

**SECOND ENGROSSMENT
with Conference Committee Amendments
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 sections 27-20-10, 27-20-31, and
2 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to
3 the twenty-four seven sobriety program; to amend and reenact subsection 3 of section
4 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2,
5 39-08-01.3, 39-08-01.4, 39-20-01, 39-20-01.1, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05,
6 subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North
7 Dakota Century Code, relating to driving while under the influence and city penalties; to provide
8 for an underage drinking prevention program; to provide for a legislative management study; to
9 provide a penalty; and to provide appropriations.

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

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

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

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

21 If a child is adjudicated delinquent for a violation of section 39-08-01 or equivalent
22 ordinance, or if a child is found to have an alcohol concentration of at least two
23 one-hundredths of one percent by weight at the time of performance of a test within
24 two hours after driving or being in physical control of a motor vehicle, the juvenile court

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

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

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

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

14 7. The period of suspension imposed for a violation of section 39-08-01, 39-08-01.2, or
15 39-08-01.4 or equivalent ordinance is:
16 a. Ninety-one days if the operator's record shows the person has not violated
17 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
18 the last violation.
19 b. One hundred eighty days if the operator's record shows the person has not
20 violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years
21 preceding the last violation and the violation was for an alcohol concentration of
22 at least eighteen one-hundredths of one percent by weight.
23 c. Three hundred sixty-five days if the operator's record shows the person has once
24 violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years
25 preceding the last violation.
26 d. Two years if the operator's record shows the person has at least once violated
27 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
28 the last violation and the violation was for an alcohol concentration of at least
29 eighteen one-hundredths of one percent by weight.

1 e. Two years if the operator's record shows the person has at least twice violated
2 section 39-08-01 or equivalent ordinance within the ~~five~~seven years preceding
3 the last violation.

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

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

10 If an individual has a temporary restricted driver's license with the restriction the
11 individual participates in the twenty-four seven sobriety program under chapter 54-12,
12 the individual may operate a motor vehicle during the suspension periods under this
13 section.

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

16 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

17 1. Except as provided under subsection 2, if the director has suspended a license under
18 section 39-06.1-10 or has extended a suspension or revocation under section
19 39-06-43, upon receiving written application from the offender affected, the director
20 may for good cause issue a temporary restricted operator's license valid for the
21 remainder of the suspension period after seven days of the suspension period have
22 passed.

23 2. If the director has suspended a license under chapter 39-20, or after a violation of
24 section 39-08-01 or equivalent ordinance, upon written application of the offender the
25 director may issue ~~for good cause~~ a temporary restricted license that takes effect after
26 thirty days of the suspension have been served after a first offense under section
27 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
28 sobriety program under chapter 54-12, the director may issue a temporary restricted
29 license that takes effect after fourteen days of the suspension have been served if the
30 driver is not subject to any unrelated suspension or revocation. The director may not
31 issue a temporary restricted license to any offender whose operator's license has

1 been revoked under section 39-20-04 or suspended upon a second or subsequent
2 offense under section 39-08-01 or chapter 39-20, except that a temporary restricted
3 license may be issued ~~for good cause~~ in accordance with subsection 5 if the offender is
4 participating in the twenty-four seven sobriety program under chapter 54-12 or if the
5 offender has not committed an offense for a period of two years before the date of the
6 filing of a written application that must be accompanied by a report from an
7 appropriate licensed addiction treatment program or if the offender is participating in
8 the drug court program and has not committed an offense for a period of three
9 hundred sixty-five days before the date of the filing of a written application that must
10 be accompanied by a recommendation from the district court. The director may
11 conduct a hearing for the purposes of obtaining information, reports, and evaluations
12 from courts, law enforcement, and citizens to determine the offender's conduct and
13 driving behavior during the prerequisite period of time. The director may also require
14 that an ignition interlock device be installed in the offender's vehicle.

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

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

24 5. If an offender has been charged with, or convicted of, a second or subsequent
25 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
26 subject to suspension under chapter 39-20 and the offender's driver's license is not
27 subject to an unrelated suspension or revocation, the director shall issue a temporary
28 restricted driver's ~~permit~~ license to the offender ~~only for the purpose of~~
29 participation upon the restriction the offender participate in the twenty-four seven
30 sobriety program ~~upon~~ under chapter 54-12. The offender shall submit an application
31 to the director for a temporary restricted license along with submission of proof of

1 financial responsibility and proof of participation in the twenty-four seven sobriety
2 program by the offender to receive a temporary restricted license. If a court or the
3 parole board finds that an offender has violated a condition of the twenty four seven
4 sobriety program, the court or parole board may order the temporary restricted driver's
5 permit be revoked and take possession of the temporary restricted driver's permit. The
6 court or the parole board shall send a copy of the order to the director who shall record
7 the revocation of the temporary restricted driver's permit. Revocation of a temporary
8 restricted driver's permit for violation of a condition of the twenty four seven sobriety
9 program does not preclude the offender's eligibility for a temporary restricted driver's
10 license under any other provisions of this section.

