

HOUSE BILL NO. 1302

Introduced by

Representatives K. Koppelman, Keiser, Kiefert, Klemin, Ruby, Delmore

Senators Hogue, Luick, Lyson, Dotzenrod, O'Connell

1 A BILL for an Act to create and enact a new subsection to section 27-20-10 and section
2 27-20-31 of the North Dakota Century Code, relating to juveniles driving under the influence; to
3 amend and reenact subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01,
4 39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsection 6 of section
5 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to chemical tests for
6 driving under the influence of alcohol or drugs; to provide a penalty; to provide an effective date;
7 and to declare an emergency.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

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

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

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

1 **SECTION 3. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota
2 Century Code is amended and reenacted as follows:

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

5 a. Ninety-one days if the operator's record shows the person has not violated
6 section 39-08-01 or equivalent ordinance within the five~~ten~~ years preceding the
7 last violation.

8 b. One hundred eighty days if the operator's record shows the person has not
9 violated section 39-08-01 or equivalent ordinance within five~~ten~~ years preceding
10 the last violation and the violation was for an alcohol concentration of at least
11 eighteen one-hundredths of one percent by weight.

12 c. Three hundred sixty-five days if the operator's record shows the person has once
13 violated section 39-08-01 or equivalent ordinance within the five~~ten~~ years
14 preceding the last violation.

15 d. Two years if the operator's record shows the person has at least once violated
16 section 39-08-01 or equivalent ordinance within the five~~ten~~ years preceding the
17 last violation and the violation was for an alcohol concentration of at least
18 eighteen one-hundredths of one percent by weight.

19 e. Two years if the operator's record shows the person has at least twice violated
20 section 39-08-01 or equivalent ordinance within the five~~ten~~ years preceding the
21 last violation.

22 f. Three years if the operator's record shows the person has at least twice violated
23 section 39-08-01 or equivalent ordinance within the five~~ten~~ years preceding the
24 last violation and the violation is for an alcohol concentration of at least eighteen
25 one-hundredths of one percent by weight.

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

29 **SECTION 4. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

- 2 1. Except as provided under subsection 2, if the director has suspended a license under
3 section 39-06.1-10 or has extended a suspension or revocation under section
4 39-06-43, upon receiving written application from the offender affected, the director
5 may for good cause issue a temporary restricted operator's license valid for the
6 remainder of the suspension period after seven days of the suspension period have
7 passed.
- 8 2. If the director has suspended a license under chapter 39-20, or after a violation of
9 section 39-08-01 or equivalent ordinance, upon written application of the offender the
10 director may issue for good cause a temporary restricted license that takes effect after
11 thirty days of the suspension have been served after a first offense under section
12 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
13 sobriety program under chapter 54-12, the director may issue a temporary restricted
14 license that takes effect after fifteen days of the suspension have been served. The
15 director may not issue a temporary restricted license to any offender whose operator's
16 license has been revoked under section 39-20-04 or suspended upon a second or
17 subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary
18 restricted license may be issued in accordance with subsection 5 of this section if the
19 offender is participating in the twenty-four seven sobriety program under chapter
20 54-12, or for good cause if the offender has not committed an offense for a period of
21 two years before the date of the filing of a written application that must be
22 accompanied by a report from an appropriate licensed addiction treatment program or
23 if the offender is participating in the drug court program and has not committed an
24 offense for a period of three hundred sixty-five days before the date of the filing of a
25 written application that must be accompanied by a recommendation from the district
26 court. The director may conduct a hearing for the purposes of obtaining information,
27 reports, and evaluations from courts, law enforcement, and citizens to determine the
28 offender's conduct and driving behavior during the prerequisite period of time. The
29 director may also require that an ignition interlock device be installed in the offender's
30 vehicle.

