

2013 HOUSE JUDICIARY

HB 1302

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
Job 18299
DATE February 5, 2013

☐ Conference Committee

Carman Hecke

Explanation or reason for introduction of bill/resolution:

Relating to juveniles driving under the influence; relating to chemical tests for driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Testimony
1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21

Vice Chairman Larry Klemin: Opened HB 1302.

Rep. Kim Koppelman: Introduced HB 1302. See testimony #1. Time on tape 31:26 to 35:08.

Rep. Ben Hanson: How do you think your bill will mesh, are they complimentary to each other, what would you envision with the other DUI bills that are being introduced in this legislative session?

Rep. Kim Koppelman: I am aware of another bill in the Senate but I don't know if there are other bills beyond that. I have not studied the details of that bill but that bill is the idea of the sponsors. This bill is not my idea, my commitment was to try to deal with the issue and I felt the best way to do that was to begin by talking with the people that deal with it on the ground every day. For us to respond as a Legislature in a responsible way we need to get a pulse from what people around our state, law enforcement, prosecutors, and the Governor's office was heavily involved, the Attorney General's office was also involved, the Highway Patrol and other groups in discussing this language and coming together around the provisions of it as at least a good start.

Rep. Vicky Steiner: Are you going to go through this piece by piece in the legislation?

Rep. Kim Koppelman: Actually there are others who will do that. The Attorney General is going to testify as to the basics to what the bill does. Ken Sorenson who drafted the Legislation will go through all the technical components for us.

Wayne Stenehjem, Attorney General of North Dakota: Handout 2, the power point shown during his testimony. Time on tape 38:33 to 52:05. We have a real problem in North Dakota and that is driving under the influence and impaired driving. North Dakota is one of the safest states in the Union when it comes to homicide and aggravated assaults and those kinds of offenses. ND is one of the worst is driving under the influence. In 2011 ND had 6, 600 DUI arrests, one in one hundred North Dakotans were arrested for driving under the influence. It doesn't mean the number was that small because the possibility of being stopped is too small? Of those 6, 600 fully one third were repeat offenders, people

who had been arrested before, dealt with, convicted and didn't get the message. Half of the fatalities in ND are alcohol related, that is at the top end of the scale nationwide. There are two features I want to mention specifically that I think are the most significant parts of the bill. The first is 24/7 sobriety program, it is a program we have utilized to great extent. It was authorized by this Legislature six or so years ago and it involves dealing with an issue that we consistently are dealing with. For years we have been telling everybody that if you continue to drink and drive we are going to stop you from driving. That doesn't work very well because as many as 80% of them drive anyway. We need to tell people that if you continue to drink and drive we will stop you from drinking. People who have a second, third, fourth offenses for driving under the influence don't have just a driving problem. They have a problem that need to be addressed and that is what the 24/7 program does. A condition of this bill is a mandatory sentence will be participation in 24/7 [program]. The term require the defendant cease drinking for a period of time depending on the level of offense it is and to ensure that they are complying with the terms of that program you have to go to the Sheriff's office twice a day and blow into an in-toxometer. He explained his power point at this time. For those who can't get to the Law Enforcement Center they use the SCRAM bracelet, which continually monitors the skin to determine if there has been a consumption of alcohol in violation of the statute. The expense of this program is from the Defendant. There has been an independent study in the state of South Dakota from whom we borrowed this program showing the result since their program was started it has reduced the incidents of DUI, it has reduced prison population in the state of SD. The other issue that this bill does that is important is to deal with the question of refusal to take a test. Under ND law we operate with implied consent, everybody who gets on the highway agrees, impliedly, that if there is probable cause to believe they are driving in an impaired fashion they must consent to a test. If you refuse to take that test you will lose your license for a year. Eighteen percent of the people asked to take the test refuse. So of the 6600 people who were arrested in 2011 about 1200 said they were not taking the test. They lost their license for a year and they drove anyway. We have looked at different ways to deal with people who refuse to take the test. SD passed a law that says Law Enforcement can physically hold you down to take a blood test. Law Enforcement especially in rural ND where they may be only one officer, they felt that was not a good approach. The other approach proposed in HB 1302 why not say if you don't take the test the criminal penalty will be the same as if you are convicted of DUI offense. At that point there is no point not to take the test. Because the only hope you may have is that you will blow in the Alco-Sensor and it might be less than .08. Behind every one of the statistics every one of those represents a family tragedy, a personal tragedy, a terrible situation that this Legislature has to deal with. We have seen a raise in the number of DUI convictions in ND over the decade or two. He played a Public Safety Announcement that was released on you-tube last week involving the family of Deutscher family.

Rep. Lois Delmore: How many of our first time offenders are reoffending?

Wayne Stenehjelm: One-third. They get arrested, they get convicted, their dealt with but they don't learn their lesson and are back again.

Rep. Kathy Hogan: How many 24/7 programs are there around the state and do we have capacity?

Wayne Stenehjelm: Every county participates and they range from 1100 people in Burleigh County have been on the program. But it is available in every county.

Rep. Randy Boehning: With these new tougher penalties and jail sentences that are mandatory how do you think the rate of DUI is going to go down?

Wayne Stenehjelm: It's hard to predict how it will go down. If you enact this legislation I will come back in two years and tell you and show you how it has gone down as I am convinced that is what will happen. What we really need to do is not just enact legislation like this we have a culture to change in ND where so many people think that it's not as serious offense as it. There is a number of people who

thinks that everybody is entitled to one DUI and then we should get tough on them. We are at the light end nationally for penalties. Those states that do have tougher penalties do have lower rates of DUI. The lesson we learn from other states with tougher laws is that it does have an effect.

Rep. Ben Hanson: I have a few folks that have said if you pass something like this it would ruin my life back when I was in college, when I made one mistake. I want to get your response on record whether it may be inhibiting their job or livelihood.

Wayne Stenehjem: People who are convicted of drinking under the influence need to quit drinking. The more arrests you have the more obvious that problem is. You will be able under this bill to continue driving if you go in twice a day and are tested and pass. People are driving anyway and if they are not under the influence that's a good thing. You will hear from people whose lives were ruined and they were ruined from no fault of their own but ruined through the actions of somebody else. So when you balance the question of whose life is being ruined, you have the innocent people whose lives are ruined or lost as opposed to those who are at fault.

Chairman Kim Koppelman: This bill does not actually increase the criminal penalty for DUI in the first offense; it remains a Class B misdemeanor. The big difference is the fine is tripled and there is some mandatory jail time. The big problem is people never see the inside of a jail cell. So as far as ruining your life this wouldn't do anything different on a criminal record than currently exists.

Vice Chairman Larry Klemin: Last session when we had the texting bill while driving and I remember one specifically that was opposed to the bill. He said I will text and drive if I want to, I'll drink and drive if I want to and you are not going to stop me.

Wayne Stenehjem: That is the point I was attempting to make with the importance of the 24/7 program. We can't stop people from driving after their licenses are suspended. We can stop them from drinking with the 24/7 program by actually requiring them to undergo the inconvenience, to undergo the expense and go in and be tested.

Rep. Andy Maragos: You alluded to the problem the first, second and third time does your office have statistics as to what portion of the ND population has a problem with drinking alcohol and with addiction?

Wayne Stenehjem: My office doesn't, but there are folks in the Dept. of Human Services that have those.

Rep. Roger Brabandt: Of these 6600 DUI's in a year's time what is the percentage of male versus female?

Wayne Stenehjem: About 75% to 79% are male.

Ken Sorenson, Assistant Attorney General: Handout #3. See attached. Time on tape 59:40 to 1:16:25. Sections one and two of the handout deals with Juvenile Court Act and gives the Judge the authority to use 24/7 Sobriety program for a juvenile adjudication.

Rep. Gary Paur: That look back period is that to the DOT?

Ken Sorenson: The look back period is for DOT driver's suspension it also affects revocations and it also affects the offense classification. Under present law if there is a second offense in a five year period that is still as B misdemeanor. But with our new law it's a second offense within a 10 year period.

Rep. Gary Paur: Does DOT only keep their records for seven years?

Ken Sorenson: We had DOT on the task force but they would need to address that.

Wayne Stenehjem: I have a chart here that shows the changes between the proposed law and this law. Handout 4, see attached.

Rep. Roger Brabandt: You talk about juvenile DUI's at .02, is a juvenile someone 17 and under?

Ken Sorenson: Under present law it is subject to the Juvenile Court jurisdiction you're under the age of 18. But if an offense is adjudicated before the 18th birthday Juvenile Court can retain jurisdiction up to age 20.

Rep. Lois Delmore: How many states that have a provision similar to what we are proposing that an individual who refuses to submit to a test is automatically guilty?

Ken Sorenson: The only state I know for sure is MN.

Rep. Lois Delmore: Could you provide that information as sponsor of the bill?

Ken Sorenson: We will take care of that.

Rep. Lois Delmore: The 24/7 sobriety program is mandatory, how long is it mandatory that someone stays on the program? Can the Judge decide that, is there a minimum mandatory time for 24/7?

Ken Sorenson: Under the amendments the mandatory participation will be for the period of probation. We are saying in the amendments the minimum period of probation the court will have the authority to extend this and present statute of the law and probation up to five years for the first time. The court also has the authority to add on another five year period.

Rep. Roger Brabandt: A temporary restricted driver's license work permit the only way you can lose that is if you refuse the DUI test, is that right?

Ken Sorenson: The primary restriction on the license will be to participation in 24/7. The Director will have the authority to propose other restrictions as appropriate. They do now but we are looking at 24/7 so that the person would not be limited to driving just to and from the breath testing site, they will be able to drive so long as they continue their participation in 24/7.

Rep. Lois Delmore: In the first offense did you look at possibility at making a graduated piece where someone at .08 on a first offense as regarded differently than someone who is well over the point of intoxication?

Ken Sorenson: Yes, having an offense classification and tying in mandatory minimum based on the alcohol concentration was discussed, but the thinking was that we wanted them to get a taste of jail.

Vice Chairman Larry Klemin: To the extent that other substances are covered is the 24/7 covered with marijuana or that sort of situation?

Ken Sorenson: Yes, all of our implied consent statutes required chemical either for alcohol concentration or determine the presence of drugs. If drugs are the issue one of the tools in the 24/7 program is a patch. This is installed at 24/7 test site and put right on the skin and it will test our known controlled substances.

Rep. Randy Boehning: I'm looking at the chart and the third offense it's a one year mandatory minimum of 180 days, is that correct?

Ken Sorenson: The third offense will be a Class C felony.

Rep. Randy Boehning: Where would those 60 or 70 days be incarcerated at the county level or at the state level?

Ken Sorenson: It's expected at the county level typically the state can't handle such a short sentence.

Mark Nelson, North Dakota Department of Transportation Safety Division: Handout #5, see attached. Time on tape 1:25:14 to 1:30:29.

Rep. Lois Delmore: What are we doing to help get to the people between the ages of 21 and 34 that seems to be a critical population, is there is something we can do to capture their interest to get them to do designated drivers? Are we making some type of campaign to get a those that are a moving target/

Mark Nelson: We know that ages 18 to 34 year old males driving pickups is a target audience for us. We try to get the message to that age group, we use groups to look at our advertisements that we use in our campaigns. We try to saturate it with 18 to 34 year old males to see what type of messaging works best. The best example is when we did the crash ad for seat belts that shows the brother going across and hitting the sister in the car that came from a huge number of 18 to 34 year olds as that worse thing they feared was hurting someone else in the vehicle.

James Prochniak, Superintendent of North Dakota Highway Patrol: Handout #6, see attached. Time on tape 1:32:43 to 1:35:50.

Rep. Kathy Hogan: We have talked about strong enforcement and education although we haven't talked much about treatment and services to those individuals, did your task force look at that issue?

James Prochniak I think the law itself as we are proposing the strong component of 24/7 is trying to get that person on the right track. To try and get them to think about making better choices and hopefully they will learn from that. I think our present law and the current law also gives that latitude the opportunity for making treatment or chemical dependency evaluation as part of the normal sentencing program to determine those that need more assistance than others.

Rep. Lois Delmore: Can you provide us with a geographical map where the DUI arrests are taking place or are they typical throughout the state?

James Prochniak: We will try and capture that information for you and forward that to the committee.

Paul Laney, Sheriff Cass County: Handout #7, see attached. Time on tape 1:38:26 to 1:41:30.

Chairman Kim Koppelman: There has been questions and concerns about jail overcrowding in ND. Any comments you have about this?

Paul Laney: That is an issue we have Sheriff's already asking for other jails to take their people because they are full. The universal message from all of us the last time we met was we support stiffer DUI penalties we have to change the culture. There was no debate among the Sheriff's regarding that issue.

Chairman Kim Koppelman: If this bill were to pass whether in its current form or with some amendment do you think that it would have a deterrent effect? Do you think once this takes effect that

when it happens to your next door neighbor or family member that word gets around and they would be more careful and the deterrent effect would begin to decrease the numbers?

Paul Laney: I 100% think that would happen and agree with the Attorney General that it will have an impact. We have to have a change of culture.

Mike Reitan, Assistant Chief of West Fargo Police Department: Handout #8, see attached. Time on tape 1:46:04 to 1:50:53. What we are asking with this bill that we make a change a DUI from traffic to a criminal act that it is. It is a criminal act due to the lethality potential of someone driving drunk in ND.

Rep. Andy Maragos: Does Wyoming, South Dakota, and Montana have the same alcohol level .08?

Mike Reitan: Yes.

Rep. Randy Boehning: ON the home monitoring is there any way to put on app on your phone or iPad that would work with this system?

Mike Reitan: I have to defer to the Attorney General.

Wayne Stenehjem: They are working on that.

Pamela Sagness, Prevention Administrator with the Department of Human Services: Handout #9, see attached. Time on tape 1:52:37 - 1:56:35. She addressed questions that had been asked prior to her testimony. Whenever someone receives a DUI they are required to complete a DUI evaluation by a Licensed Addiction Counselor in the state. Also if there was a particular region in the state, in ND alcohol is the #1 drug abuse by people coming into treatment. Most of the data shows that if we are talking about youth or adult alcohol consistent across the state.

Aaron Burst, Association of Counties: Handout #10, see attached. 1:57:35 to 1:57:56.

Chairman Kim Koppelman: Asked Attorney General to address how to approach the drunk driving and ignition interlocks, proposal of marked driver's license to prevent people from buying alcohol.

Wayne Stenehjem, Attorney General: if you have a person with a significant number of DUI's your likely dealing with someone who has a problem and that is why Rep. Hogan was correct when she talked the treatment component. 24/7 program is not designed to be a substitute for treatment. Everybody under current law who is arrested for DUI has to get a evaluation, this law continues this. Treatment providers like the 24/7 program because they know when they get somebody into their program they are sober.

Arlene Deutscher, mother of Aaron Deutscher, mother-in-law to Allison and grandmother to Brielle: Handout #11, see attached. Time on tape 2:01:01 to 2:03:35.

Tom Deutscher, father to Aaron Deutscher, mother-in-law to Allison and grandmother to Brielle : Handout #12, see attached. Time on tape 2:03:43 to 2:08:57.

Lynn and Donna Mickelson, parents of Allison Deutscher, in-laws to Aaron to Deutscher and grandparents to Brielle: Time on tape 2:09:00 to 2:19:05. Spoke on the loss of his family as well as other families who have lost family members and those situations. He talked about cultural changes and said we did a cultural change with smoking and with seatbelt usage. He feels there is no deterrent with the current law.

Leann Bertsch, Director of North Dakota Department of Corrections and Rehabilitation: Handout #13, see attached. Time on tape 2:19:35 to 2:22:10. She stated they had prepared a fiscal note for this bill.

Chairman Kim Koppelman: When you prepared the fiscal note and have heard the testimony about this bill being a deterrent did you look at that this when preparing the fiscal note?

Leann Bertsch: we were trying to look at a deterrent effect. We went to SD who has a third DUI within 10 years being a felony. We did a study with them to compare our systems in 2011 and on July 31, 2011 we had 28 DUI offenders locked up and they had 431. I checked to see if since they enacted these tougher laws they peaked with DUI offenders in 2009 about 509 offenders in prison and since then they have seen go down about 40 offenders. They contribute some of that deterrent effect to 24/7. In HB 1302 you will see a number of people being incarcerated, that will certainly have the ability to keep them off the roads. As far as deterrents affect in the first time offenders it will help but we have a lot of people locked up who have repeat offenses.

Vice Chairman Larry Klemin: Since you don't have the fiscal note built into your budget would this have to go to Appropriations to review the fiscal impact?

Leann Bertsch: That is correct.

Vice Chairman Larry Klemin: do you know how the counties will handle the additional cost?

Leann Bertsch: I do not know. Even if you gave us the funding right now I don't know that we have the resources as far as incarceration capacity to handle it. One of the options is that when we were looking at some of the other states had done, Montana built into their statute an option for Judges to give them discretion on the felony level. Instead of sentencing them directly into prison sentence them into a residential treatment program operated or contracted for by the DOCR for at least 13 months and if they successfully completed then they would be placed on probation supervision.

Vice Chairman Larry Klemin: Would this bill need to be amended to include that?

Leann Bertsch: Yes it would

Rep. Lois Delmore: Thirteen months is that what we are finding to be a number to keep someone in treatment in order to make sure they are not going to reoffend?

Leann Bertsch: That's how the Montana statute was fashioned, 13 months is a good timeframe for that. They have been running the Watch Program and they have 75% successful completion rate. That is their DUI program that offenders are put in to. Since they have been doing it they would like to have longer than 13 months.

Rep. Lois Delmore: Do we have anything like that in place in the state of ND right now that we could utilize?

Leann Bertsch: All of our resources right now are full, so that would need to be expanded. We have some good drug treatment resources within the DOCR but they are at capacity.

McKenzie Johnson, niece of Aaron and Alison Deutscher and cousin to Brielle: Time on tape 2:28:00 to 2:28:34. She testified in favor of HB 1302 because of the loss to her family.

Colton Mickelson, nephew of Aaron and Alison Deutscher and cousin to Brielle: Time on tape 2:28:42 to 29:26. He wants the law changed so people will be scared of drunk driving and think twice before driving drunk.

Cynthia Auen: Handout #14, see attached. Time on tape 2:29:43 to 2:32:47.

Sarah Johnson, sister of Allison Deutscher: Time on tape 2:33:07 to 2:345:21. Spoke about her loss and urged the passing of HB 1302.

Handout #15 by Arlene Deutscher from the Ruis family.

Russ Myhre, Attorney from Valley City, North Dakota Association of Criminal Defense Lawyers: Time on the tape 2:36:43 to 2:48:57 Handouts #'s 16, 17, 18, 19, 20, 21, see attached. He stated they were recommending amendments but handout # 21 is for SB 2240. He said Defense Lawyers were not consulted to help work on this bill or SB 2240, his organization does see benefits from HB 1302 and SB 2240. He talked about enforcement as this is a deterrent. More alcohol addiction facility and program support. We are opposed to minimum mandatory sentencing. He said they are concerned about the costs associated with this bill. They are also urging the Legislature to conduct an interim study.

Paul Myerchin President of North Dakota Association of Criminal Defense Lawyers: Time on tape 2:53:01 to 2:58.01 He said there is a need for an interim study for this bill. The majority of the drivers causing the accidents are the ones above .15.

Chairman Kim Koppelman: Asked for additional testimony - none. Hearing recessed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
February 7, 2013
Job 18454

☐ Conference Committee

Carmen Hecker

Explanation or reason for introduction of bill/resolution:

Relating to juveniles driving under the influence; relating to chemical tests for driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Chairman Kim Koppelman: Called the subcommittee meeting to order.

Chairman Koppelman: presented an overview of the bill.

Rep Delmore: The most upsetting thing is that on a first offense, everyone is equal. There is a great deal of difference between one drink over the limit and 20 drinks over. We're equating all of them.

Chairman Koppelman: Should it be a tiered punishment?

Rep Delmore: I think we should put a mandatory sentence on 0.15.

Chairman: One of the reasons that the bill does not change the first offense from a Class A misdemeanor is because it is not enforced. If we do a mandatory sentence of 0.15 for instance, does that send enough of a message to a judge who has someone at 0.12 that this is an egregious case and this person is going to spend time in jail?

Rep Klemin: Moved to amend the bill by having the first offense of BAC of .08 to .14 be a fine of \$500 and no mandatory jail time. Then for the first offense of BAC .15 or greater would be as the original bill.

Rep Delmore: Seconded.

Voice vote carried.

Chairman: Ms. Bertsch talked about the fiscal note. The repeat offender is who we want to get at but we also have in the bill about the felony never going away. Under current law, if you are convicted of a felony, it will drop off your record if you stay out of trouble for a

certain number of years. The bill proposes that wouldn't happen if you achieve a felony for a DUI, you would remain a felon for life.

Tom Trenbeath: The minimum mandatory sentence should be one year and one day so that it doesn't drop off. Those felonies would stay.

Chairman: But a year could drop off?

Tom Trenbeath: Yes, but let's be clear a felon never goes away it may be on record as a misdemeanor. There is no expunge for any offense.

Chairman Koppelman: What purpose are we doing besides keeping our prisons full?

Tom Trenbeath: It shows a felon on your criminal record.

Chairman Koppelman: Is that punitive? Or is that really serving a purpose in terms of this potentially dangerous drunk driver?

Tom Trenbeath: The criminal justice theory is that it serves both purposes. The year serves as punitive; the year and a day serves as a deterrent.

Vice Chairman Klemin: right now we have on page 7 under c third offense within 10 years is a year and a day. Under d for the fourth offense anytime it is a year and a day.

Rep Delmore: I think the most effective part of this whole bill is the 24/7. Why are we setting so many other punitive things in when that can be a positive way to address the problem?

Tom Trenbeath: I couldn't agree more the problem is getting the average Law Enforcement Officer and some Judges to agree with that.

Vice Chairman Klemin: How does the 24/7 work when you are in prison for one year and one day and you also have the 24/7?

Tom Trenbeath: The provision is one year and one day to serve at least 60 days. The balance would presumably be under some sort of supervision where the 24/7 would kick in.

The committee discussed an amendment.

Vice Chairman Klemin: Page 7 line 4 instead of a year and a day what about if we say 180 days and somewhere else it says you have to serve at least 60 of that. And then d we just leave that the way it is. It's a year and a day for both c and d, I think we need to back off as they would still need to go through the 60 days in prison. The fourth offense would be a year and a day.

Chairman Koppelman: We need to ask ourselves if we make the changes we are talking about we are lighting up on repeat offenders more than we are based on what the bill

proposes. I think we do need to send a message on the first offense but the repeat offenders that often times are causing the accidents.

Tom Trenbeath: Page 9 any of these imprisonments of any length of time can be converted to house arrest. Wearing monitoring devices paid for by the defendant.

Chairman Kim Koppelman: On a fourth offense I don't think two years is too long. We have the one motion where we changed the blood alcohol content. I would like to get Mr. Sorenson here to clarify whether the bill is written is the intent or whether the chart is. Then decide what we want to amend. There has been some discussion for getting rid of the administrative process in terms of license suspension which currently happens in Dept of Transportation. Law Enforcement doesn't like. Residential treatment was talked about but it would be expensive.

Vice Chairman Klemin: Leann Bertsch talked about Montana's residential treatment and we need to have a look at that.

Chairman Koppelman: In this bill we don't do anything with servers by design we didn't intend to criminalize people in liquor establishments. Instead of saying you are going to jail if you serve someone to say if a server feels someone is intoxicated and refuses to serve them they cannot be held liable for that decision.

Vice Chairman Larry Klemin: I have never heard of a drunk suing a bar because they are were refused to be served.

Rep. Lois Delmore: I haven't either. The server doesn't know who the driver is.

Vice Chairman Klemin: I move that we add a study on the end of the bill.

Rep. Lois Delmore: Second

The committee discussed a study on the bill.

Allen Austad: We have to determine in ND what works best. The objective is to stop people from drinking and driving, what are the best routes to do that? It is better to put them in jail or put an ankle bracelet on them, which is the most effective? I would study the whole thing.

Chairman Koppelman: adjourned.

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February 8, 2013
Job 18568

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Minutes:



Chairman Koppelman called the subcommittee to order. All members are present.

Chairman reviewed the amendment recommended during the previous meeting.

Rep Delmore: The point is: Do we want to punish them forever? Or do we want to get them into a 24/7 program where they quit drinking? What is the bottom line of what we prefer to do with these people?

Chairman: That will be in place for first time offenders. We need to figure out how we're going to deal with multiple offenders.

Rep Klemin: I think 6 months in jail for the third offense is going to give them plenty of time to think about it. They would have already gone through the 24/7 program twice by this point. They would have already been fined, evaluated for addiction treatment and probation. I think it should gradually get tougher.

Chairman: The bill proposed that.

Rep Klemin: I move to amend page 7, line 4 from 1 year and 1 day to 180 days.

Rep Delmore: Second

Voice vote: In favor: 2, Opposed: 1

Chairman: Is it one year and one day on the fourth offense in the bill?

Rep Klemin: Yes but two years of probation.

Chairman: So its two years, serve at least one year and one day?

Rep Klemin: Yes. Page 7, line 10. In the amendments that Ken just gave us, it is changing to two and I don't support that.

Chairman: What do we do with the other amendments? They were technical amendments to correct errors in the bill. Are there any of these that we want to recommend?

Rep Klemin: I would like Ken to go through them.

Ken Sorenson (09:55): When we get into subdivision D the draft that came out of the task force group had for a fourth or subsequent offense a sentence of at least 2 years and a fine of at least \$2000.

Rep Delmore: So if I refuse a breathalyzer, I'm not eligible for 24/7, I'm automatically assumed guilty and I can't get a temporary license?

Sorenson: That was from the task force. It doesn't prohibit 24/7, but it does prohibit that we restrict the driver's license.

Chairman: Let's start at the top of your amendment.

Sorenson: The amendment out of the initial task force recommended that a person who has refused to submit to chemical testing is not eligible for a temporary restricted driver's license.

Rep Delmore: That really goes a long way in contrary to what we allow people to do today.

Chairman: The discussion we had and the Attorney General's testimony in the hearing was that there have been issues/questions in terms of forcing people to take a blood test. And some state, South Dakota I believe, is doing that now. I decided that it would be smarter, between law enforcement and drunk drivers, to make refusal to take the test the same as if you would have tested. Given the way we've amended the bill so far, I think this is better. I would recommend that we say if you refuse to take the test, it's the same as if your blood alcohol level was 0.15 and the same consequences. Now that there is a differentiation where 0.15 is mandatory jail time and 0.08 is not, people are going to take the blood test.

Rep Delmore: Do you think that would be challenged legally?

Chairman: The Attorney General doesn't seem to think so.

Sorenson: The Attorney General is really strong on the refusal aspect and on the issue of whether or not they are eligible for a temporary restricted license. That is a policy decision for the committee. There is no refusal language in here restricting the temporary restricted license.

Chairman: If we do not adopt the amendments you suggested, what would be the effect of 24/7 with refusal?

Sorenson: The effect would be that is a person has a refusal; they may still be eligible for a temporary restricted driver's license.

Rep Klemin: But if they do take the test, they would be eligible for a temporary restricted license. If we are going to make refusal equal to the crime, and the crime allows them to be eligible, why shouldn't refusal allow them to be eligible?

Chairman: I agree with that.

Sorenson: With the temporary restricted permit under 24/7, if they violate 24/7 it will be handled as any other violation of the temporary restricted license which means it is subject to revocation by the director of the DOT.

Rep Klemin: Do they have administrative hearing rights?

Sorenson: It's a pretty summary process for revocation of a temporary restricted driver's license. Also a violation of the temporary restricted driver's license is another criminal offense; a Class B misdemeanor.

Rep Klemin: I would like to leave it as it is in the bill with one year and one day for the fourth offense.

Rep Delmore: So 180 days for the third?

Rep Klemin: Yes. We should probably change that fine to \$2000, like it states in the proposed amendments.

Rep Delmore: So the fourth is \$3000?

Chairman: Yes.

Rep Delmore made the motion.

Rep Klemin seconded.

Voice Vote to change 1 to 3 on line 13 of page 7. Motion carried.

Rep Klemin: On the fourth offense, are we leaving it as one year and one day?

Chairman: Yes. The chart says there is a maximum sentence of five years for the fourth or subsequent offense and two years, serving at least a year. Where is the maximum sentence of five years in the bill?

Sorenson: The maximum penalty for any a Class C felony is up to five years imprisonment and up to a \$5000 fine.

Chairman: Explain the change on page 19, line 31.

Sorenson: This comes from the crime lab. The analytical report is typically not electronically posted because it is a restricted document until it is admitted into trial. The crime lab ends up mailing out the analytical report in over 4,000 cases a year. The crime lab will still likely have to mail some out in some cases, but they have a system now that the analytical report can be accessed by authorized users by going through the criminal justice information system.

Chairman: Do all of the amendments for pages 19, 20 and 21 deal with this same issue?

Sorenson: Correct.

Rep Klemin motioned to adopt the amendments beginning on page 19, line 31 through page 21, line 7 from Mr. Sorenson's suggested amendments.

Rep Delmore seconded.

Voice vote. Motion carried.

Rep Klemin: Did we talk about page 10, line 24?

Sorenson: That language was specifically put into the statute in the 1980s by the legislative assembly to emphasize that the person is to submit to chemical testing. The task force thought it was redundant and struck the line.

Rep Klemin moved the amendment to page 10, line 24.

Rep Delmore seconded.

Voice vote. Motion carried.

Rep Delmore: Is there any place in this bill where someone has a right to ask for a blood test rather than a breathalyzer?

Sorenson: It has always been the law that the person will take the test directed by the law enforcement officer, but they have always had the right to ask for a second test.

Chairman: So if we change that to say refusal to consent is the same as being guilty, and the person refuses to consent but then wants the blood test, what is the effect?

Sorenson: That may cure the refusal.

Chairman: Is someone in that condition likely to think that through? If nothing else, they need to be advised of the options at the time if this is the new law. If someone refuses the

field test of the breathalyzer and the refusal is deemed guilt, but then requests a blood test and the results conflict, what do you do with the guilt that was presumed at that point?

Unknown: The second test results, regardless of the type, will almost always be different than the first one. The intent of this bill is that if you refuse the test, it is a crime.

Rep Delmore motioned for the legislative management study amendment.

Rep Klemin seconded.

Voice vote. Motion carried.

Al Austad: Rehab is a far more effective option than punitive measures.

Rep Klemin: The Montana provision that we got from Mr. Trenbeath allows the department of corrections to put an offender into a residential alcohol treatment program rather than in prison.

Austad: I think there needs to be an opportunity to change.

Rep Klemin: They do get an order for addiction evaluation by a licensed addiction treatment program.

Rep Delmore: Can that be done in lieu of jail time the way the bill is written?

Sorenson: If a person is sentenced to the custody of the ND Department of Corrections, which is pretty much the practice for a felony offense, the Department of Corrections has a treatment facility here within the perimeter of its maximum custody perimeter. On the campus of the ND State Hospital, there is a program that is operated by the ND Department of Corrections called the Tompkins Rehabilitations and Corrections Unit, which in an intensive in-patient drug and alcohol treatment program. The Department of Corrections frequently moves inmates to this unit for treatment. It is not in statute, but is done as a matter of practice.

Chairman: Would it be helpful if it were in statute as part of this bill?

Sorenson: I think it would be.

Rep Klemin: Could you redo your amendments and put this in?

Sorenson: I'll consult with the Department of Corrections.

Chairman: We have a suggestion that Mr. Sorenson include in the corrected amendments that he will prepare based upon the actions of the committee, an amendment that references the fact that people who are incarcerated for this crime can be referred for treatment if testing indicates that is warranted.

Rep Delmore: In lieu of a sentence?

Chairman: It would be as part of a sentence or a correctional treatment.

Rep Delmore motioned to draft the amendment.

Rep Klemin seconded.

Voice vote. Motion carried.

Austad: In regards to treatment, do you want it counted day-for-day as incarceration or do you want it counted day-for-day only if successfully completed?

Chairman: I would say successfully completed.

Rep Klemin: Agreed.

Chairman adjourned the committee.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
February 11, 2013
Job 18745

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to juveniles driving under the influence; relating to chemical tests for driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Chairman Koppelman called the meeting to order.

Chairman (13:09) explained the amendments and subcommittee work to the committee. There are three major changes that the subcommittee is recommending to the bill. The first is dealing with the mandatory minimum sentencing with regard to the first offense. The recommendation is that if it is a first offense and there is a blood alcohol between 0.08 and 0.15 that there would be no mandatory jail time, but that the fine would double to \$500.

Rep Maragos: Does the 24/7 still stay in effect?

Chairman: It is still an option.

Rep Delmore: If you are under 0.15, then no for a first offense. If you are over that, then it is.

Chairman: I think it's still an option. We'll get an answer on that.

Unknown: Does a first offense DUI automatically cause a suspended license?

Chairman: Yes, I believe so.

Rep Klemin: If you have a temporary restricted driver's license with the restriction of participation in the 24/7 program, it wouldn't be suspended.

Chairman: It might be an option for the court to suspend or allow. The restricted license is still part of the administrative process under the DOT which we talked about but did not tackle. It has been suggested that the administrative process go away.

Rep Toman: So page 2, line 26, item g doesn't take away the administrative process?

Chairman: No, it does not take away the administrative process. For people between the 0.08 and 0.15 level on the first offense, are they still subject to the 24/7 program?

Ken Sorenson: Yes. The 24/7 and the temporary restricted license is not tied into the alcohol concentration.

Rep Maragos: Is the 24/7 program still part of the first offense?

Chairman: Yes.

Sorenson: If it is a first offense and the alcohol concentration is less than 0.15, they will have the \$500 fine and the mandatory referral for the addiction evaluation. Probation and 24/7 are not mandatory at that point. If the alcohol concentration for a first offense is at least 0.15, then probation is mandatory and participation in 24/7 is mandatory. The 24/7 will still apply as part of the temporary restricted driver's license.

Chairman: Is that mandatory at 0.08?

Sorenson: There is nothing mandatory there.

Chairman: Is the suspension mandatory at 0.08 now?

Sorenson: If there is a conviction, the administrative suspension comes with the administrative hearing process and the suspension also accrues with the criminal conviction. But they would be eligible for the temporary restricted license if they are participating in 24/7.

Chairman: So the difference in current law and what this bill would do on that point is that currently you automatically have a suspension for a first offense, but they can get the restricted license to go to and from work. That would be replaced by 24/7 under the bill. Is that correct?

Sorenson: Yes. The mandatory suspension for the conviction itself is 90 days. But if they have the temporary restricted license, for a first offense regardless of the alcohol concentration, they would be eligible for the temporary restricted license after 15 days.

Chairman: Is the 24/7 in lieu of the temporary restricted license?

Sorenson: Participation is the primary restriction on the temporary restricted license.

Rep Hanson: So the 24/7 program would not even be available as an option for sentencing on first offense between 0.08 and 0.15?

Sorenson: It is still available; it's just not a mandatory condition. The court would still have discretion.

Rep Hanson: It becomes mandatory after 0.15 and between 0.08 and 0.15 it is an option?

Sorenson: Correct.

Chairman: Is the suspension mandatory at 0.08?

Sorenson: Yes. Under the implied consent process, the administrative hearing process, if the hearing officer finds those elements that there was probable cause for arrest, the person was arrested, there was an alcohol test and they met the threshold of 0.08 then they are subject to an administrative suspension. But if they have a valid driver's license at the time of the arrest, they could continue with a temporary operator's license with the 24/7 restriction in lieu of the administrative suspension.

Rep Maragos: If they are in the 24/7 program, are they restricted from having any alcohol whatsoever? Or can they have a glass of wine with dinner?

Sorenson: The 24/7 program is a zero tolerance program. If they hit a 0.02 threshold, it will show up and that would be considered a violation of the program.

Rep Maragos: There are a lot of products that contain alcohol, like pure vanilla extract used in baking. You could get into trouble and not even know it.

Sorenson: We do run into this with 24/7 with mouthwash and toothpaste also. Some body washes and shampoos will trigger a positive with the ankle bracelet. The participants in the program get some pretty detailed information as to some of the dos and don'ts of participating in the program. With mouthwash and toothpaste, for instance, they do get a second chance. If they blow a false positive due to residual alcohol in their mouth from mouthwash, they are asked to stay there for 15 minutes and blow another test. If that shows positive, that is more likely an alcoholic beverage than something they ingested a lot more innocently, such as mouthwash.

Chairman: The intent of the subcommittee is that we are, in essence, softening the mandatory minimum requirements of the first offense so that if your blood alcohol level is between 0.08 and 0.15 you would not be subject to as high a fine. If you are at 0.15 or above, the mandatory jail time would kick in and the fine would be \$750 as opposed to \$500. An important point on the refusal, it makes refusal equal to testing over. If you are at 0.08 to 0.15, there is a different requirement. Refusal is equal to being 0.15 or above. It's an incentive to take the test. We also talked about the importance of treatment. The option here allows a portion of the sentence to be served with treatment. The other major component is a study provision to study how and if it is working.

Rep Klemin: The study also looks at the administrative hearings, administrative sanctions part of this that is not being addressed by this bill.

Chairman: There has been discussion that perhaps the whole administrative process should go away. The only reason we have the administrative process, which is done through the Department of Transportation, is because years ago the federal government insisted upon it and held our highway funds. But those strings are no longer attached.

Rep Maragos moved the amendments.

Rep Larson seconded.

Voice vote. Motion carried.

Rep Maragos moved a Do Pass as Amended.

Chairman: Part of the motion is to re-refer to appropriations.

Rep Delmore seconded.

Roll Call Vote:

Yes: 13

No: 0

Absent: 1

Carried by Chairman Koppelman.

Chairman adjourned the committee.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
February 11, 2013
Job 18745

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to juveniles driving under the influence; relating to chemical tests for driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

/

Chairman Koppelman called the subcommittee to order. All members present.

Chairman: In the first amendment, it talks about between eight-hundredths of one percent by weight and fourteen-hundredths of one percent by weight and later it goes up to at least fifteen-hundredths. Is it possible to be between fourteen and fifteen-hundredths?

Ken Sorenson: From time to time, it will be in the thousandths. But typically, our system is based on hundredths. We will typically round down.

Chairman: Would it be safer to say less than fifteen-hundredths?

Sorenson: Technically the way the crime lab will do it, at least with the blood alcohol analysis, that would be better.

Rep Klemin: In regards to the study, it currently only mentions alcohol and should also mention drugs.

Rep Delmore: Are we doing anything with the implied consent change? Did we try to make allowance for that with the license somewhere?

Chairman: I think what we decided it was ok the way it is in the bill because if someone were to refuse the test, the penalty would be the same as the 0.15 or above. Is that correct?

Sorenson: There is no language to that effect right now.

Rep Delmore: The other problem we had with that is that they would not be eligible for the 24/7 program either if they refuse the test.

Sorenson: The bill with the amendments will still allow a person who refuses chemical testing to be eligible for 24/7 and a temporary restricted license.

Rep Klemin: What is the penalty if they refuse to take the test?

Rep Delmore: It remains the same as if they were 0.15 or above.

Chairman: That is our intent. I don't think the bill says that yet.

Sorenson: A refusal to submit to chemical testing becomes an offense.

Chairman: This may need a little more work on this issue.

Rep Delmore: Do you like the wording for the study?

Chairman: Do you think the language of the study captures the study of the effectiveness over the next two years of the 24/7 program?

Rep Delmore: Yes.

Rep Klemin: I'll move all the amendments.

Rep Delmore: Second.

Chairman: The motion is to move the amendments as edited by the subcommittee, with the understanding that we need to further amend to clarify the refusal with the penalty at 0.15.

Voice vote. Motion carried.

Chairman: Adjourned the subcommittee.

FISCAL NOTE
Requested by Legislative Council
01/16/2013

Bill/Resolution No.: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$8,575,237		\$22,708,901	
Appropriations			\$8,575,237		\$22,708,901	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill No.1302 provides for increased penalties for DUI offenses. Section 5 of the bill contains the increased penalties. This bill will provide a fiscal impact to both counties and the DOCR.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimated fiscal impact to the counties was estimated by the ND Association of Counties and was provided as follows: After examining the district court data provided, and talking with prosecutors and sheriffs; it was determined that a figure of 4000 cases per year should be used. This was taking the 3,500 district court cases over the past two year and increasing that to include 500 additional municipal court cases, as those were not reflected in the data. Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. The challenge is that, depending upon where those cases are jailed, there may not be room. Burleigh, Morton, Ward and Williams jails are often at capacity already. That means additional transport costs (time & expense) that have not been estimated. This may be mitigated by the deterrent effect, but since both of these factors are even more speculative, it was felt the straight calculation of days and daily rates was better supported. The estimated fiscal impact to the State is limited to the estimated impact to the DOCR. To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1,2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1)All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2)All time incarcerated for 3rd and 4th DUI offenses (Felony C) will be served at DOCR or DOCR contracted facilities; 3)Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4)All DUI offenses occur evenly throughout the year; 5)Actual time incarcerated is equal to minimum sentence; 6)All probation served at minimum mandatory; 7)No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 412 in FY15, 527 in FY16 and 527 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 258, FY16 - 377 and FY17 - 381. Costs estimated for the purpose of this fiscal note include medical, food, contract housing and additional FTE costs to provide community supervision (probation). Est Fiscal Impact 2013-15 - \$8.6 million and 1 additional FTE Est Fiscal Impact 2015-17 - \$22.7 million and 7 additional FTE See attachment for computation

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Estimated appropriation amount is equal to funding necessary for the DOCR to implement the penalty provision of HB1302 if passed into law.

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through the year						
2) Actual time incarcerated is equal to minimum days required to serve						
3) All time incarcerated for B&A at county level						
4) All time incarcerated for Felony C at state level						
5) All probation at minimum mandatory						
6) No revocation from probation						
7) Probation caseload at 65						
8) Contract housing beds \$70 per day						
Deterent Effect	0%	0%	0%	0%		
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017		
3rd Offense	51	102	102	102		
4th + Offense	106	309	425	425		
Total	157	412	527	527		
Offenses Per Month						
3rd	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Est Contract Housing	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Est Pop DOCR Facilities	1,140	1,144	1,147	1,151		
Bill Effect	157	412	527	527		
Needed Beds	-	258	377	381		
Days	365	365	365	365		
Bed Cost Per Day	70.00	70.00	70.00	70.00		
Estimated Cost	-	6,589,516	9,627,491	9,731,820		

Increase in Probation					
3rd Offense	-	46	102	102	
4th + Offense	-	-	97	309	
Total	-	46	199	412	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	7	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	75,000	300,000	525,000	
Inmate Costs					
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Increase Inmates	157	412	527	527	
Days	365	365	366	367	
Increased Medical	371,750	975,695	1,252,799	1,256,224	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Increased Inmates	157	412	527	527	
Housed Outside Docr	-	258	377	381	
Net Inc Inmates	157	154	151	147	
Days	365	365	366	367	
Increased Food	284,301	278,974	273,628	266,939	
Total Cost Increase	656,052	1,254,670	1,526,427	1,523,163	
Total Cost	656,052	7,919,186	11,453,918	11,779,983	
Total Cost 13-15		8,575,237			
Total Cost 15-17			22,708,901		

VK
2/12/13
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1302

Page 1, line 6, after the first semicolon insert "to provide for a legislative management study;"

Page 6, line 20, after the comma insert "if the alcohol concentration is at least eight-hundredths of one percent by weight but less than fifteen-hundredths of one percent by weight, the sentence must include a fine of at least five hundred dollars and an order for an addiction evaluation by an appropriate licensed addiction treatment program. If the alcohol concentration is at least fifteen-hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14,"

Page 7, line 4, replace "year and one" with "hundred eighty"

Page 7, line 13, overstrike "one" and insert immediately thereafter "at least three"

Page 7, line 21, after "sentence" insert "under subsection 3 of section 12.1-32-02 if the alcohol concentration is at least eight-hundredths of one percent by weight but less than fifteen-hundredths of one percent by weight. If the alcohol concentration is at least fifteen-hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14, a municipal court or district court may suspend a sentence"

Page 8, line 17, after "g." insert "If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the defendant 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 court may not order the department to be responsible for the costs of treatment in a private treatment facility.

h."

Page 8, line 21, replace "h." with "i."

Page 8, line 23, replace "tests" with "a test"

Page 8, line 25, replace "i." with "j."

Page 10, line 24, remove the overstrike over "~~, and shall consent~~"

Page 19, line 31, remove the overstrike over "~~from~~"

Page 19, line 31, remove "electronically posted by"

Page 20, line 1, after "designee" insert ", or electronically posted by the director of the state crime laboratory or the director's designee"

Page 21, remove line 4

Page 21, line 5, remove "designee on the crime laboratory information management system"

Page 21, line 6, remove the overstrike over "~~the director of the state crime laboratory or the director's~~"

Page 21, line 7, remove the overstrike over "~~designee or~~" and insert immediately thereafter "electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from,"

Page 25, after line 3, insert:

"SECTION 14. LEGISLATIVE MANAGEMENT STUDY - DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of North Dakota Century Code provisions that relate to administrative hearings and administrative sanctions for driving while under the influence of alcohol or drugs. With the assistance of the department of corrections and rehabilitation and the department of human services, the study must include the need for supervision, methods of treatment, and penalties for repeat driving while under the influence of alcohol or drug offenders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2-11-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1302

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote Carried

Date: 2-11-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1302

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1302: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1302 was placed on the Sixth order on the calendar.

Page 1, line 6, after the first semicolon insert "to provide for a legislative management study;"

Page 6, line 20, after the comma insert "if the alcohol concentration is at least eight-hundredths of one percent by weight but less than fifteen-hundredths of one percent by weight, the sentence must include a fine of at least five hundred dollars and an order for an addiction evaluation by an appropriate licensed addiction treatment program. If the alcohol concentration is at least fifteen-hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14,"

Page 7, line 4, replace "year and one" with "hundred eighty"

Page 7, line 13, overstrike "one" and insert immediately thereafter "at least three"

Page 7, line 21, after "sentence" insert "under subsection 3 of section 12.1-32-02 if the alcohol concentration is at least eight-hundredths of one percent by weight but less than fifteen-hundredths of one percent by weight. If the alcohol concentration is at least fifteen-hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14, a municipal court or district court may suspend a sentence"

Page 8, line 17, after "g." insert "If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the defendant 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 court may not order the department to be responsible for the costs of treatment in a private treatment facility."

h."

Page 8, line 21, replace "h." with "i."

Page 8, line 23, replace "tests" with "a test"

Page 8, line 25, replace "i." with "j."

Page 10, line 24, remove the overstrike over "~~and shall consent~~"

Page 19, line 31, remove the overstrike over "~~from~~"

Page 19, line 31, remove "electronically posted by"

Page 20, line 1, after "designee" insert ", or electronically posted by the director of the state crime laboratory or the director's designee"

Page 21, remove line 4

Page 21, line 5, remove "designee on the crime laboratory information management system"

Page 21, line 6, remove the overstrike over "~~the director of the state crime laboratory or the director's~~"

Page 21, line 7, remove the overstrike over "~~designee or~~" and insert immediately thereafter "electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from."

Page 25, after line 3, insert:

"SECTION 14. LEGISLATIVE MANAGEMENT STUDY - DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of North Dakota Century Code provisions that relate to administrative hearings and administrative sanctions for driving while under the influence of alcohol or drugs. With the assistance of the department of corrections and rehabilitation and the department of human services, the study must include the need for supervision, methods of treatment, and penalties for repeat driving while under the influence of alcohol or drug offenders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 HOUSE APPROPRIATIONS

HB 1302

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1302
2/15/13
Job 19074

☐ Conference Committee

Committee Clerk Signature

Jeannette Cork

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 27-20-10 and section 27-20-31 of the North Dakota Century Code, relating to juveniles driving under the influence; to amend and reenact subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsection 6 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to chemical tests for driving under the influence of alcohol or drugs; to provide for a legislative management study; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Rep. Kim Koppelman, District 13: distributed handouts

Leann Bertsch, Director, Dept. of Corrections: We had the FN done yesterday, we were going to submit it than the AG office asked us to hold off so they could add their portion to the FN. It will be submitted by 2/18/13.

02:22

Rep. Koppelman: Introduced the bill.

5:40

Chairman Delzer: Everybody's current numbers are already there, is that correct? These current numbers would go automatically into this.

Rep Kim Koppelman: True

Chairman Delzer: Twenty-four seven for any of these, how long it that?

Rep Kim Koppelman: It would be for the remainder of the sentence. For example, if it is your third offence, and you have a minimum mandatory probation, one year, but it could be up to a five year sentence which is up to the discretion of the court.

Chairman Delzer: We've tried mandatory sentencing before, and it hasn't gone particularly well. There are things on the books already that these people could be put in jail for. It's

not just policy, it's also money. We have to pay \$50,000 or \$60,000 a person for the time that they are in there. They most certainly won't have a job when they come out. I don't know how much rehab they are going to get while they are in jail.

Rep Kim Koppelman: The reason the committee believes it is very important to address this issue is that drunk driving is a very serious issue in ND. People are being maimed and killed. We want to insure that we want try to solve the problem. We realize full well that this law change is not going to do that by itself. We need a cultural change, and the change in this law can be a piece of the puzzle. As for the issue of mandatory minimums, I don't like them either. I talked to the Supreme Court Chief Justice about this. He said they don't like mandatory minimums either, but on this issue it is as close to a cookie cutter system as we have for sentencing people. That is the reason that we didn't raise the sentence. It is still a Class B misdemeanor. People **can** go to jail for 30 days now on their first offence. But, virtually **no one** goes to jail, **ever**, on their first offence.

Chairman Delzer: What's the maximum amount currently allowed?

Rep Kim Koppelman: Under current law the maximum sentence is 30 days, and under this law the maximum sentence is 30 days. The maximum fine is \$1000 for Class B and \$2000 for Class A. I doubt that ever happens on these offences.

Chairman Delzer: Is the problem ours or the judges?

Rep Kim Koppelman: That's a good point and is a policy question. That is one of the reasons that we decided to do this because we felt that the courts aren't doing what they should do in some cases.

Rep. Kempenich: On the first offence, what was the thought process behind this?

Rep Kim Koppelman: When we put the bill together, we gathered everyone that was interested in the bill. The reason we believed the mandatory minimum was important is that seeing the inside of a jail cell changes your life. The fact that no one is getting any jail time is the problem. There is a very serious bill on the Senate side that deals with this. If they see the inside of a jail cell for a couple of days, and they realize what lays ahead on the repeat offences. We feel that could be a part of the puzzle in changing behavior.

Chairman Delzer: Did you have any questions on how many people will lose their jobs because of this? Four days is a lot to miss from work.

Rep Kim Koppelman: I don't know the answer to that. I think that's one of the reasons the committee made some amendments to this bill and didn't put four days in for the first offence. I wouldn't be surprised to see the bill amended more.

