15.0294.04000

FISCAL NOTE

Requested by Legislative Council
12/22/2014

Revised
Amendment to: SB 2052

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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
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 modifies the conditions of participating in 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.*

The bill appears to have no fiscal impact on the Office of Attorney General.

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.*

N/A

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.*

N/A

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Kathy Roll
Agency: Office of Attorney General
Telephone: 701-328-3622
Date Prepared: 12/23/2014

15.0294.03000

FISCAL NOTE

Requested by Legislative Council
12/22/2014

Revised
Amendment to: SB 2052

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N/A

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Date Prepared: 12/23/2014

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FISCAL NOTE
Requested by Legislative Council
12/22/2014

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N/A

Name: Kathy Roll
Agency: Office of Attorney General
Telephone: 701-328-3622
Date Prepared: 12/23/2014

2015 SENATE JUDICIARY

SB 2052

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2052
1/20/2015
22194

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Minutes: #1,2,3

Ch. Hogue: We will open the hearing on SB 2052.

Vonette Richter, Asst. Code Reviser, Legislative Council: Support (see attached #1). Explained the bill.

Ch. Hogue: Thank you. Further testimony in support.

Sen. Armstrong: Sponsor, explained the bill. In the last two years, alcohol related crashes are down 38%, alcoholic related fatalities are down 37%. Originally when the bill was written, it mandated 24/7 for all juvenile offenders and the language in Section 1 and 2 is change the participation from "shall" to "may" for a first offense. That allows juvenile courts to narrowly tailor informal adjustments and formal adjustments to the needs of the juvenile. Juvenile court is not an adversarial court. It is typically based on the best interests of the child. It is still mandated for a second offense, but for a first offense, they allow juvenile court discretion. That's what the sections 1, 2 and 3 do. In addition, in section 3, on page 4, starting on line 7, "that if a juvenile does violate 24/7, when he is on it, he wouldn't be detained in adult court. Most of the 24/7 program is tested at the law enforcement facility and with this they would be referred to juvenile court but they would not be detained in an adult detention facility. Section 4 is pretty simple. If you go to line 23, it simply deletes arcane language that is no longer used in 39-06-03. We spoke to the AG's office, the DOT and various other stakeholders and no one can recall citing that statute, ever; so it was deleted from the NDCC. Section 5 is just matching numbers to the last amendment. Once you delete something you have to renumber accordingly. The amendment is section 6 is dealing with some of that double jeopardy issues; page 6, lines 25-28, regardless of what you are convicted of, anything that comes from one incident is one conviction

for administrative hearing process. That means if you are convicted of a refusal and a DUI and lose an admin. hearing, the way the paperwork works is that it goes through and you get these situations where the DOT is getting noticed twice for the same driving offense. There was a lot of talk about this issue in the Interim. Nobody disagreed that for one driving offense you should only have one administrative suspension. That just clears up that language so that whatever driving offense have, you will have one administrative sanction, not duplicate administrative sanctions from the same offense. On the top of page 7, there were a couple of outliers and we heard from testimony from defense attorneys and one of the testimony was, in a particular case, a law enforcement officer arrested somebody for failure to provide an on-site screening test, and the driver tried to take a test at the law enforcement center. The officer told him that he didn't arrest you for DUI; I arrested you for refusal, so there really is no reason to offer a second test. The goal in this whole process is to get these drivers to take the test. We want to convict people who are over the legal limit. We don't want to convict people who are under the legal limits. It should be noted that the on-site test is not admissible in court. So if you refuse an on-site screening test, this section says that law enforcement must offer you a second test once you are arrested. Under number 3, line 14, when we originally wrote the bill there wasn't a look-back for felony DUI. Your 4th DUI in a lifetime was a felony. The look-back now is 15 years. There was a lot of talk about that; both from prosecutors and defense attorneys. If you haven't had DUI in 30 years, #1) you've been pretty good for 30 years and it's very difficult to get those documents. We talked about this issue extensively. One of the matters brought up was what about the unrepresented clients who don't have a lawyer and trying to plead guilty. It puts the court, the prosecutor and the defendant in a bad situation when you can't find previous documents; we set the look-back period at 15 years, which a very significant look-back period. I think it's probably longer than just about anything else in law. It's still a significant but there is a finite date to it. On the top of page 8, #5 is deleting some drug court program language that is because it is handled in a different section. Subsection (b) under 5, starting at line 16 is, instead of 12 months' probation, we are moving it to 360 days. That is merely to come into compliance with the Interstate Compact on Misdemeanor probation. We heard a lot of testimony about that in the interim. This seemed like the easiest solution so we weren't in violation of the Compact. Subsection (d) on 28, is just adding the 15 years in again. On page 10, line 19, 24/7 program, there was some confusion as to whether the requirement at 24/7 was part of the sentence or part of probation. I think it was being treated differently in different courts across the state. We clarify it in this bill. As a part of probation, probation typically doesn't start until a conviction is

entered, and 24/7 due to the administrative process often happens very shortly after the offense; well before the criminal conviction. This just allows participation in 24/7 to begin on the date you enter it. If you are mandated for 1 year of 24/7, that year starts when you start the program, not when you are critically convicted. In some areas like Williston or the western portion of the state there is a big delay in jury trials. You could be on 24/7 for nine months before you ever have a conviction. Depending on how courts were treating it, you would start another year upon conviction. Instead of a year on 24/7, you'd be on it for a year and 9 months. That is a strain on law enforcement and one of the things about the admin. process in DUI's is that the consequences are much more immediate. Administrative hearings happen within 25 days of the offense or 25 days of the blood results coming back from the Crime Lab. Oftentimes you go on 24/7 significantly before you ever end the criminal case. Since it becomes a part of probation, we had to clarify that language. The short version is that the 24/7 starts when you enter the program, not on the date of conviction. Page 11, subsection 7, starting on line 8, that just clarifies that 24/7 is a condition of probation and not part of the sentence. In that way, it will be treated uniformly across the state. Section 7, is putting drug court back into the DUI law. In the last session, when we passed a DUI through, it was a complete mistake on my part. Drug court came out of it; it was never the intent for drug court to come out of it. We were told about it very early on in the process; unfortunately there was nothing we could do until we got here today. Drug court is going back into the DUI process. Subsection 8 is just renumbering according to those amendments. Subsection 9, at the bottom of the page, this becomes more important. We have criminalized refusal and Vonette just testified that that just got upheld on the ND Supreme Court. The criminalization refusal, however, changes a couple of things about the implied statute. Through common law and court decisions over the past 20 years, the implied consent statute was treated as to whether law enforcement read it to a driver was treated differently and we'll talk about some of that in the NDCC as we go through. The Interim committee felt that since we have criminalized refusal, it was imperative that law enforcement read to the clients, essentially verbatim and any law enforcement that has done DUI for any significant time can probably do it verbatim. I know that the AG's offers them a little card. The implied consent statute is essentially Miranda for DUI offenders. But now that we have criminalized the refusal the interim committee heard testimony and agreed that it should be mandated that law enforcement has to read that implied consent statute; failure to comply is now a crime and not just an administrative sanction. Subsection 10 is removing language that said you could only cure a refusal on a first offense. The way our refusal to submit to testing, the way it is written in the current law, and the mechanisms in place

you can now cure a second offense refusal and third offense refusals. The rationale behind that is that they are now all crimes. You are essentially allowing someone to cure the refusal for court efficiency and to deal with some consequences that happen, but you can cure any refusal that you have, not just a first offense. Part of that is because the driving suspensions now track DUI. Under the old law, a refusal would result in administrative sanctions which were very different than DUI administrative sanctions. Now they track the same because they are both criminal offenses. Page 15, the overstrike is what I was talking about; these are actually in the administrative code, 39-20, not the criminal DUI statute and that's just overstriking language that would not be consistent with requiring law enforcement to redeem implied consent. You're overstriking that, this language says it is not an issue. Well it is an issue now if you don't read implied consent statute; there are some exclusionary rule benefits that apply. That is to make 39-20 consistent with the 39-08 and that would be same on the top of line 16. Amendment 12 is just changing 15 to 14 and that is for consistency. That's how it is in another part of the code, so instead of 15 days it is 14 days. We thought it should be consistent throughout. Section 13 is an interesting issue because these administrative processes happen way before a court case does, but the sheriff is in charge of administering 24/7 program. If you lose an administrative sanction, that is simple in nature. There were some issues as to whether sheriffs would take an administrative decision as enrollment into the 24/7 mandated program. In practicality, you are having defense attorneys or defendants go to court and get a modification of conditions of release requiring 24/7 and this section simply says that when you lose an administrative hearing which requires 24/7, the sheriff's office will administer that program. It gives an administrative hearing in DUI the full force of the effective law for the conditions of that hearing, which oftentimes 24/7 and restrictive driving are under that. That's the whole deal with DUI's and there are a lot of people in here who deal with them in varying degrees. But you are dealing two separate sides, the criminal side and the administrative side. They interact with each other constantly. A lot of this language is simply to clean up some of those issues. Most of these issues are good issues; it is good to clean this up. The bill we passed last session has held up pretty well. A lot of these situations that we are cleaning up are the outliers to DUI. The DUI has run very well since the last session. Whenever you have a major overhaul like we had last session on a law, this is complicated. It deals with three different sections of the driving code, 39-20, 39-06 and 39-08. Some of these issues popped up, none of them were fatal to the conviction of DUI. DUI's have been processed properly in the last two years. These are just some outlier issues

that came up and I think that we made a good bill last session and these amendments make it better.

Ch. Hogue: Please clarify for the committee, the refusal and the DUI are still potentially two separate offenses for the same incident under the criminal side.

Sen. Armstrong: Yes. When you typically get arrested for any class B misdemeanor, the first offense you get cited with refusal and for DUI. One of the reasons we didn't do anything with that because we were very curious to see how the ND Supreme Court ruled on this issues; whether they were the same offense or one or the other and if the case had come out differently, you would have a lot of DUI convictions, or refusal convictions that would be under scrutiny now. However, with the way it was setup, you could still lose the refusal case and still have the DUI. Administratively they are treated the same. That becomes important, if you are suspended for 91 days for losing the refusal case, you shouldn't get suspended for another 91 days for losing the DUI case from the same driving incident. More importantly, as Deputy Glenn Jackson, testified at the hearing, we kind of had a way to fix that for a first offense, but if you get a second offense, it was being treated as a third because of how it got coded in the DOT. Because you had your refusal and the DUI and the language in this bill fixes that for the administrative side. It doesn't truly fix it for the criminal side.

Ch. Hogue: Do you have any anecdotal evidence or stories where the states' attorneys are out there charging two separate crimes for the same driving event.

Sen. Armstrong: I have not seen one run consecutively, which is what I care about as a defense attorney. Yes, I do think that there are people charging both. I think they are using it #1 as a negotiation tool, too because when you charge something out, you know that the refusal is more of a strict liability crime and a DUI without a chemical test comes into play when you have to prove impairment. Any prosecutor or defense attorney will tell you that becomes a difficult task oftentimes at trial. So you charge them both and then depending on how things work out. I have never seen one sentence consecutively, which is what I would look at. If my client's arrested for a class B misdemeanor, one vs. two isn't the end of the world if his driving suspension stays the same. There are negotiation tactics and other things that go with that; they are both class B misdemeanors and they come from the same offense, I believe that they are being charged. That would be one of the other

things that this bill cleans up. There was controversy about whether that was an issue or not. As far as the double jeopardy and I think there were competing views on that. I know prosecutors in the AG's office have a different opinion than defense attorneys do on that issue. So that's why we fixed it administratively, as far as the overall bill because I don't think anyone disagreed with the administrative fix. We tried to fix a lot of issues in this bill that weren't going to create any serious controversy.

