

Interim Judiciary Committee

Thursday, January 23, 2014

Testimony of Mike Reitan

*Good morning Chairman Hogue and members of the Interim Judiciary Committee. For the record my name is Mike Reitan and I am the Assistant Chief of the West Fargo Police Department.*

*During the summer of 2012 a man named Lynn Mickelson arrived unannounced at the West Fargo Police Department and asked to speak with Chief Rasmussen and myself. Lynn explained that his daughter, son-in-law, granddaughter and unborn grandchild had been killed in a traffic crash involving a drunk driver. We all know the details of the tragic event.*

*Lynn came to the Police Department that day with a purpose. He indicated he had visited with other law enforcement agency administrators with a proposal to change the existing laws relating to driving under the influence. His determination to effect change was clearly evident.*

*Lynn had with him a notebook of handwritten comments and ideas collected from family and friends. He asked if he could share them with us. As he read his list he appeared to become more disappointed as we told him his new ideas for deterrence were actually already incorporated into the North Dakota Century Code. Lengthy jail terms, higher fines, forfeiture of vehicles, ignition interlocks and driver privilege suspensions were some of the items he shared. When he asked why the existing sanctions were not used we explained sentencing is a matter for the officers of the court. Law enforcement could only get better at detecting and arresting drunks. It was up to the prosecutors and judges to prove a case and sentence the individual. We promised Lynn that we would do what we could to assist him with his efforts to toughen sentencing of DUI violations.*

*Law enforcement officers and prosecutors from Cass County began meeting to strategize a plan. We visited with others from across the state and compared North Dakota law and practice with surrounding states. Once drafted, we took our ideas to our state representatives within our district. We also shared our ideas with Lynn. Moving into the session the ideas were gaining momentum and support. Many of you spent long hours of discussion while in session to get to where we are today.*

*The document before you is rather large due to the amount of reference material that is included. I have italicized and bolded my comments for easier reference.*

#### **27-20-10. Informal adjustment.**

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

**27-20-31. Disposition of delinquent child.**

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

*Open discussion with law enforcement on mandatory application of the 24/7 program for juveniles indicates it may be overly burdensome and unnecessary. Alcohol is not as readily available to minors, (who must depend on others to obtain alcohol), as it is to adults who may obtain the alcohol legally and at many locations. Would this not be better served by using the more permissive 'may' and allowing the discretion of juvenile referee?*

*24/7 is normally administered at a correction facility requiring juveniles to interact with adult offenders. Was this a desirable consequence?*

*There may have been an oversight in 27-20-31 as it does not provide for a designated program period of 24/7 monitoring.*

*For consideration is the issue of the ability of a minor to obtain a restricted operator's license under the condition set forth in 39-06-01.1.*

**39-06-01.1. Special provisions for minor operators.**

1. The director shall cancel the operator's license of an individual who has committed acts resulting in an accumulated point total in excess of five points as provided for a violation under section 39-06.1-10 or has committed an alcohol-related offense or a drug-related offense while operating a motor vehicle, if:
  - a. The acts or offenses were committed while the individual was a minor; and
  - b. The individual admitted the violation, was found to have committed the violation by the official having jurisdiction, or pled guilty to, was found guilty of, or adjudicated to have committed the offense.
2. If an individual has had that individual's license to operate a motor vehicle canceled under subsection 1, the director shall deem that individual to have never have had any license to operate a motor vehicle and may not issue any license to operate a motor vehicle other than an instruction permit or a restricted instruction permit after the completion of any period of suspension or revocation. After the issuance of an instruction permit or restricted instruction permit, the director may not issue any other operator's license to that individual until that individual:
  - a. (1) Completes a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director;
  - (2) Completes an internet course through a licensee under chapter 39-25 and completes thirty hours of driving with that individual's parent or guardian in

- compliance with department rules designed for experience in various driving conditions; or
- (3) Successfully completes a course at an approved commercial driver training school; and
- b. Satisfies all other requirements that apply to that individual for that operator's license.

**29-06-15. Arrest without warrant - Peace officer - Officer in the United States customs service or the immigration and naturalization service.**

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

**39-06.1-10. Entries against driving record - Director duties - Hearings – Demerit schedule - Suspension.**

8. The period of suspension imposed for a violation of section 39-08-01, 39-08-01.2, or 39-08-01.4 or equivalent ordinance is:
  - a. Ninety-one days if the operator's record shows the individual has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.
  - b. One hundred eighty days if the operator's record shows the individual has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation was for an alcohol concentration of at least **eighteen one-hundredths** of one percent by weight.
  - c. Three hundred sixty-five days if the operator's record shows the individual has once violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.
  - d. Two years if the operator's record shows the individual has at least once violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation was for an alcohol concentration of at least **eighteen one-hundredths** of one percent by weight.
  - e. Two years if the operator's record shows the individual has at least twice violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.
  - f. Three years if the operator's record shows the individual has at least twice violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation is for an alcohol concentration of at least **eighteen one-hundredths** of one percent by weight.