Rep. Skarphol: When you get a DUI, you are considered high risk, do an SR22 filing, and buy high risk insurance, is that still the case?

Rep Kim Koppelman: I believe so.

Rep. Skarphol: Was there a discussion about that.

Rep Kim Koppelman: There was.

Rep. Skarphol: From my perspective most of the high risk insurance is very limited in the amount of coverage it provides, and high risk insurance has a very high cost. Was there any consideration given as an alternative to jail time to require them to carry a million dollar liability policy? Because, it is the person who is injured who suffers the consequences for the dumb action. If we are going to try to solve this problem, we should try to address that as well.

Rep Kim Koppelman: Yes. That's not a bad idea, but paying more money and having car insurance doesn't bring back people that are killed. It wouldn't solve the problem, but it just gets at a portion of the issue.

Rep. Skarphol: Typically, they end up with a lesser amount of insurance as a result of the offence.

Rep Kim Koppelman: There is no question there are other ramifications to a DUI, but North Dakota is one of the most lenient states in the nation on our DUI laws, and one of the worst in terms of the problem.

14:30

Chairman Delzer: What percentage of those picked up for the first time are below 0.15?

Rep Kim Koppelman: I don't know the percentages, but the average is about 0.17.

Chairman Delzer: We would like to have those statistics. Also I would like to know how many deaths are caused by multiple offenders.

Rep Kim Koppelman: I don't know the statistics in North Dakota, but I am told that national statistics show that 80% of traffic deaths involving alcohol are first time offenders. Looking at recent accidents, I don't believe any law in and of itself would have stopped that accident, other than being locked up. But, if someone had stepped in, the bartender or a by-stander, and taken the keys to prevent the intoxicated person from driving, it would have made a difference.

Chairman Delzer: Were there any questions about how many repeat offenders carry insurance at all?

Rep Kim Koppelman: I would like to point out a few other differences in the amendments and also what the bill does. One has to do with refusing the blood test. I think this might be an advantage, especially the way the bill was amended. SD has adopted a policy of forcing the test. We weren't sure that was a good idea. We chose in the bill to make refusal to take the test equal to a 0.15 violation. It's an incentive to take the test.

Chairman Delzer: Don't they have a right to require a blood test instead of a breathalyzer? How did you adjust that?

Rep Kim Koppelman: We aren't touching that. Correct me if I'm wrong.

Tom Trenbeth: The driver has a choice to take a second test; he can chose whatever test he wants. The initial test is at the direction of the officer. 20:00

Rep Kim Koppelman: The other piece that the amendment changed is very significant. On page 8, the amendment essentially says that it allow an individual to participate in treatment as part of the prison sentence. Upon completion of the treatment the individual must be released from custody to probation. It is significant, especially when you get into the more serious levels of repeat offences. If they are willing to go and get treatment, it is kind of a "get out of jail free card".

Chairman Delzer: If they are under the custody of the Department of Corrections, that treatment cost is at the state?

Rep Kim Koppelman: I would defer to Miss Bertsch to answer that question. It did result in a lesser amount on the fiscal note because there is less jail time.

Chairman Delzer: Maybe so, but are they responsible for paying for the treatment, or is the state? If they are in the custody of the state, they will have the responsibility to provide the treatment.

Lee Ann Bertsch, Department of Corrections: If they are in the custody of the DOCR, the cost of the treatment is borne by DOCR. If they complete the inpatient residential treatment, then the remaining incarceration time would be on supervised probation. That is why there is a reduction in the fiscal note.

Chairman Delzer: When do they become wards of the DOCR, on the fourth offence?

Lee Ann Bertsch: This bill makes a third DUI a felony. We get a fair number of A misdemeanors in prison, as well. The assumption is that approximately 50% of the A misdemeanors offences would come to the DOCR and then all of the felonies.

Chairman Delzer: If the max sentence is a year, how can they come to the Department of Corrections?

Lee Ann Bertsch: We get people for as short as a few weeks to the DOCR. Unfortunately, they are sentenced to a year but a portion of it is suspended. They can still come to the DOCR.

Chairman Delzer: So, the Department of Corrections would have to pay treatment costs for any of these people.

Lee Ann Bertsch: If they are under the Department of Corrections they do not pay any of the treatment.

Chairman Delzer: How many treatment places are out there? If it were me, I'd sure go to treatment. I might not pay any attention to it once I got out, but I'd go.

Lee Ann Bertsch: The bill will mandate treatment, and they need to successfully complete treatment. Part of the fiscal note is contracted treatment beds, because obviously all of ours will be full if a lot more come in. Our calculation would be \$95 a day for contract treatment. Our longest treatment is 90 - 100 days. The watch program out of Montana is six months.

Chairman Delzer: What is recidivism out of Thompson's?

Lee Ann Bertsch: Our total recidivism is about 37.5%.

Chairman Delzer: Is there ever a circumstance that the patrol officer finds them drinking, but they don't necessarily come back into the system?

Lee Ann Bertsch: Absolutely.

Rep. Grande: Of the programs you listed, is teen challenge one of the options?

Lee Ann Bertsch: No, teen challenge works a little differently. The individual has to self-select, because it is faith-based program. It is an option, but it is not one that the Department of Corrections can direct individuals into. We do pay for it if they want it.

Rep. Grande: If this person is in this class C felony, and they say that they want to be in Teen Challenge as a part of this portion of the law, would you pay the full tuition?

Lee Ann Bertsch: We can only pay the housing costs, because it is faith based program.

Rep. Kempenich: The courts run the 24-7 program, is that part of the fiscal note too?

Rep Kim Koppelman: Law enforcement actually runs it, and the Attorney General's Office administers it. They would come into a law enforcement agency to take the test. The offender pays the cost.

Chairman Delzer: Further questions?

Rep Kim Koppelman: One other note, this bill as written may require the North Dakota Department of Transportation to manage its federal highway funds differently in that additional funds may move into the safety area for various engineering and safety needs.
26:30

Rep. Kempenich: The old fiscal note uses 3,222 for first time offenders. That is the majority of the offenders.

Chairman Delzer: Would the first time offenders be housed in county jails?

Rep Kim Koppelman: I would believe so. I was surprised to hear how quickly the DOCR get some offenders.

Grant Levi, Interim Director for the Department of Transportation: There is no fiscal impact to the Department of Transportation as a result of what **Rep Kim Koppelman** shared with you. The bill contains a provision that would permit a repeat offender to get temporary restricted driving privileges during that one year period of suspension. That is allowed through 24-7 provisions. What occurred as part of federal legislation, we were just notified at the end of January, that if a state is going to do that instead of using the 24-7 provisions, they need to use the interlock provision. If they do not do that, it is required that the Department of Transportation has to take a portion of its funds and use it on safety projects. That is not an issue for the Department of Transportation because of the amount of work that we have.

Chairman Delzer: How much money would that be?

Grant Levi: It's about \$5.5 million. We can just apply for projects that we have in the works in the 2013-2015 biennium if the bill were to pass.

Rep. Brandenburg: About how many are third time offenders?

Lee Ann Bertsch: It is on the fiscal note.

Rep Kim Koppelman: One clarification about would they go to the penitentiary with a lower level offences? The answer is no. It takes a class A misdemeanor to kick it up to a penitentiary sentence. The reason that some of those are short is because currently a lot of the sentence is suspended.

Chairman Delzer: But, you're sent up as a second offense within ten years, it is a Class A?

Rep Kim Koppelman: Correct.

Rep. Kempenich: 33:10 Of the 3,200 first timers from the old FN, who would have the statistics as to what level of intoxication they fall into?

Grant Levi: We captured the question earlier; we will try to provide a break out of what occurs between .08 and .15 for the first time offender and the number above that.

Rep Kim Koppelman: This is not just a get tough bill, it is a logical bill. The problem that we have now when these people end up with restricted driver's licenses, and end up driving anyway, they get stopped. Then they have another offence on their license in addition to the DUI. It is a snowball rolling down the hill. We think that 24-7 is a solution for that.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1302
2/25/13
Job # 19428

☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 27-20-10 and section 27-20-31 of the North Dakota Century Code, relating to juveniles driving under the influence; to amend and reenact subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsection 6 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to chemical tests for driving under the influence of alcohol or drugs; to provide for a legislative management study; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Attachment #1

Chairman Delzer: HB1302 comes to us from Judiciary and would substantially intensify our DUI laws. We received information that we asked for from Department of Transportation. See attachment #1. Chairman Delzer reviewed the bill. He also went over the colored handout that references penalties under current law. (Previously distributed.)

Chairman Delzer: We had some concerns about the cost of county jails, and also about the alcohol limit. The current limits are between .08 and .18 for the two different levels. We also had some concerns about the days in jail, especially for the first time offender. We wanted to make sure that it was on a non-working day, so that people did not necessarily lose their job.

Rep. Kempenich: I will have a hard time supporting this bill, especially with how they have the first offense set up. The Senate already passed a 2 day with a 0.18. I would make a proposal on the first offence and higher, if you are over a .20 and one day.

Chairman Delzer: Rep. Kempenich moved to change the first offense, the higher level, from .15 to .20. Then the lower level would be .08 to .20, the higher one would be .20 and higher, and would change the jail time from 4 days to one day on a non-working day. .08 to .019 is the smaller first offence.

Rep. Brandenburg seconded the motion.

Rep. Skarphol: On a first offence the requirement would be one day of jail time on a non-working day?

Chairman Delzer: On a non-working day for those above .20. The ones below that will not have any jail time, but have a \$500 fine, and everything else would stay the same.

Chairman Delzer reviewed the penalties for DUI and the limits for each level of intoxication. 8:17

Rep. Grande: Are we going to adjust the 0.2 on the high end, and will the second offence have adjustments on the levels, or will it just change all of them from the .15 to the .2?

Chairman Delzer: The only time it is in there is on the first offence, subsequent offences are 0.08 and above.

Rep. Kempenich: The problem is on a first offence you get into situations where it might be below .2. People make mistakes, especially younger people. If you want to make an impression, the insurance companies do a real good job of that. This will probably happen to you in college, and your driving is suspended, you will start with something that could change your life one way or the other. Many times the first violation corrects the problem. I think that once you start jail time and felonies; it gets to be very tough for people. It may screw up as much as it is trying to fix. We are trying to legislate morality and common sense.

Rep. Skarphol: 1302 is endeavoring to put mandatory sentencing in place, correct? Doesn't the judge already have the discretion to do what needs to be done? Isn't this is a judicial issue more-so than a legislative issue? We need direction to go to the judges to impose a sentence that is appropriate based on an individual case.

Chairman Delzer: I agree with that statement. The bill does change the minimum fine levels, but again, all of this is up to the judges. There are currently laws in place that handle all of this.

Rep. Guggisberg: I'm not going to support this amendment. We have press conferences, hearings, and families show up. They want us to do more and change things. The higher insurance is already happening, and it is not changing anything. I think a bill like this is what we need. I think we're watering it down too much, so I'll resist the amendment.

Chairman Delzer: I know the counties are very concerned about the jail time.

A roll call vote was taken on amendment. Aye 15 Nay 7 Absent 0
The motion carried.

Rep. Bellew proposed a further amendment to double the fines in the first two categories to \$1000 and \$1500.
Rep. Thoreson seconded the amendment.

Rep. Bellew: I think that rather than give jail time, we should make these people pay so it hurts. I think that is a major deterrent.

Rep. Skarphol: In court, if you are unable to pay a fine, is the court able to incarcerate you in lieu of the money?

Rep. Kreidt: I think they have a couple of options. The judge can do what he wants to do. They could be on a payment plan, for example. If the payments weren't kept up, then the penalty could be to spend some time in jail.

Chairman Delzer: Becky, would you find out what a Class B misdemeanor would have for upper limits? They might be 30 days and a \$1000 fine. I think Class A is \$2000.

Rep. Skarphol: I'd like to think there is probably a better way to associate cost with this offence. If you are found guilty of a DUI, I think you have to do a SR-22 filing. It results in high risk insurance. As a result of that, many drivers end up with less insurance coverage because high risk is so costly. I would rather see us require a higher level of insurance that would result in an increased cost associated with this offense, than increase the fine. I say that because it is the survivors that suffer. If there are financial implications as a result, I would say it would be more appropriate as a deterrent to this offence that an offender be required to carry more insurance.

Chairman Delzer: I'm going to oppose this amendment because I think the bottom side is a little too high, and because this has nothing to do with the fiscal effects on the state. This is a policy issue of where the fine should be. I think the policy committee spent a lot of time on that. It is a fine to the individual, but it doesn't have any effects to the state of North Dakota. The previous amendment did have effects to the state of North Dakota or the political subdivisions.

Rep. Monson: I'm going to oppose this because all too often you have dependents at home that will be going without a lot more.

**A voice vote was taken.
Voice vote fails**

Rep. Skarphol: If the bill passes, it is incumbent that the other side should check on the insurance issue.

Chairman Delzer: So, noted.

Becky Keller, Legislative Council: A Class B misdemeanor has a maximum penalty of 30 days imprisonment, a fine of \$1000, or both. A Class A Misdemeanor is one year imprisonment, and a fine of \$2000, or both.

Rep. Kempenich: If it's a year, it can be expunged from the record, if it a year and a day it's permanent.

Chairman Delzer: At a year and a day you go to DOCR rather than the counties. We have the amended bill before us.

Rep. Brandenburg moved a DO PASS as amended on HB 1302.
Rep. Wieland seconded the motion.

Rep. Kempenich: There was a serious accident that caused this bill to be before us. If this passes, I don't think it will prevent future accidents from happening. There has to be an educational component with this, and it probably needs to start in the home. This is a serious thing, but this would just be false security. I probably won't support this.

Rep. Bellew: Is there anything in this bill that proposes a fine or punishes the person that sells the booze?

Chairman Delzer: Not that I'm aware of. We passed those other bills, but those mostly addressed underage drinking. One did say that you could get in trouble for selling to the habitual drunk. There were three or four things. Almost any one of us could fit under one of those things at any particular time.

Rep. Thoreson: As someone who is part-owner of an establishment that sells alcohol, there are already many penalties in law for that, up to and including losing your license.

Rep. Skarphol: Is that what are referred to as the DRAM laws?

Rep. Thoreson: I believe that's correct, the DRAM shop laws.

Chairman Delzer: We certainly have a lot of laws that try to stop this problem. Hopefully sometimes it will do some good. I'm afraid the laws don't always take care of the problem.

Rep. Grande: I'm not sure we've addressed the issue at all here. Until the courts get a handle on this, we're not addressing the issue. This is something that is supposed to make someone else feel good. I don't know that putting it on the books will accomplish anything.

Rep. Skarphol: All of us are guilty of violating laws. We have lots of laws. This event that triggered this bill is a travesty, but I don't think this is the solution.

Rep. Glassheim: I don't disagree; it may make a difference to some people. Education may start at home, but we certainly aren't going to send state paid educators into every home. We have a choice of doing nothing, or trying something. For many of us money makes a difference. I got two speeding tickets in the same spot. Now, when I come to that spot, I slow down! I think jail time is really embarrassing to many people. It won't change everyone, but 70 % of fatal accidents are first time offenders. So, we need to try something.

Rep. Skarphol: I don't disagree; it may make a difference to some people. What about those that are injured by these accidents. We also have to consider that aspect of the problem. I share your concern, but don't necessarily see this as the solution to the problem that we are trying to solve.

Rep. Glassheim: I fully support what you recommend, changing the bill and adding to the insurance so that survivors are compensated. I don't see that it is one thing or another, the survivor or the perpetrator. I can see us doing both of those things to help.

Rep. Monson: There was some discussion that it was \$5.5M for the Department of Transportation to put safety funds to use for ignition locks. Is that in this bill?

Chairman Delzer: I don't believe it is.

Rep. Nelson: There are some that will slow down after the first ticket. It's not that we don't have any deterrents to driving and drinking. That first offence would deter a lot of people from doing something again. If the fine is doubled, tripled, or quadrupled, will it make drivers change a behavior? There weren't a lot of people that came and testified to the policy committee, but from the e-mails I have received, I assure you that there are a lot of people that oppose strengthening this law. It is a compromise position. I may vote for the bill in this committee, but am unsure what I will do on the floor.

Rep. Glassheim: Higher fines and jail time are educational.

There was no further discussion on HB 1302.

A roll call vote was taken for a DO PASS as amended on HB 1302.

Aye 15 Nay 7 Absent 0

The motion carried.

Representative Brandenburg will carry HB 1302.

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All misdemeanor B and A offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court; 3) Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year - 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) 50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR; 7) No deterrent effect was used in the estimate; 8) 35 offenses per year diverted to drug court; 9) 50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Inmate ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Est Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
01/16/2013

Bill/Resolution No.: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$8,575,237		\$22,708,901	
Appropriations			\$8,575,237		\$22,708,901	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill No.1302 provides for increased penalties for DUI offenses. Section 5 of the bill contains the increased penalties. This bill will provide a fiscal impact to both counties and the DOCR.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimated fiscal impact to the counties was estimated by the ND Association of Counties and was provided as follows: After examining the district court data provided, and talking with prosecutors and sheriffs; it was determined that a figure of 4000 cases per year should be used. This was taking the 3,500 district court cases over the past two year and increasing that to include 500 additional municipal court cases, as those were not reflected in the data. Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. The challenge is that, depending upon where those cases are jailed, there may not be room. Burleigh, Morton, Ward and Williams jails are often at capacity already. That means additional transport costs (time & expense) that have not been estimated. This may be mitigated by the deterrent effect, but since both of these factors are even more speculative, it was felt the straight calculation of days and daily rates was better supported. The estimated fiscal impact to the State is limited to the estimated impact to the DOCR. To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1,2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1)All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2)All time incarcerated for 3rd and 4th DUI offenses (Felony C) will be served at DOCR or DOCR contracted facilities; 3)Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4)All DUI offenses occur evenly throughout the year; 5)Actual time incarcerated is equal to minimum sentence; 6)All probation served at minimum mandatory; 7)No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 412 in FY15, 527 in FY16 and 527 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 258, FY16 - 377 and FY17 - 381. Costs estimated for the purpose of this fiscal note include medical, food, contract housing and additional FTE costs to provide community supervision (probation). Est Fiscal Impact 2013-15 - \$8.6 million and 1 additional FTE Est Fiscal Impact 2015-17 - \$22.7 million and 7 additional FTE See attachment for computation

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Estimated appropriation amount is equal to funding necessary for the DOCR to implement the penalty provision of HB1302 if passed into law.

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through the year						
2) Actual time incarcerated is equal to minimum days required to serve						
3) All time incarcerated for B&A at county level						
4) All time incarcerated for Felony C at state level						
5) All probation at minimum mandatory						
6) No revocation from probation						
7) Probation caseload at 65						
8) Contract housing beds \$70 per day						
Deterrent Effect	0%	0%	0%	0%		
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017		
3rd Offense	51	102	102	102		
4th + Offense	106	309	425	425		
Total	157	412	527	527		
Offenses Per Month						
3rd	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Est Contract Housing	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Est Pop DOCR Facilities	1,140	1,144	1,147	1,151		
Bill Effect	157	412	527	527		
Needed Beds	-	258	377	381		
Days	365	365	365	365		
Bed Cost Per Day	70.00	70.00	70.00	70.00		
Estimated Cost	-	6,589,516	9,627,491	9,731,820		

Increase in Probation					
3rd Offense	-	46	102	102	
4th + Offense	-	-	97	309	
Total	-	46	199	412	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	7	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	75,000	300,000	525,000	
Inmate Costs					
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Increase Inmates	157	412	527	527	
Days	365	365	366	367	
Increased Medical	371,750	975,695	1,252,799	1,256,224	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Increased Inmates	157	412	527	527	
Housed Outside Docr	-	258	377	381	
Net Inc Inmates	157	154	151	147	
Days	365	365	366	367	
Increased Food	284,301	278,974	273,628	266,939	
Total Cost Increase	656,052	1,254,670	1,526,427	1,523,163	
Total Cost	656,052	7,919,186	11,453,918	11,779,983	
Total Cost 13-15		8,575,237			
Total Cost 15-17			22,708,901		

V
2/25/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1302

Page 6, line 21, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 6, line 24, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 7, line 16, remove "year and one"

Page 7, line 16, overstrike "days" and insert immediately thereafter "year and one day's"

Page 7, line 25, remove "of this subsection"

Page 7, line 28, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 7, line 29, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 8, line 1, replace "four days" with "one day's"

Page 8, line 1, after "imprisonment" insert "on a day the defendant is not scheduled for employment"

Renumber accordingly

Date: 2/25/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kempenich Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson		X
Rep. Bellew	X		Rep. Wieland		X
Rep. Brandenburg	X				
Rep. Dosch	X				
Rep. Grande	X		Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg		X
Rep. Martinson	X		Rep. Holman		X
Rep. Monson		X	Rep. Williams	X	
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford		X			
Rep. Skarphol		X			

Total Yes 15 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

first offense * higher level to 0.20

serve 1 day on a non-working day

voice vote uncertain

Date: 2/25/13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Bellew Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Rep. Streyle		
Vice Chairman Kempenich			Rep. Thoreson		
Rep. Bellew			Rep. Wieland		
Rep. Brandenburg					
Rep. Dosch					
Rep. Grande			Rep. Boe		
Rep. Hawken			Rep. Glassheim		
Rep. Kreidt			Rep. Guggisberg		
Rep. Martinson			Rep. Holman		
Rep. Monson			Rep. Williams		
Rep. Nelson					
Rep. Pollert					
Rep. Sanford					
Rep. Skarphol					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

first two categories double fines to \$1000 + \$1500

voice vote fails

Date: 2/25/13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Brandenburg Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X	Rep. Streyle		X
Vice Chairman Kempenich		X	Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch		X			
Rep. Grande		X	Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson		X	Rep. Williams	X	
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol		X			

Total Yes 15 No 7

Absent 0

Floor Assignment Rep. Brandenburg

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1302, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (15 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1302
was placed on the Sixth order on the calendar.

Page 6, line 21, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 6, line 24, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 7, line 16, remove "year and one"

Page 7, line 16, overstrike "days" and insert immediately thereafter "year and one day's"

Page 7, line 25, remove "of this subsection"

Page 7, line 28, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 7, line 29, replace "fifteen-hundredths" with "twenty-one-hundredths"

Page 8, line 1, replace "four days" with "one day's"

Page 8, line 1, after "imprisonment" insert "on a day the defendant is not scheduled for
employment"

Renumber accordingly

2013 SENATE TRANSPORTATION

HB 1302

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1302

3/14/2013

Recording job number 19971

☐ Conference Committee

Committee Clerk Signature



Relating to chemical tests for driving under the influence of alcohol or drugs; to provide for: a legislative management study, a penalty, an effective date and to declare an emergency.

Minutes:

Attached testimony 11

Chairman Oehlke opened the hearing on HB 1302

Representative Kim Koppelman Dist.13 Co-sponsor, worked with law enforcement officials, prosecutors, the Governor's Office and the Attorney General on how to keep drunk drivers off the road. Bill amended twice, (testimony #1) Original bill dealt a 4 day mandatory minimum sentence for 1st time offenders, a class B misdemeanor, problem is enforcement. Judiciary moved mandatory minimum up to .15 BAC (blood alcohol content) from .08 (legal minimum for drunk driving offense). Appropriations moved it to .21 BAC, reduced the sentence to 24 hrs. served when the individual doesn't have to work. That is too light, nearly 80% of traffic fatalities involve 1st time offenders. Server training needs to be addressed it's offered in some communities; in others it's required for a liquor license.

Attorney General Wayne Stenehjem: (in favor). As to drinking and driving ND is the worst state in the nation. Provided statistics on DUI; problem of implied consent: when law enforcement has a reasonable cause to believe you are driving under the influence you impliedly consent to submit to a chemical test. 18% exercise statutory right to refuse the test, will lose their license for a year but will drive anyway. Handout comparing current law and HB 1302, testimony #2 Participation in the 24/7 program is required. Power point presentation on 24/7, testimony #3 (segment 18:51 to 33:27)

Ken R Sorenson Assistant Attorney General, (in favor); gave a section by section explanation of the bill in its re-engrossed form, testimony #4, (34:01 to 53:37).

James Prochniak, Superintendent, ND Highway Patrol, in favor Bill encourages participation in the 24/7 program, makes a refusal to test a criminal violation, makes DUI a felony offense after 3rd violation increasing DUI penalties. Combining strong enforcement, education, and legislation may help provide the cultural change needed for motorists to think before drinking and driving. Testimony #5 (54:20 to 1:03:22)

Tim Myers, Special Agent, ND Bureau of Criminal Investigation, administers the 24/7 program Explained program enforcement, SCRAM bracelet and drug patch use (1:05:28 - 1:08:21)

Mark Nelson, Safety Division Director NDDOT, (in favor) There's federal funding through the National Highway Traffic Safety Administration (NHTSA) to plan, implement and evaluate strategies to deter impaired driving and support enforcement and education programs (explained funds use). The programs do not reduce fatalities, unless part of a comprehensive program that includes strong policy. Testimony #6, with NDDOT Safety Division Alcohol-Related Crash Data 2002- 2011 (1:09:23 to 1:15:58)

Pamela Sagness, Prevention Administrator, Human Services Dept. (DHS) discussed alcohol abuse consequences in North Dakota, testimony # 7 with ND Alcohol consumption by age group charts.(1:16:17 to 1:17:48)

Arlene Deutscher, **Tom Deutscher**, their son, his pregnant wife, and 18-mo old child were killed by a drunk driver on 7/6/12, testimony # 8 & # 9. **Lynn**, **Donna**, **Colten**, and **Festus Mickelson**; **Mckenzie** and **Sarah Johnson**, in favor of this bill; shared how the deaths of the Deutscher family affected them. (1:23:35 to 1:57:00)

Juan Ruiz and **Sandra Ruiz** parents of Cyris and Alaries Ruiz killed by a drunk driver on 7/8/12 in favor, hoping no other families go through what they went. (1:57:00 to 2:04:56)

Ladd Erickson, McLean County State's Attorney, seven page hand-out. About 15 state's attorneys from different counties, worked on this proposal. How they do things depend on their resources. Provided page by page explanation of changes and new proposals (2:06:33 to 2:57:20) Showed a DUI arrest video, (2:28:13 to 2:36:10). BAC was around .3, habitual drinker. Creating mandatory minimums based on BAC levels won't work, person on the video is going to jail, will plead out before blood test comes back so will not get the mandatory sentence. Testimony #10

Russell Meyer, ND Association of Criminal Defense Lawyers (neutral) Mr. Erickson's proposals major problem: eliminating the nurse's testimony vs. 14th and 5th amendments right to confront and cross examine witnesses. Would like to be included if there are proposals to amend. (2:57:24 to 3:04:15)

Copy of e-mail sent by **Bob Keogh**, Dickinson Municipal Judge, to the committee.
Testimony # 11

Chairman Oehlke both bills have a study in them. We are coming out with a bill

No additional testimony, hearing closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1302

3/28/2013

Recording job number 20643

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to chemical tests for driving under the influence of alcohol or drugs; to provide for: a legislative management study, a penalty, an effective date and to declare an emergency.

Minutes:

Attached testimony

Chairman Oehlke opened the discussion on HB 1302

Vice Chairman Armstrong explained amendments. An entire vehicular homicide statute was added, it is separate from DUI, but makes it a more appropriate venue for trying those cases, the penalties are different. We strengthened the law about causing injuries with a vehicle. The second DUI offense will move back to a class B misdemeanor, minimum mandatory stays the same. Large jurisdictions' municipal courts cannot deal with A misdemeanors; courts would get 400-500 more cases per year. On the third offense the 120 days in jail: the court can suspend 60 days based on completion of supervised probation. In small counties you can't double jail time, there is no place to put these people. Those are the two major changes to first offense. There are language changes. We created the first offense aggravated DUI; it will have the same sentences we have, as the 20 hours community service. These changes were brought on by the reality of how the DUI law is practiced. 390801.4 is class A misdemeanor DUI, if you have a kid in a car for the second time it will be a felony.

Senator Sitte expressed concern about fines, for the working poor they can be devastating and hurt the family more than the person doing the drinking.

Vice Chairman Armstrong in most of the states that have high fines, the judges can waive/lower them (paper rule 43 agreement). We are doubling the first offense. Statistically speaking what works is the 24/7 program. We put an additional appropriation of \$360,000 for the binge drinking prevention program. On third offense DUIs I moved the supervised probation from two years to one year, to bring the fiscal note down; they are going to be on 24/7 for longer than that so they still have supervised probation.

Chairman Oehlke Leanne Birch will tell us how much this will affect the fiscal note. No further discussion, meeting adjourned.

2013 SENATE STANDING COMMITTEE MINUTES


Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1302

3/28/2013

Recording job number 20646

☐ Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to chemical tests for driving under the influence of alcohol or drugs; to provide for: a legislative management study, a penalty, an effective date and to declare an emergency.

Minutes:

Attached testimony

Chairman Oehlke opened the discussion on HB 1302

Vice Chairman Armstrong: We are still waiting for the copies of the amendments. One thing that will be an issue with the House is the fifty percent discount for the 24/7 program for people who are declared indigent by the court. The cost is \$25/week for the offender but implementation cost is going to be fairly substantial. I would rather keep the fines reasonable and deal with that across the board. If defendants can't afford it they can still do 24/7. There is an argument for leaving it in and an argument for taking it out and this should be addressed by the committee.

Chairman Oehlke: no further discussion until we get copies of amendments. Meeting adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

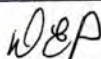
HB 1302

3/28/2013

Recording job number 20653

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to chemical tests for driving under the influence of alcohol or drugs; to provide for: a legislative management study, a penalty, an effective date and to declare an emergency.

Minutes:

Attached testimony: **1**

Chairman Oehlke opened the discussion on HB 1302

Vice Chairman Armstrong explained the proposed amendments to the bill.

Sections 1 and 2: juvenile adjudication (Recording segment 00:48 to 01:40)

Section 3: police power to arrest people upon probable cause (01:41- 03:33)

Section 4: seven year look-back (03:34 - 05:07)

Sections 5 (05:08 - 05:23), 11 subsection 5 (34:11 - 41:12) and 18 (52:29 - 53:15) deal with restricted driver's license

Section 6: Ignition interlock device (05:24 - 06:25)

Section 7 is the criminal statute - penalties (06:27 - 18:50)

Section 8 creates a criminal vehicular homicide statute (18:53 - 29:52)

Section 9 minor in the car while driving under the influence (29:53 - 31:10)

Section 10 implied consent (31:11 - 34:10)

Section 12 refusal to submit to testing (41:13 - 42:44)

Section 13 sanctions for driving while having certain alcohol concentration (42:45 - 48:36)

Section 14 election to participate in the 24/7 sobriety program (48:37 - 48:58)

Section 16 new: law enforcement officer who witnessed someone draw blood for sample testing signs a verified statement of witnessing that the approved method was followed

This will be appealed because of constitutional right to confrontation. (48:59 - 51:50)

Section 17 screening tests refusal is a crime (51:56 - 52:27)

Section 19 Legislative Management Study (53:16)

Sections 20 -21 new: underage drinking prevention program and appropriation (53:21- 54:37)

Discussion followed; **Senator Sitte** moved amendments to remove mandatory minimum sentences on Section 8 subsections 1 and 2 Senator Campbell seconded. Further discussion voice vote, amendment failed. Removing indigence language was discussed decided to leave it in. No further discussion, meeting adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

HB 1302

3/29/13

Recording job number 20670

☐ Conference Committee

Committee Clerk Signature

DEP

Explanation or reason for introduction of bill/resolution:

Relating to chemical tests for driving under the influence of alcohol or drugs; to provide for a legislative management study; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Attached testimony: 1

Chairman Oehlke opened the discussion on HB 1302's amendments that were handed out yesterday.

Senator Sitte thinks this is a great bill, it shows the legislature is cracking on DUIs while showing mercy with the 24/7 program. Drunk driving is a multigenerational problem, change cannot be achieved overnight. We should increase server training, stress designated driver more, like thru a public information campaign.

Chairman Oehlke said some liquor establishments have liquor liability coverage (60-70% of them) and have a requirement to provide training to employees. Distributors and retailers have radio campaigns over holidays, they don't want customers dying in on them, they are behind us.

Senator Axness endorsed the appropriation for substance abuse prevention program, especially since the House killed another prevention program bill. This definitely needs to be in the bill to get high school students educated on substance abuse prevention.

Senator Flakoll will bring Fargo task force data on drinking. Requested from the intern the alcohol tax info for the last three/four years, might be good for this bill to show to Appropriations how much income is generated. In Fargo they have Sober Drive, a designated driver company that drives you and your vehicle home from bars, house parties, and other locations for one flat fee. Attached testimony #1

Vice Chairman Armstrong said lack of county jail space was mentioned as potential enforcement problem. Bismarck has 2MANCAB a designated driver service.

No further discussion, meeting adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1302
March 29, 2013
Recording job number 20682

☐ Conference Committee

Committee Clerk Signature *DEP*

Explanation or reason for introduction of bill/resolution:

Relating to chemical tests for driving under the influence of alcohol or drugs; to provide for a legislative management study; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Attached testimony:

Chairman Oehlke opened the discussion on HB 1302

Senator Flakoll Moved the amendments 13.0399.03005 to reengrossed HB 1302

Vice Chairman Armstrong Seconded

Discussion followed

Roll call vote: Yes 7 No 0 Absent not voting 0

Senator Sinner moved to pass re engrossed HB 1302 as amended an re-refer to appropriation

Senator Campbell Seconded

Roll call vote: Yes 7 No 0 Absent not voting 0

Carrier: **Vice Chairman Armstrong**

FISCAL NOTE
Requested by Legislative Council
02/26/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$560,000	\$560,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: One additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$280,000/year or \$560,000/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All misdemeanor B and A offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court; 3) Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) 50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR; 7) No deterrent effect was used in the estimate; 8) 35 offenses per year diverted to drug court; 9) 50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 1 additional jail days at a cost of \$70 per day. (\$280,000 per year or \$560,000 per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 02/28/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						Average Offense Per Year
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unknown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throughout the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Inmate ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Est Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All misdemeanor B and A offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court; 3) Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) 50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR; 7) No deterrent effect was used in the estimate; 8) 35 offenses per year diverted to drug court; 9) 50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
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Increase in Inmate ADP	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
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Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
01/16/2013

Bill/Resolution No.: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$8,575,237		\$22,708,901	
Appropriations			\$8,575,237		\$22,708,901	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill No.1302 provides for increased penalties for DUI offenses. Section 5 of the bill contains the increased penalties. This bill will provide a fiscal impact to both counties and the DOCR.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimated fiscal impact to the counties was estimated by the ND Association of Counties and was provided as follows: After examining the district court data provided, and talking with prosecutors and sheriffs; it was determined that a figure of 4000 cases per year should be used. This was taking the 3,500 district court cases over the past two year and increasing that to include 500 additional municipal court cases, as those were not reflected in the data. Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. The challenge is that, depending upon where those cases are jailed, there may not be room. Burleigh, Morton, Ward and Williams jails are often at capacity already. That means additional transport costs (time & expense) that have not been estimated. This may be mitigated by the deterrent effect, but since both of these factors are even more speculative, it was felt the straight calculation of days and daily rates was better supported. The estimated fiscal impact to the State is limited to the estimated impact to the DOCR. To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1,2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1)All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2)All time incarcerated for 3rd and 4th DUI offenses (Felony C) will be served at DOCR or DOCR contracted facilities; 3)Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4)All DUI offenses occur evenly throughout the year; 5)Actual time incarcerated is equal to minimum sentence; 6)All probation served at minimum mandatory; 7)No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 412 in FY15, 527 in FY16 and 527 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 258, FY16 - 377 and FY17 - 381. Costs estimated for the purpose of this fiscal note include medical, food, contract housing and additional FTE costs to provide community supervision (probation). Est Fiscal Impact 2013-15 - \$8.6 million and 1 additional FTE Est Fiscal Impact 2015-17 - \$22.7 million and 7 additional FTE See attachment for computation

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Estimated appropriation amount is equal to funding necessary for the DOCR to implement the penalty provision of HB1302 if passed into law.

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unknown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through the year						
2) Actual time incarcerated is equal to minimum days required to serve						
3) All time incarcerated for B&A at county level						
4) All time incarcerated for Felony C at state level						
5) All probation at minimum mandatory						
6) No revocation from probation						
7) Probation caseload at 65						
8) Contract housing beds \$70 per day						
Deterrent Effect						
	0%	0%	0%	0%		
Increase in Prison ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	51	102	102	102		
4th + Offense	106	309	425	425		
Total	157	412	527	527		
Offenses Per Month						
3rd	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Est Contract Housing						
	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Est Pop DOCR Facilities	1,140	1,144	1,147	1,151		
Bill Effect	157	412	527	527		
Needed Beds	-	258	377	381		
Days	365	365	365	365		
Bed Cost Per Day	70.00	70.00	70.00	70.00		
Estimated Cost	-	6,589,516	9,627,491	9,731,820		

Increase in Probation					
3rd Offense	-	46	102	102	
4th + Offense	-	-	97	309	
Total	-	46	199	412	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	7	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	75,000	300,000	525,000	
Inmate Costs					
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Increase Inmates	157	412	527	527	
Days	365	365	366	367	
Increased Medical	371,750	975,695	1,252,799	1,256,224	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Increased Inmates	157	412	527	527	
Housed Outside Docr	-	258	377	381	
Net Inc Inmates	157	154	151	147	
Days	365	365	366	367	
Increased Food	284,301	278,974	273,628	266,939	
Total Cost Increase	656,052	1,254,670	1,526,427	1,523,163	
Total Cost	656,052	7,919,186	11,453,918	11,779,983	
Total Cost 13-15		8,575,237			
			Total Cost 15-17	22,708,901	

March 28, 2013

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3/29/13
TW

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1302

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-08-01.4, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsections 6 and 10 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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 may require the child to participate in the twenty-four seven sobriety program under chapter 54-12 for up to nine months.

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

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

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

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.

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

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within ~~five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

An individual who has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety program under chapter 54-12 is not subject to the suspension periods under this section.

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

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

1. Except as provided under subsection 2, 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 ~~for good cause~~ 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 fifteen days of the suspension have been served. 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 for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's ~~permit~~license to the offender only for the purpose of participation 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 by the offender to receive a temporary restricted license. ~~If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted~~

driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.

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

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.

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. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-yearseven-year period, of a class A misdemeanor for a third offense in a five-yearseven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period 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 4. 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.
3. Upon conviction of a second or subsequent offense within fiveseven years under this section or equivalent ordinance, the court mustmay 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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, ~~but not including~~ if the offender is participating in the twenty-four seven sobriety program.

4. 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 ~~two hundred fifty~~ 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 eighteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include at least two days' imprisonment or twenty hours community service.
 - b. For a second offense within ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively; or thirty days' community service;~~ a fine of at least ~~five hundred~~ one thousand dollars; ~~and 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 ~~five~~ seven years, the sentence must include at least ~~sixtyone~~ hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~ at least two thousand dollars; ~~and 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 ~~within seven years,~~ the sentence must include at least one hundred eighty days' year and one day's imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of one thousand

dollars; and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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. 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 offense is subject to subdivision e or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.
 - f.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 ~~subsection~~section.
 - g-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 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.
5. As used in subdivision b 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. For an offense under subsection c of subdivision 4, no more than ninety percent of the sentence may be house arrest.

6. 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, except upon a finding of indigence the court may waive fifty percent of the twenty-four seven sobriety program fees.
7. 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 sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

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

1. ~~If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
2. ~~If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~
3. ~~The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~
1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01, or equivalent ordinance, and

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

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01, or equivalent ordinance, and as a result that individual willfully causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

SECTION 9. AMENDMENT. Section 39-08-01.4 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 10. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any 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 is deemed to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug

or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

SECTION 11. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight

one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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 unless the individual has exhausted administrative procedures. 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.

SECTION 12. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person

the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

SECTION 13. AMENDMENT. Section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~five~~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 five~~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 five~~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 five~~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 five~~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 five~~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.

SECTION 14. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample ~~from~~ electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designee, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time

and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system which is received by the director from the director of the state crime laboratory or the director's designee or, a law enforcement officer, or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges

in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

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

SECTION 15. AMENDMENT. Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.

- d. The certificate of the director of the state crime laboratory designating the director's designees.
- e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- e-f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

SECTION 16. AMENDMENT. Subsection 10 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 17. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. ~~However, the~~

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.

SECTION 18. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

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 unless the individual has exhausted administrative procedures.

SECTION 19. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 20. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration between the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system

which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the underage drinking prevention program provided for under section 20 of this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 22. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of purchasing secure continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program, for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

Date: 3/28/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 1,166 Amendment

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Little Seconded By Senator Campbell

[illegible]

Total (Yes) 2 No 5

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Section 8, subsections 1 and 2 remove mandatory minimum sentences.

Date: 3/29/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0399.03005

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Flakoll Seconded By Senator Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman Dave Oehlke	✓		Senator Tyler Axness	✓	
Vice Chairman Kelly Armstrong	✓		Senator George Sinner	✓	
Senator Margaret Sitte	✓				
Senator Tim Flakoll	✓				
Senator Tom Campbell	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/29/2013
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0399.03005

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sumner Seconded By Senator Campbell

Senators	Yes	No	Senator	Yes	No
Chairman Dave Oehlke	✓		Senator Tyler Axness	✓	
Vice Chairman Kelly Armstrong	✓		Senator George Sinner	✓	
Senator Margaret Sitte	✓				
Senator Tim Flakoll	✓				
Senator Tom Campbell	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1302, as reengrossed: Transportation Committee (Sen. Oehlke, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1302 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-08-01.4, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsections 6 and 10 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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 may require the child to participate in the twenty-four seven sobriety program under chapter 54-12 for up to nine months.

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

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

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

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.

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

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:

- a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
- b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
- d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
- f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

An individual who has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety program under chapter 54-12 is not subject to the suspension periods under this section.

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

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

1. Except as provided under subsection 2, 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 for good cause 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 fifteen days of the suspension have been served. 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 for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit~~license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon 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 by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

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

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.

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. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a ~~five-year~~seven-year period, of a class A misdemeanor for a third offense in a ~~five-year~~seven-year period, of a class A misdemeanor for the fourth offense in a ~~seven-year~~seven-year period, and of a class C felony for a fifth or subsequent offense in a ~~seven-year~~seven-year period 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 4. 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.
3. Upon conviction of a second or subsequent offense within ~~five~~seven years under this section or equivalent ordinance, the court ~~must~~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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, ~~but not including~~ or if the offender is participating in the twenty-four seven sobriety program.
4. 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 ~~two hundred fifty~~ 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 eighteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include at least two days' imprisonment or twenty hours community service.
- b. For a second offense within ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of at least ~~five hundred one thousand~~ one thousand dollars; ~~and 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 ~~five~~ seven years, the sentence must include at least ~~sixty one hundred twenty~~ twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one at least two thousand~~ at least two thousand dollars; ~~and 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 ~~within seven years,~~ the sentence must include ~~at least one hundred eighty days' year and one day's imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of one thousand dollars; ~~and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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. 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 offense is subject to subdivision e or d, the district court may suspend a

~~sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.~~

f.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 ~~subsection~~section.

g.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 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.

5. As used in subdivision b 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 ~~in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program.~~ The defendant shall defray all costs associated with the electronic home detention. ~~This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. For an offense under subsection c of subdivision 4, no more than ninety percent of the sentence may be house arrest.~~

6. 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, except upon a finding of indigence the court may waive fifty percent of the twenty-four seven sobriety program fees.

7. 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 sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

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

- ~~1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
 - ~~2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~
 - ~~3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~
1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01, or equivalent ordinance, and as a result the individual willfully causes a death of another individual to occur, including the death of an unborn child, unless the individual is the mother of the unborn child. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
 2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01, or equivalent ordinance, and as a result that individual willfully causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least two years' imprisonment.
 3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

SECTION 9. AMENDMENT. Section 39-08-01.4 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 10. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any 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 is deemed to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to four three years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test

performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

SECTION 11. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.

4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.
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 unless the individual has exhausted administrative procedures. 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.

SECTION 12. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section

39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

SECTION 13. AMENDMENT. Section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

SECTION 14. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample ~~from~~ electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designee, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed

that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system which is received by the director from the director of the state crime laboratory or the director's designee or, a law enforcement officer, or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and~~
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the

person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 15. AMENDMENT. Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 16. AMENDMENT. Subsection 10 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

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

the blood sample was drawn according to the approved method of the state toxicologist.

SECTION 17. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. ~~However, the~~
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.

SECTION 18. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

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 unless the individual has exhausted administrative procedures.

SECTION 19. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 20. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration between the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the underage drinking prevention program provided for under section 20 of this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 22. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of purchasing secure continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program, for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

2013 SENATE APPROPRIATIONS

HB 1302

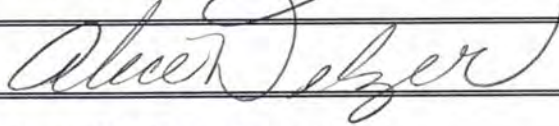
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1302
04-05-2013
Job # 20912 & 20913

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to juveniles driving under the influence (DO PASS)

Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Friday, April 05, 2013 at 8:00 am in regards to HB 1302. Roll call was taken. All committee members were present.

Becky J. Keller - Legislative Council
Laney Herauf- OMB

Chairman Holmberg: We will focus on **the fiscal note, dated 4-1-13. Testimony attached #1.** We are looking at second engrossment with Senate amendments.
Testimony attached # 2 - Estimated Impact to the DOCR.

Senator Kelly Armstrong, District 36: HB 1302 looks substantially similar to SB 2240. We found some highway safety funds so the general fund allocations will come down quite a bit for the first biennium. The major fiscal change is a \$360,000 appropriation to a binge drinking fund.

Senator Mathern: I received information from families who are very discouraged; believe this will have very little impact on the behavior in ND. I see a large fiscal note, which seems to indicate there will be some impact. Since there is no change for 1st time offenders, do you believe the fiscal note is accurate?

Senator Armstrong: As the 24/7 program is implemented in this program, I believe it will work. In South Dakota it has worked. There is a significant change for the first offenses. We have to pass an enforceable law. I believe this is getting close to doing that.

Senator Mathern: Do you think this fiscal note represents money that will be spent.

Senator Armstrong: I don't know but I hope it goes down, especially with 3rd offenders. I hope after the 2nd offence and penalties inflicted, it will change behaviors.

Senator Robison asked where the \$360,000 would be directed.

Senator Armstrong replied it would go to Department of Human Service.

Senator Mathern: Asked the Department of Corrections: Do you have sufficient authority in this bill to direct people that may be convicted to other programs besides prison?

David Krabbenhoft, Dept. of Corrections: The way the bill is right now the court can send someone to a treatment program. It doesn't change anything for the department of corrections.

Senator Mathern: Don't we need options besides prison. Montana has a program.

Dave Krabbenhoft: Yes, Montana has a program called WATCH and they have had nice documented success. This bill doesn't provide a treatment for DUI offenders.

Discussion followed on programing and resources and capacity.

Senator Robinson: (15.11) How many anticipated offenders are you going to deal with at DOCR because of HB 1302.

Dave Krabbenhoft: That is spelled out on the fiscal note. He explained.

Aaron Burst, Association of Counties: We supported the original bill and we support this bill. We also supported SB 2240. I prepared the county fiscal note in this and explained that those are hard costs and does not include whether we have the capability of doing that. I used a \$70/day, if you can't find local housing.

Discussion followed on infrastructure and local responsibilities.

Senator O'Connell: How many counties don't have the facilities to keep people?

Aaron Burst: Currently, there are four jail facilities that could handle this now. We have about 16. The majority are not going to be able to handle these increases without changing something in the short term. We are having more difficulty out west.

Mike Righton, Assistant Chief, West Fargo: Some of this overcrowding can be handled by looking at other offenses and their penalties. There is a study proposed that will look at these nonviolent criminal offenses to see if the sentences are appropriate. DUI is a more serious crime.

Chairman Holmberg: What do you think?

Senator Armstrong: This bill isn't going in a vacuum; we are trying to deal with these nonviolent offenses. He explained what is happening now because the jails are already full (24:00).

Discussion followed on treatment outside of jail time and dollars. Also had some discussion on the buildings at the State Hospital and what it would take to make them workable for this type of treatment center.

Chairman Holmberg: Anyone else wanting to testify? The corrections budget is over in the House right now. He asked Becky if they had done anything with it.

Becky J. Keller: They have called for amendments and I'll be drafting them this weekend and go over them on Monday.

Chairman Holmberg closed the hearing.

JOB # 20913

Chairman Holmberg reconvened the committee to discuss HB 1302.

Senator Carlisle moved a do pass on HB 1302.

Vice Chairman Bowman seconded.

Senator Mathern expressed the need for alternate treatment and adding more money.

Discussion followed on options. Senator Robinson has concerns and he expressed them. He is looking at some language to be drafted that could be ready for conference committees.

Chairman Holmberg: We have a bill before us and asked the clerk to call the roll on a **Do pass** on 1302.

A Roll Call vote was taken. Yea: 13; Nay: 0; Absent: 0.

Chairman Holmberg: This goes back to Transportation. **Senator Armstrong will carry the bill.**

Chairman Holmberg closed the hearing on HB 1302.

FISCAL NOTE
Requested by Legislative Council
04/22/2013

Amendment to: Reengrossed HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$6,164,406		\$6,498,954
Expenditures			\$4,699,885	\$6,164,406	\$6,266,080	\$5,729,943
Appropriations			\$4,699,885	\$6,164,406	\$6,266,080	\$5,729,943

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$1,960,000	\$1,960,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased probation and incarceration requirements and increased usage of the 24/7 sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will fiscally impact local jurisdictions, the Office of the Attorney General, and the Department of Corrections and Rehabilitation. Impact will come through increased usage of the 24/7 sobriety program, and increased probation and incarceration requirements. As amended this bill should have no material fiscal impact to the Department of Transportation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 sobriety program and an increased number of individuals on supervised probation.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by assuming one-half of the 4000 first-time DUI offenders per year would be incarcerated for 2 days and 2,000 second-time DUI offenders would be incarcerated for 10 days (increase of 5 days from current practice). Incarceration cost per day estimated at \$70. No material fiscal impact anticipated for 3rd time offenders. The DOCR impact was determined by estimating, 102 3rd offenses per year and 213 4th or more offenses per year. The DUI offenses would increase the average daily prison population by 68 in FY14, 133 in FY15, 121 in FY16 and 114 in FY17. This increase would cause DOCR facilities to reach capacity by FY15 resulting in a need to contract for additional bed space (non-treatment beds) as follows: FY15 - 17, FY16 - 25 and FY17 - 38.