Ch. Hogue: Thank you. Further testimony in support.

Aaron Birst, Association of Counties: I track most of the states' attorney prosecutor issues. I rise in support of this bill today from our prosecutor brother and sisters. More importantly I rise to thank you for your work last session. You saved lives. There's no question about that. The alcohol related fatalities are down significantly. There is no other explanation other than this bill and the media campaign that went along with it. You'll never know their names because they didn't end up as a statistic, but you saved lives. Sen. Armstrong and Vonette went through the technical aspects of the bill. Regarding the question of whether the prosecutors and how they charge these cases. Prosecutors in the legislative history last time weren't very clear about that. Our prosecutors look at the criminal refusal and the underlying DUI. They are separate offenses, but alternative offenses. You could be charged with traditional DUI and/or criminal refusal; but you're not convicted of two. That's not a new concept. We already had that concept before. We have the impairment statute, 39-08 has essentially five ways to be convicted of DUI. You have 39-08-01 that said that if you operate with a BAC of .08 or greater, that's the per se offense. Then there is also the impairment statute. Those were two ways that are charged, count 1 and count 2 but you are only convicted of one. That is how we look at the criminal refusal, is yes you could probably say they are impaired, you could probably still prove beyond a reasonable doubt they are impaired, but you could also say if they refuse the test, that it's criminal refusal. The jury can pick one, that should be a prosecutor charging decision on how to allege the allegations. No one in our association thinks that these are multiple charges. It's not like you get your first DUI on January 13th for being impaired, and then you get #2 conviction for refusing on January 13th, it is the same incident, it's just that there are multiple ways of getting at the same underlying offense. That's the only disagreement; I guess if the committee wants to insert some language to clarify that, I can tell you that most of the prosecutors I speak to, that is what is done anyway. If you want to expand that concept out of the DOT realm and into the criminal realm, we can work with that too. In terms of just the technical bill, we think it

is good. It does clean up a lot of the language, a lot of the uncertainties, but as Sen. Armstrong said that underlying principle of the bill remains good and you save lives. Is it perfect; are there unfunded mandates in there? We will keep working on it to make sure that people don't die on the roads.

Ch. Hogue: I know one of the concerns when we passed the bill in the last session, was would we create this bottleneck down at the sheriff's office from all these people showing up on a daily basis to test. Can you give us any information in that regard? Has that been a problem in some jurisdictions?

Aaron Birst: Speaking about the 24/7 program, that was in large part one of the four main components of the DUI bill to expand who gets tested; the offender comes to the sheriff's office twice a day, generally in the morning and in the evening. Test to make sure that they are sober as a condition of bail and ultimately their sentence. Has it created some problems? Yes, it has. The large jurisdictions, the Cass counties of the state have been able to function, but it is a little harder on the smaller counties. There are no law enforcement officers that I talk to that doesn't think the 24/7 is a great program. The results are that people are staying sober, which means less opportunity for them to get into trouble and be back in jail. Everybody supports the concept but has it become a matter of difficulty; again the large jurisdictions can deal with it a little better. Some of the small jurisdictions there aren't enough numbers to really cause much of a problem. The mid-level counties, regional jails have struggled. Actually in the Association of Counties we had a resolution that the 24/7 should be funded from state government or receive more funds. There are funds that the counties can receive as part of that twice a day testing; you pay a $1.00/test ($2.00/day). That doesn't cut it in those mid-level counties. I'm not here to talk about the unfunded mandates. We support the bill. It has caused some issues, but we are working through it.

Sen. Armstrong: Are there enough bracelets, do we need more bracelets, are they being utilized in those smaller jurisdictions and larger jurisdictions.

Aaron Birst: When you hear the bracelet terminology, in lieu of the 24/7, twice a day testing, you can sign up for a bracelet which has transdermal monitoring. If you are testing positive for alcohol, it relays and signal to the sheriff's department. I don't know how many of those bracelets are out. From what I can tell, most of the larger jurisdictions are not using those bracelets. Those are more unique situations where a person is 50 miles from their local sheriff's department. It also costs the defendant more money. This is just me

speaking, I know we've seen a number of studies that SD, who led the program, they find it more successful when you actually come in, build a relationship with the sheriff's department, for the twice a day as opposed to just the bracelets. I know a number of our sheriffs' members would like to see more bracelets out there.

Sen. Luick: When the defendants come in to get tested on the 24/7 program, who fronts the bill for that. Does the individual pay anything toward that test, or is it just state or county.

Aaron Birst: The AG was very clever in setting up the program. There are a lot of administrative rules that the counties can work to make sure that it works well. For the most part, the offender fronts some money for those tests. So the county will take in say $50.00 for the month and then they will deduct the amount every time they come in; it's $1.00 per test, $2.00/day. The offender pays it on the testing itself. The county itself upfront the money because they staff it up. In some counties, staffing is not as difficult and in some counties it is difficult.

Ch. Hogue: Thank you. Further testimony in support.

Glenn Jackson, Director, Driver's License Division, NDDOT: Support (see attached #2A, #2B, #2C).

Ch. Hogue: Was the B amendment brought to the attention of the Interim Committee.

Glenn Jackson: No, that was something we just noticed in the last review.

Ch. Hogue: Thank you. Further testimony in support of SB 2052.

Thomas Erhardt, Dep. Director for Transitional Planning Services, ND DOCR: Support (see attached #3).

Ch. Hogue: Thank you. Further testimony in support.

Jackson Lofgren, ND Association of Criminal Defense Attorneys: We support this bill. Everything in it is an improvement over existing law. There isn't anything in it that is a step backward. It is a step forward. I'm also a member of the Bismarck Drug Court team so I am very glad to see the language fixed as the drug courts, after the last session that ended our 3rd and 4th offense

DUI offenders applying to the program. We could no longer take them because they were going to the DOCR for that year, so we could no longer help them. This allows them to come back into our program. I've been involved with the program for about five years; first as a prosecutor, now as a defense attorney. It's an amazing program. This program is probably their only chance of succeeding. They get monitored weekly, they meet with a judge weekly, they meet with their probation officer weekly, they have treatment weekly and it is a program that can change lives so it is good to see that change in there. In regard to some of the questions, some of the testimony that the Commission heard earlier, in regards to how these things are being charged criminally; in my experience it has been all over the board. In some counties you are coming out of a refusal DUI situation with one county. In some counties, I've seen people come out with up to three counts. They are getting count 1 - refusal of the on-sight test; count 2 - DUI; count 3 - refusal of the intoxilieser blood test, so people are getting three separate criminal case filings that are commenced under the misdemeanor murder statute for sentencing, they all merge but I guess the issue is left open because what if they plead to all three, what happens a few years down the road when they pick up another one, is this now #4 for the 2 previous instances which we would think of as two separate DUI events, when they get that new one. I think that's still a question that is left open. The bill fixes it as far as the administrative side; as far as the criminal side, that's still a question. There isn't consistency among the counties; some of the larger counties you see one count and some of the smaller counties I've seen that come out as three counts. In regard to the 24/7 program, I found in the rural counties it's actually easier to get a bracelet in some of the bigger counties. My experience with some of the larger counties, they've taken the position that we're going to get this number of bracelets. We could get more but we're just going to get X number. If you're living in Bismarck and you work in Center, you're still going to have to come twice a day because we're only going to get this number of X bracelets and you're not going to get one until someone gets rid of one who is getting out of the program. My experience with rural counties, they like to get people onto the bracelet. They would rather have them out working than coming in every day, twice a day. In regards to the funding of the program, the county funds the administration of the program. The individual's on the program fund a portion of the cost of the test kits. The cost is $1.00 per test (straw), which is $2.00/day. For most people that isn't a problem. What happens sometimes is the person comes in, they don't have any money, they can't pay for the straw, they are spending the night or weekend in jail because they don't have $2.00-3.00 in their pocket to pay for

those straws. That is an issue for the truly indigent people that if they can't afford the straw, they're going to end up spending some time in jail.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2052
1/21/2015
22310

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature L Penrose

Minutes: 1

Ch. Hogue: We will take a look at SB 2052. What are the committee's wishes? If you served on the Interim Judiciary Committee, you know that we had 8 or 9 bills that we reviewed and recommended forwarding on to Legislative Management. At the last meeting, we consolidated all of these DUI issues into a single bill. So that's the bill before us.

Sen. Armstrong: I move amendments provided by DOT, A and B (see attached 1).

Sen. Casper: Second the motion.

Ch. Hogue: Any discussion. We will take a voice vote. Motion carried. We now have the bill before us as amended.

Sen. Grabinger: I move a Do Pass as amended.

Sen. Luick: Second the motion.

6 YES 0 NO 0 ABSENT DO PASS/AMENDED CARRIER: Sen. Armstrong

15.0294.01001
Title.02000

Adopted by the Judiciary Committee

January 21, 2015

TD
1/21/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2052

Page 6, line 28, after "violation" insert "and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control"

Page 12, line 20, after the period insert "The law enforcement officer shall determine which of the tests is to be used."

Page 12, overstrike line 28

Renumber accordingly

Date: 1/21/2015
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2052

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 15.0294.01001 / 02000

Recommendation: ☑ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Passed

Date: 1/21/2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE
BILL/RESOLUTION NO. 2052

Senate **JUDICIARY** Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Grabinger Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2052: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2052 was placed on the Sixth order on the calendar.

Page 6, line 28, after "violation" insert "and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control"

Page 12, line 20, after the period insert "The law enforcement officer shall determine which of the tests is to be used."

Page 12, overstrike line 28

Renumber accordingly

2015 HOUSE JUDICIARY

SB 2052

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2052
3/4/2015
24339

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to driving under the influence offenses and participation in the 24/7 sobriety and drug court programs; and to provide for retroactive application.

Minutes: Handout #1

Chairman K. Koppelman: Opened the hearing with testimony in support.

Vonette Richter, Legislative Counsel: (See handout #1).Went over the handout (:31-4:32)

Rep. Lois Delmore: Can you talk about the look back on the bill?

Vonette Richter: Section 6 subdivision 3.

Rep. Lois Delmore: It does not apply to a second offense? It applies only later on is what I am reading in your information you provided?

Vonette Richter: If you will notice that chart on the first page you will see that.

Rep. L. Klemin: On this dual conviction issue in the report it mentioned there were two opinions pending the Supreme Court. So what happened in that?

Vonette Richter: That opinion has come out and I believe Senator Armstrom is going to cover that.

Senator Armstrom: When you are dealing with the interim you don't want to hear about it anymore and some of you are hearing it for the first time. Both of those cases Rep. Klemin were upheld and in there was not double jeopardy.

Rep. L. Klemin: In one case the district court held it was constitutional and the other case the district court held it was unconstitutional and both of them were upheld?