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

***39-08-01 (5)(a)(1.) provides for an aggravated offense when the test results indicate an alcohol concentration of at least sixteen one-hundredths of one percent by weight. Should 39-06.1-10 (8) also have been changed?***

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

1. Except as provided under subsection 2 or 3, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director may issue a temporary restricted license that takes effect after fourteen days of the suspension have been served if the driver is not subject to any unrelated suspension or revocation.
3. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued in accordance with subsection 5 if the offender is participating in the twenty-four seven sobriety program under chapter 54-12 or if the offender has not committed an offense for a period of one year before the date of the filing of a written application. The application must be accompanied by:
  - a. Proof of financial responsibility and a report from an appropriate licensed addiction treatment program and, if prescribed, proof of compliance with attendance rules in an appropriate licensed addiction treatment program; or
  - b. If the offender is participating in the drug court program or other court-ordered treatment or sobriety program, a recommendation from the district court.
4. For a temporary restricted license under subsection 3, the director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may require that an ignition interlock device be installed in the offender's vehicle and may require the applicant to submit proof of attendance at a driver training course approved by the director.
5. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under section 39-06-31. A temporary restricted

- license may be issued for suspensions ordered under subsection 4 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
6. a. In addition to any restrictions authorized under section 39-06-17, the director may impose any of the following conditions upon the use of a temporary restricted license issued under this section for the use of a motor vehicle by the offender:
    - (1) To use during the licensee's normal working hours;
    - (2) To use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court; or
    - (3) To use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender.
  - b. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
  7. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's operator's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted license to the offender upon the restriction the offender participate in the twenty-four seven sobriety program under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program to receive a temporary restricted license.

*Under the 24/7 program the Sheriff is the only agency currently tasked with administration of the testing procedure. Sheriffs are indicating a significant increase in the number of individuals reporting for testing since the 2013 session. Sheriff Laney of Cass County indicated 24/7 participants at less than 40 during the summer months of 2013 that are currently approaching 150 per day. Other Sheriffs from across the state are reporting similar increases.*

*24/7 can be a condition assigned by the court or by statute relating to a criminal violation. The testing is a condition of bail or a condition of a period of probation or release. A failure under the program is a violation of an order of the court and the individual is subject to arrest under 29-06-15(3).*

*Following the 2013 session the application of 24/7 under 39-06.1-11 is a bit different. Under 39-06.1-11 the purpose of 24/7 is to provide a condition to allow the lifting of an order of driving privilege suspension. 39-20-15 provides additional information on an elective of participation in 24/7 for the purposes of lifting an order of suspension. A failure under the program is a violation of an administrative process set by the director of the driver's license division. The person would not be subject to arrest under 29-06-15(3).*

*It is entirely possible for an individual participating in the 24/7 program to be an individual suffering an administrative suspension or revocation under 39-20 but not having been convicted of a criminal offense under 3-08. The individual would have lost or did not request*

***an administrative hearing but the criminal charges were dismissed or the individual was found not guilty.***

***It is suggested that local law enforcement agencies be allowed to conduct 24/7 testing for the purpose of enforcing orders of the court. It is further suggested that local law enforcement and private contractors be allowed to conduct 24/7 testing for the purposes of meeting the requirements of the administrative process set by the director of the driver's license division. Such allowance would provide additional testing sites for 24/7 program participants and remove some burden from the Sheriff's Departments.***

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

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
  - a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
  - b. That person is under the influence of intoxicating liquor.
  - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
  - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
  - e. That individual refuses to submit to any of the following:
    - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
    - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01; or
    - (3) An onsite screening test, or tests, of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under section 39-20-14.

***Subsection (e) is redundant of 39-08-01(2) below and should be considered for removal. Subsections (a,b,c,d) are physical conditions. Subsection (e) is an action.***

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

2. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to

- submit to a chemical test, or tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.
3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, of a class C felony for any fourth or subsequent offense regardless of the length of time since the previous offense. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
  4. Upon conviction of a second or subsequent offense within seven years under this section or equivalent ordinance, the court may order the motor vehicle number plates of all of the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, or if the offender is participating in the twenty-four seven sobriety program.
  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.

***Twelve months' participation in 24/7 as a mandatory condition of probation but the length of probation is not spelled out here as it is in subsections (c,d) below.***

- 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 twenty-four 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.

***Of the DUI/ APC arrests which have occurred in West Fargo since the law came into effect, all but one defendant has requested to do community service through Restore Inc.***

- 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.
6. As used in subdivisions b and c of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.
7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees.

