none may be given, but such refusal is sufficient cause to revoke such  
16 individual's license or permit to drive in the same manner as provided in section  
17 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as  
18 provided in section 39-20-06 must be available. ~~However, the~~

19 4. The director must not revoke an individual's driving privileges for refusing to submit to  
20 a screening test requested under this section if the individual provides a sufficient  
21 breath, blood, or urine sample for a chemical test requested under section 39-20-01  
22 for the same incident.

23 5. No provisions of this section may supersede any provisions of chapter 39-20, nor may  
24 any provision of chapter 39-20 be construed to supersede this section except as  
25 provided herein.

26 6. For the purposes of this section, "chemical test operator" means an individual certified  
27 by the director of the state crime laboratory or the director's designee as qualified to  
28 perform analysis for alcohol in an individual's blood, breath, or urine.

29 **SECTION 21.** A new section to chapter 39-20 of the North Dakota Century Code is created  
30 and enacted as follows:

1        **Restricted license upon twenty-four seven sobriety program participation.**

2        Any driver suspended under this chapter may elect to participate in the twenty-four seven  
3 sobriety program under chapter 54-12. The director may issue a temporary restricted license  
4 that takes effect after fifteen days of the suspension have been served provided that the driver  
5 is not subject to any unrelated suspension. Notwithstanding any other provision of law, an  
6 individual may not receive a temporary restricted operator's license until after fourteen days  
7 after the administrative hearing on the offense under this chapter has been waived or held, or  
8 after fourteen days of the final appeal, whichever is longer.

9        **SECTION 22. AMENDMENT.** Section 40-05-06 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11        **40-05-06. City fines and penalties limited.**

- 12        1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any  
13        ordinance, resolution, or regulation of a city may not exceed one thousand five  
14        hundred dollars, and the imprisonment may not exceed thirty days for one offense.
- 15        2. For every violation of a city ordinance regulating the operation or equipment of motor  
16        vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a  
17        fee may be established, by ordinance, which may not exceed the limits, for equivalent  
18        categories of violations, set forth in section 39-06.1-06.
- 19        3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403  
20        relating to publicly owned treatment works, or prohibiting shoplifting, vandalism,  
21        criminal mischief, or malicious mischief, the penalty may not exceed a fine of one  
22        thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

23        This section does not prohibit the use of the sentencing alternatives, other than a fine or  
24        imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this  
25        section limit the use of deferred or suspended sentences under subsections 3 and 4 of section  
26        12.1-32-02.

27        **SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE**  
28 **FOR DRIVING UNDER THE INFLUENCE.** During the 2013-14 interim, the legislative  
29 management shall consider studying the administrative procedure for driving under the  
30 influence of alcohol and drugs. The study must include a review of the use of ignition interlock  
31 devices and of the effect of an individual refusing to submit to chemical testing. The legislative

1 management shall report its findings and recommendations, together with any legislation  
2 required to implement the recommendations, to the sixty-fourth legislative assembly.

3 **SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING**

4 **PREVENTION PROGRAM.** The department of human services shall facilitate the continuation  
5 of the parents listen, educate, ask, discuss program, a multiagency collaboration among the  
6 department of human services, department of transportation, North Dakota state university  
7 extension service, and North Dakota university system which has the goal of reducing the  
8 consumption of alcohol by minors by providing developmentally appropriate strategies and  
9 evidence-based underage drinking prevention services to parents and professionals throughout  
10 the state. Through this program the department of human services shall collaborate with the  
11 governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

12 **SECTION 25. APPROPRIATION.** There is appropriated out of any moneys in the general  
13 fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the  
14 sum as may be necessary, to the department of human services for the purpose of funding the  
15 underage drinking prevention program provided for under section 24 of this Act, for the  
16 biennium beginning July 1, 2013, and ending June 30, 2015.

17 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general  
18 fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the  
19 sum as may be necessary, to the attorney general for the purpose of purchasing secure  
20 continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program,  
21 for the biennium beginning July 1, 2013, and ending June 30, 2015.