Senator Armstrom: The Supreme Court said it is constitutional. The district courts are different and the Supreme Court was the same in both cases. The law as it was written was held. Went through the bill. (7:27-8:14)

Chairman K. Koppelman: I have a question on this section. When the bill was going through the process the Attorney General wanted to see juveniles subject to this because his theory was it is illegal for them to drink and it is certainly illegal for them to drink and drive so why should they get a lessor result than an adult would going through the same process particularly when this isn't necessarily punitive; it is more protective.

Senator Armstrom: That is the only policy change from the bill we passed in 2013. Juvenile court made some compelling arguments for it to begin with. There wasn't a lot of controversy around it. Continuing going through the bill at Section 4. (9:42-12:25)

Rep. Lois Delmore: The look back period came up because it wasn't being enforced uniformly and some people did not understand that if they refused the test they automatically were going to be indicted for DUI and some officers were giving them some leeway and some not. Wasn't that the reason that we thought this was important to do?

Senator Armstrom: the testimony we heard was about a case where they guy got cited for refusal to submit to onsite screening and then he got arrested and when he got to the station he said OK I am arrested anyway, I will take the test and the officer said I am not charging you with DUI; I am charging you with refusal there is no need to have the test. Which brought up the second point of that there could be some consequences. The cases that were upheld at the Supreme Court were dealing with refusals. They weren't dealing with onsite refusals and once you criminalize refusal your right to counsel applied. One of the easiest ways to fix was this. Once you get arrested give them the chemical test. We want people taking the test. Nobody wants to arrest somebody who is a .04. We are not in the business of convicting people for not driving drunk. Rep. Delmore you asked some questions. Your look back for first, second and third offenses are seven years; which we increased from five to seven the last time. But there was no timeline on a felony look back which has caused some real practical issues for unrepresented clients, prosecutors and things of that nature so we put a fifteen year look back on it. Now there is at least a deadline to it. Continuing to go through the bill. (14:34-15:42) In the western part of the state if you have a misdemeanor jury trail you can wait anywhere from eight to fifteen months to go to jury trial. When you go on 24/7 as part of your administrative process that typically happens within 30-45 days of the offense so if you go on 24/7 30 days into the offense and don't have a jury trial for 15 months part of your commission of probation is a year or 24/7 you don't get credit for time served like you do jail time so this clarifies that and says if you get a year and 24/7 it starts when you enroll in the program; not when you are convicted. We want them on the program immediately. Page 11, before Section 11(16:47-19:50). There was not much controversy during the interim on his bill. The last time the legislature tried to mess with DUI law I didn't lose an administrative hearing for two years because something got messed. These are really clean up changes.

Chairman K. Koppelman: When we were here the last time we worked hard on this bill and we had a subcommittee that worked hard on it. I was the prime sponsor and I want to publically commend Senator Armstrom who was just a lowly freshman last session, but a

seasoned defense attorney because he brought in a prospective that was really needed as we crafted this bill.

Senator Armstrom: This is just cleaning it up.

Chairman K. Koppelman: The issue essentially was we made refusal to taking the test a criminal offense just like taking the test and blowing over the limit test on alcohol content. In some jurisdictions is that they were being charged with both. They would refuse the test and then the officer would just decide they could offer enough evidence that they were also intoxicated and charged them with that too.

Senator Armstrom: We didn't touch that in the interim. We don't want someone to lose their license three times for one offense.

Chairman K. Koppelman: My intention was that there never be a double charge. The Attorney General has expressed the opposite opinion. The whole idea of making the refusal a crime was to deal with the issue that a lot of people just refused and we had a choice at that time because in South Dakota they had passed a law that said you can force someone to take the test. Is that something that still needs attention?

Senator Armstrom: I am glad we cleared up the administrative issue. If you never took a blood test you would be charged with refusal and driving while impaired. If they find you guilty of either or you get a DUI. I don't know why you would need the second charge because you can still go to trial on the same thing. It would be nice to have uniformity and clarity across the state; whichever way you decide. Sentencing will be the same regardless.

Aaron Burst, Association of Counties: When you passed 1302 you saved lives. Congratulations! With regard to this bill I will provide you the most recent data on the impaired drivers. The impaired driver falsities nosedived; both in 2013 and 2014. The one thing that changed it was the law and the accompanying media campaign that went along with that. With regard to this engrossed bill we have today the States Attorney's support the bill for the most part it is technical corrections. There are really four things the old law did. 1. It increased penalties 2. Use of minimum mandatories increased 24/7. 3. Created the vehicle homicide chapter which is really the shining gem that probably wasn't considered when we went in and it essentially says if you killed someone and you are DUI you are subjected to not the normal homicide chapter, but to a vehicle homicide chapter.4. It created criminal refusal and that was the most controversial. The ND Legislature has upheld criminal refusal. For a DUI you have a statutorily right to refuse. In 1302 the legislature says we will still allow you the statutorily right to refuse, but if you exercise that option there is consequences. They are the same as if you were a DUI. In ND if you are convicted of two DUI offenses you are no longer to drive, but they would drive anyway and they would not be insured so this bill did said if you are on 24/7 where you go to the jail twice a day and get tested then you can go back to driving and living your life. That was a significant improvement for defendants. There were costs for this bill because of jail costs and the Dept. of Corrections was born with the cost too. What you see over and over is that if the legislature does something the public notices. The alternative offense changed in

the DOT offense. If the legislature wants to clarify that I would help do that. I would be willing to work on an amendment to clarify some things if you wish.

Chairman K. Koppelman: Would you assist so we would have something to look at?

Aaron Burst: I can. This is not unique. Under ND law before HB 1302 passed last time there were two ways to get a DUI.

Glenn Jackson, NDDOT: We did have 26 dual convictions. Our temporary work permits are way up for people on 24/7 so we are seeing a lot more drivers maintaining insurance and maintaining their laws of the road and not drinking so it has been an improvement.

Chairman K. Koppelman: With respect to 24/7 they need to blow a breath test twice a day and if they blow drunk they are off. With respect with the administrative process if they blow a bad test what happens?

Glenn Jackson: Law enforcement has some leeway as to how they want to work with an individual. Once we are notified we will take away that temporary license.

Chairman K. Koppelman: Is there anything in the administrative process that would right that for those caught in that interim? Is it retroactive?

Rep. G. Paur: That 24/7 if a person has consumed alcohol I think often they will just skips the test. What are the consequences of that?

Glenn Jackson: I am not an expert on the 24/7. We just go by what law enforcement tells us.

Aaron Burst: The 24/7 program is administered by the sheriff in the counties and if they don't show up the sheriff notifies the court and gets an arrest warrant to go find the person.

Chairman K. Koppelman: So it is the same as if they blew drunk on a 24/7 test.

Aaron Burst: South Dakota created the 24/7. Courts have always been able to put conditions on people release. Our Attorney General liked it and brought it to the legislature and they liked it and the counties do it.

Senator Armstrom: We did make it retroactive. So those 26 people should be covered.

Opposition: None

Neutral: None

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2052
3/11/2015
24686

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Minutes: Handout #1,#2; Proposed amendment #3

Chairman K. Koppelman: Reopened the hearing on SB 2052.

Wayne Stenehjem, Attorney General: Wanted to discuss one part of this bill and that has to do with the decision that was made two years ago when minors have to participate in the 24/7 sobriety program. I wanted to tell you and show you in very real terms what this has done: DUI Chart shows a dramatic reduction in DUI offices between 2012 to 2014. We have had a 1,000 reduction in DUI laws within 6 months. (Had a chart that shows the reduction) (Handout #1) That brings me to the issue of minors. That is why the program was increased to include minors. Right now in ND we have 1700 adults statewide on the program. This includes people who have been convicted more than once on DUIs. We also included minors as being required to participate for up to 9 months. There are now 104 participating in the program. Be careful with what you do because what we are doing now is working. Nowhere is the problem of alcohol more serious than it is with our minors so that is why the decision was made two years ago to include participation in the 24/7 program as well. That includes minors on a first offense for driving under the influence or driving after having consumed any amount of alcohol because minors aren't supposed to be having any alcohol at all. You might ask how many minors have we had on this program right now. Right now in ND we have about 1700 adults statewide who are on the 24/7 program. That program includes people who have been convicted more than once of DUI or have aggregated driving under the influence. That is driving and having an over 1.6 which is double the legal limit in ND. There are 104 minors in ND right now. Here are the statics I have for you on those numbers between the ages of 14-19. (See handout #2) Do not at this time back off. Let us wait and look at it in another couple of years. I think it is working.

Rep. Lois Delmore: Right now they are mandated to do 24/7?

Wayne Stenehjem: Or driving under the influence or driving with over .02 which is the minimum amount you can detect.

Rep. Lois Delmore: Is that a part that says may?

Wayne Stenehjem: Kids talk so that word gets around the school. So does the word get around that says if you are driving having consumed alcohol something might happen.

Rep. Lois Delmore: Have we seen a decrease in the number of young adults being arrested on what that number was before?

Wayne Stenehjem: I don't have those numbers with me. We can get those numbers.

Rep. L. Klemin: In this bill on Section 3, line 26 there is a new section for minors and it says on line 26 may.

Chairman K. Koppelman: So are you proposing just removing the changes in Section 3 of the bill?

Wayne Stenehjem: I have an amendment drafted. There is not a minimum period of time during which minors must participate. The amendment suggests they have to participate at least 8 weeks that is something you may want to consider. One of the errors made last session was the provisions for the drug courts. I would think we would want an emergency clause on that section or the entire bill?

Chairman K. Koppelman: Maybe we should put an emergency clause on the whole bill.

Wayne Stenehjem: Yes there is no reason not to. (Handed out proposed amendment #3)

Chairman K. Koppelman: The reason we heard and I was on the interim committee and Senator Armstrong came over and testified on this and asked him the question about this measure that you are encouraging the amendment on and he did not cares if that is changed in the manor you are suggesting and he did not it was the only item in the bill that did not get a unanimous vote to pass. When I think of the ramifications of changing it now. We did it two years ago. Minors who are drinking and driving are now subject to this. What message does it send? Maybe the opposite message we want to send if the legislature now says oh now never mind; we didn't really mean that or we realize it is a problem so we are going to change it. Do you have comments on that?

Wayne Stenehjem: I think if mom and dads should have probably had the chat when they are driving them over about not drinking and driving. There are consequences. Had compliments on the 24/7 program when he went down to visit. I don't know what else we have done that has resulted in something changing and if you had seen those statics over the last several decades they were constantly going up and now for at least now it is a 25% decrease. Remember our population is higher so these are actual numbers of people; not percentages. There are approximately 45,000- 50,000 of those folks in the man camps. They are in those statics too and we are still seeing a substantial increase in the number of convictions.

Chairman K. Koppelman: We continually get questioned about MADD and Mr. Stenehjem statement was ignition interlocks keep the car from driving drunk; 24/7 keeps the driver from driving drunk.

Rep. K. Hawken: You said on a younger person under 18 it is 4-8 weeks; maybe we should add more to this amendment so that we could have some scan bracelets?

Chairman K. Koppelman: So the amendment you passed out. Section 3 of the bill what else does it do that isn't in the current law that we need?

Ken Sorenson, Attorney General's office: When I first looked at this I liked the way it was drafted originally and I like that it includes the language unruly. In the juvenile court act they changed the premise for alcohol offenses for kids under the age of 18. If you are between the age of 18 and 21 it is minor in possession or minor in consumption; and that is a crime. If you are under the age of 18 it is considered an unruly offense so we could have a kid who is a minor in possession who is driving and I think this is the juvenile that covers those situations too. That is why I amended it this way.

