

Sixty-third
Legislative Assembly
of North Dakota

REENGROSSED 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 for a legislative management study; to~~
 7 ~~provide a penalty; to provide an effective date; and to declare an emergency.~~ for an Act to create
 8 and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section
 9 to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety
 10 program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section
 11 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-08-01.4, 39-20-01, 39-20-03.1,
 12 39-20-04, 39-20-04.1, and 39-20-05, subsections 6 and 10 of section 39-20-07, and section
 13 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to
 14 provide for an underage drinking prevention program; to provide for a legislative management
 15 study; to provide a penalty; and to provide an appropriation.

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

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

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

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

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

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

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

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

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

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

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

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

30 — ~~f.~~ Three years if the operator's record shows the person has at least twice violated
31 section 39-08-01 or equivalent ordinance within the ~~five~~ten years preceding the

1 last violation and the violation is for an alcohol concentration of at least eighteen
2 one-hundredths of one percent by weight.

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

6 ~~SECTION 4. AMENDMENT.~~ Section 39-06.1-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 ~~39-06.1-11. Temporary restricted license -- Ignition interlock device.~~

9 ~~1. Except as provided under subsection 2, if the director has suspended a license under~~
10 ~~section 39-06.1-10 or has extended a suspension or revocation under section~~
11 ~~39-06-43, upon receiving written application from the offender affected, the director~~
12 ~~may for good cause issue a temporary restricted operator's license valid for the~~
13 ~~remainder of the suspension period after seven days of the suspension period have~~
14 ~~passed.~~

15 ~~2. If the director has suspended a license under chapter 39-20, or after a violation of~~
16 ~~section 39-08-01 or equivalent ordinance, upon written application of the offender the~~
17 ~~director may issue for good cause a temporary restricted license that takes effect after~~
18 ~~thirty days of the suspension have been served after a first offense under section~~
19 ~~39-08-01 or chapter 39-20, but if the offender is participating in the twenty four seven~~
20 ~~sobriety program under chapter 54-12, the director may issue a temporary restricted~~
21 ~~license that takes effect after fifteen days of the suspension have been served. The~~
22 ~~director may not issue a temporary restricted license to any offender whose operator's~~
23 ~~license has been revoked under section 39-20-04 or suspended upon a second or~~
24 ~~subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary~~
25 ~~restricted license may be issued in accordance with subsection 5 of this section if the~~
26 ~~offender is participating in the twenty four seven sobriety program under chapter~~
27 ~~54-12, or for good cause if the offender has not committed an offense for a period of~~
28 ~~two years before the date of the filing of a written application that must be~~
29 ~~accompanied by a report from an appropriate licensed addiction treatment program or~~
30 ~~if the offender is participating in the drug court program and has not committed an~~
31 ~~offense for a period of three hundred sixty five days before the date of the filing of a~~

1 written application that must be accompanied by a recommendation from the district
2 court. The director may conduct a hearing for the purposes of obtaining information,
3 reports, and evaluations from courts, law enforcement, and citizens to determine the
4 offender's conduct and driving behavior during the prerequisite period of time. The
5 director may also require that an ignition interlock device be installed in the offender's
6 vehicle.

7 ~~3. The director may not issue a temporary restricted license for a period of license
8 revocation or suspension imposed under subsection 5 of section 39-06-17 or section
9 39-06-31. A temporary restricted license may be issued for suspensions ordered under
10 subsection 7 of section 39-06-32 if it could have been issued had the suspension
11 resulted from in-state conduct.~~

12 ~~4. A restricted license issued under this section is solely for the use of a motor vehicle
13 during the licensee's normal working hours, or as provided under subsection 5 of this
14 section, and may contain any other restrictions authorized by section 39-06-17.
15 Violation of a restriction imposed according to this section is deemed a violation of
16 section 39-06-17.~~

17 ~~5. If an offender has been charged with, or convicted of, a second or subsequent
18 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
19 subject to suspension under chapter 39-20 and the offender's driver's license is not
20 subject to an unrelated suspension or revocation, the director shall issue a temporary
21 restricted driver's permit license to the offender only for the purpose of
22 participation upon the restriction the offender participate in the twenty-four seven
23 sobriety program upon under chapter 54-12. The offender shall submit an application
24 to the director for a temporary restricted license along with submission of proof of
25 financial responsibility and proof of participation in the twenty-four seven sobriety
26 program by the offender, in order to receive a temporary restricted license. If a court or
27 the parole board finds that an offender has violated a condition of the twenty-four
28 seven sobriety program, the court or parole board may order the temporary restricted
29 driver's permit be revoked and take possession of the temporary restricted driver's
30 permit. The court or the parole board shall send a copy of the order to the director who
31 shall record the revocation of the temporary restricted driver's permit. Revocation of a~~

1 temporary restricted driver's permit for violation of a condition of the twenty-four seven-
2 sobriety program does not preclude the offender's eligibility for a temporary restricted-
3 driver's license under any other provisions of this section.

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

6 ~~39-08-01. Persons under the influence of intoxicating liquor or any other drugs or~~
7 ~~substances not to operate vehicle -- Penalty.~~

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

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

14 ~~b. That person is under the influence of intoxicating liquor.~~

15 ~~c. That person is under the influence of any drug or substance or combination of~~
16 ~~drugs or substances to a degree which renders that person incapable of safely~~
17 ~~driving.~~

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

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

25 ~~2. Unless as otherwise provided in section 39-08-01.2, an individual violating this section~~
26 ~~or equivalent ordinance is guilty of a class B misdemeanor for the first or second~~
27 ~~offense in a five-year period, of a class A misdemeanor for a third~~second~~ offense in a~~
28 ~~five-year~~ten-year~~ period, of a class A misdemeanor for the fourth offense in a~~
29 ~~seven-year period, and of a class C felony for a fifth or subsequent~~third~~ offense in a~~
30 ~~seven-year~~ten-year~~ period, and a class C felony for any fourth or subsequent offense,~~
31 ~~regardless how long it has been since the previous offense. The minimum penalty for~~

1 violating this section is as provided in subsection 4. The court shall take judicial notice
2 of the fact that an offense would be a subsequent offense if indicated by the records of
3 the director or may make a subsequent offense finding based on other evidence. If an
4 individual has spent time in custody for any offense, the time spent in custody may not
5 be included as part of any period of time under this section.

6 ~~3.~~ Upon conviction of a second or subsequent offense within ~~five~~^{ten} years under this
7 section or equivalent ordinance, the court must~~shall~~ order the motor vehicle number
8 plates of all of the motor vehicles owned and operated by the offender at the time of
9 the offense to be impounded for the duration of the period of suspension or revocation
10 of the offender's driving privilege by the licensing authority. The impounded number
11 plates must be sent to the director who must retain them for the period of suspension
12 or revocation, subject to their disposition by the court. The court may make an
13 exception to this subsection, on an individual basis, to avoid undue hardship to an
14 individual who is completely dependent on the motor vehicle for the necessities of life,
15 including a family member of the convicted individual and a coowner of the motor
16 vehicle, but not including or if the offender is participating in the twenty four seven
17 sobriety program.