- 1 3. The director may not issue a temporary restricted license for a period of license
2 revocation or suspension imposed under subsection 5 of section 39-06-17 or section
3 39-06-31. A temporary restricted license may be issued for suspensions ordered under
4 subsection 7 of section 39-06-32 if it could have been issued had the suspension
5 resulted from in-state conduct.
- 6 4. A restricted license issued under this section is solely for the use of a motor vehicle
7 during the licensee's normal working hours, or as provided under subsection 5 of this
8 section, and may contain any other restrictions authorized by section 39-06-17.
9 Violation of a restriction imposed according to this section is deemed a violation of
10 section 39-06-17.
- 11 5. If an offender has been charged with, or convicted of, a second or subsequent
12 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
13 subject to suspension under chapter 39-20 and the offender's driver's license is not
14 subject to an unrelated suspension or revocation, the director shall issue a temporary
15 restricted driver's ~~permit~~license to the offender ~~only for the purpose of~~
16 ~~participation upon the restriction the offender participate~~ in the twenty-four seven
17 sobriety program ~~upon~~under chapter 54-12. The offender shall submit an application
18 to the director for a temporary restricted license along with submission of proof of
19 financial responsibility and proof of participation in the twenty-four seven sobriety
20 program ~~by the offender, in order to receive a temporary restricted license~~. If a court or
21 the parole board finds that an offender has violated a condition of the twenty four
22 seven sobriety program, the court or parole board may order the temporary restricted
23 driver's permit be revoked and take possession of the temporary restricted driver's
24 permit. The court or the parole board shall send a copy of the order to the director who
25 shall record the revocation of the temporary restricted driver's permit. Revocation of a
26 temporary restricted driver's permit for violation of a condition of the twenty four seven
27 sobriety program does not preclude the offender's eligibility for a temporary restricted
28 driver's license under any other provisions of this section.

29 **SECTION 5. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or**
2 **substances not to operate vehicle - Penalty.**

3 1. A person may not drive or be in actual physical control of any vehicle upon a highway
4 or upon public or private areas to which the public has a right of access for vehicular
5 use in this state if any of the following apply:

6 a. That person has an alcohol concentration of at least eight one-hundredths of one
7 percent by weight at the time of the performance of a chemical test within two
8 hours after the driving or being in actual physical control of a vehicle.

9 b. That person is under the influence of intoxicating liquor.

10 c. That person is under the influence of any drug or substance or combination of
11 drugs or substances to a degree which renders that person incapable of safely
12 driving.

13 d. That person is under the combined influence of alcohol and any other drugs or
14 substances to a degree which renders that person incapable of safely driving.

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

20 2. Unless as otherwise provided in section 39-08-01.2, an individual violating this section
21 or equivalent ordinance is guilty of a class B misdemeanor for the first ~~or second~~
22 ~~offense in a five-year period~~, of a class A misdemeanor for a ~~third~~second offense in a
23 ~~five-year~~ten-year period, of a class A misdemeanor for the ~~fourth~~ offense in a
24 ~~seven-year period~~, and of a class C felony for a ~~fifth or subsequent~~third offense in a
25 ~~seven-year~~ten-year period, and a class C felony for any fourth or subsequent offense,
26 regardless how long it has been since the previous offense. The minimum penalty for
27 violating this section is as provided in subsection 4. The court shall take judicial notice
28 of the fact that an offense would be a subsequent offense if indicated by the records of
29 the director or may make a subsequent offense finding based on other evidence. If an
30 individual has spent time in custody for any offense, the time spent in custody may not
31 be included as part of any period of time under this section.

- 1 3. Upon conviction of a second or subsequent offense within ~~five~~ten years under this
2 section or equivalent ordinance, the court ~~must~~shall order the motor vehicle number
3 plates of all of the motor vehicles owned and operated by the offender at the time of
4 the offense to be impounded for the duration of the period of suspension or revocation
5 of the offender's driving privilege by the licensing authority. The impounded number
6 plates must be sent to the director who must retain them for the period of suspension
7 or revocation, subject to their disposition by the court. The court may make an
8 exception to this subsection, on an individual basis, to avoid undue hardship to an
9 individual who is completely dependent on the motor vehicle for the necessities of life,
10 including a family member of the convicted individual and a coowner of the motor
11 vehicle, ~~but not including~~or if the offender is participating in the twenty-four seven
12 sobriety program.
- 13 4. A person convicted of violating this section, or an equivalent ordinance, must be
14 sentenced in accordance with this subsection. For purposes of this subsection, unless
15 the context otherwise requires, "drug court program" means a district court-supervised
16 treatment program approved by the supreme court which combines judicial
17 supervision with alcohol and drug testing and chemical addiction treatment in a
18 licensed treatment program. The supreme court may adopt rules, including rules of
19 procedure, for drug courts and the drug court program.
- 20 a. For a first offense, the sentence must include ~~both~~at least ten days'
21 imprisonment, of which forty-eight hours must be served consecutively; a fine of
22 at least ~~two~~seven hundred fifty dollars ~~and;~~ an order for addiction evaluation by
23 an appropriate licensed addiction treatment program; at least six months'
24 probation; and participation in the twenty-four seven sobriety program under
25 chapter 54-12 as a mandatory condition of probation.
- 26 b. For a second offense within ~~five~~ten years, the sentence must include at least
27 ~~five~~sixty days' imprisonment ~~or placement in a minimum security facility,~~ of which
28 forty-eight hours must be served consecutively, ~~or thirty days' community service;~~
29 a fine of at least one thousand five hundred dollars; ~~and~~ an order for addiction
30 evaluation by an appropriate licensed addiction treatment program; and at least