Remaining bed needs would be met by designating 30 existing DOCR beds for DUI treatment and contracting for 50 DUI treatment beds. Probation caseloads would increase as follows: FY15 - 58, FY16 - 275, FY17 - 343. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, treatment beds, and additional FTE's to provided community supervision (probation). See attached for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Total 2013-15 biennium estimated expenditures are \$7,443,901 (\$6,146,511 from other funds - participant fees and \$1,297,390 from the general fund). Estimated expenditures for the 2015-17 biennium are \$5,540,677 which will be paid from participant fees (other funds).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$3,420,321 (\$3,402,495 general fund and \$17,895 other funds) and 1 FTE; 2015-17 biennium \$6,266,080 (\$6,076,814 general funds and \$189,266 other funds) and 5 FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$7,443,901 (\$6,146,511 from other funds - participant fees and a \$1,297,390 general fund appropriation). The Office of Attorney General estimates an appropriation of \$5,540,677 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 04/23/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st, 2nd, and 3rd offense) at county level						
4) 2nd offense probation is unsupervised and will not impact DOCR supervision caseloads; 100% of 3rd, 4th and subsequent offense probation is supervised and will impact DOCR supervision caseloads						
5) All time incarcerated for felony C (4th and subsequent offense) incarcerated at state level						
6) Actual time incarcerated is equal to minimum mandatory sentence						
7) Contract housing beds \$70 per day (no treatment services included in rate)						
8) 30 existing DOCR beds to be designated for DUI treatment using existing resources						
9) Contract treatment program beds \$97.00 per day (program available January 1, 2014)						
10) Estimated available drug court capacity (35) consumed by 2nd and 3rd offenses (no offset to 4 and subsequent incarceration)						
11) Revised 2013-15 estimated inmate population used in determining fiscal effect						
12) All aspects of the 24/7 sobriety program administered by the Office of the Attorney General						
Offenses Per Month						
2nd Offense DOCR Probation						
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Prison Average Daily Population (ADP)						
	FY2014	FY2015	FY2016	FY2017		
DOCR Incarcerated	43	71	59	52		
Current Ave of DUI Incarcerated	18	18	18	18		
Est Increase in Prison ADP #1	25	53	41	34		
Est ADP - DOCR Treatment #2	25	30	30	30		
Est ADP - Contract Treatment #3	18	50	50	50		
Contract Housing						
	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Revised Est Population	1,212	1,232	1,252	1,272		

Bill Effect on ADP (#1 + #2)	50	83	71	64		
Needed Beds	-	17	25	38		
Days	334	365	365	365		
Bed Cost Per Day	\$ 70.00	\$ 70.00	\$ 70.00	\$ 70.00		
Est Cost - Contract Beds (No Treat)	\$ -	\$ 434,350	\$ 630,319	\$ 970,900		
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017		
Needed Contract Treatment Beds (#3)	18	50	50	50		
Days	365	365	365	365		
Bed Cost Per Day	97.00	97	97	97		
Est Cost - DOCR Contracted Treatment Beds	622,420	1,770,250	1,770,250	1,770,250		
Increase in Probation	FY2014	FY2015	FY2016	FY2017		
2nd Offense	-	-	-	-		
3rd Offense	22	95	102	102		
4th + Offense	12	162	372	440		
Less:						
Current Ave of DUI Probation	199	199	199	199		
Total Estimated Increase	-	58	275	343		
Target Caseload / Officer	65	65	65	65		
Necessary Officers	-	1	4	5		
Est FTE Cost / Year	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000		
Est Cost - Probation	\$ -	\$ 75,000	\$ 300,000	\$ 375,000		
Inmate Costs	FY2014	FY2015	FY2016	FY2017		
13-15 Budgeted Medical	\$ 6.49	\$ 6.49	\$ 6.49	\$ 6.49		
Increase Inmates	50	83	71	64		
Days	365	365	365	365		
Increased Medical	\$ 118,987	\$ 196,615	\$ 167,407	\$ 151,606		
13-15 Budgeted Food	\$ 4.96	\$ 4.96	\$ 4.96	\$ 4.96		
Increased Inmates	50	83	71	64		
Housed Outside Docr	-	17	25	38		
Net Inc Inmates	50	66	46	26		
Days	334	365	365	365		
Increased Food	\$ 83,213	\$ 119,486	\$ 83,278	\$ 47,070		
Est Cost - Inmate	202,200	316,101	250,685	198,677		
Est Total Cost	824,620	2,595,701	2,951,254	3,314,827		
Total Cost 13-15		3,420,321				
Total Cost 15-17				6,266,080		

Supervision Fee Revenue	FY2014	FY2015	FY2016	FY2017		
Estimated Probation Increase	-	58	275	343		
Monthly Supervision Fee	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00		
Months	12	12	12	12		
Collection Rate	56.7%	56.7%	56.7%	56.7%		
Est Total Revenue	\$ -	\$ 17,895	\$ 84,244	\$ 105,022		
	Total Revenue 13-15	\$ 17,895				
			Total Revenue 13-15	\$ 189,266		

FISCAL NOTE
Requested by Legislative Council
04/01/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$6,146,511		\$6,474,961
Expenditures			\$5,512,001	\$6,146,511	\$9,766,376	\$5,705,950
Appropriations			\$5,512,001	\$6,146,511	\$9,766,376	\$5,705,950

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$1,960,000	\$1,960,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased probation and incarceration requirements and increased usage of the 24/7 sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will fiscally impact local jurisdictions, the Office of the Attorney General, and the Department of Corrections and Rehabilitation. Impact will come through increased usage of the 24/7 sobriety program, and increased probation and incarceration requirements. As amended this bill should have no material fiscal impact to the Department of Transportation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 sobriety program and an increased number of individuals on supervised probation.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by assuming one-half of the 4000 first-time DUI offenders per year would be incarcerated for 2 days and 2,000 second-time DUI offenders would be incarcerated for 10 days (increase of 5 days from current practice). Incarceration cost per day estimated at \$70. No material fiscal impact anticipated for 3rd time offenders. The DOCR impact was determined by estimating, 102 3rd offenses per year and 213 4th or more offenses per year. The DUI offenses would increase the average daily prison population by 88 in FY14, 195 in FY15, 195 in FY16 and 195 in FY17. This increase would cause DOCR facilities to reach capacity by FY15 resulting in a need to contract for additional bed space as follows: FY15 - 129, FY16 - 149 and FY17 - 169. Probation caseloads

would increase as follows: FY16 - 212, FY17 - 338. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, and additional FTE's to provide community supervision (probation). See attached for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Total 2013-15 biennium estimated expenditures are \$7,443,901 (\$6,146,511 from other funds - participant fees and \$1,297,390 from the general fund). Estimated expenditures for the 2015-17 biennium are \$5,540,677 which will be paid from participant fees (other funds).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$4,214,611 (100% general fund); 2015-17 biennium \$9,931,649 (\$9,766,376 general funds and \$165,273 other funds) and 6 FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$7,443,901 (\$6,146,511 from other funds - participant fees and a \$1,297,390 general fund appropriation). The Office of Attorney General estimates an appropriation of \$5,540,677 will be needed for the 2015-17 biennium from participant fees (other funds).

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Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 04/03/2013

The DOCR impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 88 in FY14, 195 in FY15, 195 in FY16 and 195 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 129, FY16 - 149 and FY17 - 169. Probation caseloads would increase as follows: FY16 - 212, FY17 - 328. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, and additional FTE's to provide community supervision (probation). Est Fiscal Impact 2013-15 - \$4.2 million. Est Fiscal Impact 2015-17 - \$9.9 million and 6 additional FTE. See attachment for computation

2013-15 - \$4.2 million. Est Fiscal Impact 2015-17 - \$9.5 million and 5 additional FTE. See attachment for completion.						
District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through out the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st, 2nd, and 3rd offense) at county level						
4) 2nd offense probation is unsupervised and will not impact DOCR supervision caseloads; 100% of 3rd, 4th and subsequent offense probation is supervised and will impact DOCR supervision caseloads						
5) All time incarcerated for felony C (4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment services included in rate)						

7) No deterrent effect was used in the estimate					
8) Estimated available drug court capacity (35) consumed by 2nd and 3rd offenses (no offset to 4 and subsequent incarceration)					
9) Revised 2013-15 estimated inmate population used in determining fiscal effect					
10) All aspects of the 24/7 sobriety program administered by the Office of the Attorney General					
Deterrent Effect	0%	0%	0%	0%	
Offenses Per Month					
3rd - Offense	8.51	8.51	8.51	8.51	
4th +	17.71	17.71	17.71	17.71	
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017	
4th + Offense	106	213	213	213	
Less:					
Current Ave of DUI Incarcerated	18	18	18	18	
Est Increase in Prison ADP	88	195	195	195	
Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Bill Effect	88	195	195	195	
Needed Beds	-	129	149	169	
Days	334	365	365	365	
Bed Cost Per Day	\$ 70.00	\$ 70.00	\$ 70.00	\$ 70.00	
Est Cost - Contract Beds (No Treat)	\$ -	\$ 3,296,653	\$ 3,808,352	\$ 4,318,881	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
3rd Offense	22	95	102	102	
4th + Offense	-	96	309	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	-	212	328	

Target Caseload / Officer	65	65	65	65		
Necessary Officers	-	-	4	6		
Est FTE Cost / Year	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000		
Est Cost - Probation	\$ -	\$ -	\$ 300,000	\$ 450,000		
Inmate Costs	FY2014	FY2015	FY2016	FY2017		
13-15 Budgeted Medical	\$ 6.49	\$ 6.49	\$ 6.49	\$ 6.49		
Increase Inmates	88	195	195	195		
Days	334	365	365	365		
Increased Medical	\$ 190,721	\$ 461,991	\$ 462,056	\$ 462,012		
13-15 Budgeted Food	\$ 4.96	\$ 4.96	\$ 4.96	\$ 4.96		
Increased Inmates	88	195	195	195		
Housed Outside Docr	-	129	149	169		
Net Inc Inmates	88	66	46	26		
Days	334	365	365	365		
Increased Food	\$ 145,759	\$ 119,486	\$ 83,278	\$ 47,070		
Est Cost - Inmate	336,481	581,477	545,334	509,082		
Est Total Cost	336,481	3,878,130	4,653,686	5,277,964		
	Total Cost 13-15	4,214,611				
			Total Cost 15-17	9,931,649		
Supervision Fee Revenue	FY2014	FY2015	FY2016	FY2017		
Estimated Probation Increase	-	-	212	328		
Monthly Supervision Fee	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00		
Months	11	12	12	12		
Collection Rate	56.7%	56.7%	56.7%	56.7%		
Est Total Revenue	\$ -	\$ -	\$ 64,962	\$ 100,311		
	Total Revenue 13-15	\$ -				
			Total Revenue 13-15	\$ 165,273		

FISCAL NOTE
Requested by Legislative Council
02/26/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$560,000	\$560,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: One additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$280,000/year or \$560,000/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All misdemeanor B and A offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court; 3) Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) 50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR; 7) No deterrent effect was used in the estimate; 8) 35 offenses per year diverted to drug court; 9) 50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 1 additional jail days at a cost of \$70 per day. (\$280,000 per year or \$560,000 per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 02/28/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						Average Offense Per Year
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unknown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throughout the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Inmate ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Est Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All misdemeanor B and A offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court; 3) Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) 50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR; 7) No deterrent effect was used in the estimate; 8) 35 offenses per year diverted to drug court; 9) 50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						Average Offense Per Year
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Inmate ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Est Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
01/16/2013

Bill/Resolution No.: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$8,575,237		\$22,708,901	
Appropriations			\$8,575,237		\$22,708,901	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill No.1302 provides for increased penalties for DUI offenses. Section 5 of the bill contains the increased penalties. This bill will provide a fiscal impact to both counties and the DOCR.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimated fiscal impact to the counties was estimated by the ND Association of Counties and was provided as follows: After examining the district court data provided, and talking with prosecutors and sheriffs; it was determined that a figure of 4000 cases per year should be used. This was taking the 3,500 district court cases over the past two year and increasing that to include 500 additional municipal court cases, as those were not reflected in the data. Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. The challenge is that, depending upon where those cases are jailed, there may not be room. Burleigh, Morton, Ward and Williams jails are often at capacity already. That means additional transport costs (time & expense) that have not been estimated. This may be mitigated by the deterrent effect, but since both of these factors are even more speculative, it was felt the straight calculation of days and daily rates was better supported. The estimated fiscal impact to the State is limited to the estimated impact to the DOCR. To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1,2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1)All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2)All time incarcerated for 3rd and 4th DUI offenses (Felony C) will be served at DOCR or DOCR contracted facilities; 3)Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4)All DUI offenses occur evenly throughout the year; 5)Actual time incarcerated is equal to minimum sentence; 6)All probation served at minimum mandatory; 7)No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 412 in FY15, 527 in FY16 and 527 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 258, FY16 - 377 and FY17 - 381. Costs estimated for the purpose of this fiscal note include medical, food, contract housing and additional FTE costs to provide community supervision (probation). Est Fiscal Impact 2013-15 - \$8.6 million and 1 additional FTE Est Fiscal Impact 2015-17 - \$22.7 million and 7 additional FTE See attachment for computation

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Estimated appropriation amount is equal to funding necessary for the DOCR to implement the penalty provision of HB1302 if passed into law.

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unknown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through the year						
2) Actual time incarcerated is equal to minimum days required to serve						
3) All time incarcerated for B&A at county level						
4) All time incarcerated for Felony C at state level						
5) All probation at minimum mandatory						
6) No revocation from probation						
7) Probation caseload at 65						
8) Contract housing beds \$70 per day						
Deterrent Effect						
	0%	0%	0%	0%		
Increase in Prison ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	51	102	102	102		
4th + Offense	106	309	425	425		
Total	157	412	527	527		
Offenses Per Month						
3rd	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Est Contract Housing						
	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Est Pop DOCR Facilities	1,140	1,144	1,147	1,151		
Bill Effect	157	412	527	527		
Needed Beds	-	258	377	381		
Days	365	365	365	365		
Bed Cost Per Day	70.00	70.00	70.00	70.00		
Estimated Cost	-	6,589,516	9,627,491	9,731,820		

Increase in Probation					
3rd Offense	-	46	102	102	
4th + Offense	-	-	97	309	
Total	-	46	199	412	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	7	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	75,000	300,000	525,000	
Inmate Costs					
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Increase Inmates	157	412	527	527	
Days	365	365	366	367	
Increased Medical	371,750	975,695	1,252,799	1,256,224	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Increased Inmates	157	412	527	527	
Housed Outside Docr	-	258	377	381	
Net Inc Inmates	157	154	151	147	
Days	365	365	366	367	
Increased Food	284,301	278,974	273,628	266,939	
Total Cost Increase	656,052	1,254,670	1,526,427	1,523,163	
Total Cost	656,052	7,919,186	11,453,918	11,779,983	
	Total Cost 13-15	8,575,237			
			Total Cost 15-17	22,708,901	

Date: 4.5.13Roll Call Vote # 12013 SENATE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 1302Senate Appropriations Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Adopt Amendment
☐ Do Pass as Amended☒ Do Pass
☐ Do Not PassMotion Made By Carlisle Seconded By Bowman

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mather	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0Absent 0Floor Assignment Transportation Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1302, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1302, as amended, was placed on the Fourteenth order on the calendar.

2013 CONFERENCE COMMITTEE

HB 1302

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
JOB 21166
Date April 16, 2013

☒ Conference Committee

Carman Hickle

Explanation or reason for introduction of bill/resolution:

Relating to juveniles driving under the influence; relating to chemical tests for driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Rep. Ruby: Opens Conference Committee HB 1302. Asked for an explanation of the current version of the bill.

Sen. Oehlke: We will have Sen. Armstrong walk through this.

Sen. Armstrong: As it is written it looks a lot different but most of 2240 that got sent back was a lot of 1302 original language. As it was amended in Appropriations a first offense DUI was a .21 and one day in jail on a non-working day. We changed it back to .18 was because .18 is already used in another portion of the DUI code and that is the Administrative Code. We created an aggravated first offense DUI, if you are .18 or above you have two days in jail or 20 hours of community service. We moved the 2nd offense back to a Class B misdemeanor. The reason was because Cass County, Burleigh County, the city of Fargo, the city of Bismarck, these municipal courts are court of limited jurisdiction so they cannot hear A misdemeanor cases. The burden shift in the larger counties for city court to district court would have been a substantial shift that would have required more study figuring out if we have to hire more States Attorney's and revenue switch. However we did doubled the 2nd offense DUI minimum mandatory to ten days in jail. The fines all go up and require mandatory 24/7 as a condition, so essentially you also have to stay sober for one year. 3rd offenses are an A misdemeanor. 120 days in jail, 50% may be suspended upon completion of the 24/7 program and also one year supervised probation. The reason we put that in was because of jail space and what we found out in our hearing is under current law 3rd offense DUI's are often getting plead to 2nd offense DUI's based on jail space, because the limited number of beds available and we didn't want to create a situation where there was no many county jail days in jail that they are circumventing the law of necessity. 4th offense goes to a felony to a year and a day in jail and anything after that is a felony. All of these subsequence offenses require 24/7. The major change in this that was not in either version is we created a criminal vehicular homicide statue. We made it an A felony with a minimum mandatory three years in jail. This is if you are under the influence of alcohol and kill somebody you are going to prison. Under current law and in both bills first offense substantial injury was still a misdemeanor, you essentially had to hurt somebody twice before you

got charged with a felony. But if you get in a fight with somebody and beat someone up it's a felony but if you commit aggravated assault in a vehicle it's a misdemeanor. That first offense would then be a felony. The second offense for driving with a minor in the car a felon and the other felony offense would be moved from a fifth offense to a fourth offense. The House did a look back from 10 years and Senate looked back seven years. A refusal to submit to chemical testing is a crime just like a DUI. Under current law refusals are very difficult to prosecute criminally. We added it into 39.08.01 and made it a strict liability crime under the DUI statute. We also moved the suspension periods for refusals to track with the higher of the two suspensions for whatever offense level. For a first offense it is 91 days or 180 days if you refused it would be 180 days. Under current law there is a loophole with refusals no matter how intoxicated you are if you refuse the chemical tests you will get the lower of the two driver's suspensions. If you have a second offense refusal your license will be treated like a second offense DUI, but treated like the enhanced second offense.

Rep. Ruby: Are there any Constitutional issues with that?

Sen. Armstrong: That argument gets raised a lot, I know there is a case at the Supreme Court right now dealing whether or not you have to require a warrant to draw blood and that case could have ramifications that is one reason we put the study resolution in regarding refusals.

Rep. Ruby: It seems like you could make a case beyond reasonable doubt they are at least at the lowest level. But if you go to the higher level you wonder is it provable but in this case we would be removing that.

Sen. Armstrong: You can never make the beyond a reasonable doubt they were at the least lowest level. When you get charged with a DUI now you get charged with 39.08.01 A or B. It's an either or, driving under the influence which is impairment or driving with a blood alcohol concentration with at least a .08. If you refuse to test you are only charged with 39.08.01 A, they cannot charge you with 39.08.01. So when you get in jury trials scenarios guilty beyond a reasonable doubt, there are several arguments that can be used in your defense.

Rep. Ruby: Under this a refusal would be the aggravated level?

Sen. Armstrong: Yes all the way through, but the way refusals work now they are worse than any DUI from the driving side. This moves them back in consistence with the rest of the statutes driving wise and also makes it easier to prosecute the crime.

Rep. Lois Delmore: Under this bill is I refuse to take the test I am eligible later on for 24/7 program and for getting a license for at least getting to work? Because that is one of the things we talked about because we think that program has made a difference. I don't think we should deny those types of things that can help us get people off the road.

Sen. Armstrong: Let's say it's your second offense DUI and you refuse a chemical test you will lose your license for two years instead of one. But you are eligible for the 24/7 program just like everybody else. So we enhance it to the higher suspension level but you are treated like every other DUI person in that if you enter 24/7 you get to drive to work.

Rep. Lois Delmore: The penalties would be higher but you still have the option whether it's your first offense or whatever?

Sen. Armstrong: Yes, this is a significant change from current law, because refusals are very long and very hard suspensions.

Rep. Kim Koppelman: Would you prefer to tackle issues individually and reach consensus on them as we go through without formal motions and then come up with a motion in the end?

Rep. Ruby: Yes, that is my preference.

Rep. Kim Koppelman: We (the House) had taken it to a .16 and had the original four days mandatory jail time, but when it went to the House Appropriations committee that got drastically changed. I know you said .18 appears elsewhere in law, but is there any reason we couldn't change from .16 instead of .18?

Sen. Armstrong: I would leave it up to the committee if you want to change it on the first offense. I would not change it in 39.20, the reason why is because that is not the criminal part of the code and I don't think we have enough numbers, we tried to use our best guess as to the \$1.2M appropriations for the scam bracelets and the 24/7 program and I think to have that program work the most effective we need to be careful. The suspensions are significant once you get to the second and subsequent offenses. I think when you start lowering that level in 39.20 you get more on the enhanced sentences which from the driving perspective isn't a bad thing.

Rep. Kim Koppelman: I would like us to think about the .16 as one change we might agree to.

Rep. Ruby: I thought I heard the average DUI is .17. Is that consistent? Basically .18 would guarantee is that we could get the majority of the rest basically into an aggravated status. I don't know if that is true what it would do to the cost we are talking about.

Sen. Oehlke: The average .17 is related to a blood draw, breathalyzer is .13.

Rep. Kim Koppelman: I am comfortable changing the second offense back to B misdemeanor where it is in current law. I would prefer that be an A misdemeanor and would it not be possible to allow Municipal Courts to hear that level of misdemeanor for DUI offenses only? We could prescribe that in law.

Sen. Armstrong: It would be a very unique prescription in law. Municipal Courts handles all B misdemeanor cases.

Rep. Kim Koppelman: I did meet with the Attorney General and that was very doable. The issue is that we have to look at this in balance, money is an issue, court docket time is an issue but we don't want to let that drive it completely. One technical correction also, the word willfully appears for DUI and I think that should be removed.

Sen. Armstrong: Section 8 of the new language. And as a result the individual willfully causes a death and it should read causes a death.

Sen. Oehlke: page 10 Line 14 and line 23.

Rep. Ruby: Section 8 you struck the language that dealt with the death and serious bodily injury, what was it under current law with causing a death with a DUI?

Sen. Armstrong: Traditionally North Dakota has exercised extreme caution and we have a very general criminal code. We have a general homicide statute and this is not unique to this area it's everywhere and we are very leery of creating specific types of incident specific offense. So yes it was charged under assaults, reckless endangerments, manslaughter, voluntary and involuntary, those types of things. Those prosecutions have problems from the defense and the prosecution side because they don't interact exactly the right way with a vehicle and making choices at the bar

which causes these injuries three hours later. This would be a very specific vehicular deal and getting rid of the willfully is a good idea and it is for a very specific criminal act that is committed often times by people who would not be considered criminals. The minimum mandatory for a first offense injury is 90 days as a misdemeanor under current law and the minimum mandatory for a death is one year.

Rep. Ruby: We will have to meet again, but as we get approvals for each particular issue and individual issue we can get that drafted into one final draft and review that. I need a brief explanation on page 8 line 8 to 11 that language is struck which was included in 2240. Why was that pulled out of this version?

Sen. Armstrong: Because Rep. Owens asked me one question in the Transportation Committee that I didn't know the answer to and this is language that should have been out of the bill, it deals with suspension and when you can do things. It says for second offense you may suspend except for ten days. That is a ten day minimum mandatory so it's language that doesn't need to be in there because essentially what it says is we have a minimum mandatory and you can suspend except for the minimum mandatory, that is what the law is without that language.

Rep. Kim Koppelman: I like the aggravated DUI designation and I also like vehicular homicide, those are both excellent changes. On the 24/7 where is the threshold to decide whether to go with a restricted license and the administrative program or opt for 24/7?

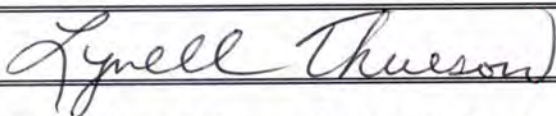
Rep. Ruby: We will adjourn and will reschedule.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
JOB 21205
Date April 17, 2013

X Conference Committee



A BILL for an Act relating to the twenty-four seven sobriety program, relating to driving while under the influence; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

Minutes:

Handout 1 and 2

Representative Ruby: Opens Conference Committee HB 1302. Asked Senator Armstrong to bring his amendments where there is some technical clean up language and will discuss issues we want to make some changes on.

Representative K. Koppelman: Handed out copies from the Attorney General's office which was a comparison based upon current law and the reengrossed bill as it came to the Senate from the House, and the Transportation Committee amendments in the Senate. The Attorney General's office is in the process of preparing suggested technical amendments for us.

Senator Armstrong: All of these came from their office and there are more now.

Representative K. Koppelman: Yes, they are being worked on and won't be ready for this meeting but later today.

2:12 Representative Ruby: Would it be a situation where we would pass this set you have and then also then consider that or is he going to have these amendments contained in this next draft being prepared?

Senator Armstrong: He will have all of these contained in the next draft.

Representative Delmore: If they all are going to be on there, it would save us some time.

Ken Sorenson, with the Attorney General's Office: Entered the Prairie Room and handed out proposed amendments.

4:16 Representative Delmore: Are these off the 04000?

Representative Ruby: That would be my guess. They are off the second engrossment with the Senate amendments. Senator Armstrong the ones you had in draft form and these are similar but not quite the proper for yet.

Representative Oehlke: Ken should walk us through this.

5:55 Sorenson: One change we made on the second engrossment with the Senate amendments is on Page 3 line 12, the language that said a person who has a temporary restricted license is not subject to the suspension periods. This language was incorrect because what they actually have is a temporary driver's license for that period of suspension. This was a technical requirement that the DOT asked for. The language adding a new subdivision E into 390801E is because the State's Attorneys felt that this language would clarify that refusal is a separate offense and that it would also be subject to the offense classifications and penalties in 390801. 390801 is the criminal statute which goes into page 5, after line 23. On page 2, line 14, there wouldn't be any consequences if it was a violation of the proposed vehicular homicide statute or driving with a child. It's adding in these statutory references to those two violations so there would also be a suspension period for those.

8:34 Representative K. Koppelman: Could you repeat that. So 390801.2 is what?

Sorenson: 3908-01.2 is the proposed vehicular homicide statute so that would be adding that in there. 390801.4 is the statute for driving with a child in the vehicle.

Sorenson: Continued with language changes.

Senator Oehlke: The intent on page 1, line 16 and page 2, line 1, take "may" out and put in "shall", that's to take the judge out as far as making any kind of determination?

Sorenson: Yes, that would be correct.

10:54 Representative K. Koppelman: We discussed this when we saw the draft coming from the Senate. The idea is that for juveniles they should be on the 24/7 program and the reason the threshold is lower for juveniles is that it's not legal for them to drink to begin with. They are breaking two laws.

Senator Armstrong: There are different license suspensions that are more severe for juveniles already; most of this is handled through juvenile court.

12:19 Sorenson: Proposed vehicular homicide and vehicular injury language of 390801.2 statutes, is defined as reckless, knowing or intentional. Driving under the influence is considered by our ND Supreme Court to be what's called a strict liability offense. The recommendation is to remove the words "willfully" on page 10, line 14 and 23; page 4 of the draft.

13:27 Representative K. Koppelman: We did discuss that point yesterday and reached a general agreement on that already.

Sorenson: I put a change in the language "unless the individual is a mother of an unborn child" because we have a fairly awkward sentence there with reference to the individual three different times in the sentence. Toward the end of the bill, page 24, over the last several sessions the legislature has gotten away of the statutory references to state toxicologists. We do have a toxicologist so I am asking that be changed to get rid of the references to state toxicologist. Also it's a problem we are having around the state dealing with the admission of the blood test and who has to testify. Instead of having the officer sign a verified statement, is to just be able to testify as to that.

Representative K. Koppelman: Would you address on the bottom of page 3 of the draft and the top of page 4 the changes on page 9 to the bill, the underscored language, the DOCR stuff.

Sorenson: The current statutory language in 390801 allows the court to put someone directly into treatment. The amendments say that they can sentence someone to a public or private treatment facility, that's the reference to 12.13202 subdivisions 1. We have had issues with the courts from time to time ordering the DOCR to pay for treatment. The language is there so that the DOCR shouldn't be ordered to pay for treatment of the private facility. Based on that Montana language a person can go be sentenced to the custody of the Department of Corrections and then upon completion of treatment be released from physical custody.

18:05 Representative K. Koppelman: Is that the same thing as we had in the House version of the bill out of the Judiciary committee?

Sorenson: It is almost identical. The difference is if the change references the current statute for language about being placed to treatment and sentencing under 12.10202 and then a separate part for the language with the Department of Corrections. Took some language that was in HB 1302, the engrossed version out of House Judiciary and moved it to a different part but leaves pretty much the language that if a person is in the custody of the DOCR and they complete treatment then they can be released from custody.

Representative K. Koppelman: On one hand we're saying that a court can't order the DOCR to pay for the treatment at an external facility. The next thing we're saying is that it implies that the court would make the sentence to the Department of Corrections but that it would be up to the Department of Corrections whether or not to place the person in treatment. Where's the judge's discretion with regard to that or because the law allows it would we be just saying the judge sentences to DOCR and it's up to them to decide whether or not to put someone in treatment or is it at the request of the inmate or how does that work?

Sorenson: We have two different provisions going on. A court can sentence to a treatment facility and if a person has been sentenced to the DOCR then DOCR will handle the treatment component and upon completion of treatment they can be released from physical custody.

20:55 Senator Oehlke: In order for DOCR to encourage a treatment facility they have to be sentenced for how long?

Sorenson: Dave Krabbenhoft from the Department of Corrections is here. He could answer that question better than I.

Representative K. Koppelman: I was told there was some interest among the states attorneys to change in the year and a day sentence in the bill we have to 18 months for this very reason that it was necessary because of the treatment referral. Now I'm hearing that that may or may not be true.

Dave Krabbenhoft, DOCR: If they are sentenced to us then the treatment piece on how that comes into effect if I understood the question correctly. If they come to us it looks like we're going to get the fourth offence guys coming in. If they are sentenced to us we can bring them into a treatment program and our programs are anywhere from 90 to 120 day range. If they complete that program then if the new bill is written, we can release them directly to supervised probation. They'll have to come to us in order for that to take effect.

22:41 Representative K. Koppelman: That is my understanding as well and both the House and the Senate version of the bill have the fourth offense as you said. We've been hearing from states' attorneys and folks that it needs to be an 18 month minimum mandatory in order to affect that. Is that accurate or not?

Krabbenhoft: As long as they are sentenced to us we don't have to have 18 months.

24:00 Senator Armstrong: We have had conflicting answers on it so we want to make sure if you have a fourth offense DUI then you have an alcohol problem. I want to make sure we are doing it at the minimum in this.

Krabbenhoft: It is not a problem.

Representative Ruby: What I am hearing is if they are a good candidate for it.

25:25 Krabbenhoft: We have a resource issue and all the beds are full they will have to wait for treatment spot to open. We don't have any additional treatment beds that are included in the bill.

26:40 Representative K. Koppelman: I know it was said we are having conflicting information on this and Mr. Birst is here from the State's Attorney's office to comment on this issue.

26:53 Aaron Birst: It has been the working assumption from states' attorneys those 18 months was the minimum you need for those hard core offenders that have to go through the evaluation and also the treatment component when you talk Tompkins. If DOCR thinks they can get someone through that whole component in a year that's fine but most states' attorneys have been sentencing to 18 months to DOCR. We don't think holding them for one year is workable.

27:48 Representative Delmore: We don't have to make an assumption they are all hard core. There needs to be some flexibility both for them and the help these people need to receive.

Birst: What I was suggesting if the initial sentence is 18 months then you pass them to DOCR. DOCR does their thing. 18 months gives you the ability for DOCR to work with them.

Representative Delmore: What do they do in Minnesota? Do they require 18 months there?

Krabbenhoft: I can't answer that but I can get you the answer.

28:52 Senator Armstrong: With the language that Mr. Sorenson drafted do you think we've solved those problems?

Birst: Yes, we want to make sure DOCR has the flexibility. We would like to see sentencing to a longer period of time for those fourth offenders and let DOCR do what they need to do.

Representative Ruby: That is the minimum so if the states' attorneys are recommending a longer period then it may be granted.

Birst: Correct. The typical sentence is 5 years' incarceration.

30:21 Representative K. Koppelman: I am not saying these are hardcore but we are talking about fourth time offenders.

Senator Armstrong: They need the treatment.

Representative K. Koppelman: When we are talking about the repeat offenses, one thing that strikes me on the colored coded sheet is the discrepancy on fines.

32:24 Representative Ruby: I would like to see these raised.

Representative K. Koppelman: The letter behind the offense is not as important as the result.

33:42 Senator Armstrong: In a separate bill we raised the maximum fines for A and B misdemeanors and C felonies.

Representative Ruby: I don't review that as a reduction of penalty on that because we do kick in the other portion.

Senator Armstrong: The aggregated first offense not moving the fine may have been an oversight.

Representative Ruby: Are you proposing an amendment?

Representative K. Koppelman: Yes, I move.

Representative Ruby: What is the maximum for C felonies?

Senator Armstrong: It is \$10,000 on August 1.

Representative Ruby: We should get a consensus and draft them then discuss it.

Representative K. Koppelman: I would propose we go back to the House fine schedule. To go down is the wrong direction.

37:27 Representative Ruby: The potential is to keep it at two like the other one?

Representative K. Koppelman: Possibly I might be willing to concede that.

Senator Armstrong: I don't see there is an issue except for the second offense if you increase it.

Representative K. Koppelman: It's at \$1,000 now and it would be \$1,500 under the House version.

39:12 Representative Ruby: I think we have consensus, two days on the hours of the aggravated DUI and also the limit. I'm okay with .18.

Representative K. Koppelman: If we were to go with .16 and I'd be willing to leave it as it is there but move it to .16 here. Regarding the mandatory jail time and community service I don't think it should be the norm.

41:25 Senator Oehlke: I heard you don't like the norm, whatever that is.

Representative K. Koppelman: I and Senator Armstrong met and he had some ideas on how to change that in such a way that the judges would have discretion. If it was up to me I'd put the language in the statute that says that it is jail time unless when jails are overcrowded a judge may have the option of sentencing to community service.

42:06 Representative Ruby: Is there some place to put language that is enabling for judges?

Senator Armstrong: Yes. I can work on the draft with Aaron.

Representative Ruby: We took care of two or three major issues there just with the fines of the blood alcohol limit and the minimum for jail time.

43:24 Representative K. Koppelman: There is something in the bill that triggers the taxpayers pay for some of the 24/7 cost in the case of indigents, etc.

Representative Delmore: They all pay that amount.

Representative Ruby: Page 9, the language I would like to see removed is on line 17 and 18.

45:28 Senator Armstrong: We talked about that. That almost didn't make it out of committee in the Senate side. There's another problem with leaving that language in there. There's this group of people that can be on 24/7 that never actually get ordered by court. Gave an example.

46:28 Representative Ruby: So there would be an inconsistency, they'd require it but could waive half of it if they were convicted.

Senator Armstrong: Except if you are only on 24/7 through administrative sanction the court doesn't really have anything to do with it at all.

Representative Ruby: My preference would be that we remove line 17 and 18 on page 9.

46:52 Representative Oehlke: Would you want to start on line 15 where it says the offender's responsible and remove all that? Maybe there is a process for this in place.

Representative Ruby: It's being used now and very successful.

Representative K. Koppelman: I think the reason that language is in there is that we crafted this and most of you know this was a product of collaboration and the Attorney General's office and the DOT and prosecutors and law enforcement, etc. were part of the process. I think the language comes from the idea that we expect people should be paying this. This is when they are on probation.

48:54 Representative Ruby: It's part of the penalty.

Senator Armstrong: There are two different sides to this. When you go on the bracelet you pay \$25.00 activation fee, \$25.00 removal fee and \$5.00 a day. Very little, if any of this goes to the county. It goes to the people in implementing the scam bracelet. Someone has to pick up the tab if you cut it in half with regard to the twice a day testing. A bigger issue in why it's a good idea to remove that language is so many of these people that are going to be on 24/7 are going to be on it long before there's a court order. In the alternate DOT universe of a court order.

51:00 Representative Ruby: If there are a few other things we want to mention, we'll get some drafts done.

Representative K. Koppelman: To bring clarity to what Senator Armstrong said; when you say remove the language you're talking about lines 17 and 18?

Senator Armstrong: Yes line 15 and 16 can stay. That's just dealing with court.

Representative Ruby: Any other major issues?

Representative K. Koppelman: My fiscal responsibility is kicking in. Once we have a consensus and conclusion we then need to refer this to Council to have another fiscal note drawn before we as a committee pass judgment on what we recommend.

Representative Ruby: Correct. We wouldn't have to wait for the fiscal note to see it unless it would change your mind of how you'd vote on it then we could wait for it.

53:03 Senator Armstrong: I am not sure where we are on the one year and one day vs. 18 months. That's the one thing that I think we're changing that will affect the fiscal note. How much will it affect the fiscal note? Do we want to change it to 18 months?

Representative K. Koppelman: My opinion is the only reason we were discussing it is that we thought it might have been necessary for DOCR to do their thing with regard to treatment. That's not necessary and the State's Attorneys could still ask for it if they believe it's necessary in specific cases, the courts could still sentence to that.

Representative Delmore: I would like to see all the amendments in place and make sure we need to really have another meeting.

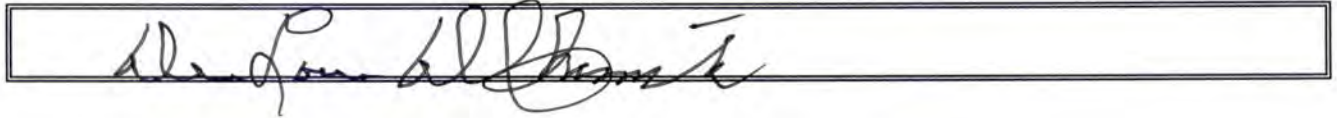
Representative Ruby adjourned the meeting.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
JOB # 21248
Date: April 18, 2013

☒ Conference Committee



Minutes:

Proposed amendment #1

Members: Rep. Ruby, Chairman, Rep. K.Koppelman, Rep. Delmore; Senator Oehlke, Senator Armstrong, Senator Axness.

Rep. Ruby: Reopens Conference Committee on HB 1302. An amendment was handed out and asked Rep. Koppelman to explain it.

Rep. Koppelman: (See proposed amendment) Senator Armstrong and I went to Legislative Council after our meeting yesterday and asked for both an amendment and a markup and was informed that the markup on a hog house is not much more helpful.

Rep. Lois Delmore: Are all the technical ones in here as well.

Rep. Koppelman: Yes. This should include the technical amendments and also the removal of the word "willfully". We deleted the indigent payment for 24-7 should be covered? In regards to the fines we kept the fourth offense at \$2,000 which is the same as the third offense and we did that because people are in jail and their families are probably the ones to suffer the most with higher fines, but we didn't feel it was appropriate to reduce the fines but to keep it flat seemed to make some sense. The DOC language was contained in the technical correction. We did request the BAC would be .16. If the average is .17 and we go to .18 the perception is we are attempting to escape the average. Second .16 is the way we did amend it in the House subcommittee which Rep. Delmore and I both served on. Third .16 is double the threshold of DUI.

Sen. Axness: On the second offense on page 32 line 25, we talked about \$1500 and it says \$1000. Did we change on that?

Rep. Koppelman: You are correct. That should be \$1500.

Sen. Armstrong: If you go to page 53 section 21; line 18 and 19 add \$500 which is consistent with another bill that passed both houses.

Rep. Koppelman: Another thing we did was community service.

Sen. Armstrong: On the aggravated first offense we took community service out and moved it so it has to be dealt with. A lot of first offense DUI's are treated at the district court level so it is the two

days in jail and you have to opt into the community service as opposed to just an either or. It says it is two days in jail but under certain circumstances you can get the community service.

Rep. Koppelman: That is important because community service sounds like we are being light, but in the counties where the jails are full so we need to have this considered but because our jail is full I will sentence you to community service.

Rep. Ruby: Does it say that in the bill.

Rep. Koppelman: No, it can also be a hardship. Community service in some situations is more heavy duty even than jail time.

Rep. Ruby: I have heard some push back because of the minimum mandatory sentences because jails are full.

Sen. Armstrong: With the DOCR, the language we added gives DOCR much more discretion than they had.

Rep. Ruby: If they have completed the treatment even before the end of their sentence they could be released to other programs? Will that affect the fiscal note in anyway?

Rep. Koppelman: Yes, the Chairman of the House wants to see the fiscal note. We discussed this in the subcommittee in the House Judiciary committee. The objective is to stop people from drinking and driving or driving when they are drunk. We need to treat this as a crime.

Rep. Lois Delmore: As the bill is currently amended can you show me where those mandatories are? I was wondering in particular the second offense with 10 days?

Sen. Oehlke: Page 6 on the amendment or page 32 of the bill.

Rep. Ruby: I do like the ten hours in place of each day.

Sen. Armstrong: We did that for a couple of reasons, the minimum becomes the sentence. The court system is overloaded so the minimum on these often time will become the sentence. What they count as a day in jail varies from district to district and case to case. If you do the 10 hours of community service they will say I am giving you 30 hours if you don't want to go to jail as opposed to making it an either or thing. Now it gives them the ability to jack it up if they want to.

Rep. Ruby: I think we all agree that on Page 6 of the amendment subsection B, that we are going from one thousand to fifteen hundred. Is there potential for changing the language or discursion for the judges on the second offense or should we move this amendment and then discuss anything further? I would like to request a fiscal note and a full markup bill with the changes. Is there anyone intending anything different with minimal mandatory?

Rep. Lois Delmore: Are these in the mark-up and did you say that we would be changing the municipal court or are we doing that in another bill?

Sen. Armstrong: The changing of the municipal court code is in the markup. This is not in the markup. This was something that was given to me this morning based on a Supreme Court case that came out yesterday. The Supreme Court ruled that you are required to have a warrant before you get a blood drop which causes significant problems in another statute dealing with DUI's in Chapter 39-20. Our current law that says the driver must be compelled by a police officer to submit to a test. That is now unconstitutional and it is in 39-20-011.

Aaron Birst, Association of Counties: It is no longer the case the law enforcement and compels a blood test for a DUI. That is no longer the case. I have prepared an amendment, but there could be some twists in it. I would be more than happy to work with anyone on this bill. The AG does not want to engage new stuff in this bill, but this is a huge deal.

Rep. Koppelman: I will take it up with the Attorney General.

Rep. Ruby: I want to make sure things are right and we do have some time.

Sen. Armstrong: I don't anticipate it being overly controversial.

Rep. Ruby: Does anyone want to move this amendment or should we hog house it all?

Rep. Koppelman: I think we should give people time to look at this and get something before us that we can all agree on.

Rep. Ruby: We will wait. Everyone can review this and if there are any considerations that you want us to consider let me know. When we settle the constitutional issue we should be able to pass one big amendment and request a fiscal note on it.

Rep. Koppelman: When we talked about the fiscal note we need to look at both sides the expenses and revenue as well.

Rep. Ruby: I think the success of not having repeat offenders and people moving on up into the higher levels and that reduction it would be on the system.

Sen. Armstrong: This fiscal note should not change very much from the Senate's version.

Rep. Ruby: We will adjourn.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
JOB 21319
Date April 19, 2013

☒ Conference Committee

Jocelyn Gallagher

Relating to driving while under the influence; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

Minutes:

Rep. Ruby: Reopens Conference Committee on HB 1302.

Rep. Kim Koppelman: Introduced proposed amendment 13.0399.03001.

Sen. Armstrong: I reviewed them this morning; they are what we talked about in committee.

Rep. Lois Delmore: This is all we looked at yesterday, there were no other changes.

Rep. Kim Koppelman: I move the amendment

Rep. Lois Delmore: Second

Rep. Ruby: We have a motion and second. Further discussion? Clerk take roll to adopt amendment 3010.

Rep. Kim Koppelman: For the order I think because we're dealing with the Senate version, it would be the Senate recede from its amendments that the conference committee further amend.

Sen. Armstrong: I'll move the Senate recede from its amendments and the conference committee further amends.

Sen. Axness: Second the motion.

Rep. Ruby: This is the .16 level, minimum mandatories we talked about are all in place, everyone understands that. The fines are escalated from where they were.....

Rep. Kim Koppelman: We have the aggravated DUI offense included and vehicular homicide that the senate added is also.

Rep. Ruby: Ok, ask clerk to take roll.

Roll vote, amendment is on.

Rep. Ruby: We have another amendment which we need to make sure we clarify as addition to not be a replacement as it seems to read at the top.

Rep. Koppelman: We just noticed this written as a hog house that is not the intent. This amendment should not replace the bill. I want to make that clear and make sure it is on the record. This amendment simply deals with the Supreme Court issue and I believe Sen. Armstrong had it prepared so he can explain it.

Sen. Armstrong: We are going to have our intern make sure this is another section to the bill.

Sen. Armstrong: I have one voice amendment I would like to make to this form amendment. It's in section 3, third line down, and the word police officer should be changed to law enforcement officer.

Rep. Kim Koppelman: Second the motion.

Sen. Oehlke: This would be section 26 or something in that area?

Rep. Ruby: We are not adopting it yet, we're just making the change to the amendment here.

Voice vote carried.

Rep. Ruby: We have an amended amendment before us. Sen. Armstrong would explain what we are looking at here.

Sen. Armstrong: 3921.1 involves exactly what the title says.

Rep. Ruby: (6:47) This says breath, so they can't even require you to take a breathalyzer without a warrant?

Rep. Kim Koppelman: That is correct.

Rep. Ruby: How does that affect the refusal language in this DUI bill and if someone refuses, we are much tougher, how long does it take to get a warrant?

Sen. Armstrong: It depends. It is the seriousness of the offense and issues with it.

Rep. Kim Koppelman: The language we have gone to in this bill dealing with refusal, the whole point is to encourage people to take the test. It seems to me this only comes into play with regard to refusal. I don't think this applies.

Sen. Armstrong: They can still be charged with the refusal crime.

Rep. Koppelman: A question of Sen. Armstrong did the Supreme Court decision deal with any kind of test or specific to blood tests?

Aaron Birst with the Association of Counties: It is a blood test in that case. There are many unanswered questions after that case. I think we are making the best decision with what we have now.

Rep. Kim Koppelman: If the Supreme Court case only deals with blood samples.....do we need to go to the breath test in our statute or just the blood?

Aaron Birst: It is an open question. Our statute as written now would've been unconstitutional if it's not corrected and at least allowing officers that they are supposed to try to get a warrant in those cases. There can be no forcible compelled testing under the latest Supreme Court case.

Rep. Ruby: Should we eliminate the breath portion in this at this point until that's really answered?

Aaron Birst: Most of those vary significant cases where you have somebody dead; most of the time officers go straight to the blood. Breath is about 50/50 versus blood in ND. On those serious cases most prosecutors' request a blood test.

Rep. Kim Koppelman: If what you're saying is true, we would be changing our practice in all the cases with this amendment. If we deleted the word breath and just left blood and urine, that means about half the cases where it is more invasive they would have to ask for the warrant but since the breath test is an open question at this point. Do you see a problem if we were to eliminate breath?

Aaron Birst: (13:52) Briefly addressed the question.

Rep. Kim Koppelman: (14:24) How does that relate to regular DUI cases?

Aaron Birst: The regular DUI cases, this does not play in at all.

Sen. Armstrong: I'm reading the opinion and the talk a lot about the dissipation of blood.....if that is the argument between a breath test and blood test is irrelevant.....if you leave an open question open guys like me will challenge breath tests based on this case. If we exclude breath from it and I'm not sure we won't win, I'm not sure we will, but what I'm reading now.....

Rep. Ruby: I feel comfortable with that last comment about they have the right to refuse anyway. We have a motion on this amendment?

Rep. Kim Koppelman: I move the amendment.

Rep. Lois Delmore second

Rep. Kim Koppelman: As part of that motion I make it very clear this is not a hog house, we strike the first part and it becomes an exception to the current bill.

Rep. Ruby: I referred to our intern to make those changes, also the changing from police to law enforcement officer.

Roll vote,

Rep. Ruby: We have a twice amended bill before us, wishes of the committee?

Rep. Koppelman: I know we want to get a fiscal note on this, I don't know what your wishes are, do we need to meet again? I'm sure the FN won't be prepared until Monday. If you prefer we move it and then wait for that before we bring it to the floor or until we meet again.

Rep. Ruby: We would see the FN before it would come to the floor and if there are any changes we see a problem with we can pull it back.

Rep. Koppelman: I don't know if any further motions are needed, we've had the motion to recede and then re-amend.

Rep. Ruby: I don't think the FN will change much. I think we understand what is in the bill now.

Rep. Koppelman: When the fiscal note is prepared, I want to encourage everyone to consider both sides of the ledger, the expenses and revenue.

Sen. Armstrong: If the fines are at the state level or county level they go into the commons school trust fund.

Rep. Ruby: Adjourned the meeting

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1302
JOB 21452
Date April 23, 2013

☒ Conference Committee

C. Allen Hickley

Explanation or reason for introduction of bill/resolution:

Relating to juveniles driving under the influence; relating to chemical tests for driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes:

Proposed Amendments #1

Rep. Ruby: Reopens Conference Committee on HB 1302 for committee work. There was an error on the amendment.

Ken Sorenson, Attorney General's Office: Second engrossment of the Conference Committee amendments language on page 9 Subdivision G and page 10 Subdivision I and J. Subdivision I has provisions for the court to sentence an offender directly to a treatment facility and in Subdivision J this is called the Montana model, where if a person sentences an offender to the custody of DOCR then may place that person in treatment and when they are done with treatment they can go on probation. The language that would appear in Subdivision G is hybridization of those two provisions.

Rep. Kim Koppelman: The section he talked about occurred on page 7 of the amendment. What was G in that erroneous draft has been removed and the language in H and I on page 7 takes care of that issue.

Rep. Kim Koppelman: Made a motion to reconsider our actions by which we issued our Conference Committee report on HB 1302.

Sen. Armstrong: Second the motion

Voice vote carried.

Rep. Kim Koppelman: Senate recede from their amendments and further amend with .03013.

Rep. Lois Delmore: Second the motion

Rep. Ruby: Section 12 is still in there and that was the fix for Constitutional issue we had as the result of the Supreme Court ruling. That is included and we would not need to have a separate amendment for that again. We would be replacing the bill with this amendment.

Vote yes 6, no 0, absent 0.

Conference Committee

HB 1302

April 23, 2013

Page 2

Rep. Ruby: The updated fiscal note is on the Laws program now so committee members can see it there.

Rep. Ruby: Adjourned.