18 ~~4.~~ A person convicted of violating this section, or an equivalent ordinance, must be
19 sentenced in accordance with this subsection. For purposes of this subsection, unless
20 the context otherwise requires, "drug court program" means a district court supervised
21 treatment program approved by the supreme court which combines judicial
22 supervision with alcohol and drug testing and chemical addiction treatment in a
23 licensed treatment program. The supreme court may adopt rules, including rules of
24 procedure, for drug courts and the drug court program.

25 ~~a.~~ For a first offense, if the alcohol concentration is at least eight hundredths of one
26 percent by weight but less than twenty one hundredths of one percent by weight,
27 the sentence must include a fine of at least five hundred dollars and an order for
28 an addiction evaluation by an appropriate licensed addiction treatment program.
29 If the alcohol concentration is at least twenty one hundredths of one percent by
30 weight, or if the individual refused to submit to a chemical test, or a test required
31 under section 39-06.2-10.2, 39-20-01, or 39-20-14, the sentence must include

~~both at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of at least two seven hundred fifty dollars and; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least six months' probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~

~~b. For a second offense within five ten years, the sentence must include at least five sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least one thousand five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~

~~c. For a third offense within five ten years, the sentence must include at least sixty one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one at least two thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~

~~d. For a fourth or subsequent offense within seven years, the sentence must include at least one hundred eighty days' year and one day's imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one at least three thousand dollars; and an order for addiction evaluation by an appropriate licensed treatment program; at least two years' probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~

~~e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to this section.~~

~~f. If the offense is subject to subdivision a or b, a municipal court or district court may suspend a sentence under subsection 3 of section 12.1-32-02 if the alcohol~~

1 ~~concentration is at least eight hundredths of one percent by weight but less than~~
2 ~~twenty-one hundredths of one percent by weight. If the alcohol concentration is at~~
3 ~~least twenty-one hundredths of one percent by weight, or if the individual refused~~
4 ~~to submit to a chemical test, or a test required under section 39-06.2-10.2,~~
5 ~~39-20-01, or 39-20-14, a municipal court or district court may suspend a~~
6 ~~sentence, except for one day's imprisonment on a day the defendant is not~~
7 ~~scheduled for employment, under subsection 3 of section 12.1-32-02 on the~~
8 ~~condition that the defendant first undergo and complete an evaluation for alcohol~~
9 ~~and substance abuse treatment and rehabilitation. If the offense is subject to~~
10 ~~subdivision c or db of this subsection, the district court may suspend a sentence,~~
11 ~~except for ten days' imprisonment, under subsection 3 or 4 of section 12.1-32-02~~
12 ~~on the condition that the defendant first undergo and complete an evaluation for~~
13 ~~alcohol and substance abuse treatment and rehabilitation. If the offense is~~
14 ~~subject to subdivision c of this subsection, the district court may suspend a~~
15 ~~sentence, except for sixty days' imprisonment, under subsection 3 of section~~
16 ~~12.1-32-02 on the condition that the defendant first undergo and complete an~~
17 ~~evaluation for alcohol and substance abuse treatment and rehabilitation. If the~~
18 ~~offense is subject to subdivision d of this subsection, the district court may~~
19 ~~suspend a sentence, except for one year's imprisonment, under subsection 3 of~~
20 ~~section 12.1-32-02 on the condition that the defendant first undergo and~~
21 ~~complete an evaluation for alcohol and substance abuse treatment and~~
22 ~~rehabilitation. If the defendant is found to be in need of alcohol and substance~~
23 ~~abuse treatment and rehabilitation, the district court may order the defendant~~
24 ~~placed under the supervision and management of the department of corrections~~
25 ~~and rehabilitation and is subject to the conditions of probation under section~~
26 ~~12.1-32-07. The district court shall require the defendant to complete alcohol and~~
27 ~~substance abuse treatment and rehabilitation under the direction of the drug~~
28 ~~court program as a condition of probation in accordance with rules adopted by~~
29 ~~the supreme court. If the district court finds that a defendant has failed to undergo~~
30 ~~an evaluation or complete treatment or has violated any condition of probation,~~

1 the district court shall revoke the defendant's probation and shall sentence the
2 defendant in accordance with this subsection.

3 ~~f.g. If the court sentences an individual to the legal and physical custody of the~~
4 ~~department of corrections and rehabilitation, the department may place the~~
5 ~~defendant in an alcohol treatment program designated by the department. Upon~~
6 ~~the individual's successful completion of the alcohol treatment program, the~~
7 ~~department shall release the individual from imprisonment to serve the remainder~~
8 ~~of the sentence of imprisonment on probation, which may include placement in~~
9 ~~another facility or treatment program. If an individual is placed in another facility~~
10 ~~or treatment program after release from imprisonment, the remainder of the~~
11 ~~individual's sentence of imprisonment must be considered time spent in custody.~~
12 ~~A court may not order the department to be responsible for the costs of treatment~~
13 ~~in a private treatment facility.~~

14 ~~h. For purposes of this section, conviction of an offense under a law or ordinance of~~
15 ~~another state which is equivalent to this section must be considered a prior~~
16 ~~offense if such offense was committed within the time limitations specified in this~~
17 ~~subsectionsection.~~

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

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

29 ~~5. As used in subdivision b of subsection 4, the term "imprisonment" includes~~
30 ~~house arrest. As a condition of house arrest, a defendant may not consume alcoholic~~
31 ~~beverages. The house arrest must include a program of electronic home detention in~~

1 ~~which and the defendant is tested at least twice daily for the consumption of~~
2 ~~alcohol shall participate in the twenty-four seven sobriety program as a condition of~~
3 ~~house arrest. The defendant shall defray pay all costs associated with the electronic~~
4 ~~home detention and participation in the twenty-four seven sobriety program. This~~
5 ~~subsection does not apply to individuals committed to or under the supervision and~~
6 ~~management of the department of corrections and rehabilitation.~~

7 ~~6. As used in this title, participation in the twenty-four seven sobriety program under~~
8 ~~chapter 12-54 means compliance with sections 54-12-27 through 54-12-31, and~~
9 ~~requires sobriety breath testing twice per day seven days per week or electronic~~
10 ~~alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for~~
11 ~~all twenty-four seven sobriety program fees and the court may not waive the fees.~~

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

14 ~~**39-08-01.2. Special punishment for causing injury or death while operating a vehicle**~~
15 ~~**while under the influence of alcohol.**~~

16 ~~1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is~~
17 ~~based in part on the evidence of the individual's operation of a motor vehicle while~~
18 ~~under the influence of alcohol or drugs, the sentence imposed must include at least~~
19 ~~one year's two years' imprisonment if the individual was an adult at the time of the~~
20 ~~offense.~~

21 ~~2. If an individual is convicted of a first offense violating section 39-08-01, or section~~
22 ~~39-08-03 based in part on the evidence of the individual's operation of a motor vehicle~~
23 ~~while under the influence of alcohol or drugs, and the violation caused serious bodily~~
24 ~~injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of~~
25 ~~a class A misdemeanor and the sentence must include at least ninety days'~~
26 ~~imprisonment if the individual was an adult at the time of the offense.~~

27 ~~3. If an individual is convicted of a second or subsequent offense in ten years of violating~~
28 ~~section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's~~
29 ~~operation of a motor vehicle while under the influence of alcohol or drugs, and the~~
30 ~~violation caused serious bodily injury, as defined in section 12.1-01-04, to another~~
31 ~~individual, that individual is guilty of a class C felony and the sentence must include at~~

1 ~~least one year and one day's imprisonment if the individual was an adult at the time of~~
2 ~~the offense.~~

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

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

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

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

18 ~~**39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**~~

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

30 ~~2. The test or tests must be administered at the direction of a law enforcement officer~~
31 ~~only after placing the individual, except individuals mentioned in section 39-20-03,~~

1 under arrest and informing that individual that the individual is or will be charged with
2 the offense of driving or being in actual physical control of a vehicle upon the public
3 highways while under the influence of intoxicating liquor, drugs, or a combination
4 thereof. For the purposes of this chapter, the taking into custody of a child under
5 section 27-20-13 or an individual under twenty-one years of age satisfies the
6 requirement of an arrest.