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

13 **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or**
14 **substances not to operate vehicle - Penalty.**

- 15 1. A person may not drive or be in actual physical control of any vehicle upon a highway
16 or upon public or private areas to which the public has a right of access for vehicular
17 use in this state if any of the following apply:
 - 18 a. That person has an alcohol concentration of at least eight one-hundredths of one
19 percent by weight at the time of the performance of a chemical test within two
20 hours after the driving or being in actual physical control of a vehicle.
 - 21 b. That person is under the influence of intoxicating liquor.
 - 22 c. That person is under the influence of any drug or substance or combination of
23 drugs or substances to a degree which renders that person incapable of safely
24 driving.
 - 25 d. That person is under the combined influence of alcohol and any other drugs or
26 substances to a degree which renders that person incapable of safely driving.
 - 27 e. That individual refuses to submit to any of the following:
 - 28 (1) A chemical test, or tests, of the individual's blood, breath, or urine to
29 determine the alcohol concentration or presence of other drugs, or
30 combination thereof, in the individual's blood, breath, or urine, at the
31 direction of a law enforcement officer under section 39-06.2-10.2 if the

1 individual is driving or is in actual physical control of a commercial motor
2 vehicle; or

3 (2) A chemical test, or tests, of the individual's blood, breath, or urine to
4 determine the alcohol concentration or presence of other drugs, or
5 combination thereof, in the individual's blood, breath, or urine, at the
6 direction of a law enforcement officer under section 39-20-01; or

7 (3) An onsite screening test, or tests, of the individual's breath for the purpose
8 of estimating the alcohol concentration in the individual's breath upon the
9 request of a law enforcement officer under section 39-20-14.

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

15 2. ~~Unless as otherwise provided in section 39-08-01.2, an~~An individual who operates a
16 motor vehicle on a highway or on public or private areas to which the public has a right
17 of access for vehicular use in this state who refuses to subject to a chemical test, or
18 tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an
19 offense under this section.

20 3. An individual violating this section or equivalent ordinance is guilty of a class B
21 misdemeanor for the first or second offense in a ~~five-year~~seven-year period, of a
22 class A misdemeanor for a third offense in a ~~five-year~~seven-year period, of a class A-
23 misdemeanor for the fourth offense in a ~~seven-year~~ period, and of a class C felony for
24 a ~~fifth or subsequent offense in a seven-year period~~C felony for any fourth or
25 subsequent offense regardless of the length of time since the previous offense. The
26 minimum penalty for violating this section is as provided in subsection 45. The court
27 shall take judicial notice of the fact that an offense would be a subsequent offense if
28 indicated by the records of the director or may make a subsequent offense finding
29 based on other evidence.

30 ~~3.4.~~ Upon conviction of a second or subsequent offense within ~~five~~seven years under this
31 section or equivalent ordinance, the court ~~must~~may order the motor vehicle number

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

11 4.5. A person convicted of violating this section, or an equivalent ordinance, must be
12 sentenced in accordance with this subsection. For purposes of this subsection, unless
13 the context otherwise requires, "drug court program" means a district court-supervised
14 treatment program approved by the supreme court which combines judicial
15 supervision with alcohol and drug testing and chemical addiction treatment in a
16 licensed treatment program. The supreme court may adopt rules, including rules of
17 procedure, for drug courts and the drug court program.

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

21 (2) In addition, for a first offense when the convicted person has an alcohol
22 concentration of at least sixteen one-hundredths of one percent by weight,
23 the offense is an aggravated first offense and the sentence must include a
24 fine of at least seven hundred fifty dollars and at least two days'
25 imprisonment.