Chairman K. Koppelman: The eight week period. Are we bumping that some?

Rep. Lois Delmore: That is set by the judge in the court depending on the circumstances.

Wayne Stenehjem: The emergency clause.

Dwayne Stanley, Special Agent with the Bureau of Criminal Investigation: I administer the 24/7 program statewide.

Chairman K. Koppelman: What is your assessment?

Dwayne Stanley: Very well. Since its inception in 2007 there have been 10,514 people on the program. Right now today we have 1725. 44 counties are participating in this program. It is working well.

Rep. G. Paur: What percentage of juveniles currently is under that 8 weeks program?

Dwayne Stanley: I can tell you of the 104 juveniles that have been on the program the shortest time someone has been on it is 1 day and the longest 186 days; the average of 23 days.

Chairman K. Koppelman: The Attorney General testified the average is 4-8 weeks. In your opinion the one day one week would that do any good?

Dwayne Stanley: No

Rep. L. Klemin: We started doing this in SD. Have other states started doing this.

Dwayne Stanley: Yes there are other states that do it. Montana, Michigan, that have started the 24/7 program.

Rep. Karls: A constituent was put on a 24/7 and later the charge was dismissed and he felt he should be refunded the money that it cost him and it violated his 14 amendment rights and on and on. Do you ever get those complaints?

Dwayne Stanley: Refunding his money; if the fee is more than $5 they get refunded.

Rep. Karls: Maybe it was the 4th amendment.

Wayne Stenehjem: We have had that and it is a condition of bail and they have been up held by every court so it is a condition of bail.

Rep. Lois Delmore: We based a lot of this on the 24/7 because we were in SD and we couldn't believe their results and so we worked hard to get it into our state. Do they handle minors the same way we are looking at in this bill and that it is flexible?

Dwayne Stanley: I don't know. Other adults we modeled it out of SD.

Rep. D. Larson: Their proposal that it isn't up to the judge and

Chairman K. Koppelman: The one substantive change in the bill. If we could get copies of the chart it would be very helpful.

Rep. D. Larson: So their proposal it isn't up to the discretion of the judge and it has to be for not less than 8 weeks?

Chairman K. Koppelman: The proposal is essentially to keep things the way they are. The Attorney General made a comment the juveniles when they are drinking and driving to say we are going to give them a lighter sentence than we give adults who are legally able to drink is probably not a good message. Now that they have been on it since the last session; to pull that back now and say we are going to lighten this penalty probably sends the opposite message.

Motion made to move the amendment by Rep. G. Paur; Seconded by Rep. Brabandt:

Rep. D. Larson: So this does not let it be up to the discretion of the judge? I have heard from other juvenile court people that this juvenile drives drunk it also includes their parents who have to drive them and do all of this and can really interfere with their employment and it can really create a lot of other hardships.

Chairman K. Koppelman: We did talk about all of this. I think you are right.

Voice vote carries.

Do Pass as Amended made by Rep. Lois Delmore: Seconded by Rep. Karls:

Discussion: None

Roll Call Vote: 12 yes 1 No 0 Absent Carrier: Rep. Mary Johnson:

15.0294.02001
Title.03000

Adopted by the Judiciary Committee

3/11/15

March 11, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2052

Page 1, line 9, remove "and"

Page 1, line 9, after "application" insert "; and to declare an emergency"

Page 3, line 26, remove "may, for a first violation or occurrence, and"

Page 3, line 26, remove ", for a second or"

Page 3, line 27, remove "subsequent violation or occurrence,"

Page 3, line 28, after "54-12" insert "for a period of not less than eight weeks"

Page 16, after line 25, insert:

"**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3/11/2015
Roll Call Vote #1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. SB 2052

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0294.02001.03060

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. G. Paur: Seconded By Rep. Brabandt:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment: _____

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

Voice vote carried. Add emergency clause.

Date: 3/11/2015
Roll Call Vote #2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. SB 2052

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Lois Delmore: Seconded By Vice Chairman Karls:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson		X			
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 12 No 1

Absent 0

Floor Assignment: Rep. Mary Johnson:

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

Voice vote carried. Add emergency clause.

REPORT OF STANDING COMMITTEE

SB 2052, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2052 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "and"

Page 1, line 9, after "application" insert "; and to declare an emergency"

Page 3, line 26, remove "may, for a first violation or occurrence, and"

Page 3, line 26, remove ", for a second or"

Page 3, line 27, remove "subsequent violation or occurrence,"

Page 3, line 28, after "54-12" insert "for a period of not less than eight weeks"

Page 16, after line 25, insert:

"**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2052

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2052
4/6/2015
25832

☐ Subcommittee
☒ Conference Committee

Commi ee Clerk Signature

Minutes: 1,2

Sen. Armstrong: We will open the conference committee on SB 2052. Explained his amendment (see attached 1). All we're dealing with is the juvenile court issues. We really appreciate the House putting the emergency clause on it. The House added 8 weeks minimum for juvenile first offense, driving under the influence. After that amendment got put on, someone from juvenile court contacted me and was really concerned about juvenile drug court being added into this language; the language in the amendment which I had passed out. I had a personal concern just in picking a new timeline inside the DUI code that already has numerous other timelines from 180 days to 1 year, and 91 days to 30 days, 2 years, etc. After meeting with some of the people in the Attorney General's office, I picked 30 days which is essentially just a minimum, because that is the minimum for an adult, is where you truly lose your license. There are some distinctions in juvenile court with work permits and things of that nature. I also picked it for a second reason. The good kids who get in trouble, not the bad kids that get in trouble, but a lot of the good kids that get into trouble seems to happen around high school graduation time, their senior year of high school. After your senior year of high school if you are a very good kid, who made a mistake one evening, 8 weeks could significantly impact where you are going in the next two months as far as graduating from school and leaving the state to attend college. I do know that after we passed the bill, because we didn't have any minimum, that there was concerns that juvenile court would only order it for 1 or 2 days, and that wasn't the intent of the policy. We wanted some significant consequences to that crime, so I put 30 days in and added the juvenile court language and I would just be interested in what anybody else has to say.

Rep. Delmore: Do they do some requiring of testing with the drug court. I believe that is part of some of the programs there.

Sen. Armstrong: Yes, you get the benefits of drug court but you also get the consequences of drug court. It's an intense program.

Rep. Delmore: I know it has been very effective.

Sen. Armstrong: It's good for adults and good for juveniles should they be in the program, and we should avail it to them in my opinion.

Rep. Delmore: How often would you say, I suppose it is the availability of the drug court for juveniles going to drug court?

Sen. Armstrong: Yes, there are unfortunately too many jurisdictions that don't have it, but the ones that do, use it very effectively. That's why when we do these drug courts; it is how you write it in the code is pretty much based on availability of the local district.

Rep. K. Koppelman: I appreciate your work on this. I think the concern that the House had about having no required 24/7 participation for juveniles is many fold, really. One is that, as the Attorney General has said, juveniles are not supposed to be drinking at all, much less drinking and driving. So for us to say for adults we are going to require this; and for juveniles we're not. It's not good public policy I don't think. The other concern is we have been requiring it and so then to now say, we're going to back off from that also sends a bad message that we don't want to for juveniles. That was the reason that the House did what it did. I think we heard all the issues, we heard from some of the juvenile officials as those of you that were on Interim Committee know and I think, while I understand their concerns, this is serious stuff and we need to send a message and these students are young people, and they need to be aware that they made a mistake and need to bear the consequences. Frankly, I think it was the Attorney General that said this in our committee, when the criticism was well you're inconveniencing the parents because they might have to drive them to these 24/7 meetings or 24/7 tests. The comment was made that they can have the visit they should have had before this happened. I thought it was kind of instructive. Personally I don't mind the compromise. I think it makes some sense and I am looking at the version of the amendment that you passed out; I would like to pass out an alternative (see attached #2). It does the same thing, but I think it is a little less cumbersome. This is the one that I actually got this morning from AG's office. I know that someone in his office made up the other one. I think this is a little bit cleaner and less cumbersome.

Sen. Armstrong: I got my amendment from the AG and took it to Legislative Council and they made me draft it more cumbersome. I got mine from Vonette Richter after getting it from the AG's office. I would prefer to have yours as well, but I might get in trouble if I go back up there and do that.

Rep. K. Koppelman: Well one version is that the House recedes from its amendments and further amending. The other version is that the Senate accedes to the House amendment and further amending. I think they both accomplish the same purpose. I move that the House recede from its amendments and that the conference committee further amends as per the amendment you passed out.

Rep. Delmore: Second the motion.

Sen. Armstrong: We will have a roll call vote. Motion passed. Conference Committee is dissolved.

6 YES 0 NO 0 ABSENT

House recede from amendments and further amend.

CARRIER: Sen. Armstrong **CARRIER: Rep. Karls**

15.0294.02002
Title.04000

Prepared by the Legislative Council staff for
Senator Armstrong
April 2, 2015

TM
4/6/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2052

That the House recede from its amendments as printed on page 832 of the Senate Journal and pages 970 and 971 of the House Journal and that Engrossed Senate Bill No. 2052 be amended as follows:

Page 1, line 9, remove "and"

Page 1, line 9, after "application" insert "; and to declare an emergency"

Page 3, line 26, remove "may, for a first violation or occurrence, and"

Page 3, line 26, remove ", for a second or"

Page 3, line 27, remove "subsequent violation or occurrence,"

Page 3, line 28, after "54-12" insert "for a period of not less than thirty days"

Page 4, after line 11, insert:

"4. If the juvenile court requires the child to participate in a juvenile drug court program, the juvenile court may waive the participation in the twenty-four seven sobriety program requirements of this section."

Page 16, after line 25, insert:

"**SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 4/6/15
Roll Call Vote #: 1

2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2052 as (re) engrossed

Senate Judiciary Committee

Action Taken

- ☐ **SENATE accede to House Amendments**
- ☐ **SENATE accede to House Amendments and further amend**
- ☐ **HOUSE recede from House amendments**
- ☒ **HOUSE recede from House amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. K. Koppelman Seconded by: Rep. L. Delmore

Senators	4/6			Yes	No	Representatives	4/6			Yes	No
Sen. Armstrong	✓			✓		Rep. Karls	✓			✓	
Casper	✓			✓		Koppelman	✓			✓	
Grabinger	✓			✓		Delmore	✓			✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 6 No: Ø Absent: Ø

Senate Carrier Sen Armstrong House Carrier Rep. Karls

LC Number 15.0294.02002 04000 of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted: _____

Statement of purpose of amendment: _____

REPORT OF CONFERENCE COMMITTEE

SB 2052, as engrossed: Your conference committee (Sens. Armstrong, Casper, Grabinger and Reps. Karls, K. Koppelman, Delmore) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 832, adopt amendments as follows, and place SB 2052 on the Seventh order:

That the House recede from its amendments as printed on page 832 of the Senate Journal and pages 970 and 971 of the House Journal and that Engrossed Senate Bill No. 2052 be amended as follows:

Page 1, line 9, remove "and"

Page 1, line 9, after "application" insert "; and to declare an emergency"

Page 3, line 26, remove "may, for a first violation or occurrence, and"

Page 3, line 26, remove ", for a second or"

Page 3, line 27, remove "subsequent violation or occurrence,"

Page 3, line 28, after "54-12" insert "for a period of not less than thirty days"

Page 4, after line 11, insert:

"4. If the juvenile court requires the child to participate in a juvenile drug court program, the juvenile court may waive the participation in the twenty-four seven sobriety program requirements of this section."