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

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

28 ~~SECTION 8. AMENDMENT.~~ Section 39-20-03.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 ~~— **39-20-03.1. Action following test result for a resident operator.**~~

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

8 ~~— 1.— The law enforcement officer shall immediately issue to that person a temporary-~~
9 ~~operator's permit if the person then has valid operating privileges, extending driving~~
10 ~~privileges for the next twenty-five days, or until earlier terminated by the decision of a~~
11 ~~hearing officer under section 39-20-05, or unless terminated by participation in the~~
12 ~~twenty-four seven sobriety program as provided under subsection 5 of this section.—~~

13 ~~The law enforcement officer shall sign and note the date on the temporary operator's~~
14 ~~permit. The temporary operator's permit serves as the director's official notification to~~
15 ~~the person of the director's intent to revoke, suspend, or deny driving privileges in this~~
16 ~~state.—~~

17 ~~— 2.— If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by~~
18 ~~drawing blood as provided in section 39-20-02 and the individual tested is not a~~
19 ~~resident of an area in which the law enforcement officer has jurisdiction, the law~~
20 ~~enforcement officer shall, on receiving the analysis of the urine or blood from the~~
21 ~~director of the state crime laboratory or the director's designee and if the analysis~~
22 ~~shows that individual had an alcohol concentration of at least eight one-hundredths of~~
23 ~~one percent by weight or, with respect to an individual under twenty-one years of age,~~
24 ~~an alcohol concentration of at least two one-hundredths of one percent by weight,~~
25 ~~either proceed in accordance with subsection 1 during that individual's reappearance~~
26 ~~within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law~~
27 ~~enforcement agency having jurisdiction where the individual lives. On that notification,~~
28 ~~that law enforcement agency shall, within twenty-four hours, forward a copy of the~~
29 ~~temporary operator's permit to the law enforcement agency making the arrest or to the~~
30 ~~director. The law enforcement agency shall issue to that individual a temporary-~~

1 operator's permit as provided in this section, and shall sign and date the permit as
2 provided in subsection 1.

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

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

28 ~~5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may~~
29 ~~elect to participate in the twenty-four seven sobriety program under chapter 54-12 in~~
30 ~~lieu of the administrative hearing under this chapter if the individual's driver's license is~~
31 ~~not subject to an unrelated suspension or revocation. The director shall issue a~~

~~temporary restricted driver's license with the restriction the individual participate in the
twenty-four seven sobriety program upon application by the individual with submission
of proof of financial responsibility and proof of participation in the twenty-four seven
sobriety program under chapter 54-12.~~

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

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

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

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

10 ~~a. One year if the person's driving record shows that within the fiveten years~~
11 ~~preceding the most recent violation of this section, the person's operator's license~~
12 ~~has not previously been suspended, revoked, or issuance denied for a violation~~
13 ~~of this chapter or section 39-08-01 or equivalent ordinance.~~

14 ~~b. Three years if the person's driving record shows that within the fiveten years~~
15 ~~preceding the most recent violation of this section, the person's operator's license~~
16 ~~has been once previously suspended, revoked, or issuance denied for a violation~~
17 ~~of this chapter or section 39-08-01 or equivalent ordinance.~~

18 ~~c. Four years if the person's driving record shows that within the fiveten years~~
19 ~~preceding the most recent violation of this section, the person's operator's license~~
20 ~~has at least twice previously been suspended, revoked, or issuance denied under~~
21 ~~this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any~~
22 ~~combination of the same, and the suspensions, revocations, or denials resulted~~
23 ~~from at least two separate arrests.~~

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

26 ~~a. An administrative hearing is not held under section 39-20-05;~~

27 ~~b. The person mails an affidavit to the director within twenty five days after the~~
28 ~~temporary operator's permit is issued. The affidavit must state that the person:~~

29 ~~(1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent~~
30 ~~ordinance within twenty five days after the temporary operator's permit is~~
31 ~~issued;~~

1 ~~————— (2) — Agrees that the person's driving privileges must be suspended as provided~~
2 ~~under section 39-06.1-10;~~

3 ~~————— (3) — Acknowledges the right to a section 39-20-05 administrative hearing and~~
4 ~~section 39-20-06 judicial review and voluntarily and knowingly waives these~~
5 ~~rights; and~~

6 ~~————— (4) — Agrees that the person's driving privileges must be revoked as provided~~
7 ~~under this section without an administrative hearing or judicial review, if the~~
8 ~~person does not plead guilty within twenty-five days after the temporary~~
9 ~~operator's permit is issued, or the court does not accept the guilty plea, or~~
10 ~~the guilty plea is withdrawn;~~

11 ~~————— c. — The person pleads guilty to violating section 39-08-01 or equivalent ordinance~~
12 ~~within twenty-five days after the temporary operator's permit is issued;~~

13 ~~————— d. — The court accepts the person's guilty plea and a notice of that fact is mailed to~~
14 ~~the director within twenty-five days after the temporary operator's permit is~~
15 ~~issued; and~~

16 ~~————— e. — A copy of the final order or judgment of conviction evidencing the acceptance of~~
17 ~~the person's guilty plea is received by the director prior to the return or~~
18 ~~reinstatement of the person's driving privileges; and~~

19 ~~————— f. — The person has never been convicted under section 39-08-01 or equivalent~~
20 ~~ordinance.~~

21 ~~————— 3. — The court must mail a copy of an order granting a withdrawal of a guilty plea to~~
22 ~~violating section 39-08-01, or equivalent ordinance, to the director within ten days after~~
23 ~~it is ordered. Upon receipt of the order, the director shall immediately revoke the~~
24 ~~person's driving privileges as provided under this section without providing an~~
25 ~~administrative hearing.~~

26 ~~———— **SECTION 10. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is~~
27 ~~amended and reenacted as follows:~~

28 ~~———— **39-20-04.1. Administrative sanction for driving or being in physical control of a**~~
29 ~~**vehicle while having certain alcohol concentration.**~~

30 ~~———— 1. — After the receipt of the certified report of a law enforcement officer and if no written~~
31 ~~request for hearing has been received from the arrested person under section~~