26 b. For a second offense within ~~five~~ seven years, the sentence must include at least
27 ~~five~~ ten days' imprisonment or placement in a minimum security facility, of which
28 forty-eight hours must be served consecutively, ~~or thirty days' community service;~~
29 a fine of at least ~~five hundred~~ one thousand dollars; ~~and~~ an order for addiction
30 evaluation by an appropriate licensed addiction treatment program; and at least

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

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

16 f.g. If the court sentences an individual to the legal and physical custody of the
17 department of corrections and rehabilitation, the department may place the
18 defendant in an alcohol treatment program designated by the department. Upon
19 the individual's successful completion of the alcohol treatment program, the
20 department shall release the individual from imprisonment to serve the remainder
21 of the sentence of imprisonment on probation, which may include placement in
22 another facility or treatment program. If an individual is placed in another facility
23 or treatment program after the release from imprisonment, the remainder of the
24 individual's sentence of imprisonment must be considered time spent in custody.
25 The court may sentence the individual to treatment under subdivision g of
26 subsection 1 of section 12.1-32-02. A court may not order the department to be
27 responsible for the costs of treatment in a private treatment facility.

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

- 1 g-i. If the penalty mandated by this section includes imprisonment or placement upon
2 conviction of a violation of this section or equivalent ordinance, and if an
3 addiction evaluation has indicated that the defendant needs treatment, the court
4 may order the defendant to undergo treatment at an appropriate licensed
5 addiction treatment program under subdivision g of subsection 1 of section
6 12.1-32-02 and the time spent by the defendant in the treatment must be credited
7 as a portion of a sentence of imprisonment or placement under this section. A
8 court may not order the department of corrections and rehabilitation to be
9 responsible for the costs of treatment in a private treatment facility.
- 10 j. If the court sentences an individual to the legal and physical custody of the
11 department of corrections and rehabilitation, the department may place the
12 individual in an alcohol treatment program designated by the department. Upon
13 the individual's successful completion of the alcohol treatment program, the
14 department shall release the individual from imprisonment to serve the remainder
15 of the sentence of imprisonment on probation, which may include placement in
16 another facility or treatment program. If an individual is placed in another facility
17 or treatment program after release from imprisonment the remainder of the
18 individual's sentence of imprisonment must be considered time spent in custody.
- 19 ~~5-6.~~ As used in subdivision b subdivisions b and c of subsection 4, the term "imprisonment"
20 includes house arrest. As a condition of house arrest, a defendant may not consume
21 alcoholic beverages. The house arrest must include a program of electronic home
22 detention in which and the defendant is tested at least twice daily for the consumption
23 of alcohol shall participate in the twenty-four seven sobriety program. The defendant
24 shall defray all costs associated with the electronic home detention. This subsection
25 does not apply to individuals committed to or under the supervision and management
26 of the department of corrections and rehabilitation. For an offense under subdivision b
27 or c of subsection 5, no more than ninety percent of the sentence may be house
28 arrest.
- 29 7. As used in this title, participation in the twenty-four seven sobriety program under
30 chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and
31 requires sobriety breath testing twice per day seven days per week or electronic

1 alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for
2 all twenty-four seven sobriety program fees and the court may not waive the fees.

3 8. An individual who operates a motor vehicle on a highway or on public or private areas
4 to which the public has a right of access for vehicular use in this state who refuses to
5 submit to a chemical test, or tests required under section 39-06.2-10.2, 39-20-01, or
6 39-20-14, is guilty of an offense under this section.

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

9 **39-08-01.2. Special punishment for causing injury or death while operating a vehicle**
10 **while under the influence of alcohol.**

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

26 1. An individual is guilty of criminal vehicular homicide if the individual commits an
27 offense under section 39-08-01 or equivalent ordinance and as a result the individual
28 causes a death of another individual to occur, including the death of an unborn child,
29 unless the individual who causes the death of the unborn child is the mother. A
30 violation of this subsection is a class A felony. If an individual commits a violation
31 under this subsection, the court shall impose at least three years' imprisonment. If the

1 individual violates this section after having been previously convicted of a violation of
2 section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least
3 ten years' imprisonment. An individual may not be prosecuted and found guilty of this
4 and an offense under chapter 12.1-16 if the conduct arises out of the same incident.

5 2. An individual is guilty of criminal vehicular injury if the individual violates section
6 39-08-01 or equivalent ordinance and as a result that individual causes substantial
7 bodily or serious bodily injury to another individual. Violation of this subsection is a
8 class C felony. If an individual violates this subsection, the court shall impose at least
9 one year's imprisonment. If the individual violates this section after having been
10 previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent
11 ordinance, the court shall impose at least two years' imprisonment.