Page 16, after line 25, insert:

"**SECTION 15. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed SB 2052 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2052

#1
1/20/15

BACKGROUND ON 2015 SENATE BILL NO. 2052

PROVIDED BY VONETTE RICHTER, LEGISLATIVE COUNCIL

(EXCERPT FROM 2013-14 INTERIM JUDICIARY COMMITTEE

DUI OFFENSE STUDY)

DRIVING UNDER THE INFLUENCE LAWS REVIEW

By Legislative Management Chairman directive, the committee was delegated the responsibility to review changes to the state's driving under the influence laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.

Summary of Driving Under the Influence Law Changes by Offense

The following table summarizes the penalties and requirements under House Bill No. 1302 for first and subsequent incidents of driving under the influence. In addition to the penalties and fines listed below, a person is required to pay $250 in court fees if convicted of a Class B misdemeanor, $325 in court fees if convicted of a Class A misdemeanor, and $525 in court fees if convicted of a Class C felony.

Criminal Penalties for Driving Under the Influence Offenses					
Offense	**Level**	**Fine**	**Fees**	**Jail**	**Other**
First offense within seven years	Class B misdemeanor	$500	$250		Evaluation
First offense within seven years and alcohol content of .16 or greater	Class B misdemeanor	$750	$250	2 days	Evaluation
Second offense within seven years	Class B misdemeanor	$1,500	$250	10 days with 48 hours consecutive	Evaluation and 24/7 sobriety program for 12 months
Third offense within seven years	Class A misdemeanor	$2,000	$325	120 days	Evaluation, one year supervised probation with requirement for 24/7 sobriety program
Fourth offense within lifetime	Class C felony	$2,000	$525	One year and one day imprisonment	Evaluation, two years' supervised probation with requirement for 24/7 sobriety program

Testimony and Committee Considerations

In its review of changes to the state's DUI laws under House Bill No. 1302, the committee received extensive testimony from numerous sources including the Attorney General; the Department of Transportation; the State Court Administrator; a district judge; a juvenile court director; the North Dakota Commissioner for the Interstate Commission for Adult Offender Supervision; the North Dakota Association of Counties; the North Dakota Association of Criminal Defense Lawyers; state's attorneys; defense

attorneys; law enforcement agencies; a private company that provides drug and alcohol testing, monitoring, tracking, and treatment; and members of the public

24/7 Sobriety Program Concerns

The committee received extensive testimony related to the impact of House Bill No. 1302 on the 24/7 sobriety program. As a result of the 2013 law, courts are required to order the offender to 12-months participation in the 24/7 sobriety program as a mandatory condition of probation for second and third DUI offenses within seven years and two years participation in the 24/7 sobriety program as a condition of probation for fourth and subsequent offenses within the offenders lifetime. As of July 1, 2014, at an average cost of $537 over the period of participation, there were:

- 1,532 total participants statewide in the 24/7 sobriety program, of which 586 are participating with secure continuous remote alcohol monitoring (SCRAM) bracelets;
- 432 DUI probationers in 39 counties statewide in the 24/7 sobriety program--73 for first-time DUI, 292 for second-time DUI, 47 for third-time DUI, and 20 for fourth-time DUI; and
- At least 79 individuals who volunteered or opted into the 24/7 sobriety program in order to receive a temporary restricted driver's license.

The testimony included concerns about the issuance of temporary restricted permits for offenders conditioned on continued participation in the 24/7 sobriety program with no exceptions for out-of-state defendants, for military members who are deployed, and for drivers who have completed intensive treatment. Another issue of concern was the requirement of a court order mandating participation in the 24/7 sobriety program before being permitted to participate in the program. Because participation in the program is required to obtain the temporary restricted permit and the court order mandating participation may not be issued for months after the offense, the testimony indicated the statutes are in need of harmonization to allow for participation in the 24/7 sobriety program before sentencing. The testimony also suggested Section 39-08-01(5)(f) and (h) be harmonized with respect to the court's authority to suspend a portion of jail time on a third or subsequent DUI upon completion of rehabilitation and 24/7 sobriety program before sentencing under subdivision f and the authority to allow a day for day credit against a sentence for a rehabilitation program that an offender does after sentencing under subdivision h. Finally, the testimony suggested clarification is needed that the 24/7 sobriety program is a condition of probation and may not be ordered as part of the sentence.

The committee considered a bill draft that would require the law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation that the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program. Testimony in support of the bill draft indicated this would resolve some of the issues that have arisen between the administrative and criminal sides of the process.

The committee also considered a bill draft to clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual already has served on the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license. The bill draft also provided the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. According to testimony in support of the bill draft, an individual would not serve less time on the program than is required by law, but the individual could serve more time. Other testimony expressed concern as to whether a judge is authorized keep an offender on the 24/7 sobriety program once probation is completed.

24/7 Sobriety Program for Juveniles

Section 2 of House Bill No. 1302 provided if a child is adjudicated delinquent for a DUI offense child is required to participate in the 24/7 sobriety program. Under the law, the maximum amount of time a juvenile can be sentenced to the 24/7 sobriety program is nine months, and there is not a minimum sentence. As of July 2014, 60 juveniles were in or had completed the 24/7 sobriety program. According to the testimony, the average time in the 24/7 sobriety program was two to four weeks for first-time minor

in consumption juvenile offenders and four to eight weeks for first time DUI juvenile offenders. The committee received testimony the juvenile court was concerned with the mandatory use of the 24/7 sobriety program for first time offenders when there may be no indication that the child is likely to repeat the offense. Requiring the program when it may not be something a child needs may have unintended consequences, such as missing part of the school day, loss of employment, or other disruptions to activities that generally have a positive influence on a child's behavior. The testimony also discussed the challenges to a parent who may have to take time off from work twice a day to drive the child to the twice-per-day testing, including the financial cost and putting the parent's employment at risk. It was suggested a better approach would be to allow the court the discretion to order the 24/7 sobriety program for a first offense while still mandating its use for a second or subsequent alcohol-related offense.

The committee considered a bill draft that would allow the court discretion in whether to order the juvenile to participate in the 24/7 sobriety program for a first offence. The bill draft would provide if a child is subject to informal adjustment or is found to be delinquent or unruly due to a DUI violation, the court would have the court discretion to require the juvenile to participate in the 24/7 sobriety program for a first violation or occurrence and would be required to order the juvenile participate in the program for a second or subsequent violation. Testimony in support of the bill draft indicated if the discretionary aspect were changed for the first offense, the juvenile court could determine if the 24/7 sobriety program is appropriate for that juvenile. The testimony noted the law does not impose the mandatory 24/7 sobriety program for the first DUI offense for adult offenders, but it does impose the sanction for first offense juvenile DUI or alcohol-related offenders.

Look-back Period for DUI Offenses

Under House Bill No. 1302, the look-back period for fourth or subsequent DUI offenses was changed from seven years to a fourth or subsequent DUI within the offender's lifetime. The committee received testimony expressing concerns about the ability to prove cases for which the records may no longer exist. According to the testimony, to prove a prior offense, courts require certified judgments indicating advisement of rights and the status of counsel for each prior conviction. It was noted under court rules, clerk of court offices may dispose of misdemeanor case records after seven years, causing documentation retrieval for a majority of cases pre-2007 nearly impossible. The testimony noted Section 39-08-01(3) directs the court to take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the Director of the Department of Transportation. According to the testimony, the Department of Transportation has a similar seven-year retention policy and therefore the certified documents from the department may not contain all previous DUI offenses.

The committee considered a bill draft that would limit the look-back period to 15 years for fourth and subsequent DUI offenses. Testimony in support of the bill draft indicated very old offenses can be difficult to prove especially if the offenses occurred in another state. Because convictions are an element of the crime, the convictions must be proved. It was noted in time more records will be computerized and more available.

Dual Conviction Issues

The committee received testimony whether it could be considered double jeopardy to charge an offender with the offense of refusal to submit to testing and the offense of DUI. Testimony indicated because the crimes have separate elements, it is not double jeopardy to charge the same person for both crimes. According to the testimony, the Legislative Assembly was aware of the two separate crimes and that it is what was intended. The committee received information on the status of two cases on appeal to the North Dakota Supreme Court based upon double jeopardy concerns. At the district court level, one judge found the statute constitutional and the other judge found the statute unconstitutional. As of November 12, 2014, the opinions of the Supreme Court on both cases were pending.

Testimony from the Department of Transportation indicated the department, in coordination with the Attorney General, had implemented a process to address the dual convictions by entering the first and second conviction in a dual conviction for a singular offense as a first conviction. According to the testimony, this process had the net impact of providing the required suspension time for a first conviction and provides for a second conviction on the records for enhancement in the event of a third conviction.

#1-4

The committee considered a bill draft that would clarify, for purposes of conviction, the test refusal and the DUI charge are intended to be alternative charges. Testimony in support of the bill draft indicated while there are several options under which an individual can be convicted of DUI, the individual only be convicted of one of those offenses. The committee amended the bill draft to address the administrative sanctions of suspension or revocation of an operator's license. The bill draft, as amended, provided for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal (subdivisions a, b, c, or d and subdivision e of Subsection 1 of Section 39-08-01) are deemed to be a single violation. The amended version of the bill draft did not include the language regarding the test refusal and the DUI charge as alternative offenses which was included in the earlier version. According to the testimony, the effect of the bill draft would be that for criminal purposes, the DUI charge and the test refusal are counted as two offenses, but the two offenses would be considered a single offense for purposes of administrative sanctions.

Implied Consent and Right to Cure

The committee received testimony that in light of the severity of the consequences for refusing to submit to testing, it is important to ensure implied consent warnings are being read to offenders. The testimony indicated the warning is intended to be read verbatim from the DUI form which states a refusal is a criminal offense. Law enforcement testimony indicated officers are expected to read the information directly from the prepared form. According to the testimony, law enforcement has been diligent in reading implied consent warnings to offenders.

The committee also received testimony regarding whether officers should allow a defendant to cure a refusal. According to the testimony, although the law is silent on the right to cure a refusal, most officers have been operating on the assumption that, if it was reasonable, a cure should be allowed if the defendant requests to cure.

The committee considered a bill draft to address the issue of implied consent. Under the bill draft, a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a). Testimony in support of the bill draft indicated while the vast majority of law enforcement officers are providing the implied consent information, the warning becomes even more important now that refusal is a criminal offense. Other testimony indicated concerns existed among state's attorneys regarding the proposed change to the implied consent requirements.

The committee also considered a bill draft that would give the individual the opportunity to cure a refusal of a test. The bill draft would require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test. Testimony in support of the bill draft indicated without the ability to cure a refusal, the constitutionality of the law may be in question. The testimony indicated the bill draft would clarify that the accused has a right to cure the refusal.