- 1 twelve months' probation; and participation in the twenty-four seven sobriety
2 program under chapter 54-12 as a mandatory condition of probation.
- 3 c. For a third offense within ~~five~~ten years, the sentence must include at least
4 ~~sixtyone year and one days'~~ imprisonment ~~or placement in a minimum security-~~
5 ~~facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~at
6 least two thousand dollars; ~~and~~ an order for addiction evaluation by an
7 appropriate licensed addiction treatment program; and at least twelve months'
8 probation; and participation in the twenty-four seven sobriety program under
9 chapter 54-12 as a mandatory condition of probation.
- 10 d. For a fourth or subsequent offense ~~within seven years,~~ the sentence must include
11 at least one hundred eightyyear and one days' imprisonment ~~or placement in a~~
12 ~~minimum security facility, of which forty-eight hours must be served~~
13 ~~consecutively;~~ a fine of one thousand dollars; ~~and~~ an order for addiction
14 evaluation by an appropriate licensed treatment program; at least two years'
15 probation; and participation in the twenty-four seven sobriety program under
16 chapter 54-12 as a mandatory condition of probation.
- 17 e. The ~~execution or~~ imposition of sentence under this section may not be
18 ~~suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an~~
19 offense subject to this section.
- 20 f. If the offense is subject to subdivision a or b of this subsection, a municipal court
21 or district court may suspend a sentence, except for four days' imprisonment,
22 under subsection 3 of section 12.1-32-02 on the condition that the defendant first
23 undergo and complete an evaluation for alcohol and substance abuse treatment
24 and rehabilitation. If the offense is subject to subdivision e ~~or d~~b of this
25 subsection, the district court may suspend a sentence, except for ten days'
26 imprisonment, under subsection 3 ~~or 4~~ of section 12.1-32-02 on the condition that
27 the defendant first undergo and complete an evaluation for alcohol and
28 substance abuse treatment and rehabilitation. If the offense is subject to
29 subdivision c of this subsection, the district court may suspend a sentence,
30 except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on
31 the condition that the defendant first undergo and complete an evaluation for

1 alcohol and substance abuse treatment and rehabilitation. If the offense is
2 subject to subdivision d of this subsection, the district court may suspend a
3 sentence, except for one year's imprisonment, under subsection 3 of section
4 12.1-32-02 on the condition that the defendant first undergo and complete an
5 evaluation for alcohol and substance abuse treatment and rehabilitation. If the
6 defendant is found to be in need of alcohol and substance abuse treatment and
7 rehabilitation, the district court may order the defendant placed under the
8 supervision and management of the department of corrections and rehabilitation
9 and is subject to the conditions of probation under section 12.1-32-07. The district
10 court shall require the defendant to complete alcohol and substance abuse
11 treatment and rehabilitation under the direction of the drug court program as a
12 condition of probation in accordance with rules adopted by the supreme court. If
13 the district court finds that a defendant has failed to undergo an evaluation or
14 complete treatment or has violated any condition of probation, the district court
15 shall revoke the defendant's probation and shall sentence the defendant in
16 accordance with this subsection.

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

21 h. An individual who operates a motor vehicle on a highway or on public or private
22 areas to which the public has a right of access for vehicular use in this state who
23 refuses to submit to a chemical test, or tests required under sections
24 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

25 g-i. If the penalty mandated by this section includes imprisonment or placement upon
26 conviction of a violation of this section or equivalent ordinance, and if an
27 addiction evaluation has indicated that the defendant needs treatment, the court
28 may order the defendant to undergo treatment at an appropriate licensed
29 addiction treatment program and the time spent by the defendant in the treatment
30 must be credited as a portion of a sentence of imprisonment or placement under
31 this section.

- 1 5. As used in subdivision b of subsection 4, the term "imprisonment" ~~includes~~may include
2 house arrest. As a condition of house arrest, a defendant may not consume alcoholic
3 beverages. The house arrest must include a program of electronic home detention in-
4 which~~and the defendant is tested at least twice daily for the consumption of~~
5 ~~alcohol~~shall participate in the twenty-four seven sobriety program as a condition of
6 house arrest. The defendant shall ~~defray~~pay all costs associated with the electronic
7 home detention and participation in the twenty-four seven sobriety program. This-
8 subsection ~~does not apply to individuals committed to or under the supervision and~~
9 ~~management of the department of corrections and rehabilitation.~~
10 6. As used in this title, participation in the twenty-four seven sobriety program under
11 chapter 12-54 means compliance with sections 54-12-27 through 54-12-31, and
12 requires sobriety breath testing twice per day seven days per week or electronic
13 alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for
14 all twenty-four seven sobriety program fees and the court may not waive the fees.