1 ~~39-20-05, or if that hearing is requested and the findings, conclusion, and decision-~~
2 ~~from the hearing confirm that the law enforcement officer had reasonable grounds to~~
3 ~~arrest the person and test results show that the arrested person was driving or in~~
4 ~~physical control of a vehicle while having an alcohol concentration of at least eight~~
5 ~~one-hundredths of one percent by weight or, with respect to a person under~~
6 ~~twenty-one years of age, an alcohol concentration of at least two one-hundredths of~~
7 ~~one percent by weight at the time of the performance of a test within two hours after~~
8 ~~driving or being in physical control of a motor vehicle, the director shall suspend the~~
9 ~~person's driving privileges as follows:~~

10 ~~a. For ninety one days if the person's driving record shows that, within the fiveten~~
11 ~~years preceding the date of the arrest, the person has not previously violated~~
12 ~~section 39-08-01 or equivalent ordinance or the person's operator's license has~~
13 ~~not previously been suspended or revoked under this chapter and the violation~~
14 ~~was for an alcohol concentration of at least eight one-hundredths of one percent~~
15 ~~by weight or, with respect to a person under twenty-one years of age, an alcohol~~
16 ~~concentration of at least two one-hundredths of one percent by weight, and under~~
17 ~~eighteen one-hundredths of one percent by weight.~~

18 ~~b. For one hundred eighty days if the operator's record shows the person has not~~
19 ~~violated section 39-08-01 or equivalent ordinance within fiveten years preceding~~
20 ~~the last violation and the last violation was for an alcohol concentration of at least~~
21 ~~eighteen one-hundredths of one percent by weight.~~

22 ~~c. For three hundred sixty-five days if the person's driving record shows that, within~~
23 ~~the fiveten years preceding the date of the arrest, the person has once previously~~
24 ~~violated section 39-08-01 or equivalent ordinance or the person's operator's~~
25 ~~license has once previously been suspended or revoked under this chapter with~~
26 ~~the last violation or suspension for an alcohol concentration under eighteen~~
27 ~~one-hundredths of one percent by weight.~~

28 ~~d. For two years if the person's driving record shows that within the fiveten years~~
29 ~~preceding the date of the arrest, the person's operator's license has once been~~
30 ~~suspended, revoked, or issuance denied under this chapter, or for a violation of~~
31 ~~section 39-08-01 or equivalent ordinance, with the last violation or suspension for~~

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

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

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

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

22 ~~39-20-05. Administrative hearing on request - Election to participate in the~~
23 ~~twenty-four seven sobriety program.~~

24 ~~1.~~ Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
25 39-20-04.1, the director shall afford that person an opportunity for a hearing if the
26 person mails or communicates by other means authorized by the director a request for
27 the hearing to the director within ten days after the date of issuance of the temporary
28 operator's permit. ~~Before the hearing, an individual may elect to participate in the~~
29 ~~twenty-four seven sobriety program under chapter 54-12.~~ The hearing must be held
30 within thirty days after the date of issuance of the temporary operator's permit. If no
31 hearing is requested within the time limits in this section, and no affidavit is submitted

1 ~~within the time limits under subsection 2 of section 39-20-04, and if the individual has~~
2 ~~not provided the director with written notice of election to participate in the twenty four~~
3 ~~seven sobriety program under chapter 54-12, the expiration of the temporary~~
4 ~~operator's permit serves as the director's official notification to the person of the~~
5 ~~revocation, suspension, or denial of driving privileges in this state.~~

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

1 ~~checklist and test records from a certified breath test operator, and a copy of a certified~~
2 ~~copy of a certificate of the director of the state crime laboratory designating the~~
3 ~~director's designee, establish prima facie the alcohol concentration or the presence of~~
4 ~~drugs, or a combination thereof, shown therein. Whether the individual was informed~~
5 ~~that the privilege to drive might be suspended based on the results of the test is not an~~
6 ~~issue.~~

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

26 ~~4. At a hearing under this section, the regularly kept records of the director and state~~
27 ~~crime laboratory may be introduced. Those records establish prima facie their contents~~
28 ~~without further foundation. For purposes of this chapter, the following are deemed~~
29 ~~regularly kept records of the director and state crime laboratory:-~~

30 ~~a. Any copy of a certified copy of an analytical report of a blood or urine sample~~
31 ~~received by the director from the director of the state crime laboratory or the~~

1 ~~director's designee or electronically posted by the director of the state crime-~~
2 ~~laboratory or the director's designee on the crime laboratory information-~~
3 ~~management system and certified by, and received from, a law enforcement-~~
4 ~~officer or individual who has authorized access to the crime laboratory-~~
5 ~~management system through the criminal justice data information sharing system-~~
6 ~~or a certified copy of the checklist and test records received by the director from a-~~
7 ~~certified breath test operator; and~~

8 ~~b. Any copy of a certified copy of a certificate of the director of the state crime-~~
9 ~~laboratory or the director's designee relating to approved methods, devices,-~~
10 ~~operators, materials, and checklists used for testing for alcohol concentration or-~~
11 ~~the presence of drugs received by the director from the director of the state crime-~~
12 ~~laboratory or the director's designee, or that have been electronically posted with-~~
13 ~~the state crime laboratory division of the attorney general at the attorney general-~~
14 ~~website; and~~

15 ~~c. Any copy of a certified copy of a certificate of the director of the state crime-~~
16 ~~laboratory designating the director's designees.~~

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

1 the director within ten days of the conclusion of the hearing. If the hearing officer has
2 determined in favor of the person, the director shall return the person's operator's
3 license by regular mail to the address on file with the director under section 39-06-20.

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

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

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

26 ~~6. The director of the state crime laboratory or the director's designee may appoint, train,
27 certify, and supervise field inspectors of breath testing equipment and its operation,
28 and the inspectors shall report the findings of any inspection to the director of the state
29 crime laboratory or the director's designee for appropriate action. Upon approval of the
30 methods or devices, or both, required to perform the tests and the individuals qualified
31 to administer them, the director of the state crime laboratory or the director's designee~~

1 shall prepare, certify, and electronically post a written record of the approval with the
2 state crime laboratory division of the attorney general at the attorney general website,
3 and shall include in the record:

4 ~~a.~~ An annual register of the specific testing devices currently approved, including
5 serial number, location, and the date and results of last inspection.

6 ~~b.~~ An annual register of currently qualified and certified operators of the devices,
7 stating the date of certification and its expiration.

8 ~~c.~~ The operational checklist and forms prescribing the methods currently approved
9 by the director of the state crime laboratory or the director's designee in using the
10 devices during the administration of the tests.

11 ~~d.~~ The certificate of the director of the state crime laboratory designating the
12 director's designees.

13 ~~e.~~ The certified records electronically posted under this section may be
14 supplemented when the director of the state crime laboratory or the director's
15 designee determines it to be necessary, and any certified supplemental records
16 have the same force and effect as the records that are supplemented.

17 ~~e.f.~~ The state crime laboratory shall make the certified records required by this
18 section available for download in a printable format on the attorney general
19 website.