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

18 **SECTION 9. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **~~39-08-01.3. Alcohol-related traffic offenses - Ignition interlock devices and the seizure~~**
21 **Seizure, forfeiture, and sale of motor vehicles.**

22 A motor vehicle owned and operated by ~~a person~~ an individual upon a highway or upon
23 public or private areas to which the public has a right of access for vehicular use may be seized,
24 forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of
25 sentencing if the ~~person~~ individual is in violation of section 39-08-01, ~~39-08-01.2,~~ or 39-08-01.4,
26 or an equivalent ordinance and has been convicted of violating section 39-08-01 or an
27 equivalent ordinance at least one other time within the ~~five~~ seven years preceding the violation.
28 ~~The court may also require that an ignition interlock device be installed in the person's vehicle~~
29 ~~for a period of time that the court deems appropriate.~~

30 **SECTION 10. AMENDMENT.** Section 39-08-01.4 of the North Dakota Century Code is
31 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 11. 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 fourthree 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 12. AMENDMENT.** Section 39-20-01.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.**

- 23 1. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~If the driver of a vehicle is
24 involved in ~~an accident~~a crash resulting in the death of another ~~person~~individual, and
25 there is probable cause to believe that the driver is in violation of section 39-08-01 ~~or~~
26 ~~has committed a moving violation as defined in section 39-06.1-09, the driver must be~~
27 ~~compelled by~~ a ~~police~~law enforcement officer shall request the driver to submit to a
28 chemical test or tests of the driver's blood, breath, or urine to determine the alcohol
29 concentration or the presence of other drugs or substances, or both.
30 2. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~If the driver of a vehicle is
31 involved in ~~an accident~~a crash resulting in the serious bodily injury, as defined in

1 section 12.1-01-04, of another person~~individual~~, and there is probable cause to believe
2 that the driver is in violation of section 39-08-01, a law enforcement officer ~~may~~
3 ~~compel~~shall request the driver to submit to a test or tests of the driver's blood, breath,
4 or urine to determine the alcohol concentration or the presence of other drugs or
5 substances, or both. ~~The methods and techniques established by the director of the~~
6 ~~state crime laboratory must be followed in collecting and preserving a specimen or~~
7 ~~conducting a test.~~

8 3. If the driver refuses to submit to a chemical test or tests of the driver's blood, breath,
9 or urine and exigent circumstances are not present, the law enforcement officer shall
10 request a search warrant to compel the driver to submit to a chemical test or tests of
11 the driver's blood, breath, or urine to determine the alcohol concentration or the
12 presence of other drugs or substances, or both.

13 4. The approved methods of the director of the state crime laboratory or the director's
14 designee must be followed in collecting and preserving a sample of the driver's blood,
15 breath, or urine and conducting a chemical test or tests to determine the alcohol
16 concentration or the presence of other drugs or substances, or both.

17 **SECTION 13. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-20-03.1. Action following test result for a resident operator.**

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

26 1. The law enforcement officer shall immediately issue to that person a temporary
27 operator's permit if the person then has valid operating privileges, extending driving
28 privileges for the next twenty-five days, or until earlier terminated by the decision of a
29 hearing officer under section 39-20-05. The law enforcement officer shall sign and
30 note the date on the temporary operator's permit. The temporary operator's permit

- 1 serves as the director's official notification to the person of the director's intent to
2 revoke, suspend, or deny driving privileges in this state.
- 3 2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by
4 drawing blood as provided in section 39-20-02 and the individual tested is not a
5 resident of an area in which the law enforcement officer has jurisdiction, the law
6 enforcement officer shall, on receiving the analysis of the urine or blood from the
7 director of the state crime laboratory or the director's designee and if the analysis
8 shows that individual had an alcohol concentration of at least eight one-hundredths of
9 one percent by weight or, with respect to an individual under twenty-one years of age,
10 an alcohol concentration of at least two one-hundredths of one percent by weight,
11 either proceed in accordance with subsection 1 during that individual's reappearance
12 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
13 enforcement agency having jurisdiction where the individual lives. On that notification,
14 that law enforcement agency shall, within twenty-four hours, forward a copy of the
15 temporary operator's permit to the law enforcement agency making the arrest or to the
16 director. The law enforcement agency shall issue to that individual a temporary
17 operator's permit as provided in this section, and shall sign and date the permit as
18 provided in subsection 1.
- 19 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
20 enforcement agency making the arrest may mail a temporary operator's permit to the
21 individual who submitted to the blood or urine test, whether or not the individual is a
22 resident of the area in which the law enforcement officer has jurisdiction. The third day
23 after the mailing of the temporary operator's permit is considered the date of issuance.
24 Actual notice of the opportunity for a hearing under this section is deemed to have
25 occurred seventy-two hours after the notice is mailed by regular mail to the address
26 submitted by the individual to the law enforcement officer. The temporary operator's
27 permit serves as the director's official notification to the individual of the director's
28 intent to revoke, suspend, or deny driving privileges in this state.
- 29 4. The law enforcement officer, within five days of the issuance of the temporary
30 operator's permit, shall forward to the director a certified written report in the form
31 required by the director. If the individual was issued a temporary operator's permit

