

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

Subsection 5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.

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

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

b. For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

c. For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least one year's supervised probation; and participation in the twentyfour seven sobriety program under chapter 54-12 as a mandatory condition of probation.

d. For a fourth or subsequent offense, the sentence must include at least one year and one day's imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

e. The imposition of sentence under this section may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.

f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation and upon completion of the twenty-four seven sobriety program. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the

supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation ~~under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court.~~ If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

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

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

i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to serve the remainder of the sentence of imprisonment on probation, which may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody.

A new Section of Chapter 39-08:

Notwithstanding the provisions of Section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of Section 39-08-01, may be suspended on the condition the defendant successfully complete a drug court program approved by the North Dakota Supreme Court.