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

22 ~~**39-20-14. Screening tests.**~~

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

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

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

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

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

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

1 ~~— SECTION 1. LEGISLATIVE MANAGEMENT STUDY -- DRIVING UNDER THE~~
2 ~~INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying~~
3 ~~the feasibility and desirability of North Dakota Century Code provisions that relate to~~
4 ~~administrative hearings and administrative sanctions for driving while under the influence of~~
5 ~~alcohol or drugs. With the assistance of the department of corrections and rehabilitation and the~~
6 ~~department of human services, the study must include the need for supervision, methods of~~
7 ~~treatment, and penalties for repeat driving while under the influence of alcohol or drug~~
8 ~~offenders. The legislative management shall report its findings and recommendations, together~~
9 ~~with any legislation required to implement the recommendations, to the sixty-fourth legislative~~
10 ~~assembly.~~

11 ~~— SECTION 15. EFFECTIVE DATE. This Act becomes effective May 1, 2013.~~

12 ~~— SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.~~

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

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

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

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

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

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

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

- 10 7. The period of suspension imposed for a violation of section 39-08-01 or equivalent
11 ordinance is:
- 12 a. Ninety-one days if the operator's record shows the person has not violated
13 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
14 the last violation.
 - 15 b. One hundred eighty days if the operator's record shows the person has not
16 violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years
17 preceding the last violation and the violation was for an alcohol concentration of
18 at least eighteen one-hundredths of one percent by weight.
 - 19 c. Three hundred sixty-five days if the operator's record shows the person has once
20 violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years
21 preceding the last violation.
 - 22 d. Two years if the operator's record shows the person has at least once violated
23 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
24 the last violation and the violation was for an alcohol concentration of at least
25 eighteen one-hundredths of one percent by weight.
 - 26 e. Two years if the operator's record shows the person has at least twice violated
27 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
28 the last violation.
 - 29 f. Three years if the operator's record shows the person has at least twice violated
30 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding

1 the last violation and the violation is for an alcohol concentration of at least
2 eighteen one-hundredths of one percent by weight.

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

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

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

10 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

- 11 1. Except as provided under subsection 2, if the director has suspended a license under
12 section 39-06.1-10 or has extended a suspension or revocation under section
13 39-06-43, upon receiving written application from the offender affected, the director
14 may for good cause issue a temporary restricted operator's license valid for the
15 remainder of the suspension period after seven days of the suspension period have
16 passed.
- 17 2. If the director has suspended a license under chapter 39-20, or after a violation of
18 section 39-08-01 or equivalent ordinance, upon written application of the offender the
19 director may issue ~~for good cause~~ a temporary restricted license that takes effect after
20 thirty days of the suspension have been served after a first offense under section
21 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
22 sobriety program under chapter 54-12, the director may issue a temporary restricted
23 license that takes effect after fifteen days of the suspension have been served. The
24 director may not issue a temporary restricted license to any offender whose operator's
25 license has been revoked under section 39-20-04 or suspended upon a second or
26 subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary
27 restricted license may be issued in accordance with subsection 5 if the offender is
28 participating in the twenty-four seven sobriety program under chapter 54-12 or for
29 good cause if the offender has not committed an offense for a period of two years
30 before the date of the filing of a written application that must be accompanied by a
31 report from an appropriate licensed addiction treatment program or if the offender is

1 participating in the drug court program and has not committed an offense for a period
2 of three hundred sixty-five days before the date of the filing of a written application that
3 must be accompanied by a recommendation from the district court. The director may
4 conduct a hearing for the purposes of obtaining information, reports, and evaluations
5 from courts, law enforcement, and citizens to determine the offender's conduct and
6 driving behavior during the prerequisite period of time. The director may also require
7 that an ignition interlock device be installed in the offender's vehicle.

8 3. The director may not issue a temporary restricted license for a period of license
9 revocation or suspension imposed under subsection 5 of section 39-06-17 or section
10 39-06-31. A temporary restricted license may be issued for suspensions ordered under
11 subsection 7 of section 39-06-32 if it could have been issued had the suspension
12 resulted from in-state conduct.

13 4. A restricted license issued under this section is solely for the use of a motor vehicle
14 during the licensee's normal working hours, or as provided under subsection 5, and
15 may contain any other restrictions authorized by section 39-06-17. Violation of a
16 restriction imposed according to this section is deemed a violation of section 39-06-17.

17 5. If an offender has been charged with, or convicted of, a second or subsequent
18 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
19 subject to suspension under chapter 39-20 and the offender's driver's license is not
20 subject to an unrelated suspension or revocation, the director shall issue a temporary
21 restricted driver's ~~permit~~license to the offender ~~only for the purpose of~~
22 ~~participation upon the restriction the offender participate~~ in the twenty-four seven
23 sobriety program ~~upon~~under chapter 54-12. The offender shall submit an application
24 to the director for a temporary restricted license along with submission of proof of
25 financial responsibility and proof of participation in the twenty-four seven sobriety
26 program ~~by the offender to receive a temporary restricted license. If a court or the~~
27 ~~parole board finds that an offender has violated a condition of the twenty-four seven~~
28 ~~sobriety program, the court or parole board may order the temporary restricted driver's~~
29 ~~permit be revoked and take possession of the temporary restricted driver's permit. The~~
30 ~~court or the parole board shall send a copy of the order to the director who shall record~~
31 ~~the revocation of the temporary restricted driver's permit. Revocation of a temporary~~

~~restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

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

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

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

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

2. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a ~~five-year~~seven-year period, of a class A misdemeanor for a third offense in a ~~five-year~~seven-year period, of a class ~~A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period~~C felony for any fourth or subsequent offense regardless of the length of time since the previous offense. The minimum penalty for violating this

1 section is as provided in subsection 4. The court shall take judicial notice of the fact
2 that an offense would be a subsequent offense if indicated by the records of the
3 director or may make a subsequent offense finding based on other evidence.

4 3. Upon conviction of a second or subsequent offense within ~~five~~seven years under this
5 section or equivalent ordinance, the court ~~must~~may order the motor vehicle number
6 plates of all of the motor vehicles owned and operated by the offender at the time of
7 the offense to be impounded for the duration of the period of suspension or revocation
8 of the offender's driving privilege by the licensing authority. The impounded number
9 plates must be sent to the director who must retain them for the period of suspension
10 or revocation, subject to their disposition by the court. The court may make an
11 exception to this subsection, on an individual basis, to avoid undue hardship to an
12 individual who is completely dependent on the motor vehicle for the necessities of life,
13 including a family member of the convicted individual and a coowner of the motor
14 vehicle, ~~but not including~~or if the offender is participating in the twenty-four seven
15 sobriety program.

16 4. A person convicted of violating this section, or an equivalent ordinance, must be
17 sentenced in accordance with this subsection. For purposes of this subsection, unless
18 the context otherwise requires, "drug court program" means a district court-supervised
19 treatment program approved by the supreme court which combines judicial
20 supervision with alcohol and drug testing and chemical addiction treatment in a
21 licensed treatment program. The supreme court may adopt rules, including rules of
22 procedure, for drug courts and the drug court program.

23 a. (1) For a first offense, the sentence must include both a fine of at least ~~two-~~
24 ~~hundred-fifty~~five hundred dollars and an order for addiction evaluation by an
25 appropriate licensed addiction treatment program.

26 (2) In addition, for a first offense when the convicted person has an alcohol
27 concentration of at least eighteen one-hundredths of one percent by weight,
28 the offense is an aggravated first offense and the sentence must include at
29 least two days' imprisonment or twenty hours community service.