Participation in Drug Court

Drug court is a court-supervised, treatment-oriented program that targets nonviolent participants whose major problems stem from substance abuse. The committee received testimony the mandatory minimum sentences in the 2013 legislation eliminated the incentives for a DUI offender to participate in the drug court process. The testimony indicated the impact of the 2013 legislation on the drug court program was an oversight.

To address the issue, the committee considered a bill draft that would provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court.

Testimony in support of the bill draft indicated abrogating the ability to use drug courts and imposing minimum mandatory penalties created substantial unintended consequences. According to the testimony,

the drug court serves as a valuable incentive for a repeat DUI offender.

Interstate Compact for Adult Offender Supervision

The committee received testimony regarding a conflict with the Interstate Compact for Adult Offender Supervision which was created by House Bill No. 1302. According to the testimony, the participation in the 24/7 sobriety program as a mandatory condition of program for second offenses would put a convicted second offense offender under the Interstate Compact if the offender relocated outside North Dakota during the probation period. If the offender relocates out of the state, the commission is faced with attempting to transfer offenders to a receiving state that may not have a 24/7 sobriety program. It was recommended the language be changed to allow participation in a program that is equal to the 24/7 sobriety program if the offender lives in another state. It was also suggested if the language of Section 39-08-01(5)(b) were modified to require the 24/7 sobriety program participation for a period of less than one year, the second offense sentence would not trigger the Interstate Compact.

The committee considered a bill draft that would change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days. The bill draft also would change the probation length for third offenses from one year to 360 days. Testimony in support of the bill draft indicated the changes would eliminate the conflict with the Interstate Compact.

Recommendation

The committee recommends Senate Bill No. 2052 to address issues related to the state's DUI laws. The bill would:

- Require a law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program;
- Clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual has already participated in the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license;
- Provide the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence;
- Allow the court discretion in whether to order a juvenile to participate in the 24/7 sobriety program;
- Limit the look-back period to 15 years for fourth and subsequent DUI offenses;
- Provide, for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal are deemed to be a single violation;
- Provide a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a);
- Require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test;
- Provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court;
- Change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days and change the probation length for third offenses from one year to 360 days; and
- Make technical changes to remove arcane language and correct inconsistent time frames.

2A-1

SENATE JUDICIARY COMMITTEE
January 20, 2015; 9:45 AM, Ft. Lincoln Room

North Dakota Department of Transportation
Glenn Jackson, Director, Driver's License Division
SB2052

Good Morning Mr. Chairman, members of the committee, I am Glenn Jackson, Director of the Driver's License Division at the North Dakota Department of Transportation (DOT). Thank you for giving me the opportunity to address you today.

The DOT supports the changes contained in SB2052. These changes provide clarification for several substantive concerns in current law. However, there are two areas the DOT wishes to bring to your attention.

The first area of the bill we wish to discuss is located on page six of the bill. Lines 25 through 28 provide some clarification on the dual conviction issue and how it relates to the driving record. The concern of the department is that this change still enables two convictions for one incident to impact the driving record. Furthermore, this impact is in a disparate manner.

NDCC 39-06.2-10.6, does not allow the enhancement of a commercial driving record except for separate incidents. This mirrors federal commercial driver license rules. In this case, the receipt of a second conviction from a single incident cannot be applied to the record, nor can a third conviction apply the second conviction from the first incident as a third conviction for enhancement. This creates the scenario where a commercial and a non-commercial driver receive different enhancements and penalties for similar behavior.

In addition, a conviction, once received, must be applied to the driver record, or it is considered masking the record, which is not allowable. This leads to a catch-22 situation in which the department is not able to enter the second conviction and apply it to commercial drivers, but is required to enter the conviction on the record because it is a legitimate conviction from a court and not to enter it is masking the record.

The DOT is providing a recommended amendment, Attachment A, to the bill, that would alleviate this situation. This change would require the court to only provide the conviction that is to be used to impact the driving record. Should the DOT only receive one conviction, the dilemma of two convictions is eliminated; however, two convictions will remain within the criminal justice system for criminal purposes and enhancement, while only one conviction will impact the driver's record or be used for enhancement.

The second area of the bill we wish to discuss is located on page 12 of the bill. Lines 21-28 relate to the law enforcement advisory. The intent of this section of code is to advise drivers of the consequences for refusing a chemical test, that they may face criminal charges and revocation of driving privileges for a refusal. The last sentence of new subsection 3(a) provides that the law enforcement officer determines which chemical test is to be used. We believe this provision may not have been intended to be part of the advisory about consequences for refusing tests and may have been a drafting oversight. To avoid any possible confusion about what needs to be included in

1/20/15 2A-1

SB 2052

the advisory, we recommend this sentence be removed from new subsection 3(a) and placed in subsection 2 of this section of code.

The DOT is providing a separate recommended amendment, Attachment B, to move the line identified above.

Thank you Mr. Chairman, I would be happy to answer any questions.

2B-1
1/29/15

A.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2052

Page 6, line 28, after "violation" insert "and the court will forward to the department of transportation only the conviction for driving under the influence or actual physical control"

Renumber accordingly

2-C-1
1/20/15

B.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2052

Page 12, line 20, after the period insert "The law enforcement officer shall determine which of the tests is to be used."

Page 12, overstrike line 28

Renumber accordingly

#3-1

SENATE JUDICIARY COMMITTEE
SENATOR DAVID HOGUE, CHAIRMAN
JANUARY 20, 2015

THOMAS ERHARDT, DEPUTY DIRECTOR FOR TRANSITIONAL PLANNING SERVICES, NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2052

My name is Tom Erhardt and I am the Deputy Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in favor of Senate Bill 2052.

On July 1, 2014 you heard testimony from Charles Placek, the State Commissioner to the Interstate Compact for Adult Offender Supervision. In this role Mr. Placek represents the State of North Dakota on the national commission that regulates the interstate transfer of offenders on probation and parole. I am here today to echo his testimony as it relates to the amendments proposed in SB 2052 to NDCC 39-08-01(5b) and (5c). Currently as written those offenders convicted for their second Driving Under the Influence (DUI) or Being in Actual Physical Control of a Motor Vehicle Under the Influence (APC) offense along with fines and an order for an addiction evaluation are also sentenced to 12 months participation in the twenty four-seven (24/7) sobriety program; third offense convictions includes fines, addiction evaluation, 12 months participation in the 24/7 sobriety program and at least one year of supervised probation. Our concern is regarding the mandatory minimum of 12 months of participation in the 24/7 sobriety program as a mandatory condition of probation for second offense DUI and the order for at least one year of supervised probation for third offenses, both of which as currently written triggers the interstate compact. With current language all convicted second and third DUI offenders fall under the Interstate Compact for the Supervision of Adult Offenders if they relocate outside of North Dakota during their probation period. Currently the vast majority of second offense offenders are placed on unsupervised probation and their court ordered conditions are monitored either by the court clerks or the local sheriff regarding the 24/7 program. The concern of the DOCR is we do not know who has been placed on unsupervised probation and the offenders are often unaware that if they relocate to another state they will need to have their probation transferred. Failure to transfer these offenders under the Interstate Compact is a liability concern for the state.

The conflict with the Interstate Compact and NDCC 39-08-01 (5b) & (5c) centers on two Compact rules. The first is Rule 1.101 - Definitions and Rule 2.105 - Misdemeanors.

Rule 1.101 defines "Supervision" as "the oversight exercised by authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report or be monitored by supervising authorities, and to comply with regulations and conditions, other than monetary conditions, imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community". Since the offender

3-2
1/20/15

that has been convicted of a second offense requires 24/7 as a mandatory condition of probation for at least 12 months this would be considered a "monitored condition" that would trigger the Interstate Commission's rules even though they may not be ordered to supervised probation.

Rule 2.105 defines the misdemeanor offenses that fall under the rules of the Interstate Compact for the Supervision of Adult Offenders. Rule 2.105 - Misdemeanants, (a) A misdemeanor offender whose sentence includes 1 year or more of supervision shall be eligible for transfer, provided that all other criteria for transfer, as specified in Rule 3.101, have been satisfied; and the instant offense includes one or more of the following:

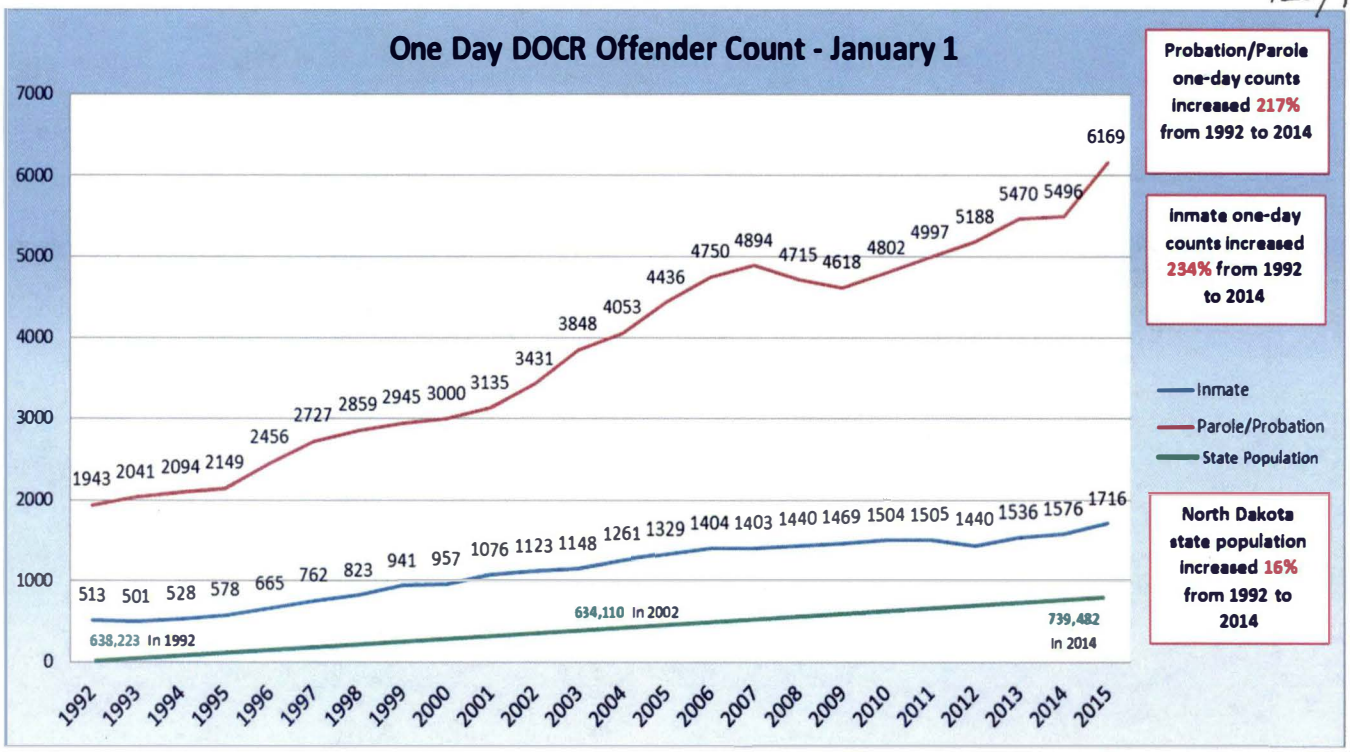
(1) an offense in which a person has incurred direct or threatened physical or psychological harm;
(2) an offense that involves the use or possession of a firearm;
(3) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;
(4) a sexual offense that requires the offender to register as a sex offender in the sending state.