15 **SECTION 6. AMENDMENT.** Section 39-08-01.2 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **39-08-01.2. Special punishment for causing injury or death while operating a vehicle**
18 **while under the influence of alcohol.**

- 19 1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is
20 based in part on the evidence of the individual's operation of a motor vehicle while
21 under the influence of alcohol or drugs, the sentence imposed must include at least
22 ~~one year's~~two years' imprisonment if the individual was an adult at the time of the
23 offense.
24 2. If an individual is convicted of a first offense violating section 39-08-01, or section
25 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle
26 while under the influence of alcohol or drugs, and the violation caused serious bodily
27 injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of
28 a class A misdemeanor and the sentence must include at least ninety days'
29 imprisonment if the individual was an adult at the time of the offense.
30 3. If an individual is convicted of a second or subsequent offense in ten years of violating
31 section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's

1 operation of a motor vehicle while under the influence of alcohol or drugs, and the
2 violation caused serious bodily injury, as defined in section 12.1-01-04, to another
3 individual, that individual is guilty of a class C felony and the sentence must include at
4 least one year and one day's imprisonment if the individual was an adult at the time of
5 the offense.

6 4. The imposition of sentence may not be deferred under subsection 4 of section
7 12.1-32-02 for an offense subject to this section.

8 5. ~~The sentence under this section may not be suspended unless the court finds that~~
9 ~~manifest injustice would result from imposition of the sentence, except for ninety days~~
10 ~~for a first offense, and one year for a second or subsequent offense in ten years. The~~
11 ~~court shall impose not less than one year of supervised probation and shall require~~
12 ~~participation in the twenty-four seven sobriety program for at least twelve months as a~~
13 ~~mandatory condition of probation.~~ Before a sentence under this section applies, a
14 defendant must be notified of the minimum mandatory sentence. If the finding of guilt
15 is by jury verdict, the verdict form must indicate that the jury found the elements that
16 create the minimum sentence.

17 6. An individual who is convicted under this section shall serve the sentence imposed by
18 the court without benefit of parole.

19 **SECTION 7. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

22 1. Any individual who operates a motor vehicle on a highway or on public or private
23 areas to which the public has a right of access for vehicular use in this state is deemed
24 to have given consent, ~~and shall consent,~~ subject to the provisions of this chapter, to a
25 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the
26 alcohol concentration or presence of other drugs, or combination thereof, in the
27 individual's blood, breath, or urine. As used in this chapter, the word "drug" means any
28 drug or substance or combination of drugs or substances which renders an individual
29 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean
30 any test to determine the alcohol concentration or presence of other drugs, or

1 combination thereof, in the individual's blood, breath, or urine, approved by the
2 director of the state crime laboratory or the director's designee under this chapter.

3 2. The test or tests must be administered at the direction of a law enforcement officer
4 only after placing the individual, except individuals mentioned in section 39-20-03,
5 under arrest and informing that individual that the individual is or will be charged with
6 the offense of driving or being in actual physical control of a vehicle upon the public
7 highways while under the influence of intoxicating liquor, drugs, or a combination
8 thereof. For the purposes of this chapter, the taking into custody of a child under
9 section 27-20-13 or an individual under twenty-one years of age satisfies the
10 requirement of an arrest.

11 3. The law enforcement officer also shall ~~also~~ inform the individual charged that North
12 Dakota law requires the individual to take the test to determine whether the individual
13 is under the influence of alcohol, drugs, or a combination of alcohol and drugs, that
14 refusal to take the test directed by the law enforcement officer is a crime, and that
15 refusal of the individual to submit to the test ~~determined appropriate will~~ directed by the
16 law enforcement officer may result in a revocation for up to four years of the
17 individual's driving privileges. The law enforcement officer shall determine which of the
18 tests is to be used.

19 4. When an individual under the age of eighteen years is taken into custody for violating
20 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt
21 to contact the individual's parent or legal guardian to explain the cause for the custody.
22 Neither the law enforcement officer's efforts to contact, nor any consultation with, a
23 parent or legal guardian may be permitted to interfere with the administration of
24 chemical testing requirements under this chapter. The law enforcement officer shall
25 mail a notice to the parent or legal guardian of the minor within ten days after the test
26 results are received or within ten days after the minor is taken into custody if the minor
27 refuses to submit to testing. The notice must contain a statement of the test performed
28 and the results of that test; or if the minor refuses to submit to the testing, a statement
29 notifying of that fact. The attempt to contact or the contacting or notification of a parent
30 or legal guardian is not a precondition to the admissibility of chemical test results or
31 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