30 b. For a second offense within ~~five~~seven years, the sentence must include at least
31 ~~five~~ten days' imprisonment ~~or placement in a minimum security facility~~, of which

1 forty-eight hours must be served consecutively, ~~or thirty days' community service;~~
2 a fine of at least ~~five hundred~~ one thousand dollars; ~~and~~ an order for addiction
3 evaluation by an appropriate licensed addiction treatment program; and at least
4 twelve months' participation in the twenty-four seven sobriety program under
5 chapter 54-12 as a mandatory condition of probation.

6 c. For a third offense within ~~five~~ seven years, the sentence must include at least
7 ~~sixty~~ one hundred twenty days' imprisonment ~~or placement in a minimum security~~
8 ~~facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~ at
9 least two thousand dollars; ~~and~~ an order for addiction evaluation by an
10 appropriate licensed addiction treatment program; at least one year's supervised
11 probation; and participation in the twenty-four seven sobriety program under
12 chapter 54-12 as a mandatory condition of probation.

13 d. For a fourth or subsequent offense ~~within seven years,~~ the sentence must include
14 at least one hundred eighty days' year and one day's imprisonment ~~or placement~~
15 ~~in a minimum security facility, of which forty-eight hours must be served~~
16 ~~consecutively;~~ a fine of one thousand dollars; ~~and~~ an order for addiction
17 evaluation by an appropriate licensed treatment program; at least two years'
18 supervised probation; and participation in the twenty-four seven sobriety program
19 under chapter 54-12 as a mandatory condition of probation.

20 e. The ~~execution or~~ imposition of sentence under this section may not be
21 ~~suspended or~~ deferred under subsection ~~3 or~~ 4 of section 12.1-32-02 for an
22 offense subject to this section.

23 f. If the offense is subject to subdivision a or b, a municipal court or district court
24 may not suspend a sentence. If the offense is subject to subdivision c, the district
25 court may suspend a sentence, except for sixty days' imprisonment, under
26 subsection 3 of section 12.1-32-02 on the condition that the defendant first
27 undergo and complete an evaluation for alcohol and substance abuse treatment
28 and rehabilitation and upon completion of the twenty-four seven sobriety
29 program. If the offense is subject to subdivision d, the district court may suspend
30 a sentence, except for one year's imprisonment, under subsection 3 of section
31 12.1-32-02 on the condition that the defendant first undergo and complete an

1 evaluation for alcohol and substance abuse treatment and rehabilitation. ~~If the~~
2 ~~offense is subject to subdivision c or d, the district court may suspend a~~
3 ~~sentence, except for ten days' imprisonment, under subsection 3 or 4 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 ~~subsection~~section.

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

- 28 5. As used in subdivision b of subsection 4, the term "imprisonment" includes house
29 arrest. As a condition of house arrest, a defendant may not consume alcoholic
30 beverages. The house arrest must include a program of electronic home detention ~~in-~~
31 ~~which~~and the defendant ~~is tested at least twice daily for the consumption of~~

1 ~~alcohol~~ shall participate in the twenty-four seven sobriety program. The defendant shall
2 defray all costs associated with the electronic home detention. ~~This subsection does~~
3 ~~not apply to individuals committed to or under the supervision and management of the~~
4 ~~department of corrections and rehabilitation.~~ For an offense under subsection c of
5 subdivision 4, no more than ninety percent of the sentence may be house arrest.

6 6. As used in this title, participation in the twenty-four seven sobriety program under
7 chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and
8 requires sobriety breath testing twice per day seven days per week or electronic
9 alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for
10 all twenty-four seven sobriety program fees and the court may not waive the fees,
11 except upon a finding of indigence the court may waive fifty percent of the twenty-four
12 seven sobriety program fees.

13 7. An individual who operates a motor vehicle on a highway or on public or private areas
14 to which the public has a right of access for vehicular use in this state who refuses to
15 submit to a chemical test, or tests required under sections 39-06.2-10.2, 39-20-01, or
16 39-20-14, is guilty of an offense under this section.

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

19 **39-08-01.2. Special punishment for causing injury or death while operating a vehicle**
20 **while under the influence of alcohol.**

21 ~~1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is~~
22 ~~based in part on the evidence of the individual's operation of a motor vehicle while~~
23 ~~under the influence of alcohol or drugs, the sentence imposed must include at least~~
24 ~~one year's imprisonment if the individual was an adult at the time of the offense.~~

25 ~~2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in~~
26 ~~part on the evidence of the individual's operation of a motor vehicle while under the~~
27 ~~influence of alcohol or drugs, and the violation caused serious bodily injury, as defined~~
28 ~~in section 12.1-01-04, to another individual, that individual is guilty of a class A~~
29 ~~misdemeanor and the sentence must include at least ninety days' imprisonment if the~~
30 ~~individual was an adult at the time of the offense.~~

~~3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

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

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01, or equivalent ordinance, and as a result that individual willfully causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least two years' imprisonment.

3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

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

1 **39-08-01.4. Driving while under the influence of alcohol while being accompanied by**
2 **a minor - Penalty.**

3 It is a class A misdemeanor for an individual who is at least twenty-one years of age to
4 violate section 39-08-01 if the violation occurred while a minor was accompanying the individual
5 in a motor vehicle. If an individual has a previous conviction for a violation of section
6 39-08-01.4, a violation of this section is a class C felony.

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

9 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

10 1. Any individual who operates a motor vehicle on a highway or on public or private
11 areas to which the public has a right of access for vehicular use in this state is deemed
12 to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a
13 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the
14 alcohol concentration or presence of other drugs, or combination thereof, in the
15 individual's blood, breath, or urine. As used in this chapter, the word "drug" means any
16 drug or substance or combination of drugs or substances which renders an individual
17 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean
18 any test to determine the alcohol concentration or presence of other drugs, or
19 combination thereof, in the individual's blood, breath, or urine, approved by the
20 director of the state crime laboratory or the director's designee under this chapter.

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

29 3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota
30 law requires the individual to take the test to determine whether the individual is under
31 the influence of alcohol or drugs; that refusal to take the test directed by the law

1 enforcement officer is a crime punishable in the same manner as driving under the
2 influence; and that refusal of the individual to submit to the test ~~determined appropriate~~
3 ~~will~~directed by the law enforcement officer may result in a revocation for a minimum of
4 one hundred eighty days and up to ~~four~~three years of the individual's driving
5 privileges. The law enforcement officer shall determine which of the tests is to be
6 used.

7 4. When an individual under the age of eighteen years is taken into custody for violating
8 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt
9 to contact the individual's parent or legal guardian to explain the cause for the custody.
10 Neither the law enforcement officer's efforts to contact, nor any consultation with, a
11 parent or legal guardian may be permitted to interfere with the administration of
12 chemical testing requirements under this chapter. The law enforcement officer shall
13 mail a notice to the parent or legal guardian of the minor within ten days after the test
14 results are received or within ten days after the minor is taken into custody if the minor
15 refuses to submit to testing. The notice must contain a statement of the test performed
16 and the results of that test; or if the minor refuses to submit to the testing, a statement
17 notifying of that fact. The attempt to contact or the contacting or notification of a parent
18 or legal guardian is not a precondition to the admissibility of chemical test results or
19 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

22 **39-20-03.1. Action following test result for a resident operator.**

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

- 29 1. The law enforcement officer shall immediately issue to that person a temporary
30 operator's permit if the person then has valid operating privileges, extending driving
31 privileges for the next twenty-five days, or until earlier terminated by the decision of a

1 hearing officer under section 39-20-05. The law enforcement officer shall sign and
2 note the date on the temporary operator's permit. The temporary operator's permit
3 serves as the director's official notification to the person of the director's intent to
4 revoke, suspend, or deny driving privileges in this state.