FISCAL NOTE
Requested by Legislative Council
04/24/2013

Amendment to: Reengrossed HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$6,164,406		\$6,498,954
Expenditures			\$4,699,885	\$6,164,406	\$6,266,080	\$5,729,943
Appropriations			\$4,699,885	\$6,164,406	\$6,266,080	\$5,729,943

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$1,960,000	\$1,960,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased probation and incarceration requirements and increased usage of the 24/7 sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will fiscally impact local jurisdictions, the Office of the Attorney General, and the Department of Corrections and Rehabilitation. Impact will come through increased usage of the 24/7 sobriety program, and increased probation and incarceration requirements. As amended this bill should have no material fiscal impact to the Department of Transportation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 sobriety program and an increased number of individuals on supervised probation.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by assuming one-half of the 4000 first-time DUI offenders per year would be incarcerated for 2 days and 2,000 second-time DUI offenders would be incarcerated for 10 days (increase of 5 days from current practice). Incarceration cost per day estimated at \$70. No material fiscal impact anticipated for 3rd time offenders. The DOCR impact was determined by estimating, 102 3rd offenses per year and 213 4th or more offenses per year. The DUI offenses would increase the average daily prison population by 68 in FY14, 133 in FY15, 121 in FY16 and 114 in FY17. This increase would cause DOCR facilities to reach capacity by FY15 resulting in a need to contract for additional bed space (non-treatment beds) as follows: FY15 - 17, FY16 - 25 and FY17 - 38.

Remaining bed needs would be met by designating 30 existing DOCR beds for DUI treatment and contracting for 50 DUI treatment beds. Probation caseloads would increase as follows: FY15 - 58, FY16 - 275, FY17 - 343. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, treatment beds, and additional FTE's to provided community supervision (probation). See attached for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Total 2013-15 biennium estimated expenditures are \$7,443,901 (\$6,146,511 from other funds - participant fees and \$1,297,390 from the general fund). Estimated expenditures for the 2015-17 biennium are \$5,540,677 which will be paid from participant fees (other funds).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$3,420,321 (\$3,402,495 general fund and \$17,895 other funds)and 1 FTE; 2015-17 biennium \$6,266,080(\$6,076,814 general funds and \$189,266 other funds)and 5 FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$7,443,901 (\$6,146,511 from other funds - participant fees and a \$1,297,390 general fund appropriation). The Office of Attorney General estimates an appropriation of \$5,540,677 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 04/24/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st, 2nd, and 3rd offense) at county level						
4) 2nd offense probation is unsupervised and will not impact DOCR supervision caseloads; 100% of 3rd, 4th and subsequent offense probation is supervised and will impact DOCR supervision caseloads						
5) All time incarcerated for felony C (4th and subsequent offense) incarcerated at state level						
6) Actual time incarcerated is equal to minimum mandatory sentence						
7) Contract housing beds \$70 per day (no treatment services included in rate)						
8) 30 existing DOCR beds to be designated for DUI treatment using existing resources						
9) Contract treatment program beds \$97.00 per day (program available January 1, 2014)						
10) Estimated available drug court capacity (35) consumed by 2nd and 3rd offenses (no offset to 4 and subsequent incarceration)						
11) Revised 2013-15 estimated inmate population used in determining fiscal effect						
12) All aspects of the 24/7 sobriety program administered by the Office of the Attorney General						
Offenses Per Month						
2nd Offense DOCR Probation						
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Prison Average Daily Population (ADP)						
	FY2014	FY2015	FY2016	FY2017		
DOCR Incarcerated	43	71	59	52		
Current Ave of DUI Incarcerated	18	18	18	18		
Est Increase in Prison ADP #1	25	53	41	34		
Est ADP - DOCR Treatment #2	25	30	30	30		
Est ADP - Contract Treatment #3	18	50	50	50		
Contract Housing						
	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Revised Est Population	1,212	1,232	1,252	1,272		

Bill Effect on ADP (#1 + #2)	50	83	71	64	
Needed Beds	-	17	25	38	
Days	334	365	365	365	
Bed Cost Per Day	\$ 70.00	\$ 70.00	\$ 70.00	\$ 70.00	
Est Cost - Contract Beds (No Treat)	\$ -	\$ 434,350	\$ 630,319	\$ 970,900	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
Needed Contract Treatment Beds (#3)	18	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97	97	97	
Est Cost - DOCR Contracted Treatment Beds	622,420	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	-	-	-	-	
3rd Offense	22	95	102	102	
4th + Offense	12	162	372	440	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	58	275	343	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	5	
Est FTE Cost / Year	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	
Est Cost - Probation	\$ -	\$ 75,000	\$ 300,000	\$ 375,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	\$ 6.49	\$ 6.49	\$ 6.49	\$ 6.49	
Increase Inmates	50	83	71	64	
Days	365	365	365	365	
Increased Medical	\$ 118,987	\$ 196,615	\$ 167,407	\$ 151,606	
13-15 Budgeted Food	\$ 4.96	\$ 4.96	\$ 4.96	\$ 4.96	
Increase Inmates	50	83	71	64	
Housed Outside Docr	-	17	25	38	
Net Inc Inmates	50	66	46	26	
Days	334	365	365	365	
Increased Food	\$ 83,213	\$ 119,486	\$ 83,278	\$ 47,070	
Est Cost - Inmate	202,200	316,101	250,685	198,677	
Est Total Cost	824,620	2,595,701	2,951,254	3,314,827	
Total Cost 13-15		3,420,321			
Total Cost 15-17				6,266,080	

	FY2014	FY2015	FY2016	FY2017		
Supervision Fee Revenue						
Estimated Probation Increase	-	58	275	343		
Monthly Supervision Fee	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00		
Months	12	12	12	12		
Collection Rate	56.7%	56.7%	56.7%	56.7%		
Est Total Revenue	\$ -	\$ 17,895	\$ 84,244	\$ 105,022		
	Total Revenue 13-15	\$ 17,895				
			Total Revenue 13-15	\$ 189,266		

FISCAL NOTE
Requested by Legislative Council
04/22/2013

Amendment to: Reengrossed HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$6,164,406		\$6,498,954
Expenditures			\$4,699,885	\$6,164,406	\$6,266,080	\$5,729,943
Appropriations			\$4,699,885	\$6,164,406	\$6,266,080	\$5,729,943

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$1,960,000	\$1,960,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased probation and incarceration requirements and increased usage of the 24/7 sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will fiscally impact local jurisdictions, the Office of the Attorney General, and the Department of Corrections and Rehabilitation. Impact will come through increased usage of the 24/7 sobriety program, and increased probation and incarceration requirements. As amended this bill should have no material fiscal impact to the Department of Transportation.

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County fiscal impact determined by assuming one-half of the 4000 first-time DUI offenders per year would be incarcerated for 2 days and 2,000 second-time DUI offenders would be incarcerated for 10 days (increase of 5 days from current practice). Incarceration cost per day estimated at \$70. No material fiscal impact anticipated for 3rd time offenders. The DOCR impact was determined by estimating, 102 3rd offenses per year and 213 4th or more offenses per year. The DUI offenses would increase the average daily prison population by 68 in FY14, 133 in FY15, 121 in FY16 and 114 in FY17. This increase would cause DOCR facilities to reach capacity by FY15 resulting in a need to contract for additional bed space (non-treatment beds) as follows: FY15 - 17, FY16 - 25 and FY17 - 38.

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Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 04/23/2013

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10) Estimated available drug court capacity (35) consumed by 2nd and 3rd offenses (no offset to 4 and subsequent incarceration)						
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Needed Contract Treatment Beds (#3)	18	50	50	50	
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Bed Cost Per Day	97.00	97	97	97	
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Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	-	-	-	-	
3rd Offense	22	95	102	102	
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Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	58	275	343	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	5	
Est FTE Cost / Year	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	
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Inmate Costs	FY2014	FY2015	FY2016	FY2017	
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Est Total Cost	824,620	2,595,701	2,951,254	3,314,827	
Total Cost 13-15		3,420,321			
Total Cost 15-17				6,266,080	

	FY2014	FY2015	FY2016	FY2017		
Supervision Fee Revenue						
Estimated Probation Increase	-	58	275	343		
Monthly Supervision Fee	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00		
Months	12	12	12	12		
Collection Rate	56.7%	56.7%	56.7%	56.7%		
Est Total Revenue	\$ -	\$ 17,895	\$ 84,244	\$ 105,022		
Total Revenue 13-15	\$ 17,895					
		Total Revenue 13-15	\$ 189,266			

FISCAL NOTE
Requested by Legislative Council
04/01/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$6,146,511		\$6,474,961
Expenditures			\$5,512,001	\$6,146,511	\$9,766,376	\$5,705,950
Appropriations			\$5,512,001	\$6,146,511	\$9,766,376	\$5,705,950

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$1,960,000	\$1,960,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased probation and incarceration requirements and increased usage of the 24/7 sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will fiscally impact local jurisdictions, the Office of the Attorney General, and the Department of Corrections and Rehabilitation. Impact will come through increased usage of the 24/7 sobriety program, and increased probation and incarceration requirements. As amended this bill should have no material fiscal impact to the Department of Transportation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 sobriety program and an increased number of individuals on supervised probation.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by assuming one-half of the 4000 first-time DUI offenders per year would be incarcerated for 2 days and 2,000 second-time DUI offenders would be incarcerated for 10 days (increase of 5 days from current practice). Incarceration cost per day estimated at \$70. No material fiscal impact anticipated for 3rd time offenders. The DOCR impact was determined by estimating, 102 3rd offenses per year and 213 4th or more offenses per year. The DUI offenses would increase the average daily prison population by 88 in FY14, 195 in FY15, 195 in FY16 and 195 in FY17. This increase would cause DOCR facilities to reach capacity by FY15 resulting in a need to contract for additional bed space as follows: FY15 - 129, FY16 - 149 and FY17 - 169. Probation caseloads

would increase as follows: FY16 - 212, FY17 - 338. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, and additional FTE's to provided community supervision (probation). See attached for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Total 2013-15 biennium estimated expenditures are \$7,443,901 (\$6,146,511 from other funds - participant fees and \$1,297,390 from the general fund). Estimated expenditures for the 2015-17 biennium are \$5,540,677 which will be paid from participant fees (other funds).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$4,214,611 (100% general fund); 2015-17 biennium \$9,931,649 (\$9,766,376 general funds and \$165,273 other funds) and 6 FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$7,443,901 (\$6,146,511 from other funds - participant fees and a \$1,297,390 general fund appropriation). The Office of Attorney General estimates an appropriation of \$5,540,677 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 04/03/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222

1) Offenses occur evenly through out the year					
---	--	--	--	--	--

- | | | | | |
|---|--|--|--|--|
| 2) Actual time incarcerated is equal to minimum mandatory sentence | | | | |
| 3) All time incarcerated for misdemeanor B and A (1st, 2nd, and 3rd offense) at county level | | | | |
| 4) 2nd offense probation is unsupervised and will not impact DOCR supervision caseloads; 100% of 3rd, 4th and subsequent offense probation is supervised and will impact DOCR supervision caseloads | | | | |
| 5) All time incarcerated for felony C (4th and subsequent offense) incarcerated at state level | | | | |
| 6) Contract housing beds \$70 per day (no treatment services included in rate) | | | | |

7) No deterrent effect was used in the estimate					
8) Estimated available drug court capacity (35) consumed by 2nd and 3rd offenses (no offset to 4 and subsequent incarceration)					
9) Revised 2013-15 estimated inmate population used in determining fiscal effect					
10) All aspects of the 24/7 sobriety program administered by the Office of the Attorney General					
Deterent Effect	0%	0%	0%	0%	
Offenses Per Month					
3rd - Offense	8.51	8.51	8.51	8.51	
4th +	17.71	17.71	17.71	17.71	
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017	
4th + Offense	106	213	213	213	
Less:					
Current Ave of DUI Incarcerated	18	18	18	18	
Est Increase in Prison ADP	88	195	195	195	
Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Bill Effect	88	195	195	195	
Needed Beds	-	129	149	169	
Days	334	365	365	365	
Bed Cost Per Day	\$ 70.00	\$ 70.00	\$ 70.00	\$ 70.00	
Est Cost - Contract Beds (No Treat)	\$ -	\$ 3,296,653	\$ 3,808,352	\$ 4,318,881	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
3rd Offense	22	95	102	102	
4th + Offense	-	96	309	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	-	212	328	

Target Caseload / Officer	65	65	65	65		
Necessary Officers	-	-	4	6		
Est FTE Cost / Year	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000		
Est Cost - Probation	\$ -	\$ -	\$ 300,000	\$ 450,000		
Inmate Costs	FY2014	FY2015	FY2016	FY2017		
13-15 Budgeted Medical	\$ 6.49	\$ 6.49	\$ 6.49	\$ 6.49		
Increase Inmates	88	195	195	195		
Days	334	365	365	365		
Increased Medical	\$ 190,721	\$ 461,991	\$ 462,056	\$ 462,012		
13-15 Budgeted Food	\$ 4.96	\$ 4.96	\$ 4.96	\$ 4.96		
Increased Inmates	88	195	195	195		
Housed Outside Docr	-	129	149	169		
Net Inc Inmates	88	66	46	26		
Days	334	365	365	365		
Increased Food	\$ 145,759	\$ 119,486	\$ 83,278	\$ 47,070		
Est Cost - Inmate	336,481	581,477	545,334	509,082		
Est Total Cost	336,481	3,878,130	4,653,686	5,277,964		
	Total Cost 13-15	4,214,611				
			Total Cost 15-17	9,931,649		
Supervision Fee Revenue	FY2014	FY2015	FY2016	FY2017		
Estimated Probation Increase	-	-	212	328		
Monthly Supervision Fee	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00		
Months	11	12	12	12		
Collection Rate	56.7%	56.7%	56.7%	56.7%		
Est Total Revenue	\$ -	\$ -	\$ 64,962	\$ 100,311		
	Total Revenue 13-15	\$ -				
			Total Revenue 13-15	\$ 165,273		

FISCAL NOTE
Requested by Legislative Council
02/26/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$560,000	\$560,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: One additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$280,000/year or \$560,000/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1,2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used:1)All misdemeanor B and A offenses will served at the county level and will have no fiscal impact to the DOCR;2)All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court;3)Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year-102 and estimated number of 4th or more offense DUI's per year 213;4)All DUI offenses occur evenly throughout the year; 5)Actual time incarcerated is equal to minimum sentence;6)50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR;7)No deterrent effect was used in the estimate; 8)35 offenses per year diverted to drug court;9)50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 1 additional jail days at a cost of \$70 per day. (\$280,000 per year or \$560,000 per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 02/28/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Inmate ADP						
	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Est Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,262,522		\$9,109,431
Expenditures			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262
Appropriations			\$8,267,337	\$8,262,522	\$12,089,977	\$7,014,262

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 5 of the bill contains the increased penalties and will have a fiscal impact to DOCR, Office of Attorney General, and cities and counties.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

ND Association of Counties: Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. To estimate the fiscal impact on DOCR operations, the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All misdemeanor B and A offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All felony offenses will either be incarcerated at DOCR/DOCR contracted facilities, placed in DOCR contracted DUI treatment program, or be placed in drug court; 3) Estimated number of 2nd offense DUI's per year - 581, 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) 50% of 2nd offense probation supervised by DOCR, and 100% of 3rd and 4th and subsequent supervised by DOCR; 7) No deterrent effect was used in the estimate; 8) 35 offenses per year diverted to drug court; 9) 50 offenses per year diverted to DOCR contracted DUI treatment program. Important to note: in estimating the fiscal effect of this bill a revised inmate population projection was used and is different from that used to build the 13-15 DOCR executive recommendation. The revised 13-15 inmate population projection average daily population is 1,591 while 1,484 average daily population was used for the executive recommendation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected. The Office of Attorney General other funds are from participant fees

(anticipated 5% growth each year). The revenues are based on the estimated number of days program participants may use and pay (\$5 per day) for SCRAM bracelets.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 581 2nd offenses per year, 102 3rd offenses per year and 213 4th or more offenses per year. Using previously stated assumptions, 35 offenders per year would be diverted to drug court, 50 offenders per year would be diverted to DOCR contracted DUI treatment program. The number of offenders incarcerated in a DOCR or DOCR contracted facility would increase 42 in FY14, 160 in FY15, 159 in FY16 and 160 in FY17. This would cause DOCR facilities to reach capacity in FY15 resulting in a need to contract for additional bed space as follows: FY15 - 94, FY16 - 113 and FY17 - 134. Probation caseloads would increase as follows: FY15 - 276, FY16 - 503, FY17 - 618. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, contract treatment program, and additional FTE's to provide community supervision (probation). See attachment for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Each bracelet and required base station costs about \$1,450, which results in a total cost of \$3,187,825. Total 2013-15 biennium estimated expenditures are \$9,549,967 (\$8,262,522 from other funds - participant fees and \$1,287,445 from the general fund). The Office of Attorney General estimates its expenditures, exclusive of the bracelet costs, at \$6,362,142, for the 2013-15 biennium. Estimated expenditures for the 2015-17 biennium are \$7,014,262 which will be paid from participant fees (other funds). With estimated 2013-15 biennium participant fees revenue of \$8,262,522 and total estimated expenditures of \$9,549,967 additional estimated general fund expenditures of \$1,287,445 will be needed. Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$6,979,892 (100% general fund) and 5FTE; 2015-17 biennium \$12,089,977 (100% general funds) and 10FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$9,549,967 (\$8,262,522 from other funds - participant fees and a \$1,287,445 general fund appropriation). Department of Transportation funding has been used in the past to purchase SCRAM bracelets and this funding is a possibility in the future. The Office of Attorney General estimates an appropriation of \$7,014,262 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st and 2nd offense) at county level						
4) 50% of 2nd offense probation supervised by DOCR; 100% of 3rd, 4th and subsequent offense probation supervised by DOCR						
5) All time incarcerated for felony C (3rd, 4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment included in rate)						
7) Contract Treatment program beds \$97.00 per day						
8) Available capacity in existing drug courts estimated at 35						
9) Revised 2013-15 estimated inmate population used in determining fiscal effect						
Deterent Effect	0%	0%	0%	0%		
Offenses Per Month						
2nd Offense DOCR Probation	24.23	24.23	24.23	24.23		
3rd - Offense	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Increase in Inmate ADP	FY2014	FY2015	FY2016	FY2017		
3rd Offense	39	50	50	50		
4th + Offense	106	213	213	213		
Less:						
Current Ave of DUI Incarcerated	18	18	18	18		
Total Increase Inmate ADP	127	245	244	245		

Less:					
Est Diverted to DOCR Contracted Treatment (1)	50	50	50	50	
Est Diverted to Drug Court	35	35	35	35	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
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Revised Est Population	1,212	1,232	1,252	1,272	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Needed Contract Beds - Overflow (3)	-	94	113	134	
Days	365	365	365	365	
Bed Cost Per Day	70.00	70.00	70.00	70.00	
Est Cost - Contract Beds - Overflow	-	2,391,573	2,899,670	3,413,573	
Est DOCR Contracted Treatment Beds	FY2014	FY2015	FY2016	FY2017	
DOCR Contracted Treatment Beds (1)	50	50	50	50	
Days	365	365	365	365	
Bed Cost Per Day	97.00	97.00	97.00	97.00	
Est Cost - DOCR Contracted Treatment Beds	1,770,250	1,770,250	1,770,250	1,770,250	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
2nd Offense	145	291	291	291	
3rd Offense	12	88	102	102	
4th + Offense	-	97	310	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	276	503	618	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	5	8	10	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	375,000	600,000	750,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	
Days	365	365	365	365	
Increased Medical	99,337	378,077	377,808	378,077	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Inmates Housed DOCR / Contract Beds (2)	42	160	159	160	

Increased Inmates - Contract Beds (3)	-	94	113	134		
Net Inc Inmates - DOCR Facility	42	66	46	26		
Days	365	365	365	365		
Increased Food	75,919	119,486	83,278	47,070		
Total Inmate Cost Increase	175,255	497,564	461,086	425,148		
Total Cost	1,945,505	5,034,387	5,731,006	6,358,971		
	Total Cost 13-15	6,979,892				
			Total Cost 15-17	12,089,977		

FISCAL NOTE
Requested by Legislative Council
01/16/2013

Bill/Resolution No.: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$8,575,237		\$22,708,901	
Appropriations			\$8,575,237		\$22,708,901	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$2,240,000	\$2,240,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

House Bill No.1302 provides for increased penalties for DUI offenses. Section 5 of the bill contains the increased penalties. This bill will provide a fiscal impact to both counties and the DOCR.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimated fiscal impact to the counties was estimated by the ND Association of Counties and was provided as follows: After examining the district court data provided, and talking with prosecutors and sheriffs; it was determined that a figure of 4000 cases per year should be used. This was taking the 3,500 district court cases over the past two year and increasing that to include 500 additional municipal court cases, as those were not reflected in the data. Four additional days of jail time per case was used as an average impact of the proposed changes. At jail costs of \$70/day this equals \$1.12 million/year or \$2.24 million/biennium. The challenge is that, depending upon where those cases are jailed, there may not be room. Burleigh, Morton, Ward and Williams jails are often at capacity already. That means additional transport costs (time & expense) that have not been estimated. This may be mitigated by the deterrent effect, but since both of these factors are even more speculative, it was felt the straight calculation of days and daily rates was better supported. The estimated fiscal impact to the State is limited to the estimated impact to the DOCR. To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1,2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1)All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2)All time incarcerated for 3rd and 4th DUI offenses (Felony C) will be served at DOCR or DOCR contracted facilities; 3)Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th or more offense DUI's per year 213; 4)All DUI offenses occur evenly throughout the year; 5)Actual time incarcerated is equal to minimum sentence; 6)All probation served at minimum mandatory; 7)No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Although the bill specifies that fines are to be levied, we are unable to determine at what rate or percentage of the fines levied would actually be collected.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by 4000 DUI cases per year with an average of 4 additional jail days at a cost of \$70 per day. (\$1.12 million per year or \$2.24 million per biennium). The DOCR impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 412 in FY15, 527 in FY16 and 527 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 258, FY16 - 377 and FY17 - 381. Costs estimated for the purpose of this fiscal note include medical, food, contract housing and additional FTE costs to provide community supervision (probation). Est Fiscal Impact 2013-15 - \$8.6 million and 1 additional FTE Est Fiscal Impact 2015-17 - \$22.7 million and 7 additional FTE See attachment for computation

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Estimated appropriation amount is equal to funding necessary for the DOCR to implement the penalty provision of HB1302 if passed into law.

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/22/2013

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum days required to serve						
3) All time incarcerated for B&A at county level						
4) All time incarcerated for Felony C at state level						
5) All probation at minimum mandatory						
6) No revocation from probation						
7) Probation caseload at 65						
8) Contract housing beds \$70 per day						
Deterent Effect	0%	0%	0%	0%		
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017		
3rd Offense	51	102	102	102		
4th + Offense	106	309	425	425		
Total	157	412	527	527		
Offenses Per Month						
3rd	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Est Contract Housing	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Est Pop DOCR Facilities	1,140	1,144	1,147	1,151		
Bill Effect	157	412	527	527		
Needed Beds	-	258	377	381		
Days	365	365	365	365		
Bed Cost Per Day	70.00	70.00	70.00	70.00		
Estimated Cost	-	6,589,516	9,627,491	9,731,820		

Increase in Probation					
3rd Offense	-	46	102	102	
4th + Offense	-	-	97	309	
Total	-	46	199	412	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	7	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	75,000	300,000	525,000	
Inmate Costs					
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Increase Inmates	157	412	527	527	
Days	365	365	366	367	
Increased Medical	371,750	975,695	1,252,799	1,256,224	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Increased Inmates	157	412	527	527	
Housed Outside Docr	-	258	377	381	
Net Inc Inmates	157	154	151	147	
Days	365	365	366	367	
Increased Food	284,301	278,974	273,628	266,939	
Total Cost Increase	656,052	1,254,670	1,526,427	1,523,163	
Total Cost	656,052	7,919,186	11,453,918	11,779,983	
Total Cost 13-15		8,575,237			
			Total Cost 15-17	22,708,901	

April 19, 2013

Handwritten initials and date: 4/19/13

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1302

That the Senate recede from its amendments as printed on pages 1343-1360 of the House Journal and pages 970-987 of the Senate Journal and that Reengrossed House Bill No. 1302 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 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, subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code, relating to driving while under the influence and city penalties; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.

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

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.

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

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.

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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.

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

7. 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 person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

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.

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

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

1. Except as provided under subsection 2, 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

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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 ~~for good cause~~ 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. 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 ~~for good cause~~ 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 two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with

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

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

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

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individual's breath upon the request of a law enforcement officer under section 39-20-14.

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. Unless as otherwise provided in section 39-08-01.2, 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 subject 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 five-year seven-year period, of a class A misdemeanor for a third offense in a five-year seven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period 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 45. 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.
- 3.4. Upon conviction of a second or subsequent offense within five seven years under this section or equivalent ordinance, the court must 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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, but not including or if the offender is participating in the twenty-four seven sobriety program.
- 4.5. 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.

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- a. (1) For a first offense, the sentence must include both a fine of at least ~~two hundred fifty~~ 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 ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of at least ~~five hundred~~ one thousand dollars; ~~and 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 ~~five~~ seven years, the sentence must include at least ~~sixty~~ one hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one at least two~~ at least two thousand dollars; ~~and 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 ~~within seven years,~~ the sentence must include at least one hundred eighty days' year and one day's imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one at least two~~ at least two thousand dollars; ~~and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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

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substance abuse treatment and rehabilitation. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 ~~shall~~ 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.

- f.g. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the defendant 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 the release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. The court may sentence the individual to treatment under subdivision g of subsection 1 of section 12.1-32-02. A court may not order the department to be responsible for the costs of treatment in a private treatment facility.
- h. 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 subsection.
- g.i. 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.
- j. 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

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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.

- 5-6. 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. 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.
8. 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.

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

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

1. ~~If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
2. ~~If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~
3. ~~The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence.~~

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~~Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

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

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

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

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

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

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

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

1. Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement

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officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

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

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

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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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report

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must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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.

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

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the

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officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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;

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- (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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

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

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 ~~five~~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

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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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

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

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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.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination

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thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and

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

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

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

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

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- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
- d. The certificate of the director of the state crime laboratory designating the director's designees.
- e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

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

- 9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. ~~If the state toxicologist, the director of the state crime laboratory, or any employee of either, or designee is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

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

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

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

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. ~~However, the~~
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.

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

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.

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

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

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

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

SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration among the department of human services, department of transportation, North Dakota state university extension service, and North Dakota

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university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

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

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

Renumber accordingly

VK
4/23/13
10623

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1302

That the Senate recede from its amendments as printed on pages 1343-1360 of the House Journal and pages 970-987 of the Senate Journal and that Reengrossed House Bill No. 1302 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 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, subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code, relating to driving while under the influence and city penalties; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.

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

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.

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

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.

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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.

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

7. 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 person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

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.

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

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

1. Except as provided under subsection 2, 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 for good cause~~ 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. 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 ~~for good cause 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 two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit license to the offender ~~only for the purpose of participation 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

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

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

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.

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. Unless as otherwise provided in section 39-08-01.2, 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 subject 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 five-year seven-year period, of a class A misdemeanor for a third offense in a five-year seven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period 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 45. 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.
- 3.4. Upon conviction of a second or subsequent offense within five seven years under this section or equivalent ordinance, the court must 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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, but not including or if the offender is participating in the twenty-four seven sobriety program.
- 4.5. 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 ~~two hundred fifty~~ 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 ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of ~~at least one thousand five hundred dollars;~~ and 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 ~~five~~ seven years, the sentence must include at least ~~sixty one hundred twenty~~ days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one at least two~~ thousand dollars; ~~and 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 ~~within seven years,~~ the sentence must include at least one hundred eighty days' year and one day's imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one at least two~~ thousand dollars; ~~and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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

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substance abuse treatment and rehabilitation. If the offense is subject to ~~subdivision c or d~~, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 ~~shall~~ 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.

f.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 ~~subsection~~ section.

g.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.

5-6. As used in ~~subdivision b~~ 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 ~~in which and~~ and the defendant ~~is tested at least twice daily for the consumption of alcohol~~ shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. ~~This subsection does~~

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not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. 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.
8. 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.

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

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

- ~~1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
- ~~2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~
- ~~3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~
1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall

impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

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

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

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

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

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

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

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

1. Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

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

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

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section

39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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.

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

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained

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driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One ~~year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

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

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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

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

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

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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.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a

vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit

issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

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

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

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certificate of the director of the state crime laboratory designating the director's designees.
 - e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified

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supplemental records have the same force and effect as the records that are supplemented.

- e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

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

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. If the ~~state toxicologist, the director of the state crime laboratory, or any employee of either, or designee is~~ subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

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

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

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

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.

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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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. ~~However, the~~
 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.

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

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.

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

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

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

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

SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration among the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

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

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

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB 1302 as (re) engrossed

Date: 4-19-13

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1343 - 1360

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Representatives				Senators			
	Yes	No			Yes	No	
Rep. Ruby	/			Sen. Oehlke	/		
Rep. Koppelman	/			Sen. Armstrong	/		
Rep. Delmore	/			Sen. Ayres	/		

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

13.0399.03010

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB 1302 as (re) engrossed

Date: 4-19-13

Roll Call Vote #: 2

- Action Taken**
- ☐ HOUSE accede to Senate amendments
 - ☐ HOUSE accede to Senate amendments and further amend
 - ☐ SENATE recede from Senate amendments
 - ☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1343 - 1360

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Representatives				Yes	No	Senators				Yes	No
Rep. Ruby				/		Sen. Oehlke				/	
Rep. Koppelman				/		Sen. Armstrong				/	
Rep. Delmore				/		Sen. Atkins				/	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Ruby Senate Carrier Sen. Oehlke

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

13.0399.63011

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB 1302 as (re) engrossed

Date: 4-23-13

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: ny

Representatives				Yes	No	Senators				Yes	No
<u>Rep. Ruby</u>				/		<u>Sen. Aehlke</u>				/	
<u>Rep. Koppelman</u>				/		<u>Sen. Armstrong</u>				/	
<u>Rep. Delmore</u>				/		<u>Sen. Alfreed</u>				/	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1302, as reengrossed: Your conference committee (Sens. Oehlke, Armstrong, Axness and Reps. Ruby, K. Koppelman, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1343-1360, adopt amendments as follows, and place HB 1302 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1343-1360 of the House Journal and pages 970-987 of the Senate Journal and that Reengrossed House Bill No. 1302 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 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, subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code, relating to driving while under the influence and city penalties; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.

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

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.

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

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.

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

7. 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:
- Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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.
 - Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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.
 - Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

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.

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

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

- Except as provided under subsection 2, 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.
- 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 ~~for good cause~~ 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. 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 for good cause 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 two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon 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 by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.

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

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.

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. Unless as otherwise provided in section 39-08-01.2, 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 subject 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 five-year seven-year period, of a class A misdemeanor for a third offense in a five-year seven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or

subsequent offense in a seven-year period 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 45. 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.

3-4. Upon conviction of a second or subsequent offense within ~~five~~seven years under this section or equivalent ordinance, the court ~~must~~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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, ~~but not including~~or if the offender is participating in the twenty-four seven sobriety program.

4-5. 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 ~~two hundred fifty~~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 ~~five~~seven years, the sentence must include at least ~~five~~ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of at least ~~five hundred~~one thousand dollars; ~~and 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 ~~five~~seven years, the sentence must include at least ~~sixty~~one hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~at least two thousand dollars; ~~and 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 ~~within seven years~~, the sentence must include at least one hundred eighty days' year and one day's imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one at least two thousand dollars; and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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 offense is subject to subdivision e or f, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.
- f.g. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the defendant 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 the release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. The court may sentence the individual to treatment under subdivision g of subsection 1 of section 12.1-32-02. A court may not order the

department to be responsible for the costs of treatment in a private treatment facility.

h. 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 subsection.

g-i. 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.

5-6. 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. 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.

8. 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.

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

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

- ~~1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
- ~~2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~
- ~~3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

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

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

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

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

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

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

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

1. Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate

will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.

4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

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

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

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor

vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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.

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

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to

the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

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

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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

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

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.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the

decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

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

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

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

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. ~~If the state toxicologist, the director of the state crime laboratory, or any employee of either, or designee is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the~~

~~individual who withdrew the defendant's blood by following the same procedure.~~

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

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

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

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. ~~However, the~~
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.

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

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.

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

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

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

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

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

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

SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration among the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

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

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

Renumber accordingly

Reengrossed HB 1302 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

HB 1302, as reengrossed: Your conference committee (Sens. Oehlke, Armstrong, Axness and Reps. Ruby, K. Koppelman, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1343-1360, adopt amendments as follows, and place HB 1302 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1343-1360 of the House Journal and pages 970-987 of the Senate Journal and that Reengrossed House Bill No. 1302 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 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, subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code, relating to driving while under the influence and city penalties; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.

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

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.

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

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.

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

7. 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:
- Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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.
 - Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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.
 - Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

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.

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

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

- Except as provided under subsection 2, 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.
- 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 ~~for good cause~~ 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. 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 ~~for good cause 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 two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit ~~license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon 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 by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

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

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.

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. ~~Unless as otherwise provided in section 39-08-01.2, an~~ 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 subject 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 five-yearseven-year period, of a class A misdemeanor for a third offense in a five-yearseven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or

~~subsequent offense in a seven-year period~~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 45. 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.

~~3.4.~~ Upon conviction of a second or subsequent offense within ~~five~~seven years under this section or equivalent ordinance, the court ~~must~~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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, ~~but not including or if the offender is participating in the twenty-four seven sobriety program.~~

~~4.5.~~ 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 ~~two hundred fifty~~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 ~~five~~seven years, the sentence must include at least ~~five~~ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of at least one thousand five hundred dollars; ~~and 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 ~~five~~seven years, the sentence must include at least ~~sixtyone~~one hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of at least two thousand dollars; ~~and 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 ~~within seven years~~, the sentence must include at least one hundred eighty days' year and one day's imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one at least two thousand dollars; and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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 offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.
- f.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 ~~subsection~~section.
- g.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.

~~5-6.~~ As used in ~~subdivision b~~ 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. 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.

8. 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.

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

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

1. ~~If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
2. ~~If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~

3. ~~The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~
1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

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

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

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

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

It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was

accompanying the individual in a motor vehicle. If an individual has a previous conviction for a violation of section 39-08-01.4, a violation of this section is a class C felony.

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

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

1. Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

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

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

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:

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

2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.
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.

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

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:
 - a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously

suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

- c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

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

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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

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

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.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an

alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received

by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and

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

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

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

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
- d. The certificate of the director of the state crime laboratory designating the director's designees.
- e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

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

- 9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. ~~If the state toxicologist, the director of the state crime laboratory, or any employee of either, or designee is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

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

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

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

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. ~~However, the~~
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.

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

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.

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

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

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

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

SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration among the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

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

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

Renumber accordingly

Reengrossed HB 1302 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1302



North Dakota House of Representatives

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Committees:
Judiciary
Political Subdivisions

Rep. Kim Koppelman -- Testimony on House Bill 1302

House Judiciary Committee

"Months ago, I began working with law enforcement officials, prosecutors, and others who are on the front lines of dealing with the problem of drinking and driving. We also received great input, support, and technical assistance from both the Governor's office and the Attorney General.

The result is a piece of legislation which is not only tough, but which also gets at the crux of the problem . . . keeping those who drink and drive off the road.

"This is tough legislation but it's reasonable legislation. It takes a balanced approach to the problem of drunk driving in North Dakota."

My commitment to deal with this problem, in a meaningful way, this legislative session, was prompted by a tragedy involving a young family from the community I represent.

On July 6th, a head-on crash, with a drunk driver going the wrong way on Interstate 94, killed a young West Fargo family--Aaron and Allison Deutscher, their young daughter Brielle, and their unborn child.

Members of their family are here with us today, to share a few words with you about their family's tragic experience.

"Tragedies, such as the one which took the young lives of the Deutscher family, from West Fargo, make it clear that we have a problem with the culture of drinking and driving in our state.

Penalties can be tougher, and this legislation will do that. But changing a culture takes more.

If we tolerate drinking and driving, but are then outraged when a drunk driver kills or maims people, those dots don't connect.

Changing that culture is a responsibility we all share.

To prevent more tragedies such as the one suffered by this family and by so many others throughout our state, we must all be part of the necessary change in our attitudes.

This issue concerns us all, and it is the obligation of all North Dakotans to be responsible with drinking---not to drive, if they drink, and to help keep others from driving when they drink.

If we all work together to do that, our state will be safer and better for it."

A change in our law, alone, will not accomplish this cultural change. Only our common commitment to make that change will do so. As the elected representatives of the people of North Dakota, we have a role to play in that process.

A change in our law can and must be part of the necessary change in the culture of our great state and the people we serve. House Bill 1302 is not the total answer, but this new, tougher law is an important piece of the puzzle. It's a good start and I believe it's a responsibility we now all bear.

I respectfully urge your favorable consideration and a "Do Pass"

recommendation on House Bill 1302. Thank you.

North Dakota
Attorney General's Office

24/7



Attorney General Wayne Stenehjem

AGE GROUPS AND BAC OF DUI'S IN NORTH DAKOTA FOR 2011

<u>Age</u>	<u>Number</u>	<u>Percent</u>
13-17	52	1.0%
18-20	344	6.0%
21-24	1306	22.0%
25-29	1204	20.0%
30-34	711	12.0%
35+	2433	40.0%

**Total 6050 100.0%

<u>BAC</u>	<u>Number</u>	<u>Percent</u>
0-.17	2579	41.4%
.17+	1794	28.8%
Refused	1169	18.8%
Not on File (NOF)	689	11.1%

**Statistics provided by ND UCR
As Per ND Department of Transportation (Updated 4/12/2012)

OTHER OFFENSES

	ND CC 12.1-17-02 Aggravated Assault	ND CC 12.1-22-02 Burglary	ND CC 39-08-01 Driving Under the Influence (DUI)	ND CC 12.1-24-01 Forgery/ Counterfeiting	ND CC 19-03.1-23 (6) Possn. Of Controlled Substance
2000-2009 (YTD)	1,734	3,060	31,564	2,749	11,355
Percentages	3%	6%	63%	5%	23%

- Alcohol and/or Drug violations make up 86%

As Per ND Department of Corrections

THE BIG PICTURE: ALCOHOL AND CRIME

THE NATIONAL PROBLEM

- 1.5 million DUI arrests each year
 - 66% first time
 - 33% repeat offenders
- 700,000 DUI convictions
- 16,885 alcohol-related fatalities ('05)
- 39% of all traffic deaths involved alcohol
- 75% of all domestic violence offenses
- \$32.5 billion a year lost/spent on alcohol-related crime



DUI in North Dakota			
	1 st DUI	2 nd DUI	5 th DUI (felony offense)
2004	4,314	1,225	50 1% overall
2005	2,605	2,478	75 1% overall
2006	3,547	1,390	35 1% overall
2007	3,286	1,398	41 1% overall
2008	4,564	1,400	36 1% overall
2009	3,353	1,162	35 1% overall
2010	4,477	1,277	36 1% overall
2011	5,040	1,359	32 1% overall

As Per Department of Transportation

HISTORY: 60th Session

The 60th Legislative Assembly, in Section 11 of Senate Bill 2003, authorized the Attorney General to establish a sobriety program pilot project in one or more judicial districts of the state. The sobriety program involved coordination among state, county, and municipal agencies. The Attorney General, in cooperation with Law Enforcement, the Judiciary, the Department of Corrections and Rehabilitation, and the Department of Transportation Traffic Safety Division, was authorized to develop guidelines, policies and procedures, and to establish user fees for a sobriety program pilot project.

Guidelines for State Wide Program

Conditions of bond, pre-trial, and post conviction

1. The sobriety program is established to implement procedures as alternatives to incarceration for offenders charged with, or convicted of:
 - a. Driving under the influence of alcohol or controlled substances;
 - b. Domestic violence;
 - c. Abuse or neglect of a child;
 - d. Or for other offenses in which alcohol or controlled substances are involved.

Guidelines for State Wide Program

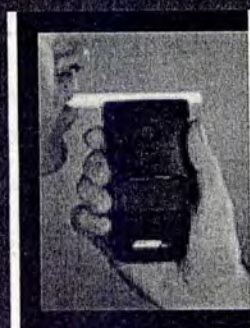
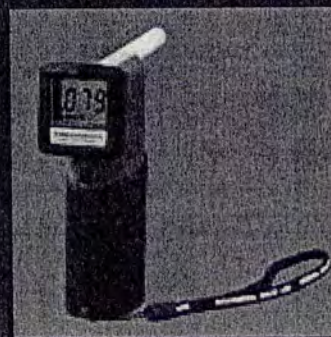
Conditions of bond, pre-trial, and post conviction

2. The sobriety program is to enforce compliance with the sobriety guidelines by the following means:
 - a. Sobriety testing twice per day seven days per week;
 - b. Electronic monitoring , including home surveillance and remote electronic alcohol monitoring;
 - c. Urine testing and drug patch testing
 - d. And establish fees, which are not subject to NDCC Chapters 28-32.

BENEFITS

- Parents, Spouses, and Children are safer
- Public is safer
- Defendant will spend less time in jail
- Treatment prospects improve
- Defendant's employer happy
- ALMOST NO COST TO TAXPAYER

The Alco-Sensor FST and/or CMI SD-5 are the newest instruments in their companies product lines. Offering both direct and passive sampling, these instruments produce fast, reliable, accurate results in a package that is designed so that the operator has maximum control over the subject during sample collection.

**S-D5**

Alcohol Monitoring System (AMS) Secure Continuous Remote Alcohol Monitoring (SCRAM)



24/7: AVAILABLE SERVICES

\$1.00

per test

\$2.00

p/day

→ - PBT

- Small counties
- Ease and Test

\$5.00 per day

(\$25.00

activation &

\$25.00

deactivation)

→ - SCRAM

- Small counties
- No jail
- Defendant has odd situation

\$40.00

per patch

→ - Drug Patch

- Small counties
- Counties without female staff

\$5.00 per test

\$12.50 for

Laboratory

Confirmation

→ - Drug Urinalysis

- Counties with high volume
- Need both male and female staff

24/7 WEB APPLICATION

24/7 Program

TEST STRIKESHEET
BCI - Admin Only

Main Search New Participant Help Logout

Joe Doe [Edit](#) [Change Status](#)

Participant #: F9N6-GTH8
Type: Court Distance: [View Account](#)
Judge: [Add Test Type](#)
Arresting jurisdiction: BCI - Admin Only
Offense Date: 12/11/2007
Site: 12/11/2007
Start: 12/11/2007
Scheduled End: 1/1/2008
Actual End: 1/1/2008
End Reason: DUI 1st Offense
Offense: DUI 1st Offense

There are no tests. In order to log test results, you must [Add a Test Type](#)

Date Type Result Testing Officer PBT Value Fee

[Show All](#)

Participant Information

Gender: Male
DOB:
Hair Color:
Eye Color:
Height:
Weight:
DUI:
Address: 1 Some Street
Bismarck, ND 58501
Alternate:
County: BURLINGHAM
Home:
Work:
Cell:
Email:

Interested Parties

[New Interested Party](#)

Employment Information

Employer:
Address:
Supervisor:
Work:
Cell:

Ken Sorenson

3

Section by Section Overview of House Bill No. 1302
House Judiciary Committee
February 5, 2013.

Section 1. Page 1, ll. 9-16.

Section 1 adds a new subsection to N.D.C.C. § 27-20-10 of the Juvenile Court Act to give the Juvenile Court discretionary authority to require a juvenile who has committed a DUI violation, or who has an alcohol concentration of two-hundredths of one percent (.02) while driving, and is participating in informal adjustment (Juvenile Court Probation) to participate in the 24/7 Sobriety Program.

Section 2. Page 1, ll. 17-24.

Section 2 adds a new subsection to N.D.C.C. § 27-20-31 to give the Juvenile Court discretionary authority to require a juvenile who has committed a DUI violation, or who has an alcohol concentration of two-hundredths of one percent (.02) while driving, and has been adjudicated delinquent, to participate in the 24/7 Sobriety Program while subject to the Juvenile Court's order.

Section 3. Page 2, ll. 1-28.

Section 3 amends multiple provisions of Subsection 7 of N.D.C.C. § 39-06.1-10 to extend the "look-back" periods for DUI offenses from 5 years previous to the latest offense to 10 years previous to the latest offense to make it consistent with the proposed ten-year look back periods in N.D.C.C. § 39-08-01, which is amended in Section 5 of HB 1302.

Section 3 adds a new subsection to Section 39-06.1-10 to allow an DUI offender who has a temporary restricted driver's license with a 24/7 Sobriety Program restriction to continue to drive and not be subject to the mandatory minimum suspensions that otherwise would apply to an offender convicted of a DUI. The DUI would have to be eligible for the restricted license in the first place, and is still subject to an automatic 15 day suspension.

The temporary restricted drivers licenses with the 24/7 Sobriety Program restriction will still be subject to N.D.C.C. § 39-06-17, and a violation of the 24/7 Sobriety program restriction is a violation of N.D.C.C. § 39-06-17 and subject to revocation by the Director of the North Dakota Department of Transportation, and is also a separate class B misdemeanor.

Section 4. Page 2, ll. 29-30, Page 3, Page 4, ll. 1-28.

Section 4 amends N.D.C.C. § 39-06.1-11, the temporary restricted driver's license statute, to include the authority for the D.O.T. Director to issue a temporary restricted driver's license with the restriction the driver participate in the 24/7 Sobriety Program.

The driver must be eligible for the temporary restricted driver's license, e.g., the driver is not subject to another unrelated suspension or revocation. The driver must apply for the license and submit proof of financial responsibility and proof of participation in the 24/7 Sobriety Program in order to receive the temporary restricted driver's license. The principal restriction is that the driver participate in the 24/7 Sobriety Program.

Section 5. Page 4, ll. 29-30, Page 5, Page 6, Page 7, Page 8, Page 9, ll. 1-14.

Section 5 amends North Dakota's Driving Under the Influence Statute, N.D.C.C. § 39-08-01. The amendments change the offense classifications and penalties, and also add a new subsection to Section 39-08-01 to make refusal to submit to chemical testing for alcohol concentration or the presence of drugs a violation of Section 39-08-01.

A first offense under Section 39-08-01 remains a class B misdemeanor. The minimum fine changes from \$250 to \$750. There is a mandatory minimum sentence of 10 days, of which 6 days may be suspended and the balance of 4 days must be served in jail. Probation is mandatory for at least 6 months and participation in the 24/7 Sobriety Program must be included as a condition of probation.

A second offense under Section 39-08-01 changes from a class B misdemeanor to a class A misdemeanor. There is a 10 year look-back period instead of five years. The minimum fine changes from \$500.00 to \$1000. The mandatory minimum sentence changes from 5 days in jail, all of which may be suspended, to 60 days in jail, of which 10 days must be served and the balance may be suspended. Probation is mandatory for at least 12 months and participation in the 24/7 Sobriety Program must be included as a condition of probation.

A third offense under Section 39-08-01 changes from a class A misdemeanor to a class C felony. There is a 10 year look-back period instead of five years. The fine changes from \$1000 to at least \$2000. The mandatory minimum sentence changes from 60 days, of which all but 10 days may be suspended, to a sentence of one year and one day, of which 60 days must be served in custody and the balance may be suspended. Probation is mandatory for at least 12

months and participation in the 24/7 Sobriety Program must be included as a condition of probation.

A fourth offense under Section 39-08-01 changes from a class A misdemeanor to a class C felony. The present look-back period is 7 years. Under the amendment, there is no look-back period. Once a DUI offense becomes a felony under Section 39-08-01, any subsequent DUI offense will be a felony. The mandatory minimum fine changes from \$1000 to \$2000. The mandatory minimum sentence changes from 180 days, of which all but 10 days may be suspended, to two years, of which one year must be served and the balance may be suspended. Probation is mandatory for at least two years and participation in the 24/7 Sobriety Program must be included as a condition of probation.

Any subsequent offense under Section 39-08-01 remains a class C felony and there is no look-back period. Again, once a DUI offense becomes a felony under Section 39-08-01, any subsequent DUI offense will be a felony. The mandatory minimum fine changes from \$1000 to \$2000. The mandatory minimum sentence changes from 180 days, of which all but 10 days may be suspended, to two years, of which one year must be served and the balance may be suspended. Probation is mandatory for at least two years and participation in the 24/7 Sobriety Program must be included as a condition of probation.

The amendment to subsection 2 of Section 39-08-01 also provides that if an individual is in custody for any offense, the time spent in custody may not be included as part of any period of time, or look-back period.

Section 5 creates a new subdivision to Section 39-08-01. See page 8 at ll. 21-24 of HB 1302. Under this new subsection, an individual who refuses to submit to chemical testing, including on-site breath testing, is guilty of an offense under Section 39-08-01. The refusal offense is subject to the same offense classifications as other DUI offenses under Section 39-08-01.

Section 5 also creates another new subsection to Section 39-08-01 to require participation in the 24/7 Sobriety Program in compliance with N.D.C.C. §§ 54-12-27 through 54-12-31, the 24/7 Sobriety Program statutes. The 24/7 Sobriety Program requirements for twice-per-day breath testing, electronic alcohol monitoring, urine testing, or drug patch testing are not subject to modification, e.g., the requirements may not be modified to once-per-day breath testing or only five days per week breath testing. The new subsection also requires the individual who is participating in the 24/7 Sobriety Program to be responsible for all 24/7 Sobriety Program fees, which may not be waived.

Section 6. Page 9, ll. 15-31, Page 10, ll. 1-18.

Section 6 amends N.D.C.C. § 39-08-01.2. Section 39-08-01.2 provides enhanced penalties for causing injury or death while operating a motor vehicle while under the influence.

If an individual is convicted of a violation of N.D.C.C. chapter 12.1-16, the state's homicide chapter, and the individual was under the influence of alcohol or drugs, the mandatory minimum sentence is amended from one year of imprisonment to two years of imprisonment.

If the individual is convicted of a first offense of driving under the influence, and the violation caused serious bodily injury, which means "bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs", the offense is a class A misdemeanor and the sentence must include at least ninety days imprisonment. This is current law.

The amendment adds a new subsection to Section 39-08-01.2 to provide that if the DUI offense is a second offense and the offense caused serious bodily injury, the offense is a class C felony and the sentence must include at least one year and one day's imprisonment.

For a first offense, the sentence may not be deferred, but the sentence may be suspended, except for 90 days, and for a second or subsequent offense in ten years, the sentence may not be deferred, but the sentence may be suspended, except for one year.

The amendments require there must be supervised probation for not less than one year with mandatory probation and participation in the 24/7 Sobriety Program for at least 12 months as a mandatory condition of probation.

The amendments also require an individual whose conviction is subject to Section 39-08-01.2 to serve the sentence imposed by the court without the benefit of parole.

Section 7. Page 10, ll. 19-30; Page 11.

Section 7 amends N.D.C.C. § 39-20-01, North Dakota's implied consent statute. An individual who operates a motor vehicle on North Dakota roads is deemed to have consented to chemical testing of the individual's blood, breath, or urine to determine alcohol concentration or to test for the presence of alcohol or drugs.