Due to the mandatory language in NDCC 39-08-01 (5b) (second offense) requiring at least 12 months of 24/7 program participation as a condition of probation and in NDCC 39-08-01 (5c) (third offense) where it requires one year of supervised probation it meets the requirements of Rule 1.101 and Rule 2.105 of the Interstate Compact, therefore if any of these offenders during their probation period relocate outside of North Dakota we must transfer their probation.

Thus, the DOCR supports the changes to NDCC 39-08-01 (5b) & (5c) requiring a period of 360 days of 24/7 participation and for third time offenses 360 days of mandatory supervised probation, as a period less than one year would not trigger the Interstate Compact transfer. A change in the language to a period under one year for both of these subsections would limit the State's liability under the rules of the Interstate Compact.

The department also supports the amendment outlined in Section 7 creating a new section of NDCC 39-08 allowing the court to suspend all but ten days of the minimum mandatory sentence for defendants charged with a third or subsequent violation of NDCC 39-08-01 if the defendant successfully completes drug court. Drug courts have been found as effective, safe alternatives to incarceration. Drug courts provide swift and certain consequences for continued negative behavior, reinforcement for meeting performance goals, and access to much needed substance use treatment. DOCR resources are being pushed to the limit in both the prison system and in the Probation & Parole Services Division as inmate and community offender populations are at record highs.

3-3
1/20/15



In summary, the Department of Corrections and Rehabilitation supports SB 2052 amending NDCC 39-08 as discussed.

#1-1

A.

1/21/2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2052

Page 6, line 28, after "violation" insert "and the court will forward to the department of transportation only the conviction for driving under the influence or actual physical control"

Renumber accordingly

B.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2052

Page 12, line 20, after the period insert "The law enforcement officer shall determine which of the tests is to be used."

Page 12, overstrike line 28

Renumber accordingly

#1
SB2052
3-4-15

BACKGROUND ON 2015 SENATE BILL NO. 2052

PROVIDED BY VONETTE RICHTER, LEGISLATIVE COUNCIL

(EXCERPT FROM 2013-14 INTERIM JUDICIARY COMMITTEE

DUI OFFENSE STUDY)

DRIVING UNDER THE INFLUENCE LAWS REVIEW

By Legislative Management Chairman directive, the committee was delegated the responsibility to review changes to the state's driving under the influence laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.

Summary of Driving Under the Influence Law Changes by Offense

The following table summarizes the penalties and requirements under House Bill No. 1302 for first and subsequent incidents of driving under the influence. In addition to the penalties and fines listed below, a person is required to pay $250 in court fees if convicted of a Class B misdemeanor, $325 in court fees if convicted of a Class A misdemeanor, and $525 in court fees if convicted of a Class C felony.

Criminal Penalties for Driving Under the Influence Offenses					
Offense	**Level**	**Fine**	**Fees**	**Jail**	**Other**
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Testimony and Committee Considerations

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attorneys; law enforcement agencies; a private company that provides drug and alcohol testing, monitoring, tracking, and treatment; and members of the public

24/7 Sobriety Program Concerns

The committee received extensive testimony related to the impact of House Bill No. 1302 on the 24/7 sobriety program. As a result of the 2013 law, courts are required to order the offender to 12-months participation in the 24/7 sobriety program as a mandatory condition of probation for second and third DUI offenses within seven years and two years participation in the 24/7 sobriety program as a condition of probation for fourth and subsequent offenses within the offenders lifetime. As of July 1, 2014, at an average cost of $537 over the period of participation, there were:

- 1,532 total participants statewide in the 24/7 sobriety program, of which 586 are participating with secure continuous remote alcohol monitoring (SCRAM) bracelets;
- 432 DUI probationers in 39 counties statewide in the 24/7 sobriety program--73 for first-time DUI, 292 for second-time DUI, 47 for third-time DUI, and 20 for fourth-time DUI; and
- At least 79 individuals who volunteered or opted into the 24/7 sobriety program in order to receive a temporary restricted driver's license.

The testimony included concerns about the issuance of temporary restricted permits for offenders conditioned on continued participation in the 24/7 sobriety program with no exceptions for out-of-state defendants, for military members who are deployed, and for drivers who have completed intensive treatment. Another issue of concern was the requirement of a court order mandating participation in the 24/7 sobriety program before being permitted to participate in the program. Because participation in the program is required to obtain the temporary restricted permit and the court order mandating participation may not be issued for months after the offense, the testimony indicated the statutes are in need of harmonization to allow for participation in the 24/7 sobriety program before sentencing. The testimony also suggested Section 39-08-01(5)(f) and (h) be harmonized with respect to the court's authority to suspend a portion of jail time on a third or subsequent DUI upon completion of rehabilitation and 24/7 sobriety program before sentencing under subdivision f and the authority to allow a day for day credit against a sentence for a rehabilitation program that an offender does after sentencing under subdivision h. Finally, the testimony suggested clarification is needed that the 24/7 sobriety program is a condition of probation and may not be ordered as part of the sentence.

The committee considered a bill draft that would require the law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation that the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program. Testimony in support of the bill draft indicated this would resolve some of the issues that have arisen between the administrative and criminal sides of the process.

The committee also considered a bill draft to clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual already has served on the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license. The bill draft also provided the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. According to testimony in support of the bill draft, an individual would not serve less time on the program than is required by law, but the individual could serve more time. Other testimony expressed concern as to whether a judge is authorized keep an offender on the 24/7 sobriety program once probation is completed.

24/7 Sobriety Program for Juveniles

Section 2 of House Bill No. 1302 provided if a child is adjudicated delinquent for a DUI offense, the child is required to participate in the 24/7 sobriety program. Under the law, the maximum amount of time a juvenile can be sentenced to the 24/7 sobriety program is nine months, and there is not a minimum sentence. As of July 2014, 60 juveniles were in or had completed the 24/7 sobriety program. According to the testimony, the average time in the 24/7 sobriety program was two to four weeks for first-time minor

in consumption juvenile offenders and four to eight weeks for first time DUI juvenile offenders. The committee received testimony the juvenile court was concerned with the mandatory use of the 24/7 sobriety program for first time offenders when there may be no indication that the child is likely to repeat the offense. Requiring the program when it may not be something a child needs may have unintended consequences, such as missing part of the school day, loss of employment, or other disruptions to activities that generally have a positive influence on a child's behavior. The testimony also discussed the challenges to a parent who may have to take time off from work twice a day to drive the child to the twice-per-day testing, including the financial cost and putting the parent's employment at risk. It was suggested a better approach would be to allow the court the discretion to order the 24/7 sobriety program for a first offense while still mandating its use for a second or subsequent alcohol-related offense.

The committee considered a bill draft that would allow the court discretion in whether to order the juvenile to participate in the 24/7 sobriety program for a first offence. The bill draft would provide if a child is subject to informal adjustment or is found to be delinquent or unruly due to a DUI violation, the court would have the court discretion to require the juvenile to participate in the 24/7 sobriety program for a first violation or occurrence and would be required to order the juvenile participate in the program for a second or subsequent violation. Testimony in support of the bill draft indicated if the discretionary aspect were changed for the first offense, the juvenile court could determine if the 24/7 sobriety program is appropriate for that juvenile. The testimony noted the law does not impose the mandatory 24/7 sobriety program for the first DUI offense for adult offenders, but it does impose the sanction for first offense juvenile DUI or alcohol-related offenders.

Look-back Period for DUI Offenses

Under House Bill No. 1302, the look-back period for fourth or subsequent DUI offenses was changed from seven years to a fourth or subsequent DUI within the offender's lifetime. The committee received testimony expressing concerns about the ability to prove cases for which the records may no longer exist. According to the testimony, to prove a prior offense, courts require certified judgments indicating advisement of rights and the status of counsel for each prior conviction. It was noted under court rules, clerk of court offices may dispose of misdemeanor case records after seven years, causing documentation retrieval for a majority of cases pre-2007 nearly impossible. The testimony noted Section 39-08-01(3) directs the court to take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the Director of the Department of Transportation. According to the testimony, the Department of Transportation has a similar seven-year retention policy and therefore the certified documents from the department may not contain all previous DUI offenses.

The committee considered a bill draft that would limit the look-back period to 15 years for fourth and subsequent DUI offenses. Testimony in support of the bill draft indicated very old offenses can be difficult to prove especially if the offenses occurred in another state. Because convictions are an element of the crime, the convictions must be proved. It was noted in time more records will be computerized and more available.

Dual Conviction Issues

The committee received testimony whether it could be considered double jeopardy to charge an offender with the offense of refusal to submit to testing and the offense of DUI. Testimony indicated because the crimes have separate elements, it is not double jeopardy to charge the same person for both crimes. According to the testimony, the Legislative Assembly was aware of the two separate crimes and that it is what was intended. The committee received information on the status of two cases on appeal to the North Dakota Supreme Court based upon double jeopardy concerns. At the district court level, one judge found the statute constitutional and the other judge found the statute unconstitutional. As of November 12, 2014, the opinions of the Supreme Court on both cases were pending.

Testimony from the Department of Transportation indicated the department, in coordination with the Attorney General, had implemented a process to address the dual convictions by entering the first and second conviction in a dual conviction for a singular offense as a first conviction. According to the testimony, this process had the net impact of providing the required suspension time for a first conviction and provides for a second conviction on the records for enhancement in the event of a third conviction.

The committee considered a bill draft that would clarify, for purposes of conviction, the test refusal and the DUI charge are intended to be alternative charges. Testimony in support of the bill draft indicated while there are several options under which an individual can be convicted of DUI, the individual only can be convicted of one of those offenses. The committee amended the bill draft to address the administrative sanctions of suspension or revocation of an operator's license. The bill draft, as amended, provided for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal (subdivisions a, b, c, or d and subdivision e of Subsection 1 of Section 39-08-01) are deemed to be a single violation. The amended version of the bill draft did not include the language regarding the test refusal and the DUI charge as alternative offenses which was included in the earlier version. According to the testimony, the effect of the bill draft would be that for criminal purposes, the DUI charge and the test refusal are counted as two offenses, but the two offenses would be considered a single offense for purposes of administrative sanctions.

Implied Consent and Right to Cure

The committee received testimony that in light of the severity of the consequences for refusing to submit to testing, it is important to ensure implied consent warnings are being read to offenders. The testimony indicated the warning is intended to be read verbatim from the DUI form which states a refusal is a criminal offense. Law enforcement testimony indicated officers are expected to read the information directly from the prepared form. According to the testimony, law enforcement has been diligent in reading implied consent warnings to offenders.

The committee also received testimony regarding whether officers should allow a defendant to cure a refusal. According to the testimony, although the law is silent on the right to cure a refusal, most officers have been operating on the assumption that, if it was reasonable, a cure should be allowed if the defendant requests to cure.

The committee considered a bill draft to address the issue of implied consent. Under the bill draft, a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a). Testimony in support of the bill draft indicated while the vast majority of law enforcement officers are providing the implied consent information, the warning becomes even more important now that refusal is a criminal offense. Other testimony indicated concerns existed among state's attorneys regarding the proposed change to the implied consent requirements.