5 2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by
6 drawing blood as provided in section 39-20-02 and the individual tested is not a
7 resident of an area in which the law enforcement officer has jurisdiction, the law
8 enforcement officer shall, on receiving the analysis of the urine or blood from the
9 director of the state crime laboratory or the director's designee and if the analysis
10 shows that individual had an alcohol concentration of at least eight one-hundredths of
11 one percent by weight or, with respect to an individual under twenty-one years of age,
12 an alcohol concentration of at least two one-hundredths of one percent by weight,
13 either proceed in accordance with subsection 1 during that individual's reappearance
14 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
15 enforcement agency having jurisdiction where the individual lives. On that notification,
16 that law enforcement agency shall, within twenty-four hours, forward a copy of the
17 temporary operator's permit to the law enforcement agency making the arrest or to the
18 director. The law enforcement agency shall issue to that individual a temporary
19 operator's permit as provided in this section, and shall sign and date the permit as
20 provided in subsection 1.

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

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

16 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
17 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
18 lieu of the administrative hearing under this chapter if the individual's driver's license is
19 not subject to an unrelated suspension or revocation. Notwithstanding any other
20 provision of law, an individual may not receive a temporary restricted operator's
21 license unless the individual has exhausted administrative procedures. The director
22 shall issue a temporary restricted driver's license with the restriction the individual
23 participate in the twenty-four seven sobriety program upon application by the individual
24 with submission of proof of financial responsibility and proof of participation in the
25 twenty-four seven sobriety program under chapter 54-12.

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

28 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
29 **testing.**

30 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may
31 be given, but the law enforcement officer shall immediately take possession of the

1 person's operator's license if it is then available and shall immediately issue to that
2 person a temporary operator's permit, if the person then has valid operating privileges,
3 extending driving privileges for the next twenty-five days or until earlier terminated by a
4 decision of a hearing officer under section 39-20-05. The law enforcement officer shall
5 sign and note the date on the temporary operator's permit. The temporary operator's
6 permit serves as the director's official notification to the person of the director's intent
7 to revoke driving privileges in this state and of the hearing procedures under this
8 chapter. The director, upon the receipt of that person's operator's license and a
9 certified written report of the law enforcement officer in the form required by the
10 director, forwarded by the officer within five days after issuing the temporary operator's
11 permit, showing that the officer had reasonable grounds to believe the person had
12 been driving or was in actual physical control of a motor vehicle while in violation of
13 section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had
14 reason to believe that the person committed a moving traffic violation or was involved
15 in a traffic accident as a driver, and in conjunction with the violation or accident the
16 officer has, through the officer's observations, formulated an opinion that the person's
17 body contains alcohol, that the person was lawfully arrested if applicable, and that the
18 person had refused to submit to the test or tests under section 39-20-01 or 39-20-14,
19 shall revoke that person's license or permit to drive and any nonresident operating
20 privilege for the appropriate period under this section, or if the person is a resident
21 without a license or a permit to operate a motor vehicle in this state, the director shall
22 deny to the person the issuance of a license or permit for the appropriate period under
23 this section after the date of the alleged violation, subject to the opportunity for a
24 prerevocation hearing and postrevocation review as provided in this chapter. In the
25 revocation of the person's operator's license the director shall give credit for time in
26 which the person was without an operator's license after the day of the person's
27 refusal to submit to the test except that the director may not give credit for time in
28 which the person retained driving privileges through a temporary operator's permit
29 issued under this section or section 39-20-03.2. The period of revocation or denial of
30 issuance of a license or permit under this section is:

- 1 a. One ~~year~~hundred eighty days if the person's driving record shows that within the
2 ~~five~~seven years preceding the most recent violation of this section, the person's
3 operator's license has not previously been suspended, revoked, or issuance
4 denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 5 b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven
6 years preceding the most recent violation of this section, the person's operator's
7 license has been once previously suspended, revoked, or issuance denied for a
8 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 9 c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven
10 years preceding the most recent violation of this section, the person's operator's
11 license has at least twice previously been suspended, revoked, or issuance
12 denied under this chapter, or for a violation of section 39-08-01 or equivalent
13 ordinance, or any combination of the same, and the suspensions, revocations, or
14 denials resulted from at least two separate arrests.
- 15 2. A person's driving privileges are not subject to revocation under subdivision a of
16 subsection 1 if all of the following criteria are met:
- 17 a. An administrative hearing is not held under section 39-20-05;
- 18 b. The person mails an affidavit to the director within twenty-five days after the
19 temporary operator's permit is issued. The affidavit must state that the person:
- 20 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent
21 ordinance within twenty-five days after the temporary operator's permit is
22 issued;
- 23 (2) Agrees that the person's driving privileges must be suspended as provided
24 under section 39-06.1-10;
- 25 (3) Acknowledges the right to a section 39-20-05 administrative hearing and
26 section 39-20-06 judicial review and voluntarily and knowingly waives these
27 rights; and
- 28 (4) Agrees that the person's driving privileges must be revoked as provided
29 under this section without an administrative hearing or judicial review, if the
30 person does not plead guilty within twenty-five days after the temporary

1 operator's permit is issued, or the court does not accept the guilty plea, or
2 the guilty plea is withdrawn;

3 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance
4 within twenty-five days after the temporary operator's permit is issued;

5 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
6 the director within twenty-five days after the temporary operator's permit is
7 issued; and

8 e. A copy of the final order or judgment of conviction evidencing the acceptance of
9 the person's guilty plea is received by the director prior to the return or
10 reinstatement of the person's driving privileges; and.

11 ~~f. The person has never been convicted under section 39-08-01 or equivalent~~
12 ~~ordinance.~~

13 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to
14 violating section 39-08-01, or equivalent ordinance, to the director within ten days after
15 it is ordered. Upon receipt of the order, the director shall immediately revoke the
16 person's driving privileges as provided under this section without providing an
17 administrative hearing.