At first, Section 7 amends Section 39-20-01 into subsections. This change is to make it easier to follow the requirements of the statute.

In the new subsection 3 to Section 39-20-01, the amendment requires the officer who is arresting an individual for a DUI offense to advise the individual of the following:

- a. North Dakota law requires the individual to take a chemical test to determine whether the individual is under the influence of alcohol or drugs
- b. That refusal to take the test directed by the law enforcement officer is a crime; and
- c. That refusal to take the test directed by the law enforcement officer may result in revocation of the individual's driving privileges up to four years.

Section 8. Page 12, Page 13, Page 14, ll. 1-5.

Section 8 amends N.D.C.C. § 39-20-03.1 to allow an individual who has been arrested for DUI and has submitted to chemical testing to determine alcohol concentration to elect to participate in the Twenty-Four Seven Sobriety Program in lieu of the implied consent administrative hearing process and to apply for a temporary restricted driver's license with the 24/7 Sobriety Program participation as the restriction. The arresting officer will issue the individual a temporary operator's permit which constitutes notice to the individual that the individual's driving privileges may be revoked or suspended. Under the amendments to N.D.C.C. § 39-20-05, the individual may elect to participate in the 24/7 Sobriety program instead of requesting the administrative hearing. This will allow the individual to have a license instead of being subject to the administrative driver's license suspension under N.D.C.C. § 39-20-04.1 that may result from the implied consent administrative hearing process. The individual must be eligible for the temporary restricted license, which means the individual must not be subject to an unrelated suspension or revocation of driving privileges. This process will not apply if there has been a refusal to submit to chemical testing.

Section 9. Page 14, ll. 6-31, Page 15, Page 16, ll. 1-28.

Section 9 amends N.D.C.C. § 39-20-04, which is the implied consent revocation statute. If an individual refuses to submit to chemical testing for DUI, the individual's license is subject to revocation for up to four years.

The amendments are in subsection 1 of Section 39-20-04 and change the look-back provisions for license revocations from five years to ten years preceding the

most recent DUI violation. For a first offense, the revocation is one year; a second offense is subject to a three-year revocation, and a third or subsequent violation is subject to a four-year revocation.

In addition to the mandatory revocation periods and the criminal offense provisions, a driver who refuses to submit to chemical testing cannot be eligible for a temporary restricted driver's license.

Section 10. Page 16, ll. 29-30, Page 17, Page 18, ll. 1-23.

Section 10 amends N.D.C.C. § 39-20-04.1, which provides for administrative suspensions in the implied consent process. If no hearing is requested, or if a hearing has been requested and the administrative hearing officer confirm the DUI offense, the individual's driving privileges will be suspended. The amendments to Section 39-20-04.1 extend the look-back periods for prior DUI offenses and DUI related suspensions from five years to ten years. The periods of administrative suspension range from 91 days to three years.

Section 11. Page 18, ll. 24-31, Page 19, Page 20, page 21, Page 22, ll. 1-26.

Section 11 amends N.D.C.C. § 39-20-05 to allow an individual arrested for a DUI offense to elect to participate in the 24/7 Sobriety Program instead of proceeding with the administrative implied consent hearing, which could result in the administrative suspension of driving privileges under Section 39-20-04.1. If the individual elects to participate in the 24/7 Sobriety Program in lieu of the administrative implied consent hearing, and the individual's driving privileges are not subject to an unrelated suspension or revocation, the Director of the D.O.T. shall issue a temporary restricted driver's license with the restriction the individual participate in the 24/7 Sobriety Program.

Section 11 also amends Section 39-20-05 to allow the admission into the administrative hearing of a certified copy of an analytical report of a blood or urine sample that has been electronically posted by the director of the Crime Laboratory on the Crime Laboratory's Laboratory Information Management System ("LIMS") and certified by an authorized user who has authorized access to the LIMS system through the state's Criminal Justice Information Sharing System ("CJIS"). A similar process is already available for the admission of other records of the Crime Laboratory, including its approved methods, devices, and operators, and individuals approved to draw blood for chemical testing.

Section 11 adds another subdivision to Subsection 4 of Section 39-20-05 to include with the regularly kept records of the Director of the D.O.T. and the Crime Laboratory for admissibility into evidence purposes a copy of a certified record of

the Director of the Crime Laboratory designating designees with respect to approved methods, devices, operators, materials, and checklists for testing alcohol concentration or the presence of drugs. This is to resolve an evidentiary issue that arises from time to time as to who are the director's authorized designees for purposes of certifying approved methods, testing devices, qualified operators, and the checklist and approved methods.

Section 12. Page 22, ll. 27-31, Page 23, ll. 1-22, Page 23, ll. 1-22.

Section 12 amends Subsection 6 of N.D.C.C. § 39-20-07. Section 39-20-07 applies to the interpretation of chemical tests for determining alcohol concentration or the presence of drugs. Subsection 6 of Section 39-20-07 presently provides that records of the Crime Laboratory, including records of approved testing devices, operators, the operational checklist and forms prescribing the approved methods may be electronically posted by the Crime Laboratory and those records will be admissible as prima facie evidence of the matters in the records. The amendment to subsection 6 adds another record, the certificate of the Crime Laboratory Director as to who are the director's designees. This is to resolve the same evidentiary issue that arises from time to time as to who are the director's authorized designees for purposes of certifying approved methods, testing devices, qualified operators, materials, and checklists for testing alcohol concentration or the presence of drugs.

Section 13. Page 23, ll. 23-31, Page 24, Page 25, ll. 1-3.

Section 13 amends N.D.C.C. § 39-20-14, which authorizes a law enforcement officer to administer an onsite breath-screening test to an individual to determine alcohol concentration.

Just like the amendments to N.D.C.C. § 39-20-01 in Section 7 of HB 1302, Section 13 amends Section 39-20-14 into subsections to make it easier to follow the requirements of the statute.

The amendment to the new subsection 3 of Section 39-20-14 includes a similar advisory as the amendment to Section 39-20-01. The law enforcement officer is required to advise the individual:

- a. North Dakota law requires the individual to take the screening test
- b. Refusal to take the screening test is a crime
- c. Refusal to take the screening test may result in revocation of driving privileges for up to four years.

Sections 14 and 15. Page 25, ll. 4-5.

Section 14 provides for an effective date of May 1, 2013, and because that is earlier than August 1, 2013, when laws would otherwise come into effect, the emergency clause was necessary.

PROPOSED DUI LEGISLATION SUMMARY

(12-20-12)

Proposed Law	Offense Level	Minimum Fine	Addiction Evaluation	Minimum Mandatory Probation	24/7 Sobriety Program	Maximum Sentence	Minimum Mandatory Sentence
1st Offense	Class B Misdemeanor	\$750	Yes	6 Months	Mandatory	30 days	10 days, serve at least 4 days
2nd Offense/10 yrs	Class A Misdemeanor	\$1,500	Yes	1 year	Mandatory	1 year	60 days, serve at least 10 days
3rd Offense/10 yrs	Class C Felony	\$2,000	Yes	1 year	Mandatory	5 years	1 year and 1 day, serve at least 60 days
4th /Subsequent Offense	Class C Felony	\$2,000	Yes	2 years	Mandatory	5 years	2 years, serve at least 1 year
Current Law							
1st Offense	Class B Misd	\$250	Yes			30 days	
2nd Offense/5yrs	Class B Misd	\$500	Yes			30 days	5 days
3rd Offense/5 yrs	Class A Misd.	\$1,000	Yes			1 year	60 days, Serve at least 10 days
4 th Offense/7 yrs	Class A Misd.	\$1,000	Yes			1 year	180 days, Serve at least 10 days
5 th Offense/7 yrs	Class C Felony	\$1,000	Yes			5 years	180 days, Serve at least 10 days

Additional Comments – proposed legislation:

1. Makes a refusal a criminal violation - same as a DUI offense, with offense penalty & license suspension, but no eligibility for restricted license.
 2. Allows a temporary restricted driver's license with participation in the 24/7 Sobriety Program in place of administrative hearings and some suspensions
 3. Increases look-back from 5 years to 10 years for DUI offenses
 4. Increases fines and penalties for DUI offenses; Once an offense reaches the felony level, it will stay at the felony level
 5. Does not create new processes for drivers licenses
 6. Allows an individual to elect 24/7 prior to an administrative hearing
 7. Gives the Juvenile Courts the authority to use 24/7 for juvenile alcohol driving violations (.02 violations), and DUI violations
- 24/7 In the case of a DUI arrest, the judge may issue a bond order requiring the arrestee to refrain from alcohol use and to show up twice each day between certain hours at a specific location for a breath alcohol test. The individual pays \$1.00 each test (\$2.00 per day) to offset the costs of testing. If the individual's test registers any alcohol use then he or she is immediately taken into custody. If the arrestee fails to show for testing, bond is revoked. The court may also order remote electronic alcohol monitoring in select cases.

5

HOUSE JUDICIARY COMMITTEE
February 5, 2013 - 10:00 a.m. – Prairie Room

North Dakota Department of Transportation
Mark Nelson, Safety Division Director

HB 1302

Good morning Mr. Chairman and members of the House Judiciary Committee, my name is Mark Nelson and I currently serve as the Safety Division Director for the DOT. I want to thank you for allowing me the opportunity to speak today in favor of HB1302.

Alcohol related crashes resulting in injury and deaths are not a new phenomenon in North Dakota. Consistently our state has recorded near 50% fatalities while nationally, alcohol related fatalities have dropped to 31 percent. But, North Dakota has not followed this trend. In seven of the previous ten years, from 2002 through 2011, over 47 percent of fatality victims in North Dakota died as a result of alcohol-related crashes.

The DOT Safety Division receives federal funding through the National Highway Traffic Safety Administration (NHTSA) to plan, implement, and evaluate strategies to deter impaired driving.

Federal Funds are used in support of enforcement and education programs. A significant portion of the funding is used in support of Regional DUI Task Forces. The Task Forces bring together law enforcement officers from city, county, state, federal and tribal agencies to conduct saturation events statewide aimed at enforcing the DUI law and deterring drunk driving. Approximately 70 percent of law enforcement in North Dakota participates in this program that began in 2010. A key component of the program is that they are well publicized in advance of the enforcement event; this in an effort to stop the individual from making the poor decision to drink and then drive.

Officers also receive support in the areas of standardized field sobriety testing (SFST), Drug Recognition Experts (DRE) training to certify law enforcement officers to identify the drug-impaired driver (an ever-increasing problem in the state), and testifying in court. We also provide assistance to law enforcement through the Traffic Safety Resource Prosecutor (TSRP) program, a program that makes an attorney available to provide technical assistance, training, and resources to assure the appropriate arrest, prosecution and adjudication of DUI offenders.

Education is a key component in addressing our DUI issue. There are numerous education programs and media campaigns administered through our office to increase public awareness of the DUI problem.

- Ad campaigns such as the Deutscher's and Kilde ad are created in an effort to tell the story of the deadly effects of drinking and driving, and how it affects families.
- Other ad campaigns such as "Don't Forget TODD" (TODD is an acronym for TO Designate a Driver) promote sober driving as the societal norm in the state.
- Parents LEAD is a comprehensive, evidence-based underage drinking prevention program administered by four state agencies including the NDDOT, the Dept. of Human Services, NDSU Extension Service, and the University System.

Funds have also been provided in support of the Attorney General's 24/7 Sobriety Program for the purchase of SCRAM units, and the Toxicology Lab for the purchase of equipment for alcohol testing.

These are just a handful of programs conducted through grant funds. There are others that have been conducted through the years. The fact is, that regardless of an increase in federal funds to support enforcement, education, and other outreach programs, these programs are unable to reduce fatalities by themselves, these programs only work if they are a component of a comprehensive program that includes strong policy.

HB 1302 is aimed at deterring drunk driving and helping North Dakota to reduce and eliminate serious injury and death on our roadways due to the impaired driver.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions.

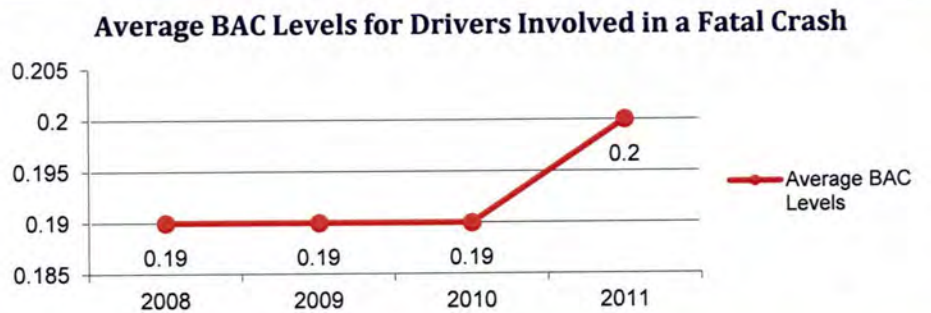
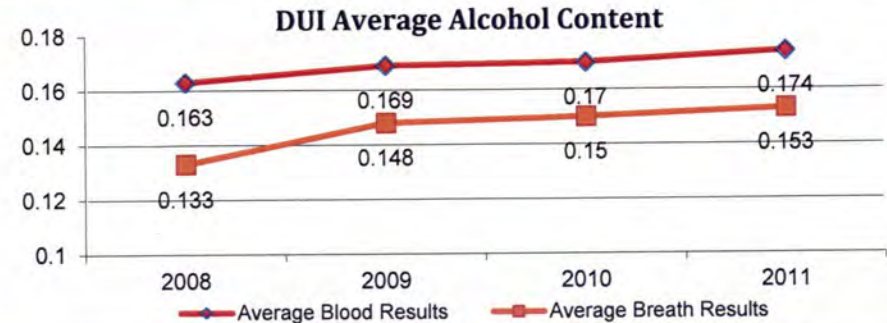
NDDOT Safety Division Alcohol-Related Crash Data

ND has continued to rank in the top 10 states in the nation with the highest rates of alcohol related motor vehicle fatalities.

Over the past 10 years, nearly half of all motor vehicle fatalities in ND involve alcohol

Alcohol-Related Fatal Crashes 2002 - 2011

Year	Fatalities		
	Alcohol-Related Fatalities	All Fatalities	% Alcohol-Related Fatalities
2002	48	97	49.48%
2003	53	105	50.48%
2004	38	100	38.00%
2005	56	123	45.53%
2006	47	111	42.34%
2007	63	111	56.76%
2008	53	104	50.96%
2009	56	140	40.00%
2010	55	105	52.38%
2011	66	148	44.59%
Total	535	1,144	46.77%



In 2011

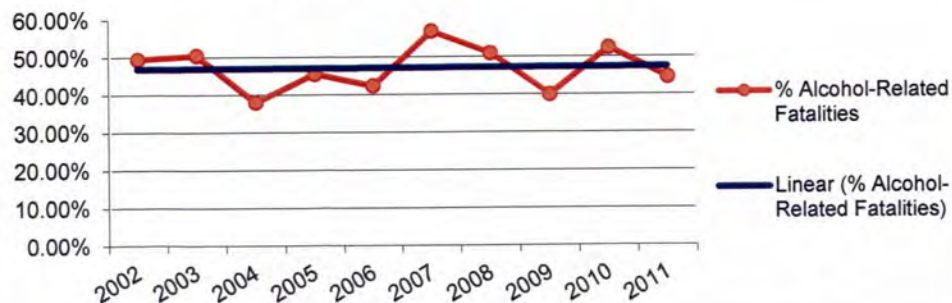
– alcohol-related crashes:

- 1 happens every 8.6 hours
- 1 person injured every 15 hours
- 1 fatality every 5.5 days

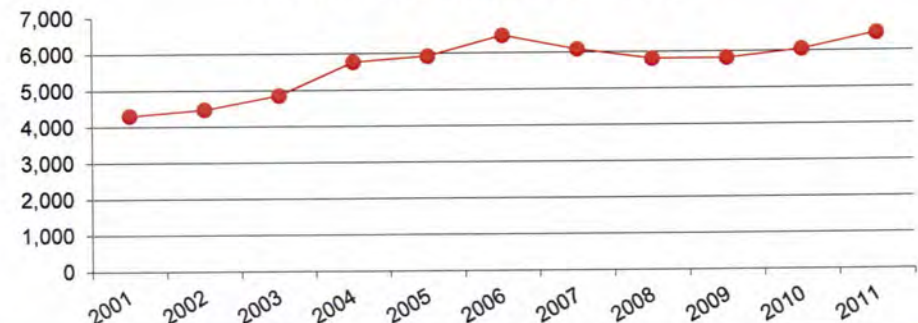
– alcohol-related fatal crashes:

- 53.6% occurred between the hours of midnight and 2:59 am
- 27 of 54 impaired drivers (50%) were between the ages of 21-34

Alcohol-Related Fatalities 2002-2011



DUI Arrests by Year 2001 - 2011



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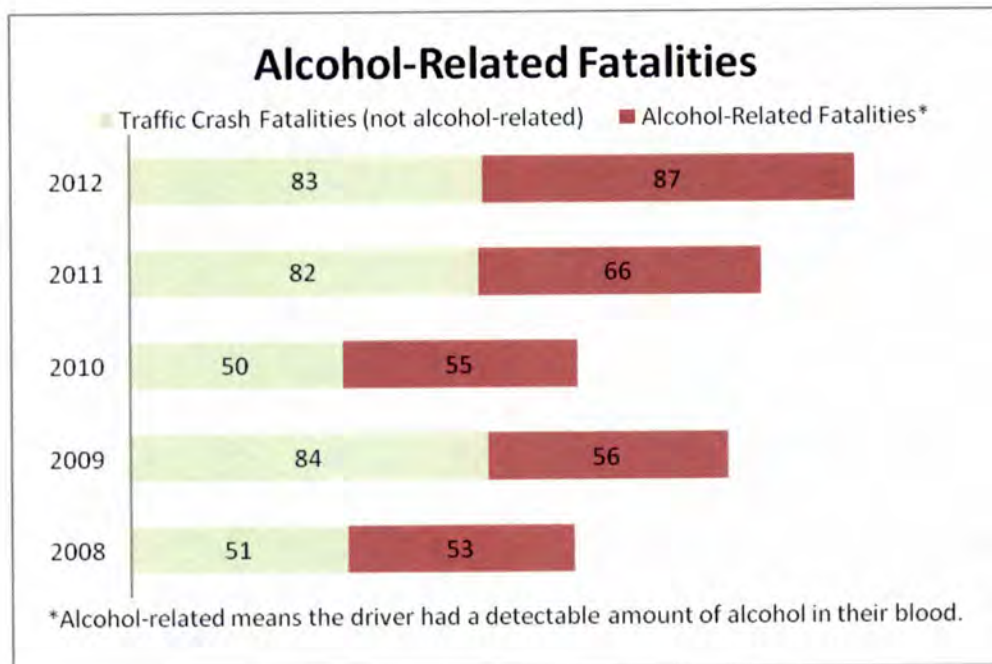
Testimony – House Bill 1302
House Judiciary Committee
Submitted by
James Prochniak, NDHP

February 5, 2013

Good morning, Mr. Chairman, and members of the House Judiciary Committee. My name is James Prochniak, superintendent of the North Dakota Highway Patrol. I am here to testify in support of House Bill 1302.

The North Dakota Highway Patrol, along with all law enforcement, has been actively involved in detecting and apprehending intoxicated drivers. Combined efforts through the Multi-Agency Enforcement program, sobriety checkpoints, and alcohol saturation overtime are measures used to enhance our daily enforcement activities. Troopers worked over 1,600 hours of DUI enforcement overtime in 2011 and over 1,500 hours in 2012. Educational campaigns and safety presentations stress the importance of making responsible decisions and also provide education on the deadly decision to drive under the influence.

Even with these extensive efforts, troopers made 1,846 DUI arrests in 2011. Last year, that number rose to 1,910. In 2012 alone, 87 lives were lost in alcohol-related fatal crashes. In 2011, the average blood AC level was 0.174, while the average breath AC level was 0.153. The average BAC of a driver involved in an alcohol-related fatal crash is 0.2 in 2011.



House Bill 1302 encourages participation in the 24/7 program, makes a refusal to test a criminal violation, makes DUI a felony offense after three violations, and, overall, increases penalties for DUI. Combining strong enforcement, education, and legislation may help provide the cultural change needed for motorists to think before making the choice to drink and drive.

Mr. Chairman, members of the committee, this concludes my testimony. I would be happy to answer any questions.

Judiciary Committee

HB1302

Testimony of Paul D. Laney—Sheriff, Cass County Government

February 5, 2013

Good morning Chairman Koppelman, Vice-Chairman Klemin and distinguished members of the Judiciary Committee; for the record, my name is Sheriff Paul D. Laney from Cass County, North Dakota, and I am here today to testify in support of HB1302.

Our country is in a time of crisis. According to the National Highway Traffic Safety Administration, commonly referred to as NHTSA, there were 32,000 people killed on our nations roadway systems in 2012. According to our regional representative, nearly 10,000 of those fatalities were attributed to Driving Under the Influence. In North Dakota, 43% of fatality crashes in 2012 were DUI related. How do we accept that statistic? How do we see those statistics and tell our communities, and our children, we are doing everything we can to protect them from people who make horrible choices?

I believe HB1302 is a move in the right direction. It is a bill that not only holds people who make poor decisions accountable, but it also may assist in the changing of culture. There is a culture of “accepted drinking and driving” in North Dakota and a belief with many that “it won’t happen to me.” We must change this thought process!

HB1302 has penalties that have strong incentives that should influence both the habitual DUI driver as well as the first time offender. The penalties should make anyone think twice before putting themselves behind the wheel and endangering themselves or a fellow citizen.

HB1302 combines the strong penalties with the new 24/7 program that has shown strong signs of success. I am a strong supporter of the 24/7 program why, because as our Attorney General often says.... “we can’t stop you from driving, but we can stop you from drinking.” When you have to

1
face somebody every day and give a breath sample, you can't hide if you have consumed an alcoholic beverage and if you know you will go to jail, it's a great incentive to stay sober.

I also understand the 24/7 program has impact issues to my fellow Sheriffs, and to the field of Corrections as a whole that must be considered. However, I know with the legislature, working in conjunction with the experts in law enforcement, we can find a process that holds people accountable for poor decisions, has strong penalties for the individuals that don't figure it out and continue to drive under the influence, and new programs that really make people think before they ever get behind the wheel of a vehicle while intoxicated.

We must change our culture in North Dakota if we ever want to have a true impact on impaired driving. HB1302 is a positive move in that direction, and for that reason, I strongly encourage you to pass HB1302 and let's all take a step forward together in protecting the fine citizens of this great state.

Thank you for your consideration of my testimony. I will gladly answer any questions you may have in regards to my support of this bill.

Good Afternoon

Chairman Koppelman, Vice Chair Klemin and members of the Committee, for the record my name is Mike Reitan, Assistant Chief of the West Fargo Police Department. I am testifying today in support of House Bill 1302. The bill before you today is meant to promote traffic safety through increased compliance with the rules regulating impaired driving in the state of North Dakota.

We are currently at a crossroads as a community and are faced with a decision as to how we will move forward with the punishment of those who have been convicted of the crime of driving under the influence. We can continue as we are with penalties lighter than many states or we can adjust the penalties to reflect our society's growing intolerance of those who choose to consume too much alcohol and then get behind the wheel.

I have seen an evolution in how North Dakotans view drinking and driving in my life time. In high school during the 1970s drinking and driving was our past time. To be arrested for driving under the influence was almost viewed as a passage to manhood. In 1984 I became a police officer. The six bars in Casselton were full each evening just as I remembered them to be all my life. To be stopped for drunk driving during this time would have resulted in you being told to just go home probably as often as you being arrested.

In the years following I have seen a change in public behavior. A shift occurred in enforcement actions from a person being sent home to an arrest being made in most circumstances. Targeted enforcement and media blitzes became focused on deterring impaired driving. The evening bar crowd became less than half of what it once was and the number of cars remaining in the parking lot through the night increased. People paid attention to how much they drank or made arrangements for a ride home. The problem is that not everyone makes the right choice to not drink and drive.

We as a society are evolving in our views of alcohol use and driving. For us to move to the next step in traffic safety we must accept the fact driving under the influence is a crime due to the level of lethality the drunk driver poses to the innocents who share the road. We can no longer view driving drunk as not just another traffic violation.

There has been much discussion about this bill and others relating to changing the penalty for driving under the influence. Some of the conversations were with your fellow law makers who said they could not support harsher penalties for first time offenders. In part their concern was they did not want a family member to face the harsher penalty of a mistake in judgment which resulted in them being arrested for driving under the influence. This bill makes little change to the penalty for the first offense.

I have heard statements about overcrowding and capacity issues at the correctional facilities across the state. It is said the mandatory jail sentences contained within this bill

Judiciary Committee

House Bill 1302

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

will only make those conditions worse. Are there not alternatives to incarceration which can be tried for certain crimes that will make room for the DUI offenders?

Home monitoring and testing are options and can be accomplished through the use of electronic ankle bracelets. The argument has come back that many people no longer maintain the land based telephone line necessary to make this form of monitoring operational. The solution is as simple as the offender being court ordered to have a basic land line telephone service capable of allowing home monitoring.

The 24/7 sobriety program is a large part of this bill. I have heard concerns about the additional burden the proposed requirements will place on the sheriff departments across the state. When 24/7 was first introduced to North Dakota I purchased the necessary test equipment and had staff trained to administer the required tests at the police department. The present 24/7 program is restricted to the sheriff departments but does it need to be? Other arguments have also surfaced but all have a solution if we are willing to adapt and change how we do business.

Drunk driving is a crime that can impact your family at any time. The penalty for drunk driving needs to be fair and just to the offender and to society. The penalty for drunk driving needs to be sufficient to make people think and make the right choices before they begin to drink. By passing HB1302 you are in the position to reinforce your community's growing intolerance with people who drive drunk. I respectfully ask for your vote recommending do pass for HB1302.

I have included handout reflecting DUI penalties in Montana, South Dakota and Wyoming. I have also included a chart that provides a rough estimation of alcohol consumption and corresponding blood alcohol percentage. The chart provides only a close approximation and disclaimers are attached. (i.e. Myself- 4 beers in one hour = .065 BAC; 5 beers 90 minutes .0775 BAC).

Thank you for your consideration. I would be willing to answer any questions you may have.

ALCOHOL IMPAIRMENT CHART MALES

APPROXIMATE BLOOD ALCOHOL PERCENTAGE									
Drinks *	BODY WEIGHT IN POUNDS								EFFECT ON PERSON
	100	120	140	160	180	200	220	240	
0	.00	.00	.00	.00	.00	.00	.00	.00	ONLY SAFE DRIVING LIMIT
1	.04	.03	.03	.02	.02	.02	.02	.02	IMPAIRMENT BEGINS.
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	DRIVING SKILLS SIGNIFICANTLY AFFECTED.
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	LEGALLY INTOXICATED. CRIMINAL PENALTIES IN ALL STATES
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

Subtract .01% for each 40 minutes of drinking.

* One drink is equal to 1¼ oz. of 80-proof liquor,
12 oz. of beer, or 4 oz. of table wine.

** ALL states have a .08 BAC per se law

—The final one took effect in August of 2005. (Updated: Sept. 3rd, 2005)

ALCOHOL IMPAIRMENT CHART FEMALES

APPROXIMATE BLOOD ALCOHOL PERCENTAGE									
Drinks *	BODY WEIGHT IN POUNDS								EFFECT ON PERSON
	90	100	120	140	160	180	200	220	240
0	.00	.00	.00	.00	.00	.00	.00	.00	ONLY SAFE DRIVING LIMIT
1	.05	.05	.04	.03	.03	.03	.02	.02	IMPAIRMENT BEGINS.
2	.10	.09	.08	.07	.06	.05	.05	.04	DRIVING SKILLS SIGNIFICANTLY AFFECTED.
3	.15	.14	.11	.11	.09	.08	.07	.06	LEGALLY INTOXICATED. CRIMINAL PENALTIES IN ALL STATES **
4	.20	.18	.15	.13	.11	.10	.09	.08	
5	.25	.23	.19	.16	.14	.13	.11	.10	
6	.30	.27	.23	.19	.17	.15	.14	.12	
7	.35	.32	.27	.23	.20	.18	.16	.14	
8	.40	.36	.30	.26	.23	.20	.18	.17	
9	.45	.41	.34	.29	.26	.23	.20	.19	
10	.51	.45	.38	.32	.28	.25	.23	.21	

Subtract .01% for each 40 minutes of drinking.

* One drink is equal to 1¼ oz. of 80-proof liquor,
12 oz. of beer, or 4 oz. of table wine.

** ALL states have a .08 BAC per se law

—The final one took effect in August of 2005. (Updated: Sept. 3rd, 2005)

DISCLAIMER: THESE CHARTS ARE IN NO WAY PURPORTED TO BE A GUIDELINE FOR HOW MUCH YOU CAN DRINK AND STILL DRIVE OR AVOID BEING ARRESTED! THE BEST POLICY IS **DON'T DRINK AND DRIVE. PERIOD.**

IMPORTANT NOTE: THERE IS NO BLOOD ALCOHOL CHART OR CALCULATOR THAT IS 100% ACCURATE BECAUSE OF THE NUMBER OF FACTORS THAT COME INTO PLAY REGARDING THE CONSUMPTION AND REDUCTION (*BURN-OFF*) RATES OF DIFFERENT PEOPLE.

FACTORS INCLUDE THE SEX (*MALE/FEMALE*) OF THE DRINKER, DIFFERING METABOLISM RATES, VARIOUS HEALTH ISSUES AND THE COMBINATION OF MEDICATIONS THAT MIGHT BE TAKEN, DRINKING FREQUENCY, AMOUNT OF FOOD IN THE STOMACH AND SMALL INTESTINE AND WHEN IT WAS EATEN, ELAPSED TIME, AND OTHERS.

THE BEST THAT CAN BE DONE IS A ROUGH ESTIMATION OF THE BAC LEVEL BASED ON KNOWN INPUTS.

Montana DUI Penalties

First DUI Conviction

- 24 hours-6 months in jail
- \$300-1,000 fine
- 6-month driver's license suspension

Second DUI Conviction (within 5 years)

- 7 days-6 months in jail
- \$600-1,000 fine
- Possible seizure and forfeiture of your vehicle
- 1-year ignition interlock installation
- 1-year driver's license suspension

Third DUI Conviction (within 5 years)

- 30 days-1 year in jail
- 1-year driver's license suspension
- \$1,000-5,000 fine
- Possible seizure and forfeiture of your vehicle
- 1-year ignition interlock installation

Penalties for Refusal

- First refusal: Six-month driver's license suspension
- Second refusal (within 5 years): One-year driver's license suspension

South Dakota DUI Penalties

First DUI conviction

- Class 1 misdemeanor on record
- Maximum one year in jail
- Maximum \$2,000 in fines
- 30 days-1 year driver's license suspension

Second DUI conviction (within 10 years)

- Class 1 misdemeanor on record
- Maximum one year in jail
- Maximum \$1,000 in fines
- 1 year driver's license suspension

Third DUI conviction

- Class 6 felony on record
- Minimum 1 year driver's license suspension
- Maximum 2 years in jail
- Court-ordered chemical dependency evaluation
- Maximum \$4,000 in fines

Fourth DUI conviction

- Class 5 felony on record
- Maximum 5 years in jail
- Maximum 2 years driver's license suspension
- Court-ordered chemical dependency evaluation

(SD cont.) Aggravated DUI conviction (BAC of .17 or more)

- Class 1 misdemeanor on record
- Maximum one year in jail
- Court-ordered chemical dependency evaluation
- Maximum \$2,000 in fines
- 30 days- 1 year driver's license suspension

Breath Test Refusal Penalties

- 1 year Administrative license suspension.

Wyoming DUI Penalties

First DUI conviction

- Up to 6 months in jail
- Up to \$750 in fines
- 90-day driver's license suspension
- Substance abuse assessment

Aggravated DUI (BAC of .15 or more)

- Mandatory installation of ignition interlock device

Second DUI conviction (within 5 years)

- 7 days-6 months in jail
- \$200-750 in fines
- 6-month driver's license suspension
- Substance abuse assessment

Third DUI conviction (within 5 years)

- 30 days- 6 months in jail
- \$750- 3,000 in fines
- 3-year driver's license suspension
- Possible substance abuse treatment

Fourth DUI conviction (within 5 years)

- Felony conviction
- Up to 2 years in jail
- Up to \$10,000 in fines

Breath Test Refusal Penalties

- 6-month Administrative license suspension
- 18-month license suspension for each subsequent refusal
- Possible installation of ignition interlock device

Source: <http://www.totaldui.com/state-laws/default.aspx> 4 Feb 2013

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Testimony
House Bill 1302 – Department of Human Services
House Judiciary
Representative Koppelman, Chairman
February 5, 2013

Chairman Koppelman, members of the Judiciary Committee, I am Pamela Sagness, Prevention Administrator with the Department of Human Services (DHS). I oversee the substance abuse prevention program which provides substance abuse prevention services, training, and technical assistance to communities in North Dakota.

We have all been hearing about North Dakota's need for a cultural change regarding alcohol. I am here today to provide some information about alcohol abuse and consequences in North Dakota. (Attachment A)

Despite declining underage drinking rates in the state, N.D. continues to rank first in underage "binge" drinking nationally (ages 12-20, NSDUH 2011); 68 percent of N.D. high school students have drunk alcohol (YRBS 2011); and in 2011, 8.3 percent of middle school students reported they had their first drink before age 11. In general, North Dakota youth have high rates of alcohol use, and they don't think binge drinking is harmful. However, 88 percent of North Dakota residents believe youth alcohol use is a problem in the state (CRS, 2008).

It is important to note that North Dakota's alcohol issues extend beyond underage drinking. Our adult binge drinking rates are among the highest in the nation. North Dakotans purchase higher volumes of alcohol per person (NIAAA, 2000-2009). In fatal crashes in North Dakota, 93 percent of the impaired drivers were age 21 or older (DOT 2011).

Alcohol abuse impacts us all. Twenty-eight percent of all adult arrests in North Dakota are DUIs (UCR 2011); 65 percent of incarcerated individuals in N.D. have a substance abuse diagnosis (DOCR 2011); and 85 people died on N.D.

roads last year in alcohol-related crashes. In 2011, 6,600 people were arrested for DUIs in N.D. That is more than the total population of Valley City.

What can be done to make a true impact on the culture of alcohol usage in North Dakota? Research shows that prevention efforts are most effective when they are part of a comprehensive, data-driven, multi-faceted approach that targets all ages and includes strategies focusing on policy, media, enforcement, parents, environment, and community-based processes.

It is also important that prevention efforts across the state are based on science. There are strategies that have been proven to reduce alcohol consumption and consequences. Developing and revising laws and policies is an effective substance abuse prevention strategy because laws and policies create change in the environment itself, which affects the entire population, rather than changing one individual's behavior at a time. Enforcement of the laws and policies is an important strategy. Media and advertising also play an important role in culture change. How do we expect youth to say "no" when their environment tells them "yes"? Education programs, such as server training, have also been shown to be effective. This program provides training to those who serve alcohol so they know how to avoid over-serving patrons, to identify minors, and to recognize fake IDs.

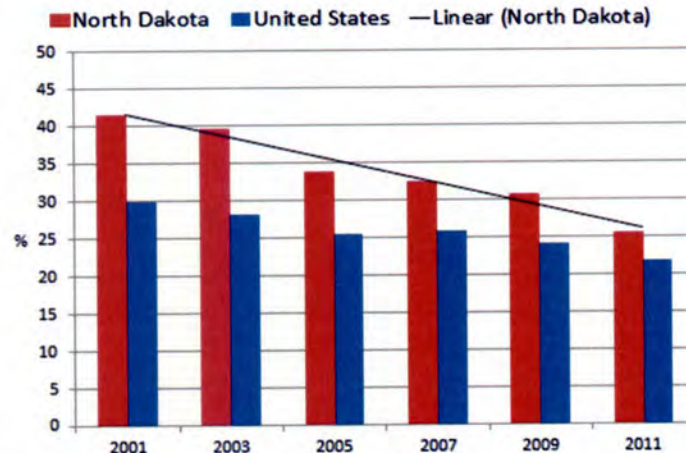
Alcohol abuse in North Dakota is a complex issue, which deserves an equally complex, comprehensive, and effective solution.

I am available to answer your questions.

Alcohol in North Dakota: <http://www.youtube.com/watch?v=KQdsvIav6WA>

ALCOHOL in NORTH DAKOTA

STUDENTS IN GRADES 9-12 WHO HAD FIVE OR MORE DRINKS OF ALCOHOL IN A ROW WITHIN A COUPLE OF HOURS ON AT LEAST 1 DAY WITHIN THE PAST MONTH, ND AND US

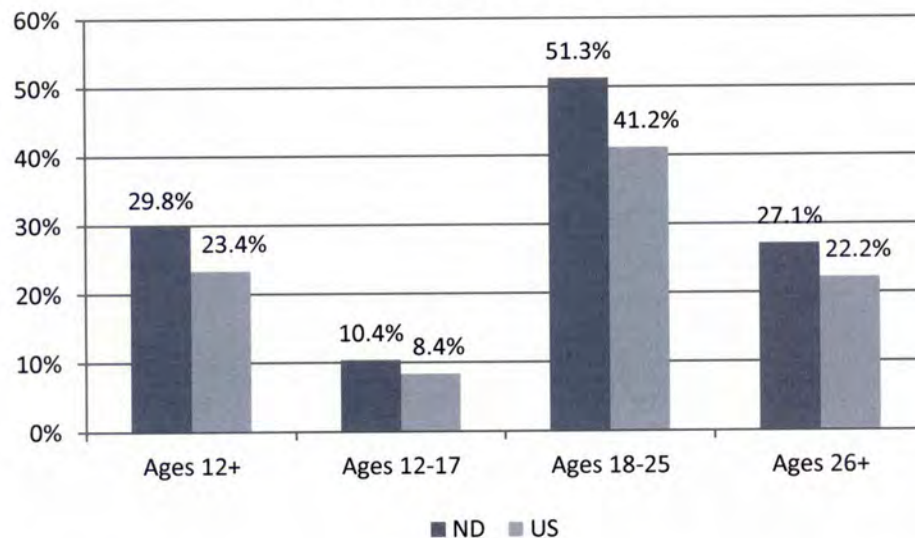


Source: YRBS

Trend line: Downward; decreases noted over time.

Conclusion: ND prevalence was higher than the US prevalence for each year.

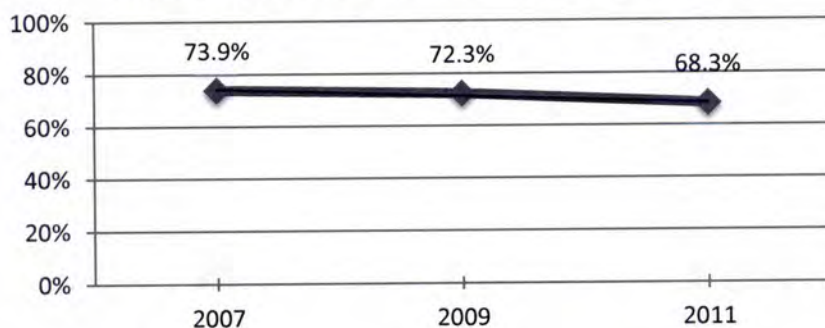
BINGE ALCOHOL USE IN PAST MONTH, NORTH DAKOTA AND UNITED STATES, BY AGE GROUP, 2009-2010



(NSDUH, 2009-2010)

28% OF ND HIGH SCHOOL STUDENTS DRANK ALCOHOL ON 20 OR MORE DAYS IN THEIR LIFE; 9.7% ON MORE THAN 100 DAYS. (YRBS, 2011)

High School Alcohol Use - *lifetime*, 2007-2011



(YRBS, 2007-2011)

ASSOCIATED RISK FACTORS AND CONSEQUENCES RELATED TO SUBSTANCE USE

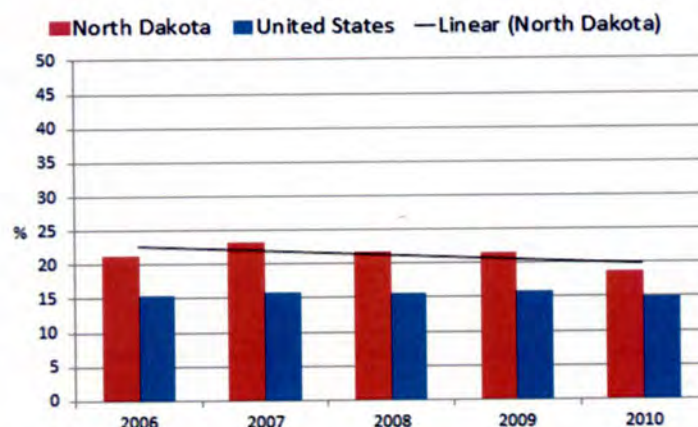
8.3% of ND middle school students had their first drink of alcohol *before* age 11 (YRBS, 2011)

- ✦ People who begin drinking before age 15 are four times more likely to become alcohol-dependent than those who wait until they are 21 (Center for Adolescent Health).

69% of ND high school students think binge drinking 1-2 times a week does NOT pose a great risk (YRBS, 2011)

- ✦ Underage alcohol use is more likely to kill young people than all illegal drugs combined (National Institute on Alcohol Abuse and Alcoholism).

ADULTS WHO ENGAGED IN BINGE ALCOHOL USE WITHIN THE PAST 30 DAYS, ND AND US, 2006-2010



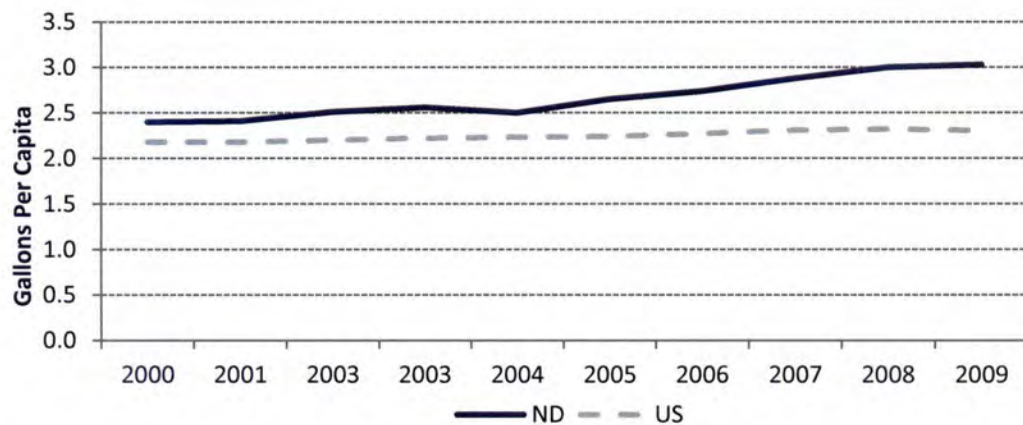
Source: BRFSS

IN ND FATAL CRASHES, 93% OF THE IMPAIRED DRIVERS WERE AGE 21 OR OLDER.

Age of Impaired Driver	14-15	16-17	18-20	21-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-69	70-74	75-79
# Fatal Crashes	1	0	3	9	7	11	3	5	5	5	3	0	1	1

(DOT, 2011)

PER CAPITA ALCOHOL CONSUMPTION, NORTH DAKOTA AND UNITED STATES, 2000-2009

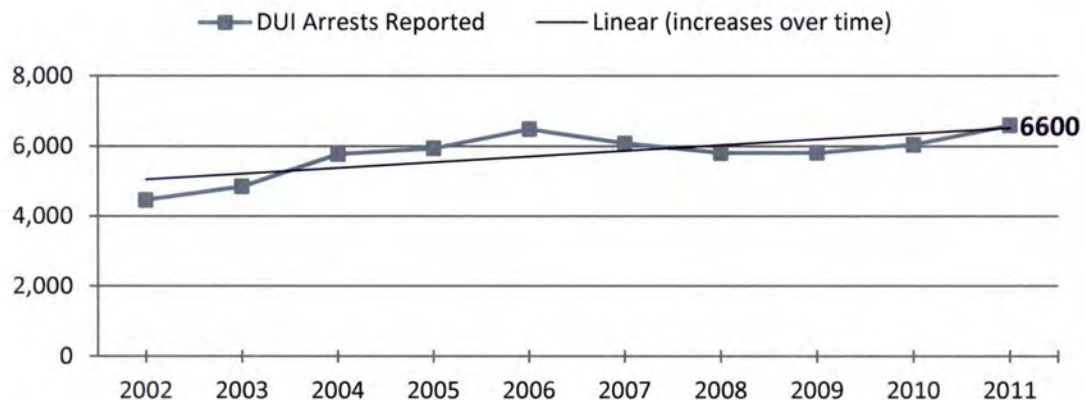


Source: National Institute on Alcohol Abuse and Alcoholism (NIAAA)

*For population ages 14 and older.

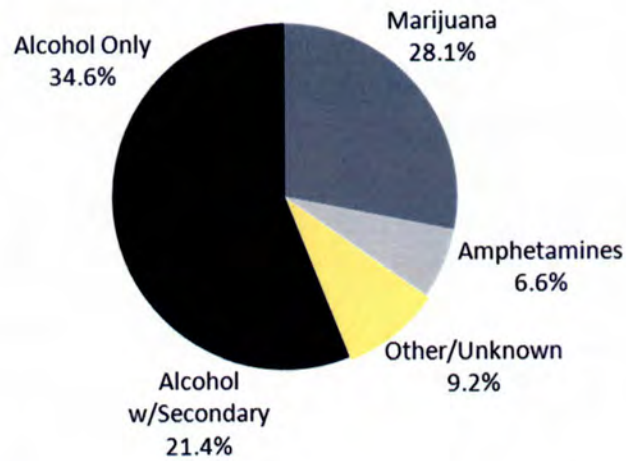
IN 2011, 28% OF ALL ADULT ARRESTS WERE FOR DRIVING UNDER THE INFLUENCE (DUI)

DUI Arrests, 2002-2011



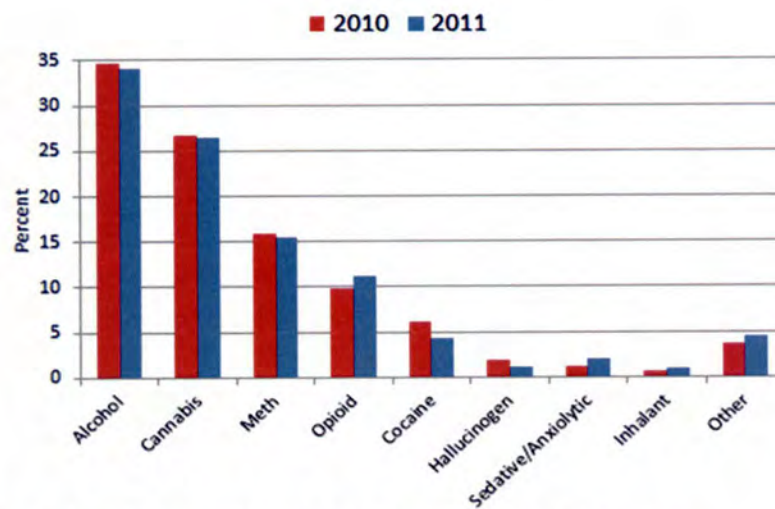
(DOT, 2011)

NORTH DAKOTA SUBSTANCE ABUSE TREATMENT, BY PRIMARY SUBSTANCE 2011



Source: Treatment Episode Data Set
*Total outpatient admissions=2,664

SUBSTANCE-RELATED DIAGNOSES AMONG NORTH DAKOTA CORRECTIONAL INMATES, 2010 AND 2011



Source: ND Department of Corrections and Rehabilitation; Total diagnoses - 2010: 1,750; 2011: 1,557

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Testimony to the: **HOUSE JUDICIARY**

Prepared February 5, 2013 by the North Dakota Association of Counties

Aaron Birst, Legal Counsel

CONCERNING HB 1302

Chairman Koppelman and members of the committee, NDACo supports efforts to eliminate and reduce impaired driving. In the words of US Supreme Court Justice Sandra Day O'Connor "The carnage caused by drunk drivers is well documented and needs no detailed recitation here." The tragedies you have heard about here today are just a number in a long line of those lives that have forever been changed by those who abuse the freedoms our Nation and State provide.

One definition of insanity is doing the same thing over and over again and expecting a different result. North Dakota needs to change. Our laws need to change.

As you all know, the issue of how to fix our DUI laws is not easy. There is also not one magic solution to changing this problem overnight. There is however some broad consensus amongst prosecutors and law enforcement for some workable solutions that are contained in this bill. It is because of those provision we offer our support.

I must also mention there are a few provisions in this bill which some in our organization view as negatively impacting DUI prosecution. I will note many of these concerns were expressed by individuals who have absolutely dedicated their professional careers to prosecuting impaired drivers.

Ending hard license suspensions, expanding the use of the 24/7 program, increasing the look back periods, criminalizing refusal and restructuring the offense levels are all ideas that can help effect changed.

Other concepts this committee will have to evaluate: What are the impacts on the criminal justice system with increased minimum mandatory sentences? Are there additional tools that could be added to the tool box? What other ideas could get us to the place we all agree we need to get to which is no more broken families like the families you have just met.

Thank you,

Good morning Chairman Koppelman and Judiciary Committee members. My name is Arlene Deutscher and I'm from Bismarck. I'm here to emphasize my position on the need for change in our current DUI culture. It's not okay to drive drunk. I'm in favor of this bill because I feel license restrictions, participation in the 24/7 sobriety program, interlock devices, and stiffer penalties and probation would help reform this culture.

Our family had looked forward to July 6th, 2012, for many months. We had scheduled a family reunion for that weekend. This was the first time in 3 years that our whole family was able to be together. Instead of a fun-filled weekend, we were planning three funerals. My son, Aaron, his pregnant wife, Allison, and their 18-month old daughter, Brielle, were killed by a drunk driver going the wrong way on Interstate 94. The impaired driver had previous drinking and driving violations. I don't have to tell you that North Dakota is near the top among states in drunken driving deaths per capita with alcohol involved in more than half of our fatal crashes.

Human costs and losses are immeasurable. I know this first hand, and for the last 7 months, all of Aaron's, Allison's and Brielle's family and friends, have suffered immense pain because of their senseless deaths. A huge piece of our future is gone. Words cannot describe the sadness we feel every day.

Aaron and Allison were so active in their community. Besides belonging to softball, soccer, and volleyball leagues, and running half marathons, they gave back by volunteering in soup kitchens, homeless shelters, delivering for Meals on Wheels, and working at local telethons. They were contributing members of society.

It is the responsibility of each of us as North Dakota's citizens, to recognize we have a very important role in changing society's attitude about driving drunk. Our first step is strengthening our DUI legislation. It's time for progressive and meaningful change, and I believe this bill is a move in that direction. Thank you.