1 **SECTION 8. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-20-03.1. Action following test result for a resident operator.**

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

- 10 1. The law enforcement officer shall immediately issue to that person a temporary
11 operator's permit if the person then has valid operating privileges, extending driving
12 privileges for the next twenty-five days, or until earlier terminated by the decision of a
13 hearing officer under section 39-20-05, or unless terminated by participation in the
14 twenty-four seven sobriety program as provided under subsection 5 of this section.
15 The law enforcement officer shall sign and note the date on the temporary operator's
16 permit. The temporary operator's permit serves as the director's official notification to
17 the person of the director's intent to revoke, suspend, or deny driving privileges in this
18 state.
- 19 2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by
20 drawing blood as provided in section 39-20-02 and the individual tested is not a
21 resident of an area in which the law enforcement officer has jurisdiction, the law
22 enforcement officer shall, on receiving the analysis of the urine or blood from the
23 director of the state crime laboratory or the director's designee and if the analysis
24 shows that individual had an alcohol concentration of at least eight one-hundredths of
25 one percent by weight or, with respect to an individual under twenty-one years of age,
26 an alcohol concentration of at least two one-hundredths of one percent by weight,
27 either proceed in accordance with subsection 1 during that individual's reappearance
28 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
29 enforcement agency having jurisdiction where the individual lives. On that notification,
30 that law enforcement agency shall, within twenty-four hours, forward a copy of the
31 temporary operator's permit to the law enforcement agency making the arrest or to the

1 director. The law enforcement agency shall issue to that individual a temporary
2 operator's permit as provided in this section, and shall sign and date the permit as
3 provided in subsection 1.

4 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
5 enforcement agency making the arrest may mail a temporary operator's permit to the
6 individual who submitted to the blood or urine test, whether or not the individual is a
7 resident of the area in which the law enforcement officer has jurisdiction. The third day
8 after the mailing of the temporary operator's permit is considered the date of issuance.
9 Actual notice of the opportunity for a hearing under this section is deemed to have
10 occurred seventy-two hours after the notice is mailed by regular mail to the address
11 submitted by the individual to the law enforcement officer. The temporary operator's
12 permit serves as the director's official notification to the individual of the director's
13 intent to revoke, suspend, or deny driving privileges in this state.

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

29 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
30 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
31 lieu of the administrative hearing under this chapter if the individual's driver's license is

1 not subject to an unrelated suspension or revocation. The director shall issue a
2 temporary restricted driver's license with the restriction the individual participate in the
3 twenty-four seven sobriety program upon application by the individual with submission
4 of proof of financial responsibility and proof of participation in the twenty-four seven
5 sobriety program under chapter 54-12.

6 **SECTION 9. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
9 **testing.**

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

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

- 11 a. One year if the person's driving record shows that within the five~~ten~~ years
12 preceding the most recent violation of this section, the person's operator's license
13 has not previously been suspended, revoked, or issuance denied for a violation
14 of this chapter or section 39-08-01 or equivalent ordinance.
- 15 b. Three years if the person's driving record shows that within the five~~ten~~ years
16 preceding the most recent violation of this section, the person's operator's license
17 has been once previously suspended, revoked, or issuance denied for a violation
18 of this chapter or section 39-08-01 or equivalent ordinance.
- 19 c. Four years if the person's driving record shows that within the five~~ten~~ years
20 preceding the most recent violation of this section, the person's operator's license
21 has at least twice previously been suspended, revoked, or issuance denied under
22 this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any
23 combination of the same, and the suspensions, revocations, or denials resulted
24 from at least two separate arrests.

25 2. A person's driving privileges are not subject to revocation under subdivision a of
26 subsection 1 if all of the following criteria are met:

- 27 a. An administrative hearing is not held under section 39-20-05;
- 28 b. The person mails an affidavit to the director within twenty-five days after the
29 temporary operator's permit is issued. The affidavit must state that the person:

- 1 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent
2 ordinance within twenty-five days after the temporary operator's permit is
3 issued;
- 4 (2) Agrees that the person's driving privileges must be suspended as provided
5 under section 39-06.1-10;
- 6 (3) Acknowledges the right to a section 39-20-05 administrative hearing and
7 section 39-20-06 judicial review and voluntarily and knowingly waives these
8 rights; and
- 9 (4) Agrees that the person's driving privileges must be revoked as provided
10 under this section without an administrative hearing or judicial review, if the
11 person does not plead guilty within twenty-five days after the temporary
12 operator's permit is issued, or the court does not accept the guilty plea, or
13 the guilty plea is withdrawn;
- 14 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance
15 within twenty-five days after the temporary operator's permit is issued;
- 16 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
17 the director within twenty-five days after the temporary operator's permit is
18 issued; and
- 19 e. A copy of the final order or judgment of conviction evidencing the acceptance of
20 the person's guilty plea is received by the director prior to the return or
21 reinstatement of the person's driving privileges; ~~and~~
- 22 f. ~~The person has never been convicted under section 39-08-01 or equivalent~~
23 ~~ordinance.~~
- 24 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to
25 violating section 39-08-01, or equivalent ordinance, to the director within ten days after
26 it is ordered. Upon receipt of the order, the director shall immediately revoke the
27 person's driving privileges as provided under this section without providing an
28 administrative hearing.