The committee also considered a bill draft that would give the individual the opportunity to cure a refusal of a test. The bill draft would require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test. Testimony in support of the bill draft indicated without the ability to cure a refusal, the constitutionality of the law may be in question. The testimony indicated the bill draft would clarify that the accused has a right to cure the refusal.

Participation in Drug Court

Drug court is a court-supervised, treatment-oriented program that targets nonviolent participants whose major problems stem from substance abuse. The committee received testimony the mandatory minimum sentences in the 2013 legislation eliminated the incentives for a DUI offender to participate in the drug court process. The testimony indicated the impact of the 2013 legislation on the drug court program was an oversight.

To address the issue, the committee considered a bill draft that would provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court.

Testimony in support of the bill draft indicated abrogating the ability to use drug courts and imposing minimum mandatory penalties created substantial unintended consequences. According to the testimony,

the drug court serves as a valuable incentive for a repeat DUI offender.

Interstate Compact for Adult Offender Supervision

The committee received testimony regarding a conflict with the Interstate Compact for Adult Offender Supervision which was created by House Bill No. 1302. According to the testimony, the participation in the 24/7 sobriety program as a mandatory condition of program for second offenses would put a convicted second offense offender under the Interstate Compact if the offender relocated outside North Dakota during the probation period. If the offender relocates out of the state, the commission is faced with attempting to transfer offenders to a receiving state that may not have a 24/7 sobriety program. It was recommended the language be changed to allow participation in a program that is equal to the 24/7 sobriety program if the offender lives in another state. It was also suggested if the language of Section 39-08-01(5)(b) were modified to require the 24/7 sobriety program participation for a period of less than one year, the second offense sentence would not trigger the Interstate Compact.

The committee considered a bill draft that would change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days. The bill draft also would change the probation length for third offenses from one year to 360 days. Testimony in support of the bill draft indicated the changes would eliminate the conflict with the Interstate Compact.

Recommendation

The committee recommends Senate Bill No. 2052 to address issues related to the state's DUI laws. The bill would:

- Require a law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program;
- Clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual has already participated in the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license;
- Provide the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence;
- Allow the court discretion in whether to order a juvenile to participate in the 24/7 sobriety program;
- Limit the look-back period to 15 years for fourth and subsequent DUI offenses;
- Provide, for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal are deemed to be a single violation;
- Provide a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a);
- Require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test;
- Provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court;
- Change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days and change the probation length for third offenses from one year to 360 days; and
- Make technical changes to remove arcane language and correct inconsistent time frames.

#1
SB2052
3-11-15

North Dakota Highway Patrol

Safety and Education

North Dakota Fatal Traffic Crash Statistics

Updated 1/20/2015

Year	2008	2009	2010	2011	2012	2013	2014	2015
Fatal Crashes	97	116	92	130	147	133	123	4
Fatalities	104	140	105	148	170	148	137	5
Alcohol-Related Crashes	48 50%	47 41%	48 52%	56 43%	77 52%	64 48%	48 39%	0
Alcohol-Related Fatalities	53 51%	56 40%	55 52%	66 45%	87 51%	71 48%	55 40%	0
Restrained Victims	17 21%	40 32%	23 29%	30 25%	41 29%	35 24%	31 23%	1 20%
Unrestrained Victims	59 73%	83 66%	48 60%	82 69%	92 65%	78 53%	78 57%	1 20%
Motorcycle Fatalities	13	7	15	14	16	9	9	0
Bicycle Fatalities	1	1	1	1	0	1	3	0
Pedestrian Fatalities	7	4	8	9	10	2	8	1
Train Fatalities	1	3	1	0	3	1	4	1

Detailed fatal crash stats - 12/31/14 (/ndhp/sites/nd.gov.ndhp/files/12-31-14.pdf)

Educational Resources

For more information regarding statewide traffic crashes, please visit the ND Department of Transportation's Traffic Safety Division (http://www.dot.nd.gov/divisions/safety/trafficsafety.htm) .

- NDDOT 2013 Crash Summary (http://www.dot.nd.gov/divisions/safety/docs/crash-summary.pdf) (NDDOT)
- Motor Vehicle Laws (http://www.legis.nd.gov/cencode/t39.html) (North Dakota Century Code Title 39)
- Winter Driving Brochure (/ndhp/sites/nd.gov.ndhp/files/docs/safety/Winter_Driving_Brochure_Rev_2009.pdf) (pdf)
- Rules of the Road Manual (http://www.dot.nd.gov/divisions/driverslicense/docs/rulesroad.pdf) (pdf)
- Off Highway Vehicle (OHV) Safety Guidelines (http://www.parkrec.nd.gov/recreation/ohv/attachments/11-13ohvlaws.pdf) (pdf)
- Snowmobile Safety Guidelines (http://www.parkrec.nd.gov/recreation/snowmobile/attachments/11-13snowmobilelaws.pdf) (pdf)
- Motorcycle Operator's Manual (http://www.dot.nd.gov/divisions/driverslicense/docs/motorcycle1.pdf) (pdf)
- ND Teen Drivers (http://www.ndteendrivers.com/) (NDDOT)

Safety Talk Request

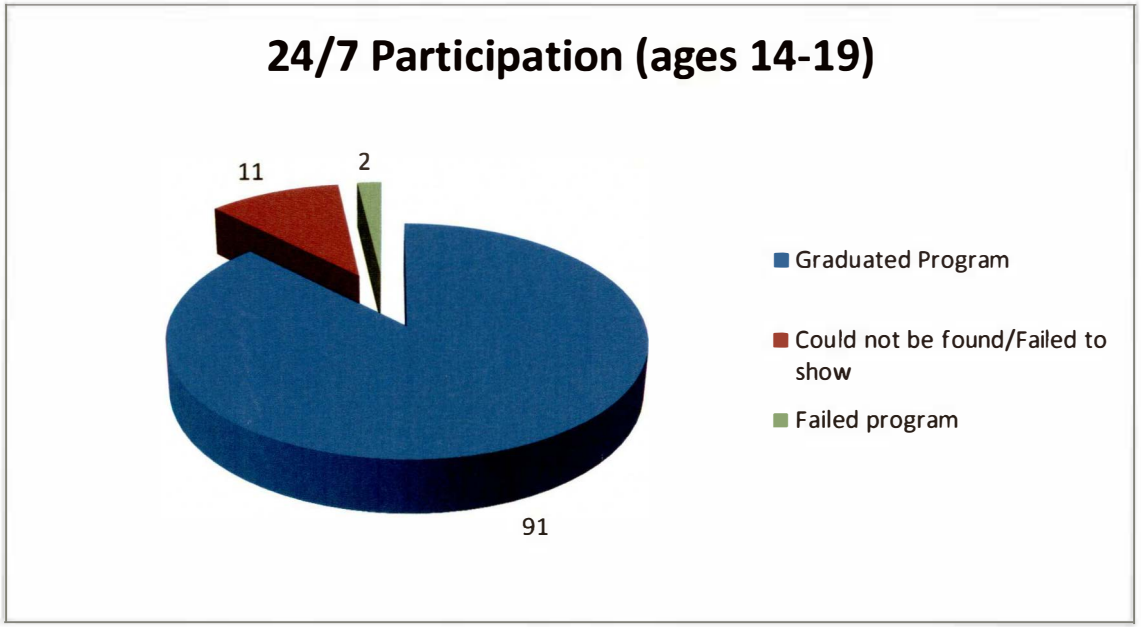
Submit a request for a safety talk (safety-talk-request) to schedule an event with one of our troopers.

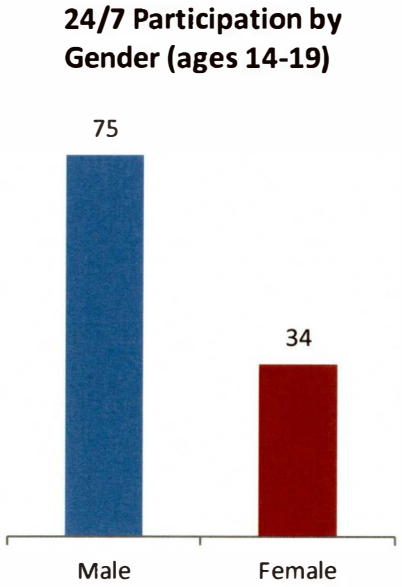
(https://www.facebook.com/ndhighwaypatrol)

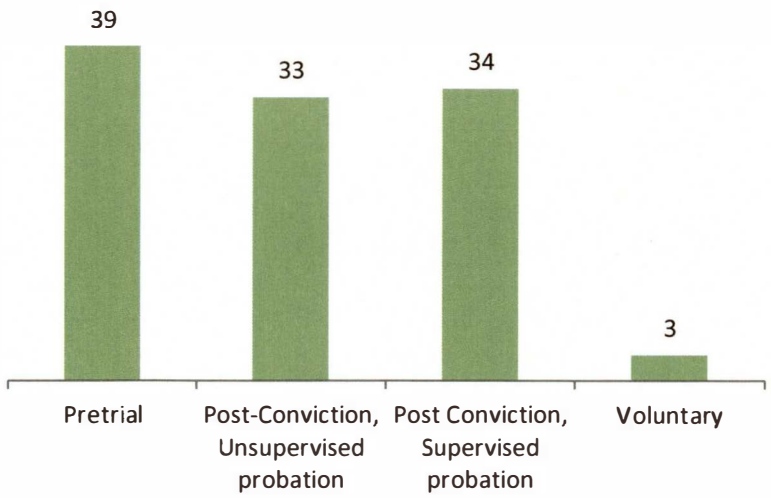
#2
SB2052
3-18-15

24/7 Participation – Individuals age 14-19

August 1, 2013 (HB 1302) through March 6, 2015
109 Individuals from 26 counties







#3
SB2052
3-11-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2052

Page 3, line 26, remove "may, for a first violation or occurrence, and"

Page 3, line 26, remove ", for a second or"

Page 3, line 27, remove "subsequent violation or occurrence,"

Page 3, line 28, after "54-12" insert "for a period of not less than eight weeks"

RENUMBER ACCORDINGLY

#1-1
4/6/15

15.0294.02002
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
April 2, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2052

That the House recede from its amendments as printed on page 832 of the Senate Journal and pages 970 and 971 of the House Journal and that Engrossed Senate Bill No. 2052 be amended as follows:

Page 1, line 9, remove "and"

Page 1, line 9, after "application" insert "; and to declare an emergency"

Page 3, line 26, remove "may, for a first violation or occurrence, and"

Page 3, line 26, remove ", for a second or"

Page 3, line 27, remove "subsequent violation or occurrence,"

Page 3, line 28, after "54-12" insert "for a period of not less than thirty days"

Page 4, after line 11, insert:

"4. If the juvenile court requires the child to participate in a juvenile drug court program, the juvenile court may waive the participation in the twenty-four seven sobriety program requirements of this section."

Page 16, after line 25, insert:

"**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

#2-1
4/6/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2052

That the Senate accede to the House amendments as printed on pages 970 and 971 of the House Journal and that Engrossed Senate Bill No. 2052 be further amended as follows:

Page 3, line 27, replace "eight weeks" with "thirty days"

Page 4, after line 8, insert:

"4. The juvenile court may waive the requirements of this section when the juvenile court requires the child to participate in a juvenile drug court program."

Renumber accordingly