Good morning chairman Koppelman and distinguished committee members. My name is Tom Deutscher and I am from Bismarck. I am here today asking that you support HB1302 otherwise known as Brielle's Law. As you may know, my son Aaron, his wife Allison and baby Brielle were killed on July 6th by a drunk driver travelling the wrong way on interstate. For those of you who are unaware of the story...we had been planning a family reunion.... It had been 3 years since the entire family was together and many changes had taken place. 3 grandchildren and 1 on the way. The yard was filled with games and a children's pool in anticipation of an afternoon of joy....and everyone was in the garage waiting for the last arrivals...Aaron, Allison and Brielle....but the only car to drive into our driveway that evening was the highway patrol. Alyssa was to ride with them....fortunately she left work early or we would have lost her too....My last words to Aaron were "I love you and drive carefully". It has been said that when a parent loses a child a little bit of them dies with them. I will tell you for a fact this is true as I have spent the last 8 months trying to hold together what remains of my family because of a senseless.... and preventable act. I do not wish this personal hell on anyone. I will not bore you with the statistics.....you've heard where we stand both as a people and as a State. Some say our DUI laws are strong enough and that our jails are already full....I would argue that they are not strong enough and that our cemeteries are full. If you think stricter legislation will come as an additional cost to the taxpayer.....(and take the unimaginable emotional toll aside)...come visit with me and I'll discuss with you the financial burden my family and my extended family is experiencing because someone chose to ignore their drinking and driving responsibility. I have watched law enforcement work tirelessly to remove drunk drivers from our roads ...and the frustration they experience when the same drivers repeat.

It continues each day.....and will do so until we act.

This bill is both aggressive and progressive.... and in my opinion long overdue. It intends to protect the innocent and educate the responsible. A well-intended reporter asked me soon after the accident if I thought that more stringent DUI laws might have saved my son's life. I responded that I did not know the answer to that question....however I said... it might save your son's life. To us this is not a republican bill.....this is not a democrat bill.....it is a mom and dad bill.

When a tragedy such as this happens to a family you are paralyzed.... You are in shock, you are in disbelief and you are in denial. This is when you look to your leaders.....you look to them to be your voice when you cannot speakand take action when you cannot move. I would like to commend representative Koppelman for being that voice... and for ...working with other agencies and entities who have a vested interest in changing a stagnant culture.....I urge your support so that the Ruis family, the Mickelson family, and my family the Deutscher family..... and all those before us... have not died in vain....rather by passing this bill they died so that others may live. Thank you.

HOUSE JUDICIARY COMMITTEE**Kim Koppelman, Chairman****February 5, 2013**

North Dakota Department of Corrections and Rehabilitation**Leann K. Bertsch, Director****Presenting Testimony Concerning: HOUSE BILL 1302**

Chairman Koppelman and Members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation (DOCR). The DOCR is neutral on House Bill 1302.

House Bill 1302 significantly increases the penalty for driving while under the influence (DUI). Under current law, a DUI does not become a felony until the fifth or subsequent offense within a seven-year period. This bill makes a third or subsequent offense within a ten-year period a class C felony. This bill will increase the number of DUI offenders who will now be convicted felons. All felony offenders sentenced to a period of probation for all or a portion of their sentence must be supervised by the Parole and Probation Division of the Department of Corrections and Rehabilitation. The DOCR believes this major change to the DUI penalty structure will eventually add hundreds of offenders per year to the caseloads of our parole and probation officers that already carry heavy caseloads.

Financial concerns and resources should not override sound policies on issues of public safety, nor should they be ignored. Impaired drivers kill people. By the time an offender is being prosecuted for their third DUI, it is apparent that the offender poses a significant risk to others on our highways. Increasing the DUI penalties and thereby widening the net so that more DUI offenders are incarcerated for longer periods of time or placed on supervised probation may increase public safety and reduce the risk that impaired drivers

pose. However, these offenders need to be adequately supervised and that will require additional parole and probation officers.

The fiscal note prepared by the DOCR on House Bill 1302 anticipates an increase in the number of DUI offenders who will be incarcerated. The DOCR's inmate projections, upon which our 2013-2015 budget was built, does not include the additional cost to incarcerate the additional DUI offenders that will be sentenced to prison as result of the increased penalties. Incarcerating impaired drivers will certainly keep them off of our highways. However, the added costs to the correctional system must be fully considered and addressed. If the intended result of House Bill 1302 is to increase public safety by reducing the number of impaired drivers on our highways, additional enforcement and treatment resources should be considered as an alternative to incarceration.

Personal Testimony for House Bill No. 1302

Hearing before House Judiciary Committee on February 5, 2013

14

Good Morning Chairman Koppelman and members of the House Judiciary Committee.

My name is Cynthia Auen and I am from Bismarck.

I am in favor of House Bill No. 1302 for the following reasons:

Studies show stiffer penalties proactively reform culture (2). And, to quote from our own State Attorney Generals website, "Over **98%** of the individuals who are placed on the 24/7 Sobriety Program successfully complete it. In other words, **they don't drink**, and they don't drink and drive." (3)

North Dakota statistically ranks among the highest in the United States for fatalities due to alcohol related automobile accidents. I believe we are in cultural denial when we say drinking and driving is not an imminent threat to the safety of North Dakotans. When sleeping campers are killed in their tents because of a drunk driver and we say impaired driving is not a problem, we are in denial. If after reading House Bill No. 1302 and recognizing the provisions necessary for REPEAT impaired driving offenders, we still say North Dakota doesn't have a problem, we are in denial.

Opponents in denial will say it takes too much preparation to plan for transportation after drinking. I submit to you that we are some of the best in the nation for preparing for winter weather conditions. Failure to plan for drinking and transportation is denial. Opponents will say this legislation takes away their right to drink. Friends and families picking up the pieces of precious lives lost to a drunk driver will say drinking and driving took away the right to live. If we think the right to drink paired with an ill choice to drive supersedes the right to safety on a shared highway, we are in denial. If we have zero tolerance for allowing pilots to fly while impaired, surgeons to operate while impaired or teachers to teach while impaired, but allow for impaired driving under the guise of convenience ... then we are in denial.

Can we afford to educate ourselves out of denial? I would like to examine that with some math using the statistics I took from the North Dakota Department of Transportation website: One person dies in a fatal crash every 2.5 days. Alcohol/Drugs/Medication was a contributing factor in 43% of fatal crashes. By the time this bill becomes effective as emergency legislation on May 1 of this year, 14 more people will have died due to impaired driving (4). Education will not work fast enough for 14 people.

Too many people have gone to their grave early for us to remain in denial. This bill is not about taking away the right to drink and the privilege to drive when you need to go to work. This bill is about preserving the lives of those who live and work and share the highways in our state. This bill is about making responsible choices and recognizing our responsibility to those who cannot.

I ask you to give a DO PASS recommendation to House Bill No. 1302.

And in the words of a prayer my family learned while my father was in alcohol rehabilitation:

May you be granted the serenity to accept the things you cannot change, courage to change the things you can and the wisdom to know the difference.

- (1) <http://www.dot.nd.gov/divisions/safety/docs/crash-summary.pdf>
- (2) <http://www.duinorthdakota.com/news.cfm/Article/6221/New-CDC-Study-Shows-Stronger-State.html>
- (3) <http://www.ag.nd.gov/TwentyFourSeven/index.htm>
- (4) $(84 \text{ days} / 2.5 \text{ fatalities per day}) \times 0.43 \text{ (\% due to alcohol related crashes)} = 14.448$

HB 1302

2-5-13

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Good morning Mr. Chairman and members of the committee. My name is Juan Ruiz from Newburg ND.

Today my friends, the Deutscher's are testifying on my behalf. I'm in favor of this bill and any other bill that benefits the people of ND in search of hope that this legislature will pass a comprehensive DUI reform. On July 7, 2012 my boys and I (the goof troop as we would call ourselves) were having a blast doing the activities we loved to do and trying new things as a family, spending quality time up at Lake Metigoshe. Camping, fishing, and swimming in a lake is something we've done before back home in Texas but jetskiing, tubing and paddle boating were new to us. At a place so beautiful, so serene and so peaceful would turn out to be just the opposite. These activities are forever going to be bitter sweet for me. Never in a million years would I have guessed that that would be our last night together. The last time I'd say Good night boys, I love you and get an actual response back. I'd give or do anything just to hear half a breath come from them. The truth is that will never happen again. We were in our tent playing video games and going over tomorrow's agenda and getting ready for bed. We said our good nights and I love yous and drifted off to sleep. My boys never got the chance to wake up. I did. I woke up to pulling my boys out from underneath a heavy duty pickup truck that ran over our tent slamming into a tree next to us. A horrific and traumatizing event I wish on no one. The sole reason of this event, a drunk driver. My boys were and still are the best gifts given to me. Cyris was born May 16, 2003. He was barely 9 years old when he was killed. He had his whole life ahead of him. He like school for the most part as any nine-year old boy would. He did his best when he needed improvement and was recognized for that at school and even got a perfect attendance award. He loved us, his cat, his dog, his cartoons, his Xbox, his friends, his cookies, and the same could be said for his little brother. Cyris loved his Legos and staying inside the house. Cyris wanted to be a video game designer when he grew up. He is a great big brother. Alaries was born Aug 30th 2006. He was only 5 years old and

was looking forward to his birthday before he was killed. He too had a whole life ahead of him. He, on the other hand, didn't like school because according to him, he's gone to school his whole life. Jokes aside, he was a great student to have in class. Alaries and his brother would sometimes get verbal warnings from the principal in the hallways for high fiving each other while walking in line to class or wherever. They're supposed to keep to themselves but they'd get away with it. Alaries had a lot in common with Cyris but he had his own likings too. He loved candy, his Hotwheels, riding bikes, going fast and just being outside. He wanted to be a race car driver. I wish I could talk more about my goof troops but it hurts too much. Just know that this brief description barely scratches the surface of who and what my boys are. Respectable, honest and loving kids that any parent could dream of. This state has so much to offer. Employment, wide open spaces, a serene beauty. Hunting, fishing, boating, the four seasons, all the things that my boys and I love. We were so happy being here. That being said, N.D. also accepts drunk driving as a matter of a fact. This is shown in N.D. law, one of the most lenient laws in the nation. After our tragedy, I learned that N.D. has one of the highest fatality rates related to alcohol. This why I want to see reform. Other states and other nations have seen alcohol related fatalities decrease when DUI laws were strengthened. I know there are two bills before the legislature. I urge you to do your research and put together a law that will have a real affect in reducing DUI fatalities. I don't want this to happen to you, your children or grandchildren. It's one of the worst pains a human can experience and I'm not lying when I say I wish I died with them or instead of them. The research shows if laws are strengthened in the right ways, fatalities will decrease. All I ask for is change, awareness, responsibility and accountability. If we saved one life wouldn't it be worth it? It could be someone in this room or a loved one of someone in this room who is saved. Thank you for your time.

Mr. Chairman and members of the committee . My name is Sandra Hernandez from Newburg.

I am the mother of Cyris and Alaries Ruiz. I am here to favor this bill and any other bill that help improve DUI laws in the state of North Dakota. I'm not just here for us, but also for all those families who have lost a loved one to a drunk driver. I'm here to help make a positive change for our society. I am here for my boys. Losing my babies has been one of the hardest things to endure. Getting told that both my baby's were killed was like having a heart attack and getting the wind knocked out of you all at the same time. I felt hopeless and destroyed. Let me let you know that my Cyris and Alaries were smart boys, true sweethearts very caring and loving. They were learning to be honest. There was always a please and thank you when asking for something. They knew how to share and how to give from the heart. Always very helpful. They understood when they were told they that they could not have every toy in the store. I honestly never had to deal with a terrible tantrum. Those boys loved to learn and explore new things. They were funny and fun loving kids to be around. They were two very happy, healthy boys. They were my pride and joy. They were the best things that could have happened to Juan and me. My heart was set on raising two fine men for this world. I wanted my boys to be somebody not just anybody. I was going to teach them to be the best they could be, but now here we are stripped from all of that, left with the worst imaginable heart ache. It hurts to wake up every morning and realize it's not all just a dream, that here starts another day without them. It feels so weird to say their names and not hear them answer back. I miss my boys so much. I miss their constant "I love yous". I miss their smiles, laughs, hugs and kisses. This world missed out on two awesome little human beings that could have made a great positive difference in this world. Kids like ours are hard to find these days. So today, my friend, Arlene Deutscher, some who truly understands exactly what we are going through is testifying on our behalf but not so you could feel sorry for us but so that you can have a little compassion and more consideration on any bills that present themselves in regards to DUIs. Something needs to be done to avoid tragedies like ours.

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Russ Myhre**From:** Russ Myhre [mlooffice3@qwestoffice.net]**Sent:** Sunday, February 03, 2013 1:26 PM**To:** pmyerchin@bmmelaw.com**Subject:** Traffic Safey Study**From:** Ryan Sandberg [mailto:rsandberg@srt.com]**Sent:** Friday, January 11, 2013 5:46 PM**To:** 'Erica Shively'; pmyerchin@bmmelaw.com; 'Bruce D Quick'; 'Gretchen M. Handy'; 'Mark A Frieese'; 'Nick Thornton'; 'Russ Myhre'; 'Travis Finck'**Cc:** 'Jon Jensen'; 'Tatum Lindbo'; 'Tom Glass'**Subject:** RE: Scanned image from Senate Page Room

I did some research on the statistics on DUI fatality accidents in North Dakota. I found some interesting things that are not told to the public.

The DOT creates every year "Traffic Safety Facts". I have the data from 2010 and 2011. Here is the website for each of these documents. (<http://www-nrd.nhtsa.dot.gov/Pubs/811606.pdf>) and <http://www-nrd.nhtsa.dot.gov/Pubs/811700.pdf>

According to these documents, a driver is considered an "alcohol impaired driver" when their blood alcohol concentration is .08 grams per deciliter or higher. (See 1st paragraph of page 1 of each above document) In addition, it states that the term "Alcohol Impaired" does not indicate that a crash or fatality was caused by alcohol impairment. See paragraph 2 of page 1 of these documents. It means that it is possible the a driver with a .08 BAC might not have caused the accident. It could have been the other driver that did not have anything in its system. I would think given the technology that it would be very simple to remove from the stats any fatality where the driver responsible for the accident was not alcohol impaired. I don't know how much we want to argue this point.

According to the 2010 data, North Dakota had 105 traffic fatalities.

1. 54 drivers involved in these fatality accidents had a .00 BAC.
 - a. This equates to 51.4% of the drivers involved in fatality accidents
2. 4 drivers had a BAC of .01 to .07.
 - a. This equates to 3.8% of the drivers involved in fatality accidents
3. 47 drivers had a BAC of .08 and higher;
 - a. 7 of the 47 drivers had a BAC between .08 and under .15.
 - i. This equates to 6% of the drivers involved in fatality accidents
 - ii. This equates to 15% of the drivers above .08 or higher
 - b. 40 of the 47 drivers had a BAC above .15
 - i. This equates to 38% of the driver's involved in fatality accidents
 - ii. In addition, this equates to 85% of the drivers above .08 or higher.

I can break this down even further to show drivers with a BAC at .01 but less than .15 are at less risk to cause a traffic fatality. For example, drivers with a BAC at .01 but less than .15 caused 10 percent of the 105 traffic fatalities.

According to the 2011 data, North Dakota had 148 traffic fatalities.

1. 81 drivers involved in these fatality accident had a .00 BAC
 - a. This equates to 54% of the drivers involved in fatality accidents
2. 3 drivers had a BAC of .01 to .07
 - a. This equates to 2% of the drivers involved in fatality accidents;
3. 64 drivers had a BAC of .08 or higher;
 - a. 9 of the 64 drivers had a BAC between .08 and under .15
 - i. This equates to 6% of the drivers involved in fatality accidents;
 - ii. This equates to 14% of the drivers above .08 or higher;
 - b. 53 of the 64 drivers had a BAC above .15 or higher;
 - i. This equates to 35.8% of the drivers involved in fatality accidents;
 - ii. This equates to 86% of the drivers above .08 or higher;

Again, the 2011 stats can be broken even further to show that drivers at .01 but less than .15 are at less risk to cause a traffic fatality than a BAC above .15. For example, drivers with a BAC at .01 but less than .15 caused 8% of the 148 traffic fatalities.

I guess what I am saying is the main culprit of traffic fatality accidents are drivers with a BAC above .15 or higher. Maybe we should take the position that any type of mandatory sentence should be for .15 or higher on 1st offenses. We already have in place higher suspension for drivers with a BAC of .18 or higher. I think we can also argue that an independent study needs to be done to determine who the main culprits for alcohol related fatalities are. I don't think the proponents of these new DUI bills will have independent studies to substantiate their claim. I alone have been able to show the driver's with a .15 BAC and higher are the greater cause of the fatality accidents. It might be possible the real culprits are drivers with a BAC of .20 or higher.

I will continue to research to see what the numbers are for earlier years. I am guessing it is very similar to the above stats.
Ryan

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Russ Myhre

From: Russ Myhre [mlooffice3@qwestoffice.net]

Sent: Sunday, February 03, 2013 1:27 PM

To: pmyerchin@bmmelaw.com

Subject: WY Stats

Comparison of Drivers in Alcohol Related Fatalities for WY from 2007 to 2011

YEAR	Total Fatalities	% of Drivers w/ BAC .01 to .07	% of Drivers w/ BAC .08 but <.15	% of Drivers w/ BAC .15 or higher	Population in 2010
2007	150	4%	8.7%	24%	675,905
2008	159	5%	10.7%	31%	675,905
2009	134	5%	8.2%	27%	675,905
2010	155	3%	7.7%	27%	675,905
2011	135	2%	9.6%	18%	675,905
Average per year	146.6	3.8%	9%	25.4%	
National	35,4765	5.6%	9.9%	21.6%	

Wyoming's DUI Laws

<http://dui.drivinglaws.org/wyoming.php>

This website might have outdated laws.

1. 1st Offense
 - a. Up to 6 months in jail
 - b. Up to \$750 fine
 - c. 90 days suspension
 - d. Ignition Interlock for 6 months for drivers with a BAC .15 or above)
 - e. Substance abuse assessment
2. 2nd Offense with in 10 years
 - a. 7 days to 6 months in jail
 - b. \$250 to \$750
 - c. 1 year license suspension
 - d. Ignition interlock device for 1 year
 - e. Substance abuse assessment
3. 3rd Offense within 10 years
 - a. 30 days to 6 months in jail
 - b. \$750 to \$3,000
 - c. 3 year license suspension
 - d. Ignition Interlock Device for 2 years
 - e. Substance Abuse Assessment
 - f. Other possibilities
 - i. Probation

- ii. Inpatient treatment program
 - iii. Alcohol education program
- 4. 4th Offense within 10 years
 - a. Felony
 - b. Jail up to 2 years
 - c. Fine up to \$10,000
 - d. License Suspension
 - e. Ignition Interlock Device for Life (May apply for removal after 5 years)

Refusal to Take test

- 1. 1st Refusal
 - a. 6 months suspension
- 2. 2nd Refusal
 - a. 18 months license suspension
- 3. 3rd Refusal
 - a. 18 month license suspension

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Russ Myhre

From: Russ Myhre [mlooffice3@qwestoffice.net]

Sent: Sunday, February 03, 2013 1:28 PM

To: pmyerchin@bmmelaw.com

Subject: MT Stats

Comparison of Drivers in Alcohol Related Fatalities for MT from 2007 to 2011

YEAR	Total Fatalities	% of Drivers w/ BAC .01 to .07	% of Drivers w/ BAC .08 but <.15	% of Drivers w/ BAC .15 or higher	Population in 2010
2007	227	6%	9.7%	30%	675,905
2008	229	5%	11.8%	27%	675,905
2009	221	5%	10%	27%	675,905
2010	189	5.8%	11.6%	27%	675,905
2011	209	4%	10.5%	28%	675,905
Average per year	121.6	3.8%	8.9%	35%	
National	35,4765	5.6%	9.9%	21.6%	

Montana Laws

<http://www.edgarsnyder.com/drunken-driving/driving-alcohol-laws/montana-drunken-driving-laws.html>

There is no look back period for previous DUIs

1. 1st Offenders

a. Maximum sentence of 6 months

- i. However, a child under 16 in vehicle, then maximum sentence is 1 year;
 1. Additional maximum of 20 days if BAC was excessive;
- ii. No mandatory

- iii. Additional maximum of 10 days in prison if the BAC was excessive;
 - b. \$300 to \$1,000 fine;
 - i. However, a child under 16 in vehicle, then fine is \$600 to \$2,000
 - 1. Additional \$600 to \$2000 if BAC was excessive
 - ii. Additional \$300 to \$1000 fine if the BAC was excessive;
 - c. Revocation of license for 6 months
 - d. Ignition Interlock can be recommended
1. 2nd Offense
- a. Maximum sentence up to 6 months
 - i. However, a child under 16 in vehicle, then maximum sentence is 1 year;
 - 1. Additional maximum of 60 days in jail if the BAC was excessive;
 - ii. No mandatory
 - iii. Additional maximum of 30 days in prison if the BAC was excessive
 - b. Revocation of license for 1 year
 - c. \$600 to \$1,000 Fine
 - i. However, a child under 16 in vehicle, then fine is \$1,200 to \$2,000
 - 1. Additional \$1,200 to \$2,000 if the BAC was excessive;
 - d. Ignition interlock required for 1 year after the expiration of the license revocation period;
2. 3rd Offense
- a. Maximum sentence of 1 year;
 - i. 6 months additional time if the BAC was excessive;
 - ii. However, a child under 16 in vehicle and an excessive BAC, then an additional maximum of 12 months in prison
 - b. \$1,000 to \$5,000 Fine
 - i. Additional fine of \$1,000 to \$5,000 if the BAC was excessive
 - ii. However, a child under 16 in vehicle, then fine is \$2,000 to \$10,000
 - 1. Additional fine of \$2,000 to \$10,000
 - c. Revocation of license for 1 year
 - d. Ignition interlock required for 1 year after the expiration of the license revocation period;
3. 4th Offense or more
- a. Minimum sentence is 13 months in a correctional facility
 - i. However, the person can serve 13 months in a residential alcohol treatment program operated or approved by Montana's DOC.
 - b. 5 year suspended sentence;
 - c. \$1,000 to \$10,000 fine;
 - d. Revocation of license for 1 year.
 - e. Ignition interlock required for 1 year after the expiration of the license revocation period;

Russ Myhre

From: Russ Myhre [mlooffice3@qwestoffice.net]

Sent: Monday, February 04, 2013 8:52 AM

To: pmyerchin@bmmelaw.com

Subject: SD Stats

Comparison of Drivers in Alcohol Related Fatalities for SD from 2007 to 2011

YEAR	Total Fatalities	% of Drivers w/ BAC .01 to .07	% of Drivers w/ BAC .08 but <.15	% of Drivers w/ BAC .15 or higher	Population in 2010
2007	146	6%	7.5%	24%	675,905
2008	119	6%	6.7%	22%	675,905
2009	131	5%	9%	31%	675,905
2010	140	7%	9.2%	17%	675,905
2011	111	4%	6.3%	24%	675,905
Average per year	129.4	5.6%	7.7%	23.6%	
National	35,4765	5.6%	9.9%	21.6%	

SD DUI Laws

<http://www.edgarsnyder.com/drun-driving/driving-alcohol-laws/south-dakota-drun-driving-laws.html>

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=32-23&Type=Statute>
<http://dui.drivinglaws.org/sdakota.php>

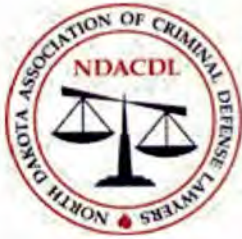
1. 1st Offense (SDCC 32-23-2)
 - a. Maximum sentence up to 1 year
 - b. Up to \$2,000 fine
 - c. Driver's Suspension/Revocation is 30 days to 1 year (the court and not the DOT);
 - i. Restricted License Possible
 - ii. The court may allow restricted license if successful completion of chemical dependency program and proof of SR-22 for:
 1. 24/7 testing
 2. employment;
 3. Attendance at School;
 4. Attendance at counseling programs;
 - d. Court ordered evaluation if the driver's BAC was .17 or higher
 - i. Cost paid by the driver;
 - e. Proof of SR-22 Insurance
1. 2nd Offense within 10 years (SDCC 32-23-3)
 - a. Maximum sentence up to 2 years;

- b. \$1,000 to \$2,000 fine;
- c. Driver's Suspension/Revocation is not less than 1 year (by the court);
 - i. Restricted License Possible;
 - ii. The court may allow restricted license if successful completion of chemical dependency program and proof of SR-22 for:
 - 1. 24/7 testing
 - 2. employment;
 - 3. Attendance at School;
 - 4. Attendance at counseling programs;
- d. SR-22 Insurance
- e. Complete chemical dependency program
- 2. 3rd Offense within 10 years (SDCC 32-23-4)
 - a. Maximum sentence up to 2 years;
 - b. \$2,000 to \$4,000 fine;
 - c. Driver's suspension/Revocation is at least 1 year by the Court;
 - i. Restricted License Possible
 - ii. The court may allow restricted license if successful completion of chemical dependency program and proof of SR-22 for:
 - 1. 24/7 testing
 - 2. employment;
 - 3. Attendance at School;
 - 4. Attendance at counseling programs;
 - d. SR-22 Insurance
 - e. Complete chemical dependency program
- 3. 4th Offense within 10 years (Felony) (SDCC 32-23-4.6)
 - a. Maximum sentence up to 5 years in prison;
 - b. \$2,000 to \$10,000 fine;
 - c. Driver's suspension/revocation is at least 2 years by the Court;
 - i. The court may allow restricted license if successful completion of chemical dependency program and proof of SR-22 for:
 - 1. 24/7 testing
 - 2. employment;
 - 3. Attendance at School;
 - 4. Attendance at counseling programs;
- 5. 5th or subsequent offense within 10 years (Felony)(SDCC 32-23-4.7)
 - a. Maximum sentence up to 10 years in prison;
 - b. Up to \$20,000 fine;
 - c. Driver's suspension/revocation is at least 3 years;
 - i. The court may allow restricted license if successful completion of chemical dependency program and proof of SR-22 for:
 - 1. 24/7 testing
 - 2. employment;
 - 3. Attendance at School;
 - 4. Attendance at counseling programs;

Refusal to take Test (Implied Consent Laws) (SDCC 32-23-11 and 18)

- 1. Driver's license suspended for 1 year;
 - a. The Secretary of Public Safety can promulgate rules for restricted license. (I don't know what they are.
 - b. You can cure all refusals no matter if 1st, 2nd, etc. (SDCC 32-23-11.1)

24/7 testing (SDCC 32-23-23 authorizes this testing and how the court can revoke the restricted permit.)



NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

**TO: SENATOR DAVE OEHLKE, CHAIRMAN
SENATE JUDICIARY COMMITTEE**

**FROM: NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS
Russell J. Myhre
NDACDL Legislative Committee**

SUBJECT: Senate Bill No. 2240 and House Bill No. 1302

This Memorandum is in response to your request to NDACDL to submit proposed amendments to Senate Bill No. 2240, and incorporating the elements of House Bill No. 1302 into Senate Bill No. 2240

First and foremost, NDACDL does not favor intoxicated persons driving automobiles. This is a crime and a criminal act which endangers property and lives, and it is appropriate to punish those who violate the laws prohibiting this criminal behavior.

NDACDL also recognizes that drinking and driving is only a part of a much larger societal problem, of the impacts which alcohol and alcoholism has upon the lives of all our families. Alcohol has much broader implications than persons who drink and drive illegally. Testimony was received by the Senate Judiciary Committee that between 50% and 85% of all crime resulted from the direct and indirect consequences of drinking. Other testimony cited statistics that related alcohol and drug usage to domestic violence, assaults, and other crimes of violence. While there was little testimony about the consequences of criminal convictions, a DUI conviction can result in the loss of employment, a loss of residence, child support arrearages, bankruptcy, and additional subsequent convictions for driving under suspension. The impacts are felt, not just upon the guilty person, but also upon their families, their businesses, and and their creditors, and in more than enough situations, the taxpayers end up supporting not just the guilty person, but also his dependents.

NDACDL is taking the position upon both SB 2240 and HB 1302 that, while there are good parts of each bill which would provide useful tools in terms of sentencing defendants, the increase in the minimum mandatory sentences, especially the requirement for a mandatory jail term for a first offense, will not address the larger issues related to drinking and driving.

NDACDL urges the North Dakota Legislature to conduct a two-year study of the ways to change and counteract the Culture of Alcohol in North Dakota, regardless of how it chooses to address these issues in the current session. The problems are much broader than just drunken driving, and while it may feel satisfying to increase minimum mandatory jail sentences for drunk drivers, the associated \$50 million costs do little to address the overall Culture of Alcohol. ***Rather, a two-year study will allow North Dakota time to pull the "best-of-the-best" approaches for dealing with DUI from other states. This legislature can then enact amendments to existing DUI laws knowing that it will have a meaningful and lasting impact to change the Culture of Alcohol in North Dakota.***

As the attached traffic safety statistics clearly show, "the main culprit of traffic fatality accidents [where the driver has been drinking] are drivers with a BAC above .15 or higher." See Exhibit 1, attached analysis of "Traffic Safety Facts". In other words, imposing increased minimum mandatory sentences for first offense Driving Under the Influence does not address the real safety issue involved in alcohol-related accidents, injuries, and deaths.

NDACDL believes the best approach to reducing the number of alcohol-related accidents, injuries, and deaths is to follow a ***comprehensive program*** which includes:

- ▶ Enhanced law enforcement, including support to cities and counties for additional officers and equipment to target drunk driving. Put more law enforcement officers on the streets and give them the tools to enforce the law;
- ▶ Increase support for alcohol and drug rehabilitation programs and treatment facilities, especially in rural areas;
- ▶ Support public awareness programs and publicity aimed toward drinking responsibly if one chooses to drink, promoting **taxi cab voucher** and designated driver awareness, and reporting intoxicated drivers;
- ▶ Support local programs to provide alternative transportation to intoxicated persons, especially in rural areas, such as public transportation subsidies, volunteer programs, and other programs designed to keep intoxicated persons off the roads;
- ▶ Adopt and support technologies and programs such as the advanced technology ignition interlock systems and the Twenty-Four Seven Sobriety program to deal with persons who are convicted of driving under the influence and to provide courts with more options to deal with sentencing alternatives ;
- ▶ Conduct a two-year interim study to address how to change the Culture of Alcohol which exists, which would include an examination of whether changes in DUI laws are appropriate ***and whether more severe penalties need to be put in place on alcohol establishment owners; and***

- ▶ Enforce the existing DUI laws and provide courts with the tools to impose sentences which are greater than the existing minimum mandatory sentences already on the books.

NDACDL opposes both Senate Bill No. 2240 and House Bill No. 1302 as they were introduced.

However, **NDACDL also supports ideas which are incorporated in each bill.** NDACDL would support amending Senate Bill No. 2240 to incorporate the best parts of each bill. **NDACDL believes the best parts of these bills are the temporary restricted license provisions that allow a driver to install an interlock device or participate in the 24/7 program in order to maintain employment. NDACDL sees these provisions as positive changes in our existing law because these changes will allow a person to retain their job, pay their court fines and fees, and by keeping their job they will not go on public assistance.**

NDACDL also opposes some of the specific parts of Senate Bill No. 2240 and House Bill No. 1302. The reasons NDACDL opposes both bills, at least in part, are as follows:

- ▶ The costs associated with implementing both bills are extremely high and disproportionate to the desired result, to eliminate drunk driving. Senate Bill No. 2240 has a fiscal note in the amount of \$35.2 million, and testimony indicated that the additional costs to counties and cities would amount to \$15.6 million in direct costs, or at least \$50.8 million. House Bill No. 1302 has a fiscal note of almost \$19 million for the 2013-15 biennium, which would increase to \$49.9 million during the 2015-17 biennium. NDACDL would suggest these amounts of money would be better spent by increasing support for the *comprehensive program* components supported by NDACDL.
- ▶ If either bill were enacted, there would be other and additional costs associated with increasing the mandatory minimum sentence, including requiring between 4 to 30 days incarceration for a first offense, which are not included in these fiscal notes. These costs would create additional strain on the entire criminal justice system. The number of DUI trials, especially jury trials, would increase dramatically. The costs of jury trials to counties would increase. The increase in the number of DUI trials would require hiring additional staff to prosecute these offenses. The costs of incarcerating drunk drivers on the first offense and dramatically increasing the penalties for a second offense would fall back on counties and cities, which would increase local taxes.
- ▶ NDACDL opposes increasing minimum mandatory sentences, at least for first offense DUI convictions, but favors giving judges, prosecutors, and attorneys more alternatives at sentencing, which would include specific grounds which could aggravate or mitigate the sentence. This would include allowing a

convicted driver to have access to alternative programs such as the advanced technology ignition interlock system and the Twenty-Four Seven Sobriety Program. It would also provide specific grounds for a judge to consider whether a sentence in excess of the minimum mandatory sentence would be appropriate in each case.

► As the DOT Traffic Safety Facts analysis shows, the drivers who cause the overwhelming number of traffic fatalities in North Dakota are those who are highly intoxicated. While no one would condone drunken driving, by examining the statistics about who causes fatal accidents, it appears the real problem are drivers who are highly intoxicated at .15% BAC or more.

► NDACDL opposes a marked driver's license, as currently provided in Senate Bill No. 2240. However, NDACDL takes no position on whether there ought to be specially marked driver's licenses for persons convicted of DUI. However, if a marked driver's license is created for persons convicted of DUI, there should be a rational basis for enforcement underlying the law. Senate Bill No. 2240 does not accomplish this purpose because it only targets younger looking drivers convicted of DUI and does not address how a marked driver's license would prevent older convicted drivers from obtaining alcohol.

1. The manner in which Senate Bill No. 2240 was drafted would create, at best, an unworkable method to prohibit or at least limit the ability of a person convicted of DUI unless all retail licensees were mandated to require all persons attempting to purchase alcohol.
2. The question came up during testimony whether these provisions, creating a criminal penalty for any person serving alcohol privately, and it does appear these provision would apply to this situation.
3. As drafted, the marked driver's license would target persons who were, or appeared to be, younger and would not necessarily have any impact upon the ability of an older individual who had been convicted of Driving Under the Influence, even one who has a "lifetime" mark on his driver's license. In other words, it would be unlikely for a retail licensee to request proof of age of an individual who appears to be well over the age of 21. If the goal of the marked license is to prohibit the sale of alcohol to individuals for a period of 5 years upwards to a lifetime ban, relying on a youthful appearance to provide an appropriate means of enforcement of this provision clearly does not achieve that goal.

► While generally, NDACDL opposes minimum mandatory sentences on general principles because minimum mandatory sentences take away a judge's discretion. However, NDACDL recognizes that in regard to DUI sentences, there

are minimum mandatory jail terms, fines, and fees which have already been adopted.

► NDACDL opposes the imposition of a mandatory jail term for first time offenders. It should be remembered that there are already a considerable number of direct consequences which affect a person convicted of DUI, which include fines, costs, payment of fees for evaluations, payment of reinstatement fees, high-risk insurance requirements, attorney's fees and court fees (even if indigent, there are required fees), and possible incarceration. There may be other collateral consequences to a DUI conviction, such as landlords refusing to rent or terminating leases, employers terminating employment or not hiring, and other forms of discrimination. Increasing the minimum mandatory sentence required for DUI convictions would cost at least \$50 million under either Senate Bill No. 2240 and House Bill No. 1302. However, no one has demonstrated how increasing minimum mandatory sentences would significantly reduce drunken driving in North Dakota.

► The criminal penalty provisions of Senate Bill No. 2240 do not accord with the provisions of NDCC § 12.1-32-01, dealing with the classification of offenses and penalties. Adoption of this unusual criminal penalty provision would create an alternative set of sentences which far exceed the limitations of § 12.1-32-01 which have been in place in North Dakota law for 40 years.

► The amended language in House Bill No. 1302 which states, "If an individual has spent time in custody for any offense, the time spent in custody may not be included as part of any period of time under this section" is at odds with NDCC § 12.1-32-02(2), which states "Credit against any sentence to any term of imprisonment must be given by the court...."

► While the criminal penalty provisions of House Bill No. 1302 basically increase the minimum mandatory provisions and increase a second offense DUI to a Class A Misdemeanor and a third offense DUI to a Class C Felony, the addition of creating a new offense (Page 8, lines 21 through 24) for refusing to submit to a breath test has serious constitutional ramifications and could be subject to challenge.

NDACDL urges a **"DO NOT PASS"** recommendation on Senate Bill No. 2240 and on House Bill No. 1302. However, NDACDL also urges that consideration be made to the proposed amendments to Senate Bill No. 2240 and to supporting an interim study to address the Culture of Alcohol in North Dakota and ways to curb alcoholism and drug dependency.

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Russ Myhre

From: Russ Myhre [mlooffice3@qwestoffice.net]
Sent: Sunday, February 03, 2013 1:25 PM
To: pmyerchin@bmmelaw.com
Subject: Amendments

PROPOSED AMENDMENTS TO SENATE BILL NO. 2240

Page 1, line 1, delete "a new section to chapter 5-01, a new section to chapter" and insert, "a new subdivision to subsection 4 of section 39-08-01; and a new subdivision to subsection 7 of section 39-06.1-10"

Page 1, line 2, delete "5-02" and ", and section"

Page 1, line 3, delete "39-08-01.5"

Page 1, line 3, delete "marked licenses for driving under the"

Page 1, line 4, delete "influence and" and

Page 1, line 4, after "license" insert "and participation in twenty-four seven program"

Page 1, line 4, delete "subsection 7 of"

Page 1, line 5, delete "section 39-06.1-01"

Page 1, line 5, delete "subsections 4 and 5 of section 39-08-01; section" and insert "subsection 7 of section 39-06.1-10; section 39-20-11; section 39-20-01; section 39-20-03.1; section 39-20-04; section 39-20-05; subsection 6 of section 39-20-07"

Page 1, line 6, delete "39-08-01.3, subsection 1 of section 39-20-04, and section 39-20-04.1" and insert "; and to repeal subdivision f of subsection 2 of Section 39-20-04 of the North Dakota Century Code."

Page 1, delete lines 10 through 23

Page 2, delete lines 1 through 2

Page 2, delete lines 16 through 31

Page 3, delete lines 1 through 9

Page 3, delete lines 12 through 31 and insert

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

1. Except as provided under subsection 2, 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 for good cause 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 has had an advanced technology ignition interlock system installed or 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 fifteen days of the suspension have been served. 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 of this section if the offender has had an advanced technology ignition interlock system installed or is participating in the twenty-four seven sobriety program under chapter 54 - 12, or for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5 of this section, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's (((license))) license to the offender (((only for the purpose of participation))) upon the restriction the offender participate in the twenty-four seven sobriety program (((upon))) under chapter 54-12 or has had installed an advanced technology ignition interlock device 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 (((by the offender))) or has had an advanced technology ignition system installed, in order to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven

sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.

Page 4, line 29, delete "Subsection" and insert "Subdivision of subsection"

Page 4, line 30, delete "amended and reenacted" and insert "created and enacted"

Page 5, delete lines 1 through 31 and insert "In addition to the factors to be considered in a sentencing decision contained in section 12.1-32-04, the following factors, or the converse thereof where appropriate, while not controlling of the discretion of the court, shall be accorded weight in making determinations regarding the desirability of exceeding the minimum mandatory sentences set forth in this subsection:

- i. Whether an accident occurred during the violation;
- ii. Whether the intoxication of the person convicted of the violation was a factor in the accident;
- iii. Whether a physical injury or death resulted from any such accident;
- iv. Whether the person convicted of the violation had an open container of alcoholic beverage;
- v. Whether the person convicted of the violation illegally possessed any controlled substances within the vehicle at the time of the violation;
- vi. Whether the person convicted of the violation had any passengers in the vehicle at the time of the violation;
- vii. Whether the person convicted of the violation had any minor passengers in the vehicle at the time of the violation;
- viii. Whether the person convicted of the violation had a blood alcohol content of eighteen hundredths of one percent alcohol at the time of the violation;
- ix. Whether the person convicted of the violation concurrently committed other violations of law at the time of the violation;
- x. Any other factor which the sentencing court may deem to be appropriate or relevant to the violation.

Nothing herein shall be deemed to require explicit reference to these factors in a judgment or by the court at sentencing."

On page 5, delete lines 1 through 31 and insert "A new subdivision to subsection 7 of section 39-06.1-10 of the North Dakota Century Code is hereby created and enacted as follows:

An individual who has a temporary restricted driver's license with the restriction the individual participates in twenty-four seven sobriety program under chapter 54-12 or has been required to have an ignition interlock device installed under section 39-06.1 is not subject to the suspension periods under this subsection."

On page 6, delete lines 1 through 31 and insert as follows:

"Section 39-20-01 of the North Dakota Century Code is hereby amended and reenacted as follows:

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

Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer also shall also inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol, drugs, or a combination of alcohol and drugs and that refusal of the individual to submit to the test (((determined appropriate will))) directed by the law enforcement officer may result in a revocation of the individual's driving privileges a minimum of one year and a maximum of four years. The law enforcement officer shall determine which of the tests is to be used. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05, or unless terminated by participation in the twenty-four seven sobriety program as provided under subsection 5 of this section or by the installation of an advanced technology ignition interlock system. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.

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

4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an

alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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 or in the advanced technology ignition interlock system 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. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty - four seven sobriety program or have an advanced technology ignition interlock system 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 or proof of the installation of an advanced technology ignition interlock system .

Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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. Before the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54 - 12 or the advanced technology ignition interlock system. 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.

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

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

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

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

- a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system received by the director from (((the director of the state crime laboratory or the director's designee or))) a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; (((and)))

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

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

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

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

7. 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. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty - four seven program upon application by the individual with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program.

Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
- d. The certificate of the director of the state crime laboratory designating the director's designees.
- e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- (((e.)))f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

Subdivision f of subsection 4 of Section 39-20-04 of the North Dakota Century Code is repealed.

On page 7, delete lines 1 through 31 and

On page 8, delete lines 1 through 10

On page 10, delete lines 4 through 31

On page 11, delete lines 1 through 31

On page 12, delete lines 1 through 31

On page 13, delete lines 1 through 15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1302

Page 1, line 6, after the first semicolon insert "to provide for a legislative management study;"

Page 6, line 20, after the comma insert "if the alcohol concentration is at least eight-hundredths of one percent by weight but less than fifteen-hundredths of one percent by weight, the sentence must include a fine of at least five hundred dollars and an order for an addiction evaluation by an appropriate licensed addiction treatment program. If the alcohol concentration is at least fifteen-hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14,"

Page 7, line 4, replace "year and one" with "hundred eighty"

Page 7, line 13, overstrike "one" and insert immediately thereafter "at least three"

Page 7, line 21, after "sentence" insert "under subsection 3 of section 12.1-32-02 if the alcohol concentration is at least eight-hundredths of one percent by weight but less than fifteen-hundredths of one percent by weight. If the alcohol concentration is at least fifteen-hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14, a municipal court or district court may suspend a sentence"

Page 8, line 17, after "g." insert:

"If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the defendant 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 court may not order the department to be responsible for the costs of treatment in a private treatment facility.

h."

Page 8, line 21, replace "h." with "i."

Page 8, line 23, replace "tests" with "a test"

Page 8, line 25, replace "i." with "j."

Page 10, line 24, remove the overstrike over "~~, and shall consent~~"

Page 19, line 31, remove the overstrike over "~~from~~"

Page 19, line 31, remove "electronically posted by"

Page 20, line 1, after "designee" insert ", or electronically posted by the director of the state crime laboratory or the director's designee"

Page 21, remove line 4

Page 21, line 5, remove "designee on the crime laboratory information management system"

Page 21, line 6, remove the overstrike over "~~the director of the state crime laboratory or the director's~~"

Page 21, line 7, remove the overstrike over "designee-or"

Page 21, line 7, after the first "or" insert "electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from,"

Page 25, after line 3, insert:

"SECTION 14. LEGISLATIVE MANAGEMENT STUDY - DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of North Dakota Century Code provisions that relate to administrative hearings and administrative sanctions for driving while under the influence of alcohol or drugs. With the assistance of the department of corrections and rehabilitation and the department of human services, the study must include the need for supervision, methods of treatment, and penalties for repeat driving while under the influence of alcohol or drug offenders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

P

West's Montana Code Annotated Currentness

Title 61. Motor Vehicles

Chapter 8. Traffic Regulation

Part 7. Enforcement--Penalties

→ → 61-8-731. Driving under influence of alcohol or drugs--driving with excessive alcohol concentration--penalty for fourth or subsequent offense

(1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

page 1

District of Columbia Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly throught the year						
2) Actual time incarcerated is equal to minimum days required to serve						
3) All time incarcerated for B&A at county level						
4) All time incarcerated for Felony C at state level						
5) All probation at minimum mandatory						
6) No revocation from probation						
7) Probation caseload at 65						
8) Contract housing beds \$70 per day						
Deterent Effect	0%	0%	0%	0%		
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017		
3rd Offense	51	102	102	102		
4th + Offense	106	309	425	425		
Total	157	412	527	527		
Offenses Per Month						
3rd	8.51	8.51	8.51	8.51		
4th +	17.71	17.71	17.71	17.71		
Est Contract Housing	FY2014	FY2015	FY2016	FY2017		
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298		
Est Pop DOCR Facilities	1,140	1,144	1,147	1,151		
Bill Effect	157	412	527	527		
Needed Beds	-	258	377	381		
Days	365	365	365	365		
Bed Cost Per Day	70.00	70.00	70.00	70.00		
Estimated Cost	-	6,589,516	9,627,491	9,731,820		

Part of Handout 1

7/1/15

8-11-15

minimum

maximum

officer

Page 2

Increase Probation					
3rd Offense	-	46	102	102	
4th + Offense	-	-	97	309	
Total	-	46	199	412	
Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	1	4	7	
Est FTE Cost / Year	75,000	75,000	75,000	75,000	
Estimate Cost	-	75,000	300,000	525,000	
Inmate Costs					
13-15 Budgeted Medical	6.49	6.49	6.49	6.49	
Increase Inmates	157	412	527	527	
Days	365	365	366	367	
Increased Medical	371,750	975,695	1,252,799	1,256,224	
13-15 Budgeted Food	4.96	4.96	4.96	4.96	
Increased Inmates	157	412	527	527	
Housed Outside Docr	-	258	377	381	
Net Inc Inmates	157	154	151	147	
Days	365	365	366	367	
Increased Food	284,301	278,974	273,628	266,939	
Total Cost Increase	656,052	1,254,670	1,526,427	1,523,163	
Total Cost	656,052	7,919,186	11,453,918	11,779,983	
Total Cost 13-15		8,575,237			
			Total Cost 15-17	22,708,901	

HB 1302
2/25/13
Attachment 1

NDLA, H APP - Traeholt, Meredith

From: Butts, Linda N.
Sent: Wednesday, February 20, 2013 9:39 AM
To: Delzer, Jeff W.
Cc: NDLA, H APP - Traeholt, Meredith
Subject: question from house approp- HB1302 last Friday-Rep Delzer

Rep. Delzer and Ms. Traeholt, below are answers to the questions asked last Friday. Please let me know if you have further questions.

1. What is the average blood alcohol level for someone getting a DUI – 2011 = .174 blood
2. What % of DUIs are between .08 and .15 for first time offenders - Of the total DUI's 31.63 % (2151) were for first time offenses within the range of .08-.15 BAC.
3. What % of DUIs are between .08 and .15 for subsequent offenders - Of the total DUI's 16.50% (1122) were for repeat offenses within the range of .08-.15 BAC.
4. What % of repeat offenders carry insurance –Unknown
5. What % of fatal alcohol crashes involve 1 time offenders - In 2011 there were a total of 55 legally impaired drivers(above 0.08%) involved in fatal crashes. Of those 55 drivers, 42 were 1st time offenders with a BAC of .08 or higher. 42/55=76%
6. What % of fatal alcohol crashes involve 2nd/ subsequent offenders – In 2011 there were at total of 55 legally impaired drivers(above 0.08%) involved in fatal crashes. Of those 55 drivers, 13 had a second or subsequent offense. 13/55 = 24%

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North Dakota House of Representatives

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West Fargo, ND 58078-1101
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kkoppelman@nd.gov

Committees:
Judiciary
Political Subdivisions

3-14-13

Rep. Kim Koppelman -- Testimony on House Bill 1302

Senate Transportation Committee

Mr. Chairman and Members of the Senate Transportation Committee, it's good to be with you today to present House Bill 1302 and to ask for your favorable consideration of this legislation.

Months ago, I began working with law enforcement officials, prosecutors, and others who are on the front lines of dealing with the problem of drunk driving in North Dakota. We also received great input, support, and technical assistance from both the Governor's office and the Attorney General.

The result is a piece of legislation which is not only tough, but which also gets at the crux of the problem . . . keeping those who drink and drive off the road.

My commitment to deal with this problem in a meaningful way, this legislative session, was prompted by a tragedy involving a young family from the community I represent.

On July 6th, a head-on crash, with a drunk driver going the wrong way on Interstate 94, killed a young West Fargo family--Aaron and Allison Deutscher, their young daughter Brielle, and their unborn child.

Members of their family are here with us today, to share a few words with you about their family's tragic experience.

"Tragedies, such as the one which took the young lives of the Deutscher family, from West Fargo, make it clear that we have a problem with the culture of drunk driving in our state.

Penalties can be tougher, and this legislation will do that. But changing a culture takes more.

If we tolerate drinking and driving, but are then outraged when a drunk driver kills or maims people, those dots don't connect.

Changing that culture is a responsibility we all share.

To prevent more tragedies such as the one suffered by this family and by so many others throughout our state, we must all be part of the necessary change in our attitudes.

This issue concerns us all, and it is the obligation of all North Dakotans to be responsible with drinking---not to drive, when they drink, and to help keep others from driving when they drink.

If we all work together to do that, our state will be safer and better for it.

A change in our law, alone, will not accomplish this cultural change. Only our common commitment to make that change will do so.

As the elected representatives of the people of North Dakota, we have a role to play in that process.

A change in our law can and must be part of the necessary change in the culture of our great state and the people we serve. This is tough legislation, but it's reasonable legislation. It takes a balanced approach to the problem of drunk driving in North Dakota.

House Bill 1302 is not the total answer, but this new, tougher law is an important piece of the puzzle. It's a good start and I believe it's a responsibility we now all bear.

As originally introduced, the bill is the product of the collaboration and input of those I mentioned earlier. Their expertise was invaluable in discerning the important and necessary components of a piece of legislation which would both be a meaningful change in our law, a deterrent to offenders, a catalyst for cultural change and, last but not least, a law that could pass.