29 **SECTION 10. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-20-04.1. Administrative sanction for driving or being in physical control of a**
2 **vehicle while having certain alcohol concentration.**

3 1. After the receipt of the certified report of a law enforcement officer and if no written
4 request for hearing has been received from the arrested person under section
5 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
6 from the hearing confirm that the law enforcement officer had reasonable grounds to
7 arrest the person and test results show that the arrested person was driving or in
8 physical control of a vehicle while having an alcohol concentration of at least eight
9 one-hundredths of one percent by weight or, with respect to a person under
10 twenty-one years of age, an alcohol concentration of at least two one-hundredths of
11 one percent by weight at the time of the performance of a test within two hours after
12 driving or being in physical control of a motor vehicle, the director shall suspend the
13 person's driving privileges as follows:

- 14 a. For ninety-one days if the person's driving record shows that, within the five~~ten~~
15 years preceding the date of the arrest, the person has not previously violated
16 section 39-08-01 or equivalent ordinance or the person's operator's license has
17 not previously been suspended or revoked under this chapter and the violation
18 was for an alcohol concentration of at least eight one-hundredths of one percent
19 by weight or, with respect to a person under twenty-one years of age, an alcohol
20 concentration of at least two one-hundredths of one percent by weight, and under
21 eighteen one-hundredths of one percent by weight.
- 22 b. For one hundred eighty days if the operator's record shows the person has not
23 violated section 39-08-01 or equivalent ordinance within five~~ten~~ years preceding
24 the last violation and the last violation was for an alcohol concentration of at least
25 eighteen one-hundredths of one percent by weight.
- 26 c. For three hundred sixty-five days if the person's driving record shows that, within
27 the five~~ten~~ years preceding the date of the arrest, the person has once previously
28 violated section 39-08-01 or equivalent ordinance or the person's operator's
29 license has once previously been suspended or revoked under this chapter with
30 the last violation or suspension for an alcohol concentration under eighteen
31 one-hundredths of one percent by weight.

1 d. For two years if the person's driving record shows that within the ~~five~~ten years
2 preceding the date of the arrest, the person's operator's license has once been
3 suspended, revoked, or issuance denied under this chapter, or for a violation of
4 section 39-08-01 or equivalent ordinance, with the last violation or suspension for
5 an alcohol concentration of at least eighteen one-hundredths of one percent by
6 weight or if the person's driving record shows that within the five years preceding
7 the date of arrest, the person's operator's license has at least twice previously
8 been suspended, revoked, or issuance denied under this chapter, or for a
9 violation of section 39-08-01 or equivalent ordinance, or any combination thereof,
10 and the suspensions, revocations, or denials resulted from at least two separate
11 arrests with the last violation or suspension for an alcohol concentration of under
12 eighteen one-hundredths of one percent by weight.

13 e. For three years if the operator's record shows that within ~~five~~ten years preceding
14 the date of the arrest, the person's operator's license has at least twice previously
15 been suspended, revoked, or issuance denied under this chapter, or for a
16 violation of section 39-08-01 or equivalent ordinance, or any combination thereof,
17 and the suspensions, revocations, or denials resulted from at least two separate
18 arrests and the last violation or suspension was for an alcohol concentration of at
19 least eighteen one-hundredths of one percent by weight.

20 2. In the suspension of the person's operator's license the director shall give credit for the
21 time the person was without an operator's license after the day of the offense, except
22 that the director may not give credit for the time the person retained driving privileges
23 through a temporary operator's permit issued under section 39-20-03.1 or 39-20-03.2.

24 **SECTION 11. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **39-20-05. Administrative hearing on request - Election to participate in the**
27 **twenty-four seven sobriety program.**

28 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
29 39-20-04.1, the director shall afford that person an opportunity for a hearing if the
30 person mails or communicates by other means authorized by the director a request for
31 the hearing to the director within ten days after the date of issuance of the temporary

1 operator's permit. Before the hearing, an individual may elect to participate in the
2 twenty-four seven sobriety program under chapter 54-12. The hearing must be held
3 within thirty days after the date of issuance of the temporary operator's permit. If no
4 hearing is requested within the time limits in this section, and no affidavit is submitted
5 within the time limits under subsection 2 of section 39-20-04, and if the individual has
6 not provided the director with written notice of election to participate in the twenty-four
7 seven sobriety program under chapter 54-12, the expiration of the temporary
8 operator's permit serves as the director's official notification to the person of the
9 revocation, suspension, or denial of driving privileges in this state.