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

13 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
14 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
15 lieu of the administrative hearing under this chapter if the individual's driver's license is
16 not subject to an unrelated suspension or revocation. Notwithstanding any other
17 provision of law, an individual may not receive a temporary restricted operator's
18 license until after fourteen days after the administrative hearing on the offense under
19 this chapter has been waived or held, or after fourteen days of the final appeal,
20 whichever is longer. The director shall issue a temporary restricted driver's license with
21 the restriction the individual participate in the twenty-four seven sobriety program upon
22 application by the individual with submission of proof of financial responsibility and
23 proof of participation in the twenty-four seven sobriety program under chapter 54-12.

24 **SECTION 14. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
27 **testing.**

28 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may
29 be given, but the law enforcement officer shall immediately take possession of the
30 person's operator's license if it is then available and shall immediately issue to that
31 person a temporary operator's permit, if the person then has valid operating privileges,

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

- 29 a. One year~~hundred eighty days~~ if the person's driving record shows that within the
30 ~~five~~seven years preceding the most recent violation of this section, the person's

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

- 1 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance
2 within twenty-five days after the temporary operator's permit is issued;
- 3 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
4 the director within twenty-five days after the temporary operator's permit is
5 issued; and
- 6 e. A copy of the final order or judgment of conviction evidencing the acceptance of
7 the person's guilty plea is received by the director prior to the return or
8 reinstatement of the person's driving privileges; ~~and,~~
- 9 f. ~~The person has never been convicted under section 39-08-01 or equivalent~~
10 ~~ordinance.~~
- 11 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to
12 violating section 39-08-01, or equivalent ordinance, to the director within ten days after
13 it is ordered. Upon receipt of the order, the director shall immediately revoke the
14 person's driving privileges as provided under this section without providing an
15 administrative hearing.

16 **SECTION 15. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-20-04.1. Administrative sanction for driving or being in physical control of a**
19 **vehicle while having certain alcohol concentration.**

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

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

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

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

12 **SECTION 16. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **39-20-05. Administrative hearing on request - Election to participate in the**
15 **twenty-four seven sobriety program.**

- 16 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
17 39-20-04.1, the director shall afford that person an opportunity for a hearing if the
18 person mails or communicates by other means authorized by the director a request for
19 the hearing to the director within ten days after the date of issuance of the temporary
20 operator's permit. Upon completion of the hearing, an individual may elect to
21 participate in the twenty-four seven sobriety program under chapter 54-12. The
22 hearing must be held within thirty days after the date of issuance of the temporary
23 operator's permit. If no hearing is requested within the time limits in this section, and
24 no affidavit is submitted within the time limits under subsection 2 of section 39-20-04,
25 and if the individual has not provided the director with written notice of election to
26 participate in the twenty-four seven sobriety program under chapter 54-12, the
27 expiration of the temporary operator's permit serves as the director's official
28 notification to the person of the revocation, suspension, or denial of driving privileges
29 in this state.
- 30 2. If the issue to be determined by the hearing concerns license suspension for operating
31 a motor vehicle while having an alcohol concentration of at least eight one-hundredths

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

- 1 system, or a certified copy of the checklist and test records received by the
2 director from a certified breath test 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 17. 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 18. AMENDMENT.** Subsection 9 of section 39-20-07 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to
11 be indigent by the court in the criminal proceeding at issue may subpoena, without
12 cost to the defendant, the individual who conducted the chemical analysis referred to
13 in this section to testify at the trial on the issue of the amount of alcohol concentration
14 or presence of other drugs, or a combination thereof in the defendant's blood, breath,
15 or urine at the time of the alleged act. If the ~~state toxicologist, the director of the state~~
16 ~~crime laboratory, or any employee of either, or designee~~ is subpoenaed to testify by a
17 defendant who is not indigent and the defendant does not call the witness to establish
18 relevant evidence, the court shall order the defendant to pay costs to the witness as
19 provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual~~
20 ~~who withdrew the defendant's blood by following the same procedure.~~