The bill was amended twice--first in the House Judiciary Committee and then in the House Appropriations Committee. A Judiciary Sub Committee worked hard on the amendments which the Committee attached and I believe that they are responsible and workable. Personally, I believe that the Appropriations amendments weakened the bill too much. Of course, I still support it, but recognize that, in its current form, the bill may need more work.

I am also aware that others, who were not necessarily involved in the far-reaching process which went into the preparation of this legislation, now have ideas, suggestions and amendments that they may wish to bring forward.

Because of that, I have committed to meet with several of those who have been involved, along with your vice chairman, in order to weigh and consider ideas and to prepare some suggested amendments.

Mr. Chairman, if you'll be so kind as to allow us to do so, those suggested amendments will be submitted to your committee as soon as we're able to meet and prepare them.

With that, Mr. Chairman and Members of the Committee, I respectfully urge your favorable consideration and a "Do Pass" recommendation on House Bill 1302. Thank you.

CURRENT LAW	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
1 st offense	Class B Misd.	\$250	Yes			30 days	
2 nd offense/5 years	Class B Misd.	\$500	Yes		24/7 optional bond/probation	30 days	5 days
3 rd Offense/5 years	Class A Misd.	\$1,000	Yes		24/7 optional bond/probation	1 year	60 days, serve at least 10 days
4 th offense/7 years	Class A Misd.	\$1,000	Yes		24/7 optional bond/probation	1 year	180 days, serve at least 10 days
5 th offense/7 years	Class C Fel	\$1,000	Yes		24/7 optional bond/probation	5 Years	180 days, serve at least 10 days

HB 1302	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
1 st offense, BAC .08-less than .21	Class B Misd.	\$500	Yes			30 days	
1 st offense, BAC .21 and higher	Class B Misd.	\$750	Yes	6 months	24/7 - bond optional, probation mandatory	30 days	10 days, serve at least 1(non-working) day
2 nd offense/10 years	Class A Misd.	\$1,500	Yes	1 year	24/7 - bond optional, probation mandatory	1 year	60 days, serve at least 10 days
3 rd Offense/10 years	Class C Fel	\$2,000	Yes	1 year	24/7 - bond optional, probation mandatory	5 years	180 days, serve at least 60 days
4 th / subsequent offense	Class C Fel	\$3,000	Yes	2 years	24/7 - bond optional, probation mandatory	5 years	1 year and 1 day, serve at least 1 year

1. Makes a refusal a criminal violation, same as the DUI offense with offense penalty and license suspension, except that refusal for 1st offense is treated as if BAC is .21 for penalty. Eligible for temporary restricted license, if not already suspended or under revocation.
2. Temporary restricted license with 24/7 program in place of administrative hearing and administrative suspension of license.
3. Juvenile court has discretion to use 24/7.
4. Increases look-back from 5 years to 10 years for DUI offenses.
5. Does not create new processes for driver's licenses.
6. 24/7 In the case of a DUI arrest, the judge may issue a bond order requiring the individual to refrain from alcohol use and to show up twice each day between certain hours at a specific location for a breath alcohol test. The individual pays \$1.00 each test (\$2.00 per day) to offset the costs of testing. If the individual's test registers any alcohol use, then he or she is immediately taken into custody. If the arrestee fails to show for testing, bond is revoked. The court may also order remote electronic alcohol monitoring in select cases.

North Dakota
Attorney General's Office

24/7



Attorney General Wayne Stenehjem

AGE GROUPS AND BAC OF DUI'S IN NORTH DAKOTA FOR 2011

<u>Age</u>	<u>Number</u>	<u>Percent</u>
13-17	52	1.0%
18-20	344	6.0%
21-24	1306	22.0%
25-29	1204	20.0%
30-34	711	12.0%
35+	2433	40.0%

****Total** 6050 100.0%

<u>BAC</u>	<u>Number</u>	<u>Percent</u>
0-.17	2579	41.4%
.17+	1794	28.8%
Refused	1169	18.8%
Not on File (NOF)	689	11.1%

**Statistics provided by ND UCR
As Per ND Department of Transportation (Updated 4/12/2012)

OTHER OFFENSES

	ND CC 12.1-17-02 Aggravated Assault	ND CC 12.1-22-02 Burglary	ND CC 39-08-01 Driving Under the Influence (DUI)	ND CC 12.1-24-01 Forgery/ Counterfeiting	ND CC 19-03.1-23 (6) Possn. Of Controlled Substance
2000-2009 (YTD)	1,734	3,060	31,564	2,749	11,355
Percentages	3%	6%	63%	5%	23%

- Alcohol and/or Drug violations make up 86%

As Per ND Department of Corrections

THE BIG PICTURE: ALCOHOL AND CRIME

THE NATIONAL PROBLEM

- 1.5 million DUI arrests each year
 - 66% first time
 - 33% repeat offenders
- 700,000 DUI convictions
- 16,885 alcohol-related fatalities ('05)
- 39% of all traffic deaths involved alcohol
- 75% of all domestic violence offenses
- \$32.5 billion a year lost/spent on alcohol- related crime



DUI in North Dakota			
	1 st DUI	2 nd DUI	5 th DUI (felony offense)
2004	4,314	1,225	50 1% overall
2005	2,605	2,478	75 1% overall
2006	3,547	1,390	35 1% overall
2007	3,286	1,398	41 1% overall
2008	4,564	1,400	36 1% overall
2009	3,353	1,162	35 1% overall
2010	4477	1277	36 1% overall
2011	5040	1359	32 1% overall

As Per Department of Transportation

HISTORY: 60th Session

The 60th Legislative Assembly, in Section 11 of Senate Bill 2003, authorized the Attorney General to establish a sobriety program pilot project in one or more judicial districts of the state. The sobriety program involved coordination among state, county, and municipal agencies. The Attorney General, in cooperation with Law Enforcement, the Judiciary, the Department of Corrections and Rehabilitation, and the Department of Transportation Traffic Safety Division, was authorized to develop guidelines, policies and procedures, and to establish user fees for a sobriety program pilot project.

Guidelines for State Wide Program

Conditions of bond, pre-trial, and post conviction

1. The sobriety program is established to implement procedures as alternatives to incarceration for offenders charged with, or convicted of:
 - a. Driving under the influence of alcohol or controlled substances;
 - b. Domestic violence;
 - c. Abuse or neglect of a child;
 - d. Or for other offenses in which alcohol or controlled substances are involved.

Guidelines for State Wide Program

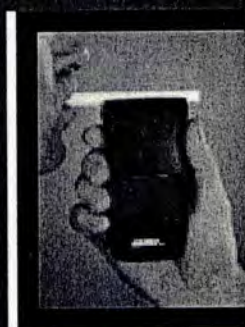
Conditions of bond, pre-trial, and post conviction

2. The sobriety program is to enforce compliance with the sobriety guidelines by the following means:
 - a. Sobriety testing twice per day seven days per week;
 - b. Electronic monitoring , including home surveillance and remote electronic alcohol monitoring;
 - c. Urine testing and drug patch testing
 - d. And establish fees, which are not subject to NDCC Chapters 28-32.

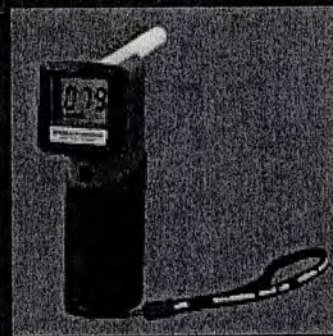
BENEFITS

- Parents, Spouses, and Children are safer
- Public is safer
- Defendant will spend less time in jail
- Treatment prospects improve
- Defendant's employer happy
- ALMOST NO COST TO TAXPAYER

The Alco-Sensor FST and/or CMI SD-5 are the newest instruments in their companies product lines. Offering both direct and passive sampling, these instruments produce fast, reliable, accurate results in a package that is designed so that the operator has maximum control over the subject during sample collection.



S-D5



Alcohol Monitoring System (AMS) Secure Continuous Remote Alcohol Monitoring (SCRAM)



24/7: AVAILABLE SERVICES

\$1.00 per test	→	- PBT
\$2.00 p/day		<ul style="list-style-type: none"> • Small counties • Ease and Test
\$5.00 per day	→	- SCRAM
(\$25.00 activation & \$25.00 deactivation)		<ul style="list-style-type: none"> • Small counties • No jail • Defendant has odd situation
\$40.00 per patch	→	- Drug Patch
		<ul style="list-style-type: none"> • Small counties • Counties without female staff
\$5.00 per test \$12.50 for Laboratory Confirmation	→	- Drug Urinalysis
		<ul style="list-style-type: none"> • Counties with high volume • Need both male and female staff

24/7 WEB APPLICATION

24/7 Program
 Test Management
 BCI - Admin Only

Main Search New Participant Help Logout

Joe Doe [Edit](#) [Change Status](#)

Participant #	F9N6-GT88	Balance	View Account
Type	Court		
Judge			
Arresting Jurisdiction		Tests	Add Test Type
Offense Date			
Start	12/11/2007		
Scheduled End	1/1/2008		
Actual End			
End Reason			
Offense	DUI 1st Offense		

There are no tests. In order to log test results, you must [Add a Test Type](#)

Date	Type	Result	Testing Officer	PBT Value	Fee
Show All					

Participant Information

Gender: Male
 DOB:
 Hair Color:
 Eye Color:
 Height:
 Weight:
 OLN:
 Address: 1 Some Street
 Bismarck, ND 58501
 Alternate:
 County: BURLEIGH
 Home:
 Work:
 Cell:
 Email:

Interested Parties
[New Interested Party](#)

Employment Information

Employer:
 Address:
 Supervisor:
 Work:
 Cell:

Current Numbers/Statistics

- Present and Successful PBT tests versus No shows and failed PBT tests
- 96.41 % Success rate

Total PBT tests: 299,638

– Present and Successful PBT tests: 288,892

Current Numbers/Statistics

- SCRAM Bracelets available to BCI = 374
- SCRAM Bracelets available to DOCR = 69
- SCRAM Bracelets available to Standing Rock = 71
- Total Available = 514

(Statistics as of February 4, 2013)

REENGROSSED HOUSE BILL 1302
SECOND ENGROSSMENT
SENATE TRANSPORTATION COMMITTEE
MARCH 14, 2013

Section by Section Overview of Reengrossed House Bill No. 1302
with House Judiciary and House Appropriation Committee Amendments

Section 1. Page 1, ll. 9-16.

Section 1 adds a new subsection to N.D.C.C. § 27-20-10 of the Juvenile Court Act to give the Juvenile Court discretionary authority to require a juvenile who has committed a DUI violation, or who has an alcohol concentration of two-hundredths of one percent (.02) while driving, and is participating in informal adjustment (Juvenile Court Probation) to participate in the 24/7 Sobriety Program.

Section 2. Page 1, ll. 17-24.

Section 2 adds a new subsection to N.D.C.C. § 27-20-31 to give the Juvenile Court discretionary authority to require a juvenile who has committed a DUI violation, or who has an alcohol concentration of two-hundredths of one percent (.02) while driving, and has been adjudicated delinquent, to participate in the 24/7 Sobriety Program while subject to the Juvenile Court's order.

Section 3. Page 2, ll. 1-28.

Section 3 amends Subsection 7 of N.D.C.C. § 39-06.1-10 to extend the "look-back" periods for DUI offenses from 5 years previous to the latest offense to 10 years previous to the latest offense. This is consistent with the proposed ten-year look back periods in N.D.C.C. § 39-08-01, which is amended in Section 5 of Reengrossed HB 1302.

Section 3 also amends Subsection 7 of Section 39-06.1-10 to allow an DUI offender who has a temporary restricted driver's license with a 24/7 Sobriety Program restriction to continue to drive and not be subject to the mandatory minimum suspensions that otherwise would apply to an offender convicted of a DUI. The DUI offender would have to be eligible for the restricted license in the first place, and will still subject to an automatic 15 day suspension.

The temporary restricted drivers licenses with the 24/7 Sobriety Program restriction will be subject to N.D.C.C. § 39-06-17, which is the temporary restricted driver's license and penalty statute, and a violation of the 24/7 Sobriety program restriction is a violation of N.D.C.C. § 39-06-17 and will subject the temporary driver's license to revocation by the Director of the North Dakota Department of Transportation. A violation of Section 39-06-17 is also a separate class B misdemeanor.

Section 4. Page 2, ll. 29-30; Page 3; Page 4, ll. 1-28.

Section 4 amends N.D.C.C. § 39-06.1-11, which authorizes temporary restricted driver's licenses if a license is subject to suspension under the implied consent chapter, N.D.C.C. ch. 39-20, or for a violation of N.D.C.C. § 39-08-01, the DUI statute, to include the authority for the D.O.T. Director to issue a temporary restricted driver's license with the restriction the DUI offender participate in the 24/7 Sobriety Program.

The DUI offender must be eligible for the temporary restricted driver's license, e.g., the driver is not subject to another unrelated suspension or revocation. The DUI offender must apply for the license and submit proof of financial responsibility and proof of participation in the 24/7 Sobriety Program in order to receive the temporary restricted driver's license. The principal restriction on the license is that the DUI offender participate in the 24/7 Sobriety Program.

Section 5. Page 4, ll. 29-30; Page 5; Page 6; Page 7; Page 8; Page 9; Page 10, ll. 1-5.

Section 5 amends North Dakota's Driving Under the Influence Statute, N.D.C.C. § 39-08-01. The amendments change the offense classifications and penalties, add a new provision to Section 39-08-01 to make refusal to submit to chemical testing for alcohol concentration or the presence of drugs a violation of Section 39-08-01, and allow a DUI offender who has been sentenced to the DOCR to be released from custody upon completion of treatment, with the remainder of the sentence to be served on probation.

A first offense in violation of Section 39-08-01 remains a class B misdemeanor. (Page 5, ll. 20-22.)

The House Judiciary Committee and House Appropriations Committee amended Subsection 2 of Section 39-08-01 so that first offenses will be handled differently, depending on the alcohol concentration by weight.

If the alcohol concentration by weight is at least .08, but less than .21, the fine changes from \$250 to at least \$500.00, but there is no mandatory jail time. There must still be an alcohol evaluation, but probation and 24/7 participation are not mandatory – they will be discretionary. (See Page 6, ll. 20-23.)

If the alcohol concentration by weight is at least .21, or if the individual refuses to submit to chemical testing, the minimum fine changes from \$250 to at least \$750. There is a mandatory minimum sentence of 10 days, of which 9 days may be suspended and the 1 day must be served in jail, but on a non-working day. Probation is mandatory for at least 6 months and participation in the 24/7 Sobriety Program must be included as a condition of probation. (See Page 6, ll. 24-31; Page 7, ll. 25-31; Page 8, ll. 1-4.)

A second offense under Section 39-08-01 changes from a class B misdemeanor to a class A misdemeanor. (Page 5, ll. 22-23.) There is a 10 year look-back period instead of five years. The minimum fine changes from \$500.00 to \$1500.00. (Page 7, ll. 4.) The mandatory minimum sentence changes from 5 days in jail, all of which may be suspended, to 60 days in jail, of which 10 days must be served and the balance may be suspended. (Page 7, ll. 2; Page 8, ll. 4-8.) Probation is mandatory for at least 12 months and participation in the 24/7 Sobriety Program must be included as a condition of probation. (Page 7, ll. 5-7.)

A third offense under Section 39-08-01 changes from a class A misdemeanor to a class C felony. (Page 5, ll. 23-25.) There is a 10 year look-back period instead of five years. The fine changes from \$1000 to at least \$2000.00. (Page 7, ll. 10-11.) The mandatory minimum sentence changes from 60 days, of which all but 10 days may be suspended, to a sentence of a minimum of 180 days, of which 60 days must be served in custody and the balance may be suspended. (Page 7, ll. 8-9; Page 8, ll. 8-12.) Probation is mandatory for at least 12 months and participation in the 24/7 Sobriety Program must be included as a condition of probation. (Page 7, ll. 12-14.)

A fourth offense under Section 39-08-01 changes from a class A misdemeanor to a class C felony. (Page 5, ll. 25-27.) The present look-back period is 7 years. Under the amendment, there is no look-back period. (Page 5, ll. 25-27.) Once a DUI offense becomes a felony under Section 39-08-01, any subsequent DUI offense will be a felony. The mandatory minimum fine changes from \$1000 to at least \$3000.00. (Page 7, ll. 18.) The mandatory minimum sentence changes from 180 days, of which all but 10 days may be suspended, to one year and one day, of which one year must be served and the balance may be suspended. (Page 7, ll. 15-16; Page 8, ll. 12-17.) Probation is mandatory for at least two years and

participation in the 24/7 Sobriety Program must be included as a condition of probation. (Page 7, ll. 19-21.)

The amendment to subsection 2 of Section 39-08-01 also provides that if an individual is in custody for any offense, the time spent in custody may not be included as part of any period of time, or look-back period, under Section 39-08-01. (Page 5, ll. 29-31.)

New treatment provision Page 8, ll. 27-31, p. 9, ll. 1-7.

A House Judiciary Committee amendment to HB 1302 allows an individual to participate in treatment as part of a prison sentence, and upon completion of the treatment, the individual must be released from custody to probation.

Refusal to Submit to Chemical Testing Page 9, ll. 12-15.

Under the amendment that appears on Page 9, ll. 12-15, an individual who refuses to submit to chemical testing, including on-site breath testing, is guilty of an offense under Section 39-08-01. The refusal offense is subject to the same offense classifications as other DUI offenses under Section 39-08-01. The individual may still be eligible for a temporary restrictive driver's license with the 24/7 Sobriety Program Restrictions if the individual's license was not already subject to suspension or revocation.

Compliance with 24/7 Sobriety Program Requirements. Page 10, ll. 1-5.

Participation in the 24/7 Sobriety Program requires compliance with N.D.C.C. §§ 54-12-27 through 54-12-31, which are the 24/7 Sobriety Program statutes. The 24/7 Sobriety Program requirements for twice-per-day breath testing, electronic alcohol monitoring, urine testing, or drug patch testing are not subject to modification, e.g., the requirements may not be modified to once-per-day breath testing or only five days per week breath testing. The new subsection also requires the individual who is participating in the 24/7 Sobriety Program to be responsible for all 24/7 Sobriety Program fees, which may not be waived.

Section 6. Page 10, ll. 6-31; Page 11, ll. 1-9.

Section 6 amends N.D.C.C. § 39-08-01.2. Section 39-08-01.2 provides enhanced penalties for causing injury or death while operating a motor vehicle while under the influence.

If an individual is convicted of a violation of N.D.C.C. chapter 12.1-16, the state's homicide chapter, and the individual was under the influence of alcohol or drugs,

the mandatory minimum sentence is amended from one year of imprisonment to two years of imprisonment.

If the individual is convicted of a first offense of driving under the influence, and the violation caused serious bodily injury, which means "bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs", the offense is a class A misdemeanor and the sentence must include at least ninety days imprisonment. This is current law.

The amendment adds a new subsection to Section 39-08-01.2 to provide that if the DUI offense is a second offense and the offense caused serious bodily injury, the offense is a class C felony and the sentence must include at least one year and one day's imprisonment.

For a first offense, the sentence may not be deferred, but the sentence may be suspended, except for 90 days, and for a second or subsequent offense in ten years, the sentence may not be deferred, but the sentence may be suspended, except for one year.

The amendments require there must be supervised probation for not less than one year with mandatory probation and participation in the 24/7 Sobriety Program for at least 12 months as a mandatory condition of probation.

The amendments also require an individual whose conviction is subject to Section 39-08-01.2 to serve the sentence imposed by the court without the benefit of parole.

Section 7. Page 11, ll. 10-31; Page 12, ll. 1-21.

Section 7 amends N.D.C.C. § 39-20-01, which is North Dakota's implied consent statute. Under Section 39-20-01, an individual who operates a motor vehicle on North Dakota roads is deemed to have consented to chemical testing of the individual's blood, breath, or urine to determine alcohol concentration or to test for the presence of alcohol or drugs.

Section 7 amends Section 39-20-01 into subsections. This change is to make it easier to follow the requirements of the statute.

In the new subsection 3 to Section 39-20-01, the amendment requires the officer who is arresting an individual for a DUI offense to provide the following advisory:

- a. North Dakota law requires the individual to take a chemical test to determine whether the individual is under the influence of alcohol or drugs
- b. That refusal to take the test directed by the law enforcement officer is a crime; and
- c. That refusal to take the test directed by the law enforcement officer may result in revocation of the individual's driving privileges up to four years.

Section 8. Page 12, ll. 22-30; Page 13; Page 14, ll. 1-27.

N.D.C.C. § 39-20-03.1 is one of North Dakota's statutes on the implied consent driver's license administrative process. If an individual is charged with a DUI, the individual will receive a temporary operator's permit which is good for 25 days or unless earlier terminated following an administrative hearing. Section 8 amends Section 39-20-03.1 to allow an individual who has been arrested for DUI and has submitted to chemical testing to determine alcohol concentration to elect to participate in the Twenty-Four Seven Sobriety Program in lieu of the implied consent administrative hearing process and to apply for a temporary restricted driver's license with the 24/7 Sobriety Program participation as the restriction. The arresting officer will issue the individual a temporary operator's permit which constitutes notice to the individual that the individual's driving privileges may be revoked or suspended. Under the amendments to N.D.C.C. § 39-20-05, the individual may elect to participate in the 24/7 Sobriety program instead of requesting the administrative hearing. (See Section 11 of Reengrossed HB 1302, Page 17, ll. 15-31; Page 23, ll. 13-20.) This will allow the individual to have a license instead of being subject to the administrative driver's license suspension under N.D.C.C. § 39-20-04.1 that may result from the implied consent administrative hearing process. The individual must be eligible for the temporary restricted license, which means the individual must not be subject to an unrelated suspension or revocation of driving privileges.

Section 9. Page 14, ll. 28-29; Page 15; Page 16; Page 17, ll. 1-20.

Section 9 amends N.D.C.C. § 39-20-04, which is the implied consent revocation statute. If an individual refuses to submit to chemical testing for DUI, the individual's license is subject to revocation for up to four years.

The amendments are in subsection 1 of Section 39-20-04 and change the look-back provisions for license revocations from five years to ten years preceding the most recent DUI violation. For a first offense, the revocation is one year; a

second offense is subject to a three-year revocation, and a third or subsequent violation is subject to a four-year revocation.

Section 10. Page 17, ll. 21-31; Page 18; Page 19, ll. 1-14.

Section 10 amends N.D.C.C. § 39-20-04.1, which provides for administrative suspensions in the implied consent process. If no hearing is requested, or if a hearing has been requested and the administrative hearing officer confirm the DUI offense, the individual's driving privileges will be suspended. The amendments to Section 39-20-04.1 extend the look-back periods for prior DUI offenses and DUI related suspensions from five years to ten years. The periods of administrative suspension range from 91 days to three years.

Section 11. Page 19, ll. 15-31; Page 20; Page 21; Page 22; Page 23, ll. 1-20.

Section 11 amends N.D.C.C. § 39-20-05 to allow an individual arrested for a DUI offense to elect to participate in the 24/7 Sobriety Program instead of proceeding with the administrative implied consent hearing, which could result in the administrative suspension of driving privileges under Section 39-20-04.1. If the individual elects to participate in the 24/7 Sobriety Program in lieu of the administrative implied consent hearing, and the individual's driving privileges are not subject to an unrelated suspension or revocation, the Director of the D.O.T. shall issue a temporary restricted driver's license with the restriction the individual participate in the 24/7 Sobriety Program.

Section 11 also amends Section 39-20-05 to allow the admission into the administrative hearing of a certified copy of an analytical report of a blood or urine sample that has been electronically posted by the director of the Crime Laboratory on the Crime Laboratory's Laboratory Information Management System ("LIMS") and certified by an authorized user who has authorized access to the LIMS system through the state's Criminal Justice Information Sharing System ("CJIS"). A similar process is already available for the admission of other records of the Crime Laboratory, including its approved methods, devices, and operators, and individuals approved to draw blood for chemical testing.

Section 11 adds another subdivision to Subsection 4 of Section 39-20-05 to include with the regularly kept records of the Director of the D.O.T. and the Crime Laboratory for admissibility into evidence purposes a copy of a certified record of the Director of the Crime Laboratory designating designees with respect to approved methods, devices, operators, materials, and checklists for testing alcohol concentration or the presence of drugs. This is to resolve an evidentiary issue that arises from time to time as to who are the director's authorized

designees for purposes of certifying approved methods, testing devices, qualified operators, and the checklist and approved methods.

Section 12. Page 23, ll. 21-31; Page 24, ll. 1-16.

Section 12 amends Subsection 6 of N.D.C.C. § 39-20-07. Section 39-20-07 applies to the interpretation of chemical tests for determining alcohol concentration or the presence of drugs. Subsection 6 of Section 39-20-07 presently provides that records of the Crime Laboratory, including records of approved testing devices, operators, the operational checklist and forms prescribing the approved methods may be electronically posted by the Crime Laboratory and those records will be admissible as prima facie evidence of the matters in the records. The amendment to subsection 6 adds another record, the certificate of the Crime Laboratory Director as to who are the director's designees. This is to resolve the same evidentiary issue that arises from time to time as to who are the director's authorized designees for purposes of certifying approved methods, testing devices, qualified operators, materials, and checklists for testing alcohol concentration or the presence of drugs.

Section 13. Page 24, ll. 17-30; Page 25, ll. 1-27.

Section 13 amends N.D.C.C. § 39-20-14, which authorizes a law enforcement officer to administer an onsite breath-screening test to an individual to determine alcohol concentration.

Just like the amendments to N.D.C.C. § 39-20-01 in Section 7 of HB 1302, Section 13 amends Section 39-20-14 into subsections to make it easier to follow the requirements of the statute.

The amendment to the new subsection 3 of Section 39-20-14 includes a similar advisory as the amendment to Section 39-20-01. The law enforcement officer is required to advise the individual:

- a. North Dakota law requires the individual to take the screening test
- b. Refusal to take the screening test is a crime
- c. Refusal to take the screening test may result in revocation of driving privileges for up to four years.

Section 14, Page 25, ll. 28-31; Page 26, ll. 1-6.

Section 14 provides for a Legislative Management Study of the Implied Consent Administrative Hearing Process and Treatment, Supervision, and Penalties for Repeat DUI Offenders.

Sections 15 and 16. Page 26, ll. 7, 8.

Section 14 provides for an effective date of May 1, 2013, and because that is earlier than August 1, 2013, when laws would otherwise come into effect, the emergency clause is necessary.

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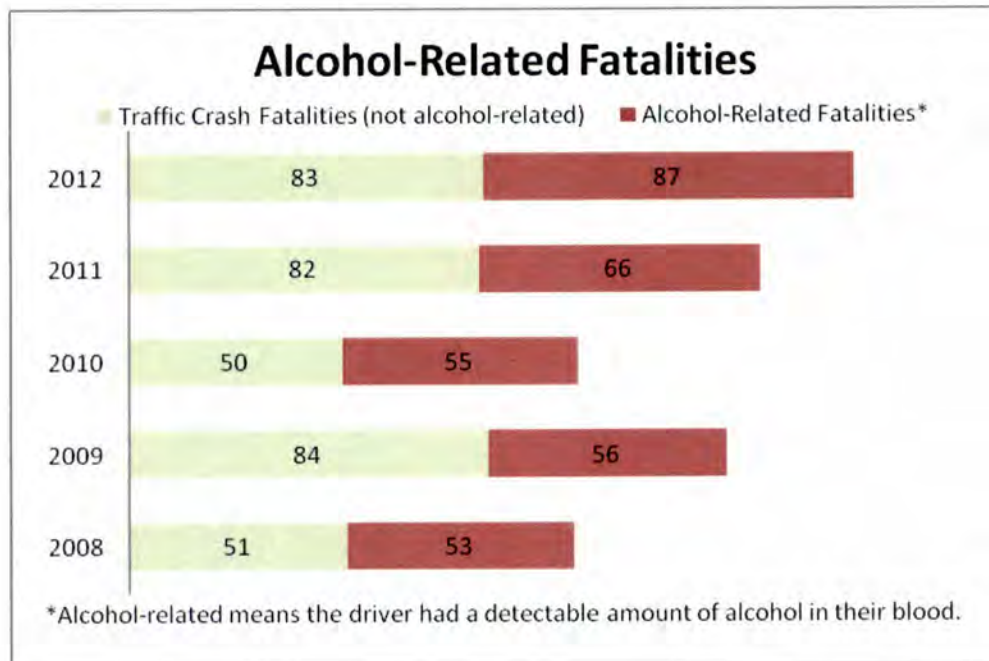
Testimony – House Bill 1302
Senate Transportation Committee
Submitted by
James Prochniak, NDHP

March 14, 2013

Good afternoon, Mr. Chairman, and members of the Senate Transportation Committee. My name is James Prochniak, superintendent of the North Dakota Highway Patrol. I am here to testify in support of House Bill 1302.

The North Dakota Highway Patrol, along with all law enforcement, has been actively involved in detecting and apprehending intoxicated drivers. Combined efforts through the Multi-Agency Enforcement program, sobriety checkpoints, and alcohol saturation overtime are measures used to enhance our daily enforcement activities. Troopers worked over 1,600 hours of DUI enforcement overtime in 2011 and over 1,500 hours in 2012. Educational campaigns and safety presentations stress the importance of making responsible decisions and also provide education on the deadly decision to drive under the influence.

Even with these extensive efforts, troopers made 1,846 DUI arrests in 2011. Last year, that number rose to 1,910. In 2012 alone, 87 lives were lost in alcohol-related fatal crashes. In 2011, the average blood AC level was 0.174, while the average breath AC level was 0.153. The average BAC of a driver involved in an alcohol-related fatal crash was 0.2 in 2011.



House Bill 1302 encourages participation in the 24/7 program, makes a refusal to test a criminal violation, makes DUI a felony offense after three violations, and, overall, increases penalties for DUI. Combining strong enforcement, education, and legislation may help provide the cultural change needed for motorists to think before making the choice to drink and drive.

Mr. Chairman, members of the committee, this concludes my testimony. I would be happy to answer any questions.

SENATE TRANSPORTATION COMMITTEE**March 14, 2013****2:30 p.m. – Lewis & Clark Room****North Dakota Department of Transportation****Mark Nelson, Safety Division Director****HB1302**

Good morning Mr. Chairman and members of the Senate Transportation Committee, my name is Mark Nelson and I currently serve as the Safety Division Director for the North Dakota Department of Transportation (DOT). I want to thank you for allowing me the opportunity to speak today in favor of HB1302.

Alcohol related traffic crashes resulting in injury and deaths are not a new phenomenon in North Dakota. Consistently our state has recorded near 50% alcohol related fatalities while nationally, alcohol related fatalities have dropped to 31%. But, North Dakota has not followed this trend. In seven of the previous ten years, from 2002 through 2011, over 47% of fatality victims in North Dakota died as a result of alcohol-related crashes.

The DOT Safety Division receives federal funding through the National Highway Traffic Safety Administration (NHTSA) to plan, implement, and evaluate strategies to deter impaired driving.

Federal Funds are used in support of enforcement and education programs. A significant portion of the funding is used in support of Regional DUI Task Forces. The Task Forces bring together law enforcement officers from city, county, state, federal and tribal agencies to conduct saturation events statewide aimed at enforcing the DUI law and deterring drunk driving. Approximately 70% of law enforcement in North Dakota participates in this program that began in 2010. A key component of the program is that they are well publicized in advance of the enforcement event; this is an effort to stop the individual from making the poor decision to drink and then drive.

Officers also receive support in the areas of standardized field sobriety testing (SFST), Drug Recognition Experts (DRE) training to certify law enforcement officers to identify the drug-impaired driver (an ever-increasing problem in the state), and testifying in court. We also provide assistance to law enforcement through the Traffic Safety Resource Prosecutor (TSRP) program, a program that makes an attorney available to provide technical assistance, training, and resources to assure the appropriate arrest, prosecution and adjudication of DUI offenders.

Education is a key component in addressing our DUI issue. There are numerous education programs and media campaigns administered through our office to increase public awareness of the DUI problem.

- Ad campaigns such as the Deutscher's and Kilde ad were created in an effort to tell the story of the deadly effects of drinking and driving, and how it affects families.
- Other ad campaigns such as "Don't Forget TODD" (TODD is an acronym for TO Designate a Driver) promote sober driving as the societal norm in the state.
- Parents LEAD is a comprehensive, evidence-based underage drinking prevention program administered by four state agencies including the NDDOT, the Department of Human Services, NDSU Extension Service, and the University System.

Funds have also been provided in support of the Attorney General's 24/7 Sobriety Program for the purchase of SCRAM units, and the Toxicology Lab for the purchase of equipment for alcohol testing.

These are just a handful of programs conducted through grant funds. There are others that have been conducted through the years. The fact is, that regardless of an increase in federal funds to support enforcement, education, and other outreach programs, these programs are unable to reduce fatalities by themselves, these programs only work if they are a component of a comprehensive program that includes strong policy.

HB 1302 is aimed at deterring drunk driving and helping North Dakota to reduce and eliminate serious injury and death on our roadways due to the impaired driver.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions.

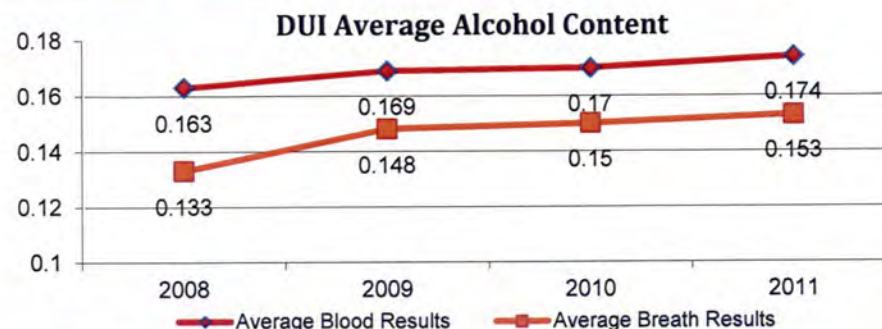
NDDOT Safety Division Alcohol-Related Crash Data

ND has continued to rank in the top 10 states in the nation with the highest rates of alcohol related motor vehicle fatalities.

Over the past 10 years, nearly half of all motor vehicle fatalities in ND involve alcohol

Alcohol-Related Fatal Crashes 2002 - 2011

Year	Fatalities		
	Alcohol-Related Fatalities	All Fatalities	% Alcohol-Related Fatalities
2002	48	97	49.48%
2003	53	105	50.48%
2004	38	100	38.00%
2005	56	123	45.53%
2006	47	111	42.34%
2007	63	111	56.76%
2008	53	104	50.96%
2009	56	140	40.00%
2010	55	105	52.38%
2011	66	148	44.59%
Total	535	1,144	46.77%



In 2011

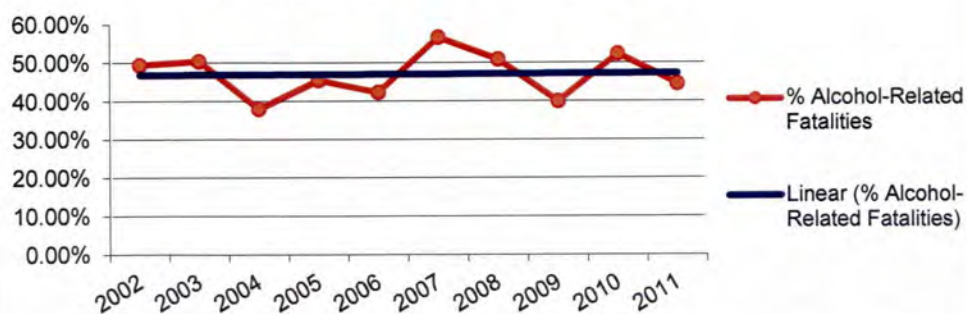
– alcohol-related crashes:

- 1 happens every 8.6 hours
- 1 person injured every 15 hours
- 1 fatality every 5.5 days

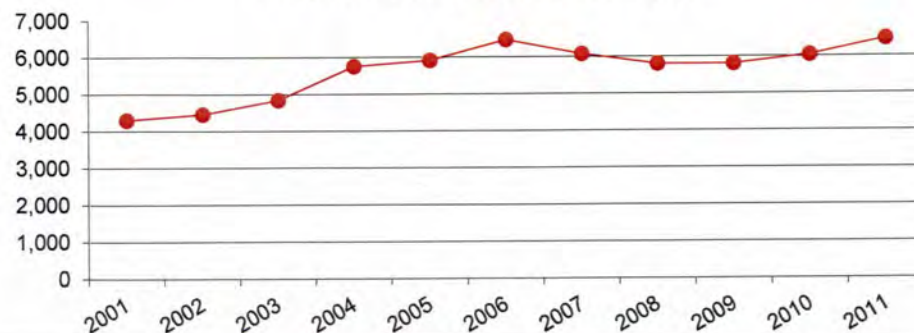
– alcohol-related fatal crashes:

- 53.6% occurred between the hours of midnight and 2:59 am
- 27 of 54 impaired drivers (50%) were between the ages of 21-34

Alcohol-Related Fatalities 2002-2011



DUI Arrests by Year 2001 - 2011



Testimony
House Bill 1302 – Department of Human Services
Senate Transportation Committee
Senator Oehlke, Chairman
March 14, 2013

Chairman Oehlke, members of the Transportation Committee, I am Pamela Sagness, Prevention Administrator with the Department of Human Services (DHS). I oversee the substance abuse prevention program which provides substance abuse prevention services, training, and technical assistance to communities in North Dakota.

We have all been hearing about North Dakota's need for a cultural change regarding alcohol. I am here today to provide some information about alcohol abuse and consequences in North Dakota. (Attachment A)

Despite declining underage drinking rates in the state, N.D. continues to rank first in underage "binge" drinking nationally (ages 12-20, NSDUH 2011); 68 percent of N.D. high school students have drunk alcohol (YRBS 2011); and in 2011, 8.3 percent of middle school students reported they had their first drink before age 11. In general, North Dakota youth have high rates of alcohol use, and they don't think binge drinking is harmful. However, 88 percent of North Dakota residents believe youth alcohol use is a problem in the state (CRS, 2008).

It is important to note that North Dakota's alcohol issues extend beyond underage drinking. Our adult binge drinking rates are among the highest in the nation. North Dakotans purchase higher volumes of alcohol per person (NIAAA, 2000-2009). In fatal crashes in North Dakota, 93 percent of the impaired drivers were age 21 or older (DOT 2011).

Alcohol abuse impacts us all. Twenty-eight percent of all adult arrests in North Dakota are DUIs (UCR 2011); 65 percent of incarcerated individuals in N.D. have a substance abuse diagnosis (DOCR 2011); and 85 people died on N.D.

roads last year in alcohol-related crashes. In 2011, 6,600 people were arrested for DUIs in N.D. That is more than the total population of Valley City.

What can be done to make a true impact on the culture of alcohol usage in North Dakota? Research shows that prevention efforts are most effective when they are part of a comprehensive, data-driven, multi-faceted approach that targets all ages and includes strategies focusing on policy, media, enforcement, parents, environment, and community-based processes.

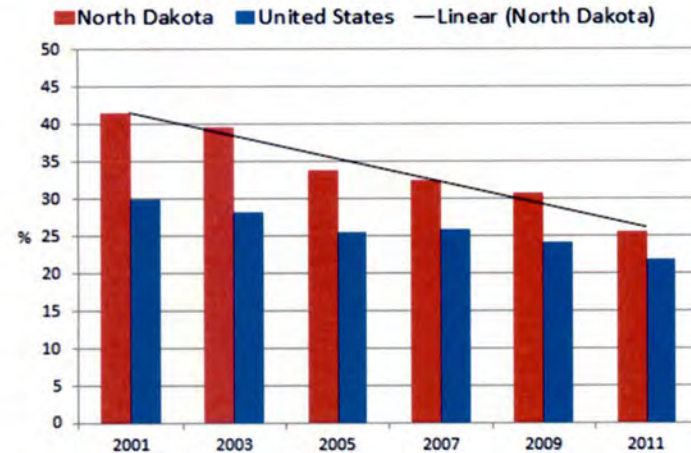
It is also important that prevention efforts across the state are based on science. There are strategies that have been proven to reduce alcohol consumption and consequences. Developing and revising laws and policies is an effective substance abuse prevention strategy because laws and policies create change in the environment itself, which affects the entire population, rather than changing one individual's behavior at a time. Enforcement of the laws and policies is an important strategy. Media and advertising also play an important role in culture change. How do we expect youth to say "no" when their environment tells them "yes"? Education programs, such as server training, have also been shown to be effective. This program provides training to those who serve alcohol so they know how to avoid over-serving patrons, to identify minors, and to recognize fake IDs.

Alcohol abuse in North Dakota is a complex issue, which deserves an equally complex, comprehensive, and effective solution.

I am available to answer your questions.

ALCOHOL in NORTH DAKOTA

STUDENTS IN GRADES 9-12 WHO HAD FIVE OR MORE DRINKS OF ALCOHOL IN A ROW WITHIN A COUPLE OF HOURS ON AT LEAST 1 DAY WITHIN THE PAST MONTH, ND AND US

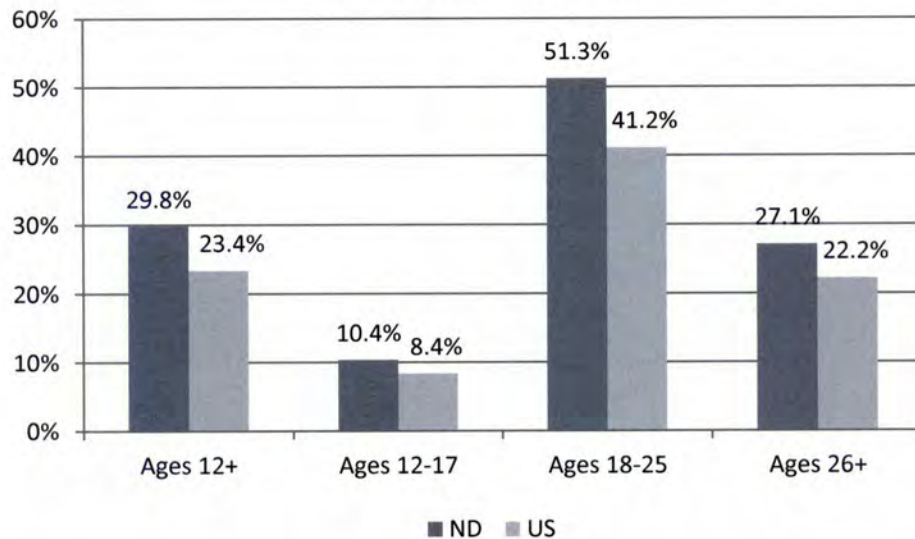


Source: YRBS

Trend line: Downward; decreases noted over time.

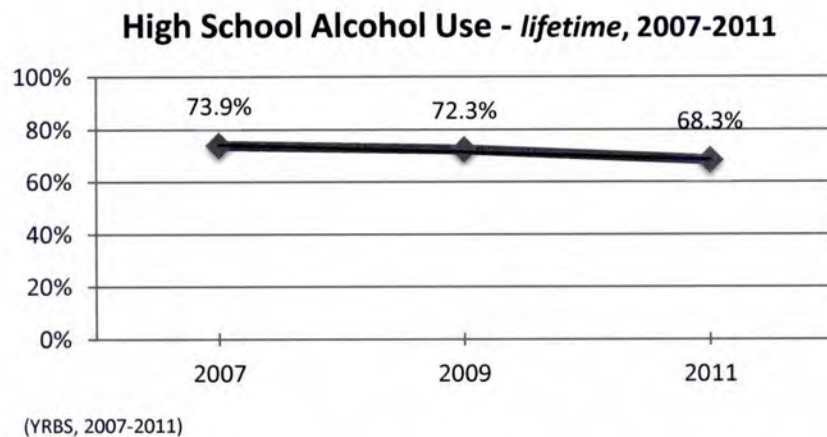
Conclusion: ND prevalence was higher than the US prevalence for each year.

BINGE ALCOHOL USE IN PAST MONTH, NORTH DAKOTA AND UNITED STATES, BY AGE GROUP, 2009-2010



(NSDUH, 2009-2010)

28% OF ND HIGH SCHOOL STUDENTS DRANK ALCOHOL ON 20 OR MORE DAYS IN THEIR LIFE; 9.7% ON MORE THAN 100 DAYS. (YRBS, 2011)



ASSOCIATED RISK FACTORS AND CONSEQUENCES RELATED TO SUBSTANCE USE

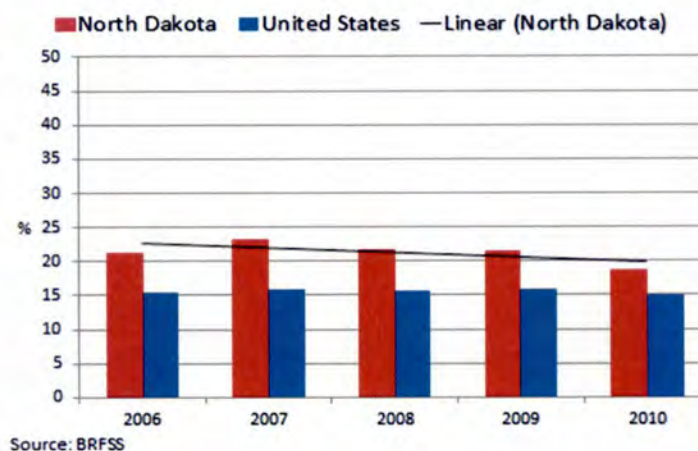
8.3% of ND middle school students had their first drink of alcohol *before* age 11 (YRBS, 2011)

- ✦ People who begin drinking before age 15 are four times more likely to become alcohol-dependent than those who wait until they are 21 (Center for Adolescent Health).

69% of ND high school students think binge drinking 1-2 times a week does NOT pose a great risk (YRBS, 2011)

- ✦ Underage alcohol use is more likely to kill young people than all illegal drugs combined (National Institute on Alcohol Abuse and Alcoholism).

ADULTS WHO ENGAGED IN BINGE ALCOHOL USE WITHIN THE PAST 30 DAYS,
ND AND US, 2006-2010

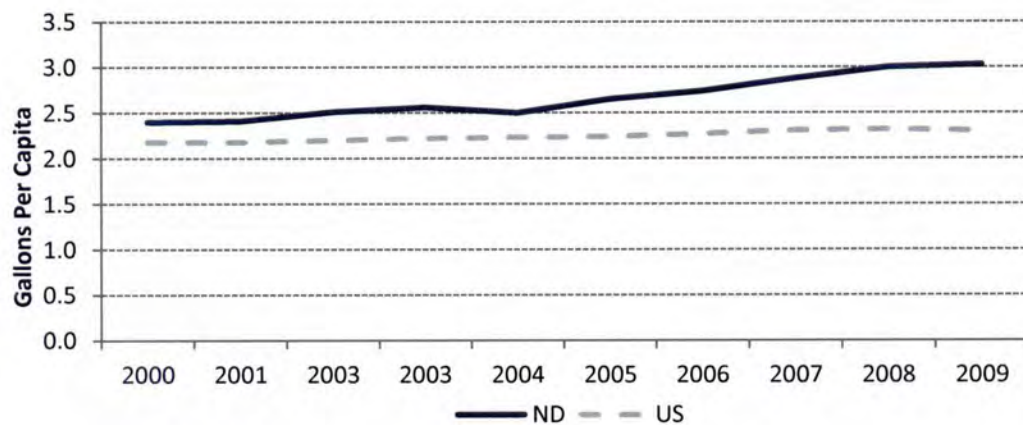


IN ND FATAL CRASHES, 93% OF THE IMPAIRED DRIVERS WERE AGE 21 OR OLDER.

Age of Impaired Driver	14-15	16-17	18-20	21-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-69	70-74	75-79
# Fatal Crashes	1	0	3	9	7	11	3	5	5	5	3	0	1	1

(DOT, 2011)

PER CAPITA ALCOHOL CONSUMPTION, NORTH DAKOTA AND UNITED STATES, 2000-2009

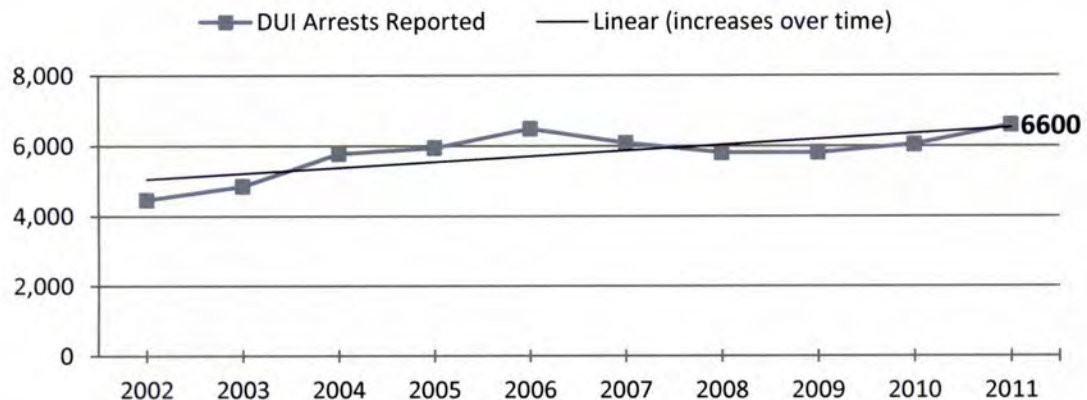


Source: National Institute on Alcohol Abuse and Alcoholism (NIAAA)

*For population ages 14 and older.