- 10 2. If the issue to be determined by the hearing concerns license suspension for operating
11 a motor vehicle while having an alcohol concentration of at least eight one-hundredths
12 of one percent by weight or, with respect to an individual under twenty-one years of
13 age, an alcohol concentration of at least two one-hundredths of one percent by weight,
14 the hearing must be before a hearing officer assigned by the director and at a time and
15 place designated by the director. The hearing must be recorded and its scope may
16 cover only the issues of whether the arresting officer had reasonable grounds to
17 believe the individual had been driving or was in actual physical control of a vehicle in
18 violation of section 39-08-01 or equivalent ordinance or, with respect to an individual
19 under twenty-one years of age, the individual had been driving or was in actual
20 physical control of a vehicle while having an alcohol concentration of at least two
21 one-hundredths of one percent by weight; whether the individual was placed under
22 arrest, unless the individual was under twenty-one years of age and the alcohol
23 concentration was less than eight one-hundredths of one percent by weight, then
24 arrest is not required and is not an issue under any provision of this chapter; whether
25 the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if
26 applicable, section 39-20-02; and whether the test results show the individual had an
27 alcohol concentration of at least eight one-hundredths of one percent by weight or,
28 with respect to an individual under twenty-one years of age, an alcohol concentration
29 of at least two one-hundredths of one percent by weight. For purposes of this section,
30 a copy of a certified copy of an analytical report of a blood or urine sample
31 ~~from~~ electronically posted by the director of the state crime laboratory or the director's

1 designee on the crime laboratory information management system and certified by a
2 law enforcement officer or individual who has authorized access to the crime
3 laboratory management system through the criminal justice data information sharing
4 system, or a certified copy of the checklist and test records from a certified breath test
5 operator, and a copy of a certified copy of a certificate of the director of the state crime
6 laboratory designating the director's designee, establish prima facie the alcohol
7 concentration or the presence of drugs, or a combination thereof, shown therein.

8 Whether the individual was informed that the privilege to drive might be suspended
9 based on the results of the test is not an issue.

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

- 29 4. At a hearing under this section, the regularly kept records of the director and state
30 crime laboratory may be introduced. Those records establish prima facie their contents

1 without further foundation. For purposes of this chapter, the following are deemed
2 regularly kept records of the director and state crime laboratory:

- 3 a. Any copy of a certified copy of an analytical report of a blood or urine sample
4 electronically posted by the director of the state crime laboratory or the director's
5 designee on the crime laboratory information management system received by
6 the director from ~~the director of the state crime laboratory or the director's~~
7 ~~designee~~ or a law enforcement officer or individual who has authorized access to
8 the crime laboratory management system through the criminal justice data
9 information sharing system or a certified copy of the checklist and test records
10 received by the director from a certified breath test operator; and
11 b. Any copy of a certified copy of a certificate of the director of the state crime
12 laboratory or the director's designee relating to approved methods, devices,
13 operators, materials, and checklists used for testing for alcohol concentration or
14 the presence of drugs received by the director from the director of the state crime
15 laboratory or the director's designee, or that have been electronically posted with
16 the state crime laboratory division of the attorney general at the attorney general
17 website; and
18 c. Any copy of a certified copy of a certificate of the director of the state crime
19 laboratory designating the director's designees.

- 20 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
21 officer's findings of fact, conclusions of law, and decision based on the findings and
22 conclusions and shall immediately deliver to the person a copy of the decision. If the
23 hearing officer does not find in favor of the person, the copy of the decision serves as
24 the director's official notification to the person of the revocation, suspension, or denial
25 of driving privileges in this state. If the hearing officer finds, based on a preponderance
26 of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or
27 that the person had an alcohol concentration of at least eight one-hundredths of one
28 percent by weight or, with respect to a person under twenty-one years of age, an
29 alcohol concentration of at least two one-hundredths of one percent by weight, the
30 hearing officer shall immediately take possession of the person's temporary operator's
31 permit issued under this chapter. If the hearing officer does not find against the

1 person, the hearing officer shall sign, date, and mark on the person's permit an
2 extension of driving privileges for the next twenty days and shall return the permit to
3 the person. The hearing officer shall report the findings, conclusions, and decisions to
4 the director within ten days of the conclusion of the hearing. If the hearing officer has
5 determined in favor of the person, the director shall return the person's operator's
6 license by regular mail to the address on file with the director under section 39-06-20.

