

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1534
(Representatives Griffin, Dahl)

AN ACT to amend and reenact subsection 2 of section 39-08-01 and section 39-08-01.2 of the North Dakota Century Code, relating to special punishment for causing injury or death while under the influence of alcohol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A person~~ Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

SECTION 2. AMENDMENT. Section 39-08-01.2 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~The penalty provided in this section applies when:~~
 - a. ~~A person~~ If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the person's individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year's imprisonment if the individual was an adult at the time of the offense.
 - b. ~~2. A person~~ If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the person's individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person; or
 - e. ~~A person is convicted of violating section 39-08-01 and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person~~ individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.
2. ~~3. If the defendant was at least eighteen years of age at the time of the offense under chapter 12.1-16, the sentence under that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 or 39-08-03, the sentence under either section must be at least ninety days' imprisonment. The sentence under chapter 12.1-16 or section 39-08-01 or 39-08-03 this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon.~~

3. ~~If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1534.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State