***As currently written an individual may be arrested for refusal of a roadside preliminary breath test under 39-08-01(2). Following the arrest for refusal, the individual may change their mind and indicate their desire to submit to a chemical test. For the test to be valid under 39-20-01(2), the officer must arrest the individual and inform the individual they are or will be charged with DUI or APC.***

***As the person is already under arrest for the refusal, the officer is required to Mirandize the individual, inform the individual they are under arrest for DUI or APC, and administer the chemical test or tests. The officer cannot unarrest the individual under the statute for the original refusal. As a result, the individual faces penalties for two violations of 39-08-01. By practice, some prosecutors are dismissing the refusal charge during the preliminary hearing and pursuing the charged DUI or APC.***

*Possible solutions to the current condition would be to (1) move a refusal of a chemical test to a new section under 39-08 and create a new penalty or (2) provide for a mechanism to 'cure' an arrest for refusal similar to the 'cure' of a driver privileges revocation for refusal as allowed under 39-20-04(2) and which would direct dismissal of the refusal charge at the time of first appearance.*

*To provide a sampling of those held in jail a snap shot of a daily census at the Cass Correctional Facility found 199 inmates being held. Of those twenty were being held on twenty-eight separate alcohol related charges. Three charges were for violation of the 24/7 program. Five charges were for DUI Refusal. Three charges were for 3<sup>rd</sup> Offense DUI and seven for 4<sup>th</sup> Offense or more DUI. Of the seven held for the 4<sup>th</sup> DUI two are waiting trial and five were sentenced with release dates of February, May, July, October, and November 2014. Two individuals charged with of the 4<sup>th</sup> Offense DUI were also charged with DUI refusal and driving under suspension.*

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

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

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

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

2. A person's driving privileges are not subject to revocation under subdivision (a) of subsection 1 if all of the following criteria are met:
  - a. An administrative hearing is not held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;

- (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
  - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
  - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
  - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and
  - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

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

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

- concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.
- b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
  - c. For three hundred sixty-five days if the person's driving record shows that, within the seven years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
  - d. For two years if the person's driving record shows that within the seven years preceding the date of the arrest, the person's operator's license has once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the seven years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
  - e. For three years if the operator's record shows that within the seven years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
2. In the suspension of the person's operator's license the director shall give credit for the time the person was without an operator's license after the day of the offense, except that the director may not give credit for the time the person retained driving privileges through a temporary operator's permit issued under section 39-20-03.1 or 39-20-03.2.
- 39-08-01 (5)(a.)(1.) provides for an aggravated offense when the test results indicate an alcohol concentration of at least sixteen one-hundredths of one percent by weight. Should 39-20-04.1 also have been changed?***

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

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

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

1. Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol.
2. An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient.
3. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test may result in a revocation for at least one hundred eighty days and up to three years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a

- hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available.
4. The director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident.
  5. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein.
  6. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

**39-20-15. Restricted license upon twenty-four seven sobriety program participation.**

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

**54-12-27. Twenty-four seven sobriety program.**

The attorney general may establish a statewide twenty-four seven sobriety program. The sobriety program involves coordination among state, county, and municipal agencies to implement procedures as alternatives to incarceration for offenders charged with, or convicted of, driving under the influence of alcohol or controlled substances, domestic violence, abuse or neglect of a child, or for other offenses in which alcohol or controlled substances are involved.

**54-12-28. Twenty-four seven sobriety program guidelines and program fees.**

The attorney general, in cooperation with law enforcement, the judiciary, the department of corrections and rehabilitation, and the traffic safety division of the department of transportation, may develop guidelines, policies, and procedures to administer the twenty-four seven sobriety program and to test offenders to enforce compliance with the sobriety program, including sobriety testing twice per day seven days per week, electronic monitoring, including home surveillance and remote electronic alcohol monitoring, urine testing and drug patch testing, and to establish program fees, all of which are not subject to chapter 28-32.

**54-12-29. Twenty-four seven sobriety program fund - Continuing appropriation.**

There is created the twenty-four seven sobriety program fund to be administered by the attorney general. The fund includes appropriated funds; moneys received from grants from the United States; agencies of this state; private grants, gifts, or donations; and program fees. The funds are appropriated as a continuing appropriation to the attorney general for expenses

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necessary for the administration and operation of the sobriety program, including staff support, training and travel costs, computer software and hardware, testing equipment, and supplies.

**54-12-30. Twenty-four seven sobriety program fees.**

A criminal justice agency may collect program fees from offenders participating in the twenty-four seven sobriety program, including fees for twice per day breath alcohol testing, urine testing, drug patch testing, installation and deactivation fees for remote electronic alcohol monitoring devices, and remote electronic alcohol monitoring daily fees. The criminal justice agency shall pay all program fees into the general fund of the governing body. The fees may only be applied to twenty-four seven sobriety program support services, equipment maintenance and replacement, and compliance with the program. The governing body shall pay any daily fees collected for remote electronic alcohol monitoring to the twenty-four seven sobriety program fund.

**54-12-31. Bond conditions.**

A district or municipal court of this state may order an offender charged with a violation of section 39-08-01 or equivalent ordinance, domestic violence, abuse or neglect of a child, or other offense in which alcohol or controlled substances are involved to participate in the twenty-four seven sobriety program as a condition of bond.