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

19 7. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
20 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
21 lieu of the administrative hearing under this chapter if the individual's driver's license is
22 not subject to an unrelated suspension or revocation. The director shall issue a
23 temporary restricted driver's license with the restriction the individual participate in the
24 twenty-four seven program upon application by the individual with submission of proof
25 of financial responsibility and proof of participation in the twenty-four seven sobriety
26 program.

27 **SECTION 12. AMENDMENT.** Subsection 6 of section 39-20-07 of the North Dakota
28 Century Code is amended and reenacted as follows:

29 6. The director of the state crime laboratory or the director's designee may appoint, train,
30 certify, and supervise field inspectors of breath testing equipment and its operation,
31 and the inspectors shall report the findings of any inspection to the director of the state

1 crime laboratory or the director's designee for appropriate action. Upon approval of the
2 methods or devices, or both, required to perform the tests and the individuals qualified
3 to administer them, the director of the state crime laboratory or the director's designee
4 shall prepare, certify, and electronically post a written record of the approval with the
5 state crime laboratory division of the attorney general at the attorney general website,
6 and shall include in the record:

- 7 a. An annual register of the specific testing devices currently approved, including
8 serial number, location, and the date and results of last inspection.
- 9 b. An annual register of currently qualified and certified operators of the devices,
10 stating the date of certification and its expiration.
- 11 c. The operational checklist and forms prescribing the methods currently approved
12 by the director of the state crime laboratory or the director's designee in using the
13 devices during the administration of the tests.
- 14 d. The certificate of the director of the state crime laboratory designating the
15 director's designees.
- 16 e. The certified records electronically posted under this section may be
17 supplemented when the director of the state crime laboratory or the director's
18 designee determines it to be necessary, and any certified supplemental records
19 have the same force and effect as the records that are supplemented.
- 20 e-f. The state crime laboratory shall make the certified records required by this
21 section available for download in a printable format on the attorney general
22 website.

23 **SECTION 13. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **39-20-14. Screening tests.**

- 26 1. Any individual who operates a motor vehicle upon the public highways of this state is
27 deemed to have given consent to submit to an onsite screening test or tests of the
28 individual's breath for the purpose of estimating the alcohol concentration in the
29 individual's breath upon the request of a law enforcement officer who has reason to
30 believe that the individual committed a moving traffic violation or was involved in a
31 traffic accident as a driver, and in conjunction with the violation or the accident the

1 officer has, through the officer's observations, formulated an opinion that the
2 individual's body contains alcohol.

3 2. An individual may not be required to submit to a screening test or tests of breath while
4 at a hospital as a patient if the medical practitioner in immediate charge of the
5 individual's case is not first notified of the proposal to make the requirement, or objects
6 to the test or tests on the ground that such would be prejudicial to the proper care or
7 treatment of the patient.

8 3. The screening test or tests must be performed by an enforcement officer certified as a
9 chemical test operator by the director of the state crime laboratory or the director's
10 designee and according to methods and with devices approved by the director of the
11 state crime laboratory or the director's designee. The results of such screening test
12 must be used only for determining whether or not a further test shall be given under
13 the provisions of section 39-20-01. The officer shall inform the individual that North
14 Dakota law requires the individual to take the screening test to determine whether the
15 individual is under the influence of alcohol, that refusal to take the screening test is a
16 crime, and that refusal of the individual to submit to a screening test ~~will~~may result in a
17 revocation for up to four years of that individual's driving privileges. If such individual
18 refuses to submit to such screening test or tests, none may be given, but such refusal
19 is sufficient cause to revoke such individual's license or permit to drive in the same
20 manner as provided in section 39-20-04, and a hearing as provided in section
21 39-20-05 and a judicial review as provided in section 39-20-06 must be available.

22 ~~However, the~~

23 4. The director must not revoke an individual's driving privileges for refusing to submit to
24 a screening test requested under this section if the individual provides a sufficient
25 breath, blood, or urine sample for a chemical test requested under section 39-20-01
26 for the same incident.

27 5. No provisions of this section may supersede any provisions of chapter 39-20, nor may
28 any provision of chapter 39-20 be construed to supersede this section except as
29 provided herein.

1 6. For the purposes of this section, "chemical test operator" means an individual certified
2 by the director of the state crime laboratory or the director's designee as qualified to
3 perform analysis for alcohol in an individual's blood, breath, or urine.

4 **SECTION 14. EFFECTIVE DATE.** This Act becomes effective May 1, 2013.

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