21 **SECTION 19. AMENDMENT.** Subsection 10 of section 39-20-07 of the North Dakota
22 Century Code is amended and reenacted as follows:

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

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

3 **39-20-14. Screening tests.**

- 4 1. Any individual who operates a motor vehicle upon the public highways of this state is
5 deemed to have given consent to submit to an onsite screening test or tests of the
6 individual's breath for the purpose of estimating the alcohol concentration in the
7 individual's breath upon the request of a law enforcement officer who has reason to
8 believe that the individual committed a moving traffic violation or was involved in a
9 traffic accident as a driver, and in conjunction with the violation or the accident the
10 officer has, through the officer's observations, formulated an opinion that the
11 individual's body contains alcohol.
- 12 2. An individual may not be required to submit to a screening test or tests of breath while
13 at a hospital as a patient if the medical practitioner in immediate charge of the
14 individual's case is not first notified of the proposal to make the requirement, or objects
15 to the test or tests on the ground that such would be prejudicial to the proper care or
16 treatment of the patient.
- 17 3. The screening test or tests must be performed by an enforcement officer certified as a
18 chemical test operator by the director of the state crime laboratory or the director's
19 designee and according to methods and with devices approved by the director of the
20 state crime laboratory or the director's designee. The results of such screening test
21 must be used only for determining whether or not a further test shall be given under
22 the provisions of section 39-20-01. The officer shall inform the individual that North
23 Dakota law requires the individual to take the screening test to determine whether the
24 individual is under the influence of alcohol, that refusal to take the screening test is a
25 crime, and that refusal of the individual to submit to a screening test ~~will~~may result in a
26 revocation for at least one hundred eighty days and up to fourthree years of that
27 individual's driving privileges. If such individual refuses to submit to such screening
28 test or tests, none may be given, but such refusal is sufficient cause to revoke such
29 individual's license or permit to drive in the same manner as provided in section
30 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as
31 provided in section 39-20-06 must be available. ~~However, the~~

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

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

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

11 **SECTION 21.** A new section to chapter 39-20 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Restricted license upon twenty-four seven sobriety program participation.**

14 Any driver suspended under this chapter may elect to participate in the twenty-four seven
15 sobriety program under chapter 54-12. The director may issue a temporary restricted license
16 that takes effect after fifteen days of the suspension have been served provided that the driver
17 is not subject to any unrelated suspension. Notwithstanding any other provision of law, an
18 individual may not receive a temporary restricted operator's license until after fourteen days
19 after the administrative hearing on the offense under this chapter has been waived or held, or
20 after fourteen days of the final appeal, whichever is longer.

21 **SECTION 22. AMENDMENT.** Section 40-05-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **40-05-06. City fines and penalties limited.**

- 24 1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any
25 ordinance, resolution, or regulation of a city may not exceed one thousand five
26 hundred dollars, and the imprisonment may not exceed thirty days for one offense.
- 27 2. For every violation of a city ordinance regulating the operation or equipment of motor
28 vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a
29 fee may be established, by ordinance, which may not exceed the limits, for equivalent
30 categories of violations, set forth in section 39-06.1-06.

1 3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403
2 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism,
3 criminal mischief, or malicious mischief, the penalty may not exceed a fine of one
4 thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

5 This section does not prohibit the use of the sentencing alternatives, other than a fine or
6 imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this
7 section limit the use of deferred or suspended sentences under subsections 3 and 4 of section
8 12.1-32-02.

9 **SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE**

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

16 **SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING**

17 **PREVENTION PROGRAM.** The department of human services shall facilitate the continuation
18 of the parents listen, educate, ask, discuss program, a multiagency collaboration among the
19 department of human services, department of transportation, North Dakota state university
20 extension service, and North Dakota university system which has the goal of reducing the
21 consumption of alcohol by minors by providing developmentally appropriate strategies and
22 evidence-based underage drinking prevention services to parents and professionals throughout
23 the state. Through this program the department of human services shall collaborate with the
24 governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

25 **SECTION 25. APPROPRIATION.** There is appropriated out of any moneys in the general
26 fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the
27 sum as may be necessary, to the department of human services for the purpose of funding the
28 underage drinking prevention program provided for under section 24 of this Act, for the
29 biennium beginning July 1, 2013, and ending June 30, 2015.

30 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
31 fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the

Sixty-third
Legislative Assembly

- 1 sum as may be necessary, to the attorney general for the purpose of purchasing secure
- 2 continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program,
- 3 for the biennium beginning July 1, 2013, and ending June 30, 2015.