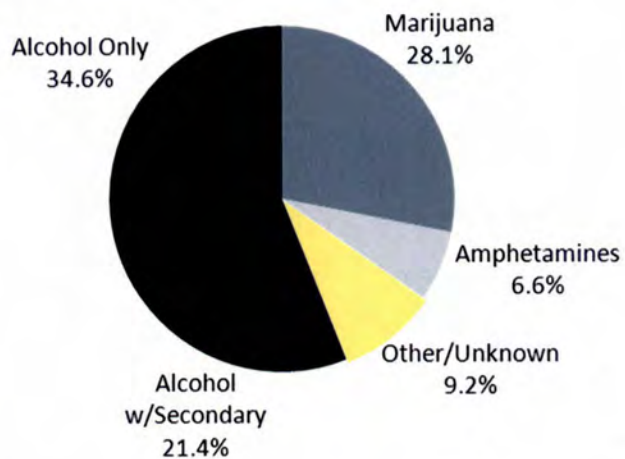
IN 2011, 28% OF ALL ADULT ARRESTS WERE FOR DRIVING UNDER THE INFLUENCE (DUI)

DUI Arrests, 2002-2011



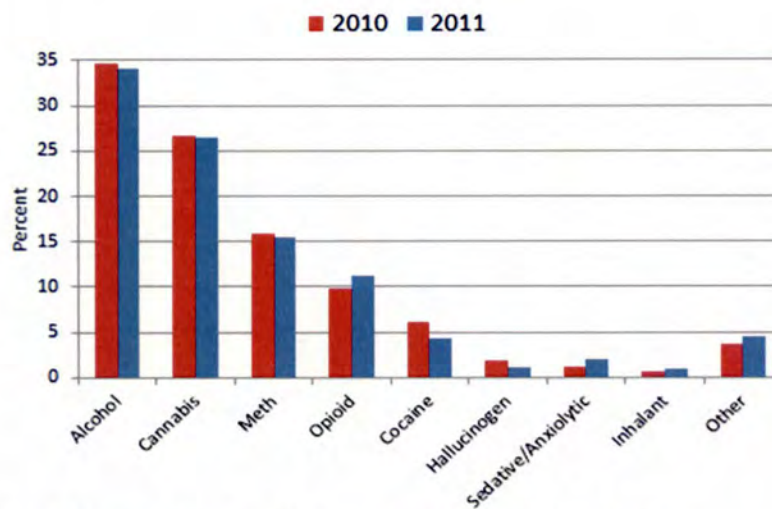
(DOT, 2011)

NORTH DAKOTA SUBSTANCE ABUSE TREATMENT, BY PRIMARY SUBSTANCE 2011



Source: Treatment Episode Data Set
*Total outpatient admissions=2,664

SUBSTANCE-RELATED DIAGNOSES AMONG NORTH DAKOTA CORRECTIONAL INMATES, 2010 AND 2011



Source: ND Department of Corrections and Rehabilitation; Total diagnoses - 2010: 1,750; 2011: 1,557

Good afternoon Chairman Oehlke and Transportation Committee members. My name is Arlene Deutscher and I'm from Bismarck. I know some of you have heard my testimony at other hearings and hope I don't sound like a broken record.

Many of you enter this building through the west doors and may remember the wrecked vehicle that was on display in mid-January. That was my son's car. Our family had looked forward to July 6th, 2012, for many months. We had scheduled a family reunion for that weekend. Instead of a fun-filled weekend, we were planning three funerals. My son, Aaron, his pregnant wife, Allison, and their 18-month old daughter, Brielle, were killed by a drunk driver going the wrong way on Interstate 94. The impaired driver had previous drinking and driving violations. I don't have to tell you that North Dakota is near the top among states in drunken driving deaths per capita with alcohol involved in more than half of our fatal crashes. This is a real problem in this state.

I'm here to emphasize my position on the need for change in our current DUI culture. It's not okay to drive drunk. We can't begin to make a difference if we don't approach this aggressively. I feel stiffer penalties would be a first step in reforming this culture.

I have followed the numerous amendments of the original **HB 1302** to how it currently reads. The penalties and blood alcohol levels have notably changed considerably in reference to the 24/7 sobriety program. I feel the 24/7 program is ^{a strong} ~~one~~ step in the right direction.

I have reviewed the Appropriations Committee amendment which ^{changes} ~~increases~~ the blood alcohol concentration from less than fifteen hundredths to less than twenty-one hundredths as terms for the ^{sobriety} ~~alcohol~~ treatment program. In order to strengthen DUI legislation, I ask that you consider the original proposal of fifteen-hundredths.

Human costs and losses are immeasurable. I know this first hand, and for the last 8 months, all of Aaron's, Allison's and Brielle's family and friends, have suffered immense pain because of their senseless deaths. Words cannot describe the sadness we feel every day.

It is the responsibility of each of us as North Dakota's citizens, to recognize we have a very important role in changing society's attitude about driving drunk. Our first step is strengthening our DUI legislation. It's time for progressive change, and I look to you as legislators to help North Dakota move in that direction. Thank you.

1302

Good morning chairman Oehlke and distinguished committee members. My name is Tom Deutscher and I am from Bismarck. I am here today asking that you support HB1302 otherwise known as Brielle's Law. As you may know, my son Aaron, his wife Allison and baby Brielle were killed on July 6th by a drunk driver travelling the wrong way on interstate. For those of you who are unaware of the story...we had been planning a family reunion..... It had been 3 years since the entire family was together and many changes had taken place. 3 grandchildren and 1 on the way. The yard was filled with games and a children's pool in anticipation of an afternoon of joy.....and everyone was in the garage waiting for the last arrivals...Aaron, Allison and Brielle.....but the only car to drive into our driveway that evening was the highway patrol. Alyssa was to ride with them....fortunately she was allowed to leave work early or we would have lost her too.....My last words to Aaron were "I love you and drive carefully". It has been said that when a parent loses a child a little bit of them dies with them. I will tell you for a fact this is true as I have

spent the last 8 months trying to hold together what remains of my family because of a senseless.... and preventable act. I do not wish this personal hell on anyone. I will not bore you with the statistics.....you've heard where we stand both as a people and as a State. Some say our DUI laws are strong enough and that our jails are already full....I would argue that they are not strong enough and that our cemeteries are full. If you think stricter legislation will come as an additional cost to the taxpayer.....(and take the unimaginable emotional toll aside)....come visit with me and I'll discuss with you the financial burden my family and my extended family is experiencing because someone chose to ignore their drinking and driving responsibility. Issues raised such as cost and jail space are merely obstaclesnot reasons... to weaken our approach. I have watched law enforcement work tirelessly to remove drunk drivers from our roads ...and the frustration they experience when the same drivers repeat.

It continues each day.....and will do so until we act.

This bill is both aggressive and progressive.... and in my opinion long overdue. It intends to protect the innocent

Pushing for
"Brielle's Law"
A Change in Drunk Driving Laws

Lynn & Donna Mickelson

Parents of Allison Deutscher

16930 69th St. SE
Colfax, ND 58018
701-372-3860
moparnut@rrt.net



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REGULATIONS GOVERNING OPERATORS

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.

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.~~

e. In addition to being charged with an offense under the subsection, a refusal to submit to a chemical test after a law enforcement officer provides the individual with the implied consent advisements proscribed by this title is a separate offense. However, a conviction under this subsection and another subsection of this section arising out of the same incident or arrest shall be considered one offense for enhancement purposes. An individual convicted under this subsection shall be sentenced in accordance with the penalties under subsection 39-08-01(2).

4. A person convicted of violating this section or an equivalent ordinance, must be

sentenced in accordance with this subsection. A violation of section 39-08-03 or equivalent

ordinance shall enhance a subsequent conviction for violating this section or equivalent ordinance. 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.

New statute:

Violation of court ordered alcohol prohibition

If an individual has been charged, pled, or found guilty of offense under this chapter and the court has ordered the individual not consume any alcoholic beverages as a condition of bond or probation, the individual is guilty of an A misdemeanor if they violate that court order. A law enforcement shall have the authority to immediately arrest the individual if probable cause exists that the individual has violated this section.

(new statute)

Criminal vehicular homicide, criminal vehicular injury, and criminal vehicular substantial risk of injury.

- 1) Criminal vehicular homicide. An individual is guilty of criminal vehicular homicide if the individual violates section 39-08-01 and willfully causes a death to occur, including the death of an unborn child if the individual is not the mother. Violation of this section is a class A felony. If an individual violates this section the court must impose at least five years incarceration. If the individual violates this section after having been previously convicted of a violation of sections 39-08-01 or 39-08-03, or equivalent ordinance, the court must impose at least ten years incarceration. The requirements of section 12.1-32-09.1 apply to a sentence under this subsection. (Create a cross reference in 12.1-32-09.1 for this subsection) An individual cannot be prosecuted or found guilty of this subsection and an offense in chapter 12.1-16 if the conduct arises out of the same incident.
- 2) Criminal vehicular injury. An individual is guilty of criminal vehicular injury if they violate section 39-08-01 and willfully causes substantial bodily or serious bodily injury to another. Violation of this section is a class B felony. If an individual violates this section the court must impose at least two years incarceration. If the individual violates this section after having been previously convicted of a violation of sections 39-08-01 or 39-08-03, or equivalent ordinance, the court must impose incarceration of at least five years.
- 3) Criminal vehicular substantial risk of injury. An individual is guilty of this offense if the individual violates section 39-08-01 and willfully creates substantial risk of injury or damage to property. Violation of this section is a class C felony. Creating a substantial risk of injury or damage to property means having a blood alcohol concentration in excess of sixteen one-hundreds percent by weight or being substantially impaired by drugs or alcohol, and driving under circumstances manifesting extreme indifference to the value of human life or property. If the individual is convicted under the subsection the minimum terms of jail or imprisonment are the same as found in section 39-08-01 for prior offenses.
- 4) The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under the section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

(Need to cross reference this section into the license suspension sections so a conviction under this section is treated for suspension purposes as a violation of 39-08-01 with however many priors the person has.)

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

It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle. If an individual has been previously convicted this section or a violation of section 39-08-01 or equivalent ordinance a violation of this section is a class C felony.

10. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required. A law enforcement officer that witnesses an individual medically qualified to draw a blood sample for testing as set forth in subsection 5 can sign a statement that the officer witnessed the procedures being followed for a proper blood draw and that statement is prima facie evidence that the blood was properly drawn and no further foundation is required regarding the drawing of the blood for the test to be admitted into evidence. A challenge to a law enforcement officer's testimony that an individual who drew blood was medically qualified to do so is limited to weight and creditability of the officers knowledge and is not foundational for admittance into evidence of the blood test results unless the officer had no basis to conclude that the individual was medically qualified to draw blood .

District Court Data January 1, 2007 thru December 31, 2012 (6 years)

	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Off
1st Offense	10,441		3,496	17	13,954
2nd Offense	3,489				3,489
3rd Offense	156	457			613
4th Offense	1,141				1,141
5 + Offense	134				134
Unknown	3,970	(457)	(3,496)	(17)	-
Total DUI and APC	19,331	-	-		19,331

NDLA, S TRN - Perez, Doris

From: NDLA, Intern 06 - Hagel, Justin
Sent: Thursday, February 07, 2013 10:02 AM
To: Oehlke, H. Dave; Flakoll, Tim; Axness, Tyler; Sinner, George B.; Sitte, Margaret A.; Campbell, Tom S.
Cc: Armstrong, Kelly; NDLA, S TRN - Perez, Doris
Subject: FW: DUI legislation

From: Kelly Armstrong [<mailto:Kelly@reichert-armstrong.com>]
Sent: Thursday, February 07, 2013 9:58 AM
To: NDLA, Intern 06 - Hagel, Justin
Subject: Fwd: DUI legislation

Please forward this to all the members of the committee. This comes from the Municipal Court Judge in Dickinson.

Kelly

Begin forwarded message:

From: Robert Keogh <Bob@keogh-lawoffice.com>
Date: February 5, 2013, 10:57:51 PM CST
To: Kelly Armstrong <kelly@reichertlaw.com>
Subject: DUI legislation

Sen. Armstrong:

You and I have had previous communications about the proposed increased DUI minimum penalties. I do not know where the legislation is at right now, but I have some concerns as this law would impact Municipal Courts.

One is the cost because of the increased jail costs the city would pay if there was a minimum jail sentence on the first offense. Cities must pay for their own jail costs; the state does not help with those obligations. The Southwest Multi County Correction Center here in Dickinson charges us \$75 per day (1hr-24 hrs). While I attempt to have Defendants repay the City for those costs, it does not happen in all cases, and in some is difficult to collect. If there is a minimum 4 days as I have heard proposed, that will mean so much more additional expense to the city, and perhaps much more to collect from Defendants.

An increased minimum fine, while perhaps somewhat overdue just considering inflation, may seem to be a benefit to the cities in the sense of increased revenue, but most of the time the courts have to work very hard to collect the monies they are owed, so this b would not necessarily know the offender had any prior convictions, but she would then transfer the case to the District Court.

I would believe that the vast majority of our licensed drivers are deterred from drunk driving either by their own responsible behavior or the present DUI laws. I believe that most first time DUI offenders are deterred by the present penalties from committing a second offense.

I think there are some repeat offenders who will not be deterred by any increased penalties.

I believe that license suspension is a great deterrent to most first time offenders, who find even a short suspension a significant penalty. But there are those persons who are so addicted that no penalty will deter them, and there are those persons who will drive regardless of their suspensions.

Bob Keogh, Dickinson Municipal Judge

13.0399.03005
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
March 28, 2013

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1302

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-08-01.4, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsections 6 and 10 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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 may require the child to participate in the twenty-four seven sobriety program under chapter 54-12 for up to nine months.

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

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

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

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.

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

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

An individual who has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety program under chapter 54-12 is not subject to the suspension periods under this section.

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

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

1. Except as provided under subsection 2, 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 ~~for good cause~~ 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 fifteen days of the suspension have been served. 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 for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's ~~permit~~license to the offender ~~only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon~~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 by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted

~~driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

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

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.

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. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a ~~five-year~~seven-year period, of a class A misdemeanor for a third offense in a ~~five-year~~seven-year period, and of a class C felony for a fourth or subsequent offense in a seven-year period or 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 4. 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.
3. Upon conviction of a second or subsequent offense within ~~five~~seven years under this section or equivalent ordinance, the court ~~must~~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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, but not including or if the offender is participating in the twenty-four seven sobriety program.

4. 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 ~~two hundred fifty~~ 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 eighteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include at least two days' imprisonment or twenty hours community service.
 - b. For a second offense within ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively; or thirty days' community service;~~ a fine of at least ~~five hundred~~ one thousand dollars; ~~and 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 ~~five~~ seven years, the sentence must include at least ~~sixty~~ one hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~ at least two thousand dollars; ~~and 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 ~~within seven years,~~ the sentence must include at least one hundred eighty days' year and one day's imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of one thousand

dollars; and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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. 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 offense is subject to subdivision e or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.
 - f.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 ~~subsection~~section.
 - g.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 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.
5. As used in subdivision b 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. For an offense under subsection c of subdivision 4, no more than ninety percent of the sentence may be house arrest.

6. 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, except upon a finding of indigence the court may waive fifty percent of the twenty-four seven sobriety program fees.
7. 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 sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

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

1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.
2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.
1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01, or equivalent ordinance, and

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

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01, or equivalent ordinance, and as a result that individual willfully causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

SECTION 9. AMENDMENT. Section 39-08-01.4 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 10. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any 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 is deemed to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug

or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

SECTION 11. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight

one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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 unless the individual has exhausted administrative procedures. 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.

SECTION 12. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person

the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year ~~hundred eighty days~~ if the person's driving record shows that within the ~~five~~ seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~ Two years if the person's driving record shows that within the ~~five~~ seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~ Three years if the person's driving record shows that within the ~~five~~ seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

SECTION 13. AMENDMENT. Section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~five~~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 five~~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 five~~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 five~~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 five~~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 five~~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.

SECTION 14. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample ~~from~~ electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designee, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time

and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system which is received by the director from the director of the state crime laboratory or the director's designee or, a law enforcement officer, or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges

in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

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

SECTION 15. AMENDMENT. Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.

- d. The certificate of the director of the state crime laboratory designating the director's designees.
- e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

SECTION 16. AMENDMENT. Subsection 10 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 17. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. However, the

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.

SECTION 18. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

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 unless the individual has exhausted administrative procedures.

SECTION 19. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 20. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration between the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system

which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the underage drinking prevention program provided for under section 20 of this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 22. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of purchasing secure continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program, for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

LIQUOR AND BEER TAXES

CURRENT LAW

Imposition and Administration

The tax on liquor and beer is a privilege tax imposed on all alcoholic beverage wholesalers doing business in North Dakota. In addition, direct shippers, microbrew pubs, domestic wineries and domestic distilleries pay the taxes on alcoholic beverages made by those facilities and sold directly to consumers. A pub, winery, or distillery may not engage in any wholesaling activities. The State Tax Commissioner administers the tax and licenses of wholesalers, direct shippers, microbrew pubs, domestic wineries and domestic distilleries. The tax is collected on either a monthly or annual calendar year basis. Licenses are also required for alcoholic beverage suppliers shipping product to a North Dakota wholesaler and out of state direct shippers of alcoholic beverages to North Dakota consumers.

Exemptions

If the alcohol is used for non-beverage purposes, it is exempt from the tax. These exemptions include:

- Denatured alcohol
- Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations
- Flavoring extracts
- Syrups and food products
- Scientific chemical and industrial products
- Wines delivered to priests, rabbis and ministers for sacramental use

Rates

The amount of the tax is determined by the type of beverage and the gallonage sold by a wholesaler. The tax rate schedule is as follows:

	Per Wine Gallon
Beer in bulk containers	\$.08
Beer in bottles and cans	\$.16
Wine (less than 17% alcohol), including sparkling wine	\$.50
Wine (17% to 24% alcohol)	\$.60
Distilled Spirits	\$ 2.50
Alcohol	\$ 4.05

Distribution of Revenue

Revenue from the liquor and beer tax is deposited in the State General Fund.

HISTORICAL OVERVIEW

Significant Changes in Law

1967 Session

- The alcoholic beverage tax law was rewritten and the tax rates were restructured.

1991 Session

- Microbrew pubs became subject to the liquor and beer tax.

1995 Session

- Bonding repealed.

1995 Session

- Microbrew pubs became subject to new licensing requirements.

1999 Session

- Establish penalties for the shipping of out-of-state sales of alcoholic beverages from an out-of-state location directly to a person in North Dakota who is not a wholesaler.

2001 Session

- The wholesale alcoholic beverage administration was transferred from the state treasurer to the state Tax Commissioner effective July 1, 2001.
- Effective August 1, 2001, direct shippers of alcoholic beverages and farm wineries are required to obtain annual licenses and pay the wholesaler and applicable retailer taxes to the state Tax Commissioner.

2003 Session

- The alcoholic beverages law was amended to replace "farm winery" with "domestic winery."

2005 Session

- Suppliers became subject to new licensing requirements.
- Brand registration requirements were repealed.
- Thresholds for point-of-sale and dispensing equipment provided by wholesalers to retailers were increased.
- The percentage volume of North Dakota produced ingredients that must be included in wine produced by a domestic winery was defined.

2007 Session

- Container capacity was defined for "bottle or can" and bulk sales.
- The reciprocity with other states with regard to wine sales was repealed.
- Direct shipments to consumers inside or outside of the state are allowed by domestic wineries.
- Domestic winery reporting requirements were defined. The revocation of a suppliers license is provided for failure to comply with reporting requirements.

2009 Session

- Domestic distilleries required to obtain annual license and pay the wholesaler and applicable retailer taxes to the State Tax Commissioner.
- Tax rate on sparkling wine reduced to \$.50 per wine gallon.
- Updated obsolete law references for microbrew pubs and referenced monthly tax reporting by microbrew pubs.

2011 Session

- Expanded the number of days the Tax Commissioner may issue permits for a domestic winery or domestic distillery to participate in special events. Participation has been increased from twenty days to twenty events plus all Pride of Dakota events.

Liquor and Beer Taxes Collections

<u>Fiscal Year</u>	<u>Total Collections</u>
2000	5,420,486
2001	5,455,921
2002	5,493,783
2003	5,662,052
2004	5,910,349
2005	5,979,513
2006	6,340,589
2007	6,478,280
2008	6,959,464
2009	7,208,645
2010	7,411,422
2011	7,798,552
2012	8,469,290

SOURCE: Office of State Tax Commissioner.

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3/28/13

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DUI LAW CURRENT

First offense - B Misdemeanor

- \$250 fine, \$250 fees, mandatory addiction evaluation, SR-22
- 91/180 day DL suspension--work permit after 30 days

Second Offense - B Misdemeanor

- \$500 fine, \$250 fees, addiction evaluation, SR-22
- Five days in jail
- 1/2 year DL suspension--no work permit
- 24/7 used mostly as a condition of pretrial release

Third Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, addiction evaluation, SR-22
- 60 days in jail
- 3 year DL suspension--no work permit
- 24/7 used mostly as a condition of pretrial release

Fourth Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, addiction evaluation, SR-22
- 180 days in jail
- 3 year DL suspension--no work permit
- 24/7 used mostly as a condition of pretrial release

Refusal To Submit to Testing

- Not a crime--still charged as DUI--Difficult to get a conviction
- First offense 1 year DL suspension, no work permit. (May "cure" refusal by pleading guilty to DUI w/in 25 days)
- 2nd offense 3 year DL suspension, no work permit. (Cannot "cure")
- 3rd offense 4 year DL suspension, no work permit. (Cannot "cure")

PROPOSED CHANGES

First Offense - B Misdemeanor

- \$500 fine, \$250 fees, mandatory addiction evaluation, SR-22
- 2 days in jail or 20 hours community service if AC over .18
- 91/180 day DL suspension--work permit after 30 days

Second Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, mandatory addiction evaluation, SR-22
- 1 year participation in the 24/7 program
- 10 days in jail (doubles)
- 1/2 year DL suspension but may get a restricted license if compliant in the 24/7 program

Third Offense - A Misdemeanor

- \$2,000 fine (max), \$325 fees, mandatory addiction evaluation, SR-22
- 2 year supervised probation and 24/7 program
- 120 days in jail (doubles)
- 3 year DL suspension but may get a restricted license if compliant in the 24/7 program

Fourth Offense - C Felony

- \$1,000 fine, \$500 fees, mandatory addiction evaluation, SR-22
- 2 years supervised probation and 24/7 program
- 1 year and 1 day in prison
- 3 Year DL suspension but may get restricted license if compliant in the 24/7 program

Refusal to submit to chemical testing

- Crime of DUI under subsection of 39-08-01
- Treated just like a DUI
- License suspensions are:
 - 180 days - 1st offense
 - 2 years - 2nd offense
 - 3 years - 3rd and subsequent
- Restricted licenses would work the same as any other DUI
- Makes refusals easier to prosecute as a DUI.
- Makes it the same as a DUI not an additional crime (MN. makes it a separate crime)
- Closes a DL loophole that exists now.

Additional Changes

- Appropriation of \$1.2 million for scam bracelets used in monitoring 24/7.
- Fiscal Note will decrease compared to current.
- 2 year minimum mandatory sentence for any death (Cannot be suspended).
- 1 year minimum mandatory sentence for any injury caused for a second or subsequent offense (Cannot be suspended).
 - 50% reduction in fees for 24/7 upon a finding of indigency
 - House arrest can be imposed for 90% of any jail sentence
 - Inpatient treatment is given day for day for any jail sentence

CURRENT LAW	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
1 st offense	Class B Misd.	\$250	Yes			30 days	
2 nd offense/5 years	Class B Misd.	\$500	Yes		24/7 optional bond/probation	30 days	5 days
3 rd Offense/5 years	Class A Misd.	\$1,000	Yes		24/7 optional bond/probation	1 year	60 days, serve at least 10 days
4 th offense/7 years	Class A Misd.	\$1,000	Yes		24/7 optional bond/probation	1 year	180 days, serve at least 10 days
5 th offense/7 years	Class C Fel	\$1,000	Yes		24/7 optional bond/probation	5 Years	180 days, serve at least 10 days

HB 1302	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
1 st offense, BAC .08-less than .21	Class B Misd.	\$500	Yes			30 days	
1 st offense, BAC .21 and higher	Class B Misd.	\$750	Yes	6 months	24/7 - bond optional, probation mandatory	30 days	10 days, serve at least 1(non-working) day
2 nd offense/10 years	Class A Misd.	\$1,500	Yes	1 year	24/7 - bond optional, probation mandatory	1 year	60 days, serve at least 10 days
3 rd Offense/10 years	Class C Fel	\$2,000	Yes	1 year	24/7 - bond optional, probation mandatory	5 years	180 days, serve at least 60 days
4 th / subsequent offense	Class C Fel	\$3,000	Yes	2 years	24/7 - bond optional, probation mandatory	5 years	1 year and 1 day, serve at least 1 year

1. Makes a refusal a criminal violation, same as the DUI offense with offense penalty and license suspension, except that refusal for 1st offense is treated as if BAC is .21 for penalty. Eligible for temporary restricted license, if not already suspended or under revocation.
2. Temporary restricted license with 24/7 program in place of administrative hearing and administrative suspension of license.
3. Juvenile court has discretion to use 24/7.
4. Increases look-back from 5 years to 10 years for DUI offenses.
5. Does not create new processes for driver's licenses.
6. 24/7 In the case of a DUI arrest, the judge may issue a bond order requiring the individual to refrain from alcohol use and to show up twice each day between certain hours at a specific location for a breath alcohol test. The individual pays \$1.00 each test (\$2.00 per day) to offset the costs of testing. If the individual's test registers any alcohol use, then he or she is immediately taken into custody. If the arrestee fails to show for testing, bond is revoked. The court may also order remote electronic alcohol monitoring in select cases.

FISCAL NOTE
Requested by Legislative Council
04/01/2013

#1

HB 1302
45-B

Amendment to: HB 1302

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$6,146,511		\$6,474,961
Expenditures			\$5,512,001	\$6,146,511	\$9,766,376	\$5,705,950
Appropriations			\$5,512,001	\$6,146,511	\$9,766,376	\$5,705,950

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$1,960,000	\$1,960,000
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased probation and incarceration requirements and increased usage of the 24/7 sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will fiscally impact local jurisdictions, the Office of the Attorney General, and the Department of Corrections and Rehabilitation. Impact will come through increased usage of the 24/7 sobriety program, and increased probation and incarceration requirements. As amended this bill should have no material fiscal impact to the Department of Transportation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increase revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 sobriety program and an increased number of individuals on supervised probation.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

County fiscal impact determined by assuming one-half of the 4000 first-time DUI offenders per year would be incarcerated for 2 days and 2,000 second-time DUI offenders would be incarcerated for 10 days (increase of 5 days from current practice). Incarceration cost per day estimated at \$70. No material fiscal impact anticipated for 3rd time offenders. The DOCR impact was determined by estimating, 102 3rd offenses per year and 213 4th or more offenses per year. The DUI offenses would increase the average daily prison population by 88 in FY14, 195 in FY15, 195 in FY16 and 195 in FY17. This increase would cause DOCR facilities to reach capacity by FY15 resulting in a need to contract for additional bed space as follows: FY15 - 129, FY16 - 149 and FY17 - 169. Probation caseloads

would increase as follows: FY16 - 212, FY17 - 338. Costs estimated for the purpose of this fiscal note include medical, food, contract housing, and additional FTE's to provided community supervision (probation). See attached for computation. Office of Attorney General fiscal impact: There are approximately 6,400 resident DUI's per year. In addition, approximately 950 children (17 and under) will likely participate in the 24/7 Sobriety program. As a result of this bill, the office estimates about 35% of the participants will use SCRAM bracelets. The Office of Attorney General currently has 374 SCRAM bracelets. This bill could require an estimated 2,573 additional bracelets which results in a net increase of 2,199 new bracelets. Total 2013-15 biennium estimated expenditures are \$7,443,901 (\$6,146,511 from other funds - participant fees and \$1,297,390 from the general fund). Estimated expenditures for the 2015-17 biennium are \$5,540,677 which will be paid from participant fees (other funds).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

DOCR - Total 2013-15 biennium estimated appropriation needed \$4,214,611 (100% general fund); 2015-17 biennium \$9,931,649 (\$9,766,376 general funds and \$165,273 other funds) and 6 FTE. Attorney General - Total 2013-15 biennium estimated appropriations needed are \$7,443,901 (\$6,146,511 from other funds - participant fees and a \$1,297,390 general fund appropriation). The Office of Attorney General estimates an appropriation of \$5,540,677 will be needed for the 2015-17 biennium from participant fees (other funds).

Name: David Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 04/03/2013

42 4-5-1 HB130

District Court Data January 1, 2007 thru December 31, 2012 (6 years)						
	Total by Offense	Unknown - Misdemeanor A	Unknown - Misdemeanor B	Converted Degree	Adjusted Total by Offense	Average Offense Per Year
1st Offense	10,441		3,496	17	13,954	2,325.67
2nd Offense	3,489				3,489	581.50
3rd Offense	156	457			613	102.17
4th Offense	1,141				1,141	190.17
5 + Offense	134				134	22.33
Unkown	3,970	(457)	(3,496)	(17)	-	-
Total DUI and APC	19,331	-	-		19,331	3,222
Assumptions						
1) Offenses occur evenly through out the year						
2) Actual time incarcerated is equal to minimum mandatory sentence						
3) All time incarcerated for misdemeanor B and A (1st, 2nd, and 3rd offense) at county level						
4) 2nd offense probation is unsupervised and will not impact DOCR supervision caseloads; 100% of 3rd, 4th and subsequent offense probation is supervised and will impact DOCR supervision caseloads						
5) All time incarcerated for felony C (4th and subsequent offense) incarcerated at state level						
6) Contract housing beds \$70 per day (no treatment services included in rate)						

7) No deterrent effect was used in the estimate					
8) Estimated available drug court capacity (35) consumed by 2nd and 3rd offenses (no offset to 4 and subsequent incarceration)					
9) Revised 2013-15 estimated inmate population used in determining fiscal effect					
10) All aspects of the 24/7 sobriety program administered by the Office of the Attorney General					
Deterrent Effect	0%	0%	0%	0%	
Offenses Per Month					
3rd - Offense	8.51	8.51	8.51	8.51	
4th +	17.71	17.71	17.71	17.71	
Increase in Prison ADP	FY2014	FY2015	FY2016	FY2017	
4th + Offense	106	213	213	213	
Less:					
Current Ave of DUI Incarcerated	18	18	18	18	
Est Increase in Prison ADP	88	195	195	195	
Contract Housing	FY2014	FY2015	FY2016	FY2017	
Budgeted Capacity DOCR	1,298	1,298	1,298	1,298	
Revised Est Population	1,212	1,232	1,252	1,272	
Bill Effect	88	195	195	195	
Needed Beds	-	129	149	169	
Days	334	365	365	365	
Bed Cost Per Day	\$ 70.00	\$ 70.00	\$ 70.00	\$ 70.00	
Est Cost - Contract Beds (No Treat)	\$ -	\$ 3,296,653	\$ 3,808,352	\$ 4,318,881	
Increase in Probation	FY2014	FY2015	FY2016	FY2017	
3rd Offense	22	95	102	102	
4th + Offense	-	96	309	424	
Less:					
Current Ave of DUI Probation	199	199	199	199	
Total Estimated Increase	-	-	212	328	

Target Caseload / Officer	65	65	65	65	
Necessary Officers	-	-	4	6	
Est FTE Cost / Year	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	
Est Cost - Probation	\$ -	\$ -	\$ 300,000	\$ 450,000	
Inmate Costs	FY2014	FY2015	FY2016	FY2017	
13-15 Budgeted Medical	\$ 6.49	\$ 6.49	\$ 6.49	\$ 6.49	
Increase Inmates	88	195	195	195	
Days	334	365	365	365	
Increased Medical	\$ 190,721	\$ 461,991	\$ 462,056	\$ 462,012	
13-15 Budgeted Food	\$ 4.96	\$ 4.96	\$ 4.96	\$ 4.96	
Increased Inmates	88	195	195	195	
Housed Outside Docr	-	129	149	169	
Net Inc Inmates	88	66	46	26	
Days	334	365	365	365	
Increased Food	\$ 145,759	\$ 119,486	\$ 83,278	\$ 47,070	
Est Cost - Inmate	336,481	581,477	545,334	509,082	
Est Total Cost	336,481	3,878,130	4,653,686	5,277,964	
	Total Cost 13-15	4,214,611			
			Total Cost 15-17	9,931,649	
Supervision Fee Revenue	FY2014	FY2015	FY2016	FY2017	
Estimated Probation Increase	-	-	212	328	
Monthly Supervision Fee	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	
Months	11	12	12	12	
Collection Rate	56.7%	56.7%	56.7%	56.7%	
Est Total Revenue	\$ -	\$ -	\$ 64,962	\$ 100,311	
	Total Revenue 13-15	\$ -			
			Total Revenue 13-15	\$ 165,273	

Technical Changes to HB 1302 with Senate Transportation Amendments

1. Changes to the title

Page 1, line 4, after "39-08-01.2," insert "39-08-01.3,"

Page 1, line 5, after "6" insert ", 9,"

2. Make participation in 24/7 mandatory for juvenile DUI/APC violators

Page 1, line 16, replace "may" with "shall"

Page 2, line 1, replace "may" with "shall"

3. There is no suspension period for vehicular homicide/vehicular injury or DUI/APC with a child in the vehicle. The proposed changes would make these violations subject to the suspension period, and also to a 24/7 Restricted Driver's License.

Page 2, line 14, overstrike "section" and insert immediately thereafter "sections"

Page 2, line 14, after "39-08-01" insert: ", 39-08-01.2, or 39-08-01.4,

4. The D.O.T. pointed out a motor vehicle operator does not have a temporary restricted driver's license in lieu of suspension; instead, the operator has the temporary restricted driver's license for the period of suspension. The proposed changes accomplish that D.O.T. requirement.

Page 3, line 10, replace "An" with "If an"

Page 3, line 10, remove "who"

Page 3, line 11, insert an underlined comma after "54-12"

Page 3, line 12, replace "is not subject to" with "the individual may operate a motor vehicle during"

5. This change eliminates the 15 day suspension period.

Page 3, line 28, replace "that takes effect after fifteen days of the suspension have been served" with "provided the driver is not subject to any unrelated suspension or revocation"

6. The overstrike and removal of "for good cause" is for consistency. It has been overstruck on page 3, line 24 already.

Page 4, line 2, overstrike "for"

Page 4, line 3, overstrike "good cause"

7. The addition of a new subdivision (e) to subsection 1 of Section 39-08-01 and moving the language that refusal is an offense to a new subsection 2 is at the request of the state's attorneys. By its placement before the offense classifications and penalties provisions, it will clarify that a refusal offense will be subject to the same offense classifications and penalties as a DUI/APC offense involving a chemical or breath test.

Page 5, after line 23, insert:

"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.

Page 5, after line 29, insert

- “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 subject to a chemical test, or tests required under sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.”

Page 5, line 30, overstrike “2.” and insert immediately thereafter “3.”

Page 5, line 30, overstrike “Unless as otherwise provided in section 39-08-01.2, an” and insert immediately thereafter “An”

Page 6, line 6, overstrike “4” and insert immediately thereafter “5”

Page 6, line 9, overstrike “3.” and insert immediately thereafter “4.”

Page 6, line 21, overstrike “4.” and insert immediately thereafter “5.”

- 8. The removal of the “at least” language for second and third offenses is because the fine is already at the maximum for the offense classification.**

Page 7, line 8, overstrike “at least”

Page 7, line 14, remove “at”

Page 7, line 15, remove “least”

- 9. The replacement of “shall” with “may” is to change the mandatory language for drug court, which is not available in every court in the first place, and also because the judiciary feels tied by the mandatory language.**

Page 8, line 16, overstrike “shall” and insert immediately thereafter “may”

- 10. The following changes address drug and alcohol treatment. Section 12.1-32-02(1)(g) authorizes a court to sentence an individual to a treatment program in a public or private treatment facility. The DOCR cannot be responsible for payment for treatment in a private treatment facility. The second part is a variation of the “Montana” model – if a DUI/APC violator is sentenced to the custody of the DOCR, the DOCR may release the violator from physical custody upon completion of treatment.**

Page 8, line 31, after “program” insert “under subdivision g of subsection 1 of section 12.1-32-02.”

Page 9, line 2, after the period insert “A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.”

Page 9, after line 2, insert:

- 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.

Page 9, line 3, overstrike "5." and insert immediately thereafter "6."

Page 9, line 3, overstrike "4" and insert immediately thereafter "5"

11. The following changes are technical corrections if house arrest will be used for class A misdemeanor offenses.

Page 9, line 3, after "subdivision b" insert "and c"

Page 9, line 10, replace "subsection" insert "subsections b or"

Page 9, line 11, replace "4" with "5"

12. DUI/APC are strict liability offenses. "Willfully" means reckless, knowingly, or intentionally, and does not include negligence. The use of "individual" three times in the same sentence was ambiguous, so the clause is deleted.

Page 10, line 14, remove "willfully"

Page 10, line 15, remove ", unless the individual is the mother of the unborn child"

Page 10, line 20, after "of" insert "a violation of this section"

Page 10, line 23, remove "willfully"

13. The amendment to Section 39-08-01.3, which is a vehicle forfeiture statute, is primarily a technical change to change the look-back period, and also to provide that violations of the vehicular homicide/injury statute, and DUI/APC with a child may also lead to a vehicle forfeiture. Also, the statute included a reference to interlock, which was not consistent with the forfeiture.

Page 11, after line 3, insert:

SECTION ____. Section 39-08-01.3 of the North Dakota Century Code is amended and reenacted as follows:

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

Page 11, line 11, after "39-08-01.4," insert "or equivalent ordinance."

Page 11, line 17, remove the overstrike from "~~, and shall consent~~"

14. A number of changes are necessary to the statute pertaining to the introduction of crime laboratory records into the implied consent hearing process.

Page 20, line 25, after "designee," insert ", or electronically posted by the director of the state crime laboratory or the director's designee"

Page 20, line 28, after "system" insert a comma

Page 20, line 29, after "operator" insert a comma

Page 21, replace lines 26-31 with:

- a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information

management system and certified by, and received from, a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and

Page 22, remove lines 1-3

15. The following changes relate to blood draws and delete references to the state toxicologist.

Page 24, after line 9, insert:

“SECTION ____. Subsection 9 of Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. If ~~the state toxicologist,~~ the director of the state crime laboratory or designee, ~~or any employee of either,~~ is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

Page 24, line 16, replace “sign a verified statement” with “testify”

Page 24, line 18, replace “state toxicologist” with “director of the state crime laboratory or the director's designee”

Page 24, line 19, replace “drawn according to the” with “properly obtained.”

Page 24, remove line 20

Page 24, line 28, overstrike “moving”

Renumber Accordingly

Rep. Koppelman
4-17-13

CURRENT LAW	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
1 st offense	Class B Misd.	\$250	Yes			30 days	
2 nd offense/5 years	Class B Misd.	\$500	Yes		24/7 optional bond/probation	30 days	5 days
3 rd Offense/5 years	Class A Misd.	\$1,000	Yes		24/7 optional bond/probation	1 year	60 days, serve at least 10 days
4 th offense/7 years	Class A Misd.	\$1,000	Yes		24/7 optional bond/probation	1 year	180 days, serve at least 10 days
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REENGROSSED HB 1302	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
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2 nd offense/10 years	Class A Misd.	\$1,500	Yes	1 year	24/7 - bond optional, probation mandatory	1 year	60 days, serve at least 10 days
3 rd Offense/10 years	Class C Fel	\$2,000	Yes	1 year	24/7 - bond optional, probation mandatory	5 years	180 days, serve at least 60 days
4 th / subsequent offense	Class C Fel	\$3,000	Yes	2 years	24/7 - bond optional, probation mandatory	5 years	1 year and 1 day, serve at least 1 year

TRANSPORTATION COMMITTEE AMENDMENTS	Offense level	Minimum Fine	Addiction Evaluation	Min. Mandatory Probation	Other restrictions	Maximum sentence	Min. mandatory sentence
1 st offense, BAC less than .18	Class B Misd.	\$500	Yes			30 days	
Aggravated DUI, 1 st offense, BAC .18 or higher	Class B Misd.	\$500	Yes			30 days	2 days or 20 hours comm. service
2 nd offense/7 years	Class B Misd.	\$1,000	Yes	1 year	24/7 - bond optional, probation mandatory	30 days	10 days
3 rd Offense/7 years	Class A Misd.	\$2,000	Yes	1 year	24/7 - bond optional, probation mandatory	1 year	120 days, serve at least 60 days, up to 90% house arrest
4 th / subsequent offense	Class C Felony	\$1,000	Yes	2 years	24/7 - bond optional, probation mandatory	5 years	1 year and 1 day, serve at least 1 year
Criminal vehicular injury	Class C Felony					5 years	1 year imprisonment 2 years with prior DUI or reckless driving
Criminal vehicular homicide	Class A Felony					20 years	3 years imprisonment 10 years with prior DUI or reckless driving

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Page 4, line 2, overstrike "for"

Page 4, line 3, overstrike "good cause"

7. The addition of a new subdivision (e) to subsection 1 of Section 39-08-01 and moving the language that refusal is an offense to a new subsection 2 is at the request of the state's attorneys. By its placement before the offense classifications and penalties provisions, it will clarify that a refusal offense will be subject to the same offense classifications and penalties as a DUI/APC offense involving a chemical or breath test.

Page 5, after line 23, insert:

"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.

Page 5, after line 29, insert

- “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 subject to a chemical test, or tests required under sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.”

Page 5, line 30, overstrike “2.” and insert immediately thereafter “3.”

Page 5, line 30, overstrike “Unless as otherwise provided in section 39-08-01.2, an” and insert immediately thereafter “An”

Page 6, line 6, overstrike “4” and insert immediately thereafter “5”

Page 6, line 9, overstrike “3.” and insert immediately thereafter “4.”

Page 6, line 21, overstrike “4.” and insert immediately thereafter “5.”

- 8. The removal of the “at least” language for second and third offenses is because the fine is already at the maximum for the offense classification.**

Page 7, line 8, overstrike “at least”

Page 7, line 14, remove “at”

Page 7, line 15, remove “least”

- 9. The replacement of “shall” with “may” is to change the mandatory language for drug court, which is not available in every court in the first place, and also because the judiciary feels tied by the mandatory language.**

Page 8, line 16, overstrike “shall” and insert immediately thereafter “may”

- 10. The following changes address drug and alcohol treatment. Section 12.1-32-02(1)(g) authorizes a court to sentence an individual to a treatment program in a public or private treatment facility. The DOCR cannot be responsible for payment for treatment in a private treatment facility. The second part is a variation of the “Montana” model – if a DUI/APC violator is sentenced to the custody of the DOCR, the DOCR may release the violator from physical custody upon completion of treatment.**

Page 8, line 31, after “program” insert “under subdivision g of subsection 1 of section 12.1-32-02.”

Page 9, line 2, after the period insert “A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.”

Page 9, after line 2, insert:

- 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.

Page 9, line 3, overstrike "5." and insert immediately thereafter "6."

Page 9, line 3, overstrike "4" and insert immediately thereafter "5"

11. The following changes are technical corrections if house arrest will be used for class A misdemeanor offenses.

Page 9, line 3, after "subdivision b" insert "and c"

Page 9, line 10, replace "subsection" insert "subsections b or"

Page 9, line 11, replace "4" with "5"

12. DUI/APC are strict liability offenses. "Willfully" means reckless, knowingly, or intentionally, and does not include negligence. The use of "individual" three times in the same sentence was ambiguous, so the clause is deleted.

Page 10, line 14, remove "willfully"

Page 10, line 15, remove ", unless the individual is the mother of the unborn child"

Page 10, line 20, after "of" insert "a violation of this section"

Page 10, line 23, remove "willfully"

13. The amendment to Section 39-08-01.3, which is a vehicle forfeiture statute, is primarily a technical change to change the look-back period, and also to provide that violations of the vehicular homicide/injury statute, and DUI/APC with a child may also lead to a vehicle forfeiture. Also, the statute included a reference to interlock, which was not consistent with the forfeiture.

Page 11, after line 3, insert:

SECTION ____. Section 39-08-01.3 of the North Dakota Century Code is amended and reenacted as follows:

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

Page 11, line 11, after "39-08-01.4," insert "or equivalent ordinance,"

Page 11, line 17, remove the overstrike from "~~, and shall consent~~"

14. A number of changes are necessary to the statute pertaining to the introduction of crime laboratory records into the implied consent hearing process.

Page 20, line 25, after "designee, insert ", or electronically posted by the director of the state crime laboratory or the director's designee"

Page 20, line 28, after "system" insert a comma

Page 20, line 29, after "operator" insert a comma

Page 21, replace lines 26-31 with:

- a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information

management system and certified by, and received from, a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and

Page 22, remove lines 1-3

15. The following changes relate to blood draws and delete references to the state toxicologist.

Page 24, after line 9, insert:

“SECTION ____. Subsection 9 of Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. If ~~the state toxicologist, the director of the state crime laboratory or designee, or any employee of either,~~ the director of the state crime laboratory or designee, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

Page 24, line 16, replace “sign a verified statement” with “testify”

Page 24, line 18, replace “state toxicologist” with “director of the state crime laboratory or the director's designee”

Page 24, line 19, replace “drawn according to the” with “properly obtained.”

Page 24, remove line 20

Page 24, line 28, overstrike “moving”

Renumber Accordingly

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1302

That the Senate recede from its amendments as printed on pages 1343-1360 of the House Journal and pages 970-987 of the Senate Journal and that Reengrossed House Bill No. 1302 be amended as follows:

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.

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

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.

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

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.

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

7. The period of suspension imposed for a violation of sectionsections 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 person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

If an individual has a temporary restricted operator'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.

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

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

1. Except as provided under subsection 2, 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 ~~for good cause~~ 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. 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 ~~for good cause~~ 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 two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's operator's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit operator's license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon 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 by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

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

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.

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. Unless as otherwise provided in section 39-08-01.2, 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 subject 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 five-year seven-year period, of a class A misdemeanor for a third offense in a five-year seven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period 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 45. 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.
- 3.4. Upon conviction of a second or subsequent offense within five seven years under this section or equivalent ordinance, the court must 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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, but not including or if the offender is participating in the twenty-four seven sobriety program.
- 4.5. 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 ~~two hundred fifty~~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 ~~five~~seven years, the sentence must include at least ~~five~~ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of ~~at least one thousand~~five hundred dollars; ~~and 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 ~~five~~seven years, the sentence must include at least ~~sixty one hundred twenty~~days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one at least two~~thousand dollars; ~~and 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 ~~within seven years,~~ the sentence must include ~~at least one hundred eighty days' year and one day's~~imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of ~~one at least two~~thousand dollars; ~~and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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. For an offense subject to paragraph 2 of subdivision a, a court may substitute ten hours of community service for each day of imprisonment. 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 offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.

- f.g. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the defendant 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 the release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. The court may sentence the individual to treatment under subdivision g of subsection 1 of section 12.1-32-02. A court may not order the department to be responsible for the costs of treatment in a private treatment facility.
- h. 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 subsectionsection.
- g-i. 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.
- j. 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.

- 5-6. 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. 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.
8. 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 sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

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

1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.
2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence.

~~Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

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

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

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

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

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

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

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

1. Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall also inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement

officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

SECTION 12. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.

3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.
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 operator'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 operator'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.

SECTION 13. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then

available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

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

SECTION 14. AMENDMENT. Section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

SECTION 15. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with

section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by

and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and

- b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 16. AMENDMENT. Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 17. AMENDMENT. Subsection 9 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. ~~If the state toxicologist, the director of the state crime laboratory, or any employee of either, or designee is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

SECTION 18. AMENDMENT. Subsection 10 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. However, the

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.

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

Temporary restricted operator's 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 operator's 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.

SECTION 21. AMENDMENT. Section 40-05-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 22. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 23. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration between the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

SECTION 24. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the underage drinking prevention program provided for under section 23 of this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 25. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of purchasing secure continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program, for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1302

That the Senate recede from its amendments as printed on pages 1343-1360 of the House Journal and pages 970-987 of the Senate Journal and that Reengrossed House Bill No. 1302 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 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, subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code, relating to driving while under the influence and city penalties; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.

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

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.

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

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.

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

7. 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 person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~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 person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~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 person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~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.

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

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.

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

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

1. Except as provided under subsection 2, 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 ~~for good cause~~ 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. 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 ~~for good cause~~ 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 two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. 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 also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. 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 driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon 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 by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

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

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.

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. Unless as otherwise provided in section 39-08-01.2, 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 subject 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 five-yearseven-year period, of a class A misdemeanor for a third offense in a five-yearseven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year periodC 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 45. 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.
- 3-4. Upon conviction of a second or subsequent offense within fiveseven years under this section or equivalent ordinance, the court mustmay 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 impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. 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 coowner of the motor vehicle, but not includingor if the offender is participating in the twenty-four seven sobriety program.
- 4-5. 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 ~~two hundred fifty~~ 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 ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of at least ~~five hundred~~ one thousand dollars; and 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 ~~five~~ seven years, the sentence must include at least ~~sixty~~ one hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~ at least two thousand dollars; and 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 ~~within seven years,~~ the sentence must include at least one hundred eighty days' year and one day's imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~ at least two thousand dollars; and 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 execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 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 offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall 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.

f.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 ~~subsection~~section.

g-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.

5.6. As used in ~~subdivision b~~ 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 in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does

not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. 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.
8. 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.

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

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

- ~~1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.~~
- ~~2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.~~
- ~~3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~
1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall

impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

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

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

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

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

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

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

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

1. Any 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to fourthree years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

1. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~ If the driver of a vehicle is involved in an accidenta crash resulting in the death of another personindividual, and there is probable cause to believe that the driver is in violation of section 39-08-01 ~~or has committed a moving violation as defined in section 39-06.1-09, the driver must be compelled by, a police~~ law enforcement officer shall request the driver to submit to a chemical test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both.
2. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~ If the driver of a vehicle is involved in an accidenta crash resulting in the serious bodily injury, as defined in section 12.1-01-04, of another personindividual, and there is probable cause to believe that the driver is in violation of section 39-08-01, a law enforcement officer ~~may compel~~ shall request the driver to submit to a test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both. The methods and techniques established by the director of the state crime laboratory must be followed in collecting and preserving a specimen or conducting a test.
3. If the driver refuses to submit to a chemical test or tests of the driver's blood, breath, or urine and exigent circumstances are not present, the law enforcement officer shall request a search warrant to compel the driver to submit to a chemical test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both.
4. The approved methods of the director of the state crime laboratory or the director's designee must be followed in collecting and preserving a sample of the driver's blood, breath, or urine and conducting a chemical test or tests to determine the alcohol concentration or the presence of other drugs, or substances, or both.

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

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:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section

39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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.

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

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained

driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
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; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
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.

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

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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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 ~~five~~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.

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

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.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a

vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and~~
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had 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, the hearing officer shall immediately take possession of the person's temporary operator's permit

issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

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

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

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certificate of the director of the state crime laboratory designating the director's designees.
 - e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified

supplemental records have the same force and effect as the records that are supplemented.

- e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

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

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the alleged act. If the ~~state toxicologist, the director of the state crime laboratory, or any employee of either, or designee is~~ subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.~~

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

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

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

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 will may result in a revocation for at least one hundred eighty days and up to fourthree 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. However, the
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.

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

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.

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

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

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

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

SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration among the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

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

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

Renumber accordingly

A PERSONAL PLEA



TOM STROMME/Tribune

YOUNG ACTIVIST: Colton Mickelson, 9, wore his Cub Scout uniform while testifying in favor of HB1302, a bill to toughen North Dakota's drunken driving law on Tuesday in the state Capitol. Colton and his cousin, McKenzie Johnson, 10, left, read statements to the members of the House Judiciary Committee asking for a tougher law. Both lost their aunt to a drunken driver in July. Allison and Aaron Deutscher and their daughter were killed east of Bismarck. In back, at left, is Allison Deutscher's brother, Ryan Mickelson, of Colfax.