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

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

22 1. After the receipt of the certified report of a law enforcement officer and if no written
23 request for hearing has been received from the arrested person under section
24 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
25 from the hearing confirm that the law enforcement officer had reasonable grounds to
26 arrest the person and test results show that the arrested person was driving or in
27 physical control of a vehicle while having an alcohol concentration of at least eight
28 one-hundredths of one percent by weight or, with respect to a person under
29 twenty-one years of age, an alcohol concentration of at least two one-hundredths of
30 one percent by weight at the time of the performance of a test within two hours after

1 driving or being in physical control of a motor vehicle, the director shall suspend the
2 person's driving privileges as follows:

- 3 a. For ninety-one days if the person's driving record shows that, within the ~~five~~seven
4 years preceding the date of the arrest, the person has not previously violated
5 section 39-08-01 or equivalent ordinance or the person's operator's license has
6 not previously been suspended or revoked under this chapter and the violation
7 was for an alcohol concentration of at least eight one-hundredths of one percent
8 by weight or, with respect to a person under twenty-one years of age, an alcohol
9 concentration of at least two one-hundredths of one percent by weight, and under
10 eighteen one-hundredths of one percent by weight.
- 11 b. For one hundred eighty days if the operator's record shows the person has not
12 violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years
13 preceding the last violation and the last violation was for an alcohol concentration
14 of at least eighteen one-hundredths of one percent by weight.
- 15 c. For three hundred sixty-five days if the person's driving record shows that, within
16 the ~~five~~seven years preceding the date of the arrest, the person has once
17 previously violated section 39-08-01 or equivalent ordinance or the person's
18 operator's license has once previously been suspended or revoked under this
19 chapter with the last violation or suspension for an alcohol concentration under
20 eighteen one-hundredths of one percent by weight.
- 21 d. For two years if the person's driving record shows that within the ~~five~~seven years
22 preceding the date of the arrest, the person's operator's license has once been
23 suspended, revoked, or issuance denied under this chapter, or for a violation of
24 section 39-08-01 or equivalent ordinance, with the last violation or suspension for
25 an alcohol concentration of at least eighteen one-hundredths of one percent by
26 weight or if the person's driving record shows that within the ~~five~~seven years
27 preceding the date of arrest, the person's operator's license has at least twice
28 previously been suspended, revoked, or issuance denied under this chapter, or
29 for a violation of section 39-08-01 or equivalent ordinance, or any combination
30 thereof, and the suspensions, revocations, or denials resulted from at least two

1 separate arrests with the last violation or suspension for an alcohol concentration
2 of under eighteen one-hundredths of one percent by weight.

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

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

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

16 **39-20-05. Administrative hearing on request - Election to participate in the**
17 **twenty-four seven sobriety program.**

18 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
19 39-20-04.1, the director shall afford that person an opportunity for a hearing if the
20 person mails or communicates by other means authorized by the director a request for
21 the hearing to the director within ten days after the date of issuance of the temporary
22 operator's permit. Upon completion of the hearing, an individual may elect to
23 participate in the twenty-four seven sobriety program under chapter 54-12. The
24 hearing must be held within thirty days after the date of issuance of the temporary
25 operator's permit. If no hearing is requested within the time limits in this section, and
26 no affidavit is submitted within the time limits under subsection 2 of section 39-20-04,
27 and if the individual has not provided the director with written notice of election to
28 participate in the twenty-four seven sobriety program under chapter 54-12, the
29 expiration of the temporary operator's permit serves as the director's official
30 notification to the person of the revocation, suspension, or denial of driving privileges
31 in this state.

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

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

20 4. At a hearing under this section, the regularly kept records of the director and state
21 crime laboratory may be introduced. Those records establish prima facie their contents
22 without further foundation. For purposes of this chapter, the following are deemed
23 regularly kept records of the director and state crime laboratory:

- 24 a. Any copy of a certified copy of an analytical report of a blood or urine sample
25 electronically posted by the director of the state crime laboratory or the director's
26 designee on the crime laboratory information management system which is
27 received by the director ~~from the director of the state crime laboratory or the~~
28 ~~director's designee or~~ a law enforcement officer, or an individual who has
29 authorized access to the crime laboratory management system through the
30 criminal justice data information sharing system or a certified copy of the

1 checklist and test records received by the director from a certified breath test
2 operator; ~~and~~

3 b. Any copy of a certified copy of a certificate of the director of the state crime
4 laboratory or the director's designee relating to approved methods, devices,
5 operators, materials, and checklists used for testing for alcohol concentration or
6 the presence of drugs received by the director from the director of the state crime
7 laboratory or the director's designee, or that have been electronically posted with
8 the state crime laboratory division of the attorney general at the attorney general
9 website; and

10 c. Any copy of a certified copy of a certificate of the director of the state crime
11 laboratory designating the director's designees.

12 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
13 officer's findings of fact, conclusions of law, and decision based on the findings and
14 conclusions and shall immediately deliver to the person a copy of the decision. If the
15 hearing officer does not find in favor of the person, the copy of the decision serves as
16 the director's official notification to the person of the revocation, suspension, or denial
17 of driving privileges in this state. If the hearing officer finds, based on a preponderance
18 of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or
19 that the person had an alcohol concentration of at least eight one-hundredths of one
20 percent by weight or, with respect to a person under twenty-one years of age, an
21 alcohol concentration of at least two one-hundredths of one percent by weight, the
22 hearing officer shall immediately take possession of the person's temporary operator's
23 permit issued under this chapter. If the hearing officer does not find against the
24 person, the hearing officer shall sign, date, and mark on the person's permit an
25 extension of driving privileges for the next twenty days and shall return the permit to
26 the person. The hearing officer shall report the findings, conclusions, and decisions to
27 the director within ten days of the conclusion of the hearing. If the hearing officer has
28 determined in favor of the person, the director shall return the person's operator's
29 license by regular mail to the address on file with the director under section 39-06-20.

30 6. If the person who requested a hearing under this section fails to appear at the hearing
31 without justification, the right to the hearing is waived, and the hearing officer's

1 determination on license revocation, suspension, or denial will be based on the written
2 request for hearing, law enforcement officer's report, and other evidence as may be
3 available. The hearing officer shall, on the date for which the hearing is scheduled,
4 mail to the person, by regular mail, at the address on file with the director under
5 section 39-06-20, or at any other address for the person or the person's legal
6 representative supplied in the request for hearing, a copy of the decision which serves
7 as the director's official notification to the person of the revocation, suspension, or
8 denial of driving privileges in this state. Even if the person for whom the hearing is
9 scheduled fails to appear at the hearing, the hearing is deemed to have been held on
10 the date for which it is scheduled for purposes of appeal under section 39-20-06.

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

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

1 e. The certified records electronically posted under this section may be
2 supplemented when the director of the state crime laboratory or the director's
3 designee determines it to be necessary, and any certified supplemental records
4 have the same force and effect as the records that are supplemented.

5 ~~e.f.~~ The state crime laboratory shall make the certified records required by this
6 section available for download in a printable format on the attorney general
7 website.

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

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

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

21 **39-20-14. Screening tests.**

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

30 2. An individual may not be required to submit to a screening test or tests of breath while
31 at a hospital as a patient if the medical practitioner in immediate charge of the

1 individual's case is not first notified of the proposal to make the requirement, or objects
2 to the test or tests on the ground that such would be prejudicial to the proper care or
3 treatment of the patient.

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

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

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

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

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

Restricted license upon twenty-four seven sobriety program participation.

Any driver suspended under this chapter may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The director may issue a temporary restricted license that takes effect after fifteen days of the suspension have been served provided that the driver is not subject to any unrelated suspension. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license unless the individual has exhausted administrative procedures.

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

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

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

SECTION 22. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of purchasing secure

- 1 continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program,
- 2 for the biennium beginning July 1, 2013, and ending June 30, 2015.