

SENATE BILL NO. 2240

Introduced by

Senators Mathern, Anderson

Representatives Gruchalla, Hunskor, N. Johnson

1 A BILL ~~for an Act to create and enact a new section to chapter 5-01, a new section to chapter~~
2 ~~5-02, a new subsection to section 39-01-01, a new section to chapter 39-08, and section~~
3 ~~39-08-01.5 of the North Dakota Century Code, relating to marked licenses for driving under the~~
4 ~~influence and an ignition interlock restricted license; to amend and reenact subsection 7 of~~
5 ~~section 39-06.1-10, section 39-06.1-11, subsections 4 and 5 of section 39-08-01, section~~
6 ~~39-08-01.3, subsection 1 of section 39-20-04, and section 39-20-04.1 of the North Dakota~~
7 ~~Century Code, relating to driving while under the influence and ignition interlock; and to provide~~
8 ~~a penalty; for an Act to create and enact a new subsection to section 39-06.1-10 and a new~~
9 ~~section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven~~
10 ~~sobriety program; to amend and reenact subsection 7 of section 39-06.1-10, sections~~
11 ~~39-06.1-11, 39-08-01, 39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05,~~
12 ~~subsection 6 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code,~~
13 ~~relating to driving while under the influence; to provide for a legislative management study; to~~
14 ~~provide a penalty; and to provide an appropriation.~~

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

16 ~~— **SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is created~~
17 ~~and enacted as follows:~~

18 ~~— **Delivery prohibited to individuals with marked license - Penalty.**~~

19 ~~— An individual who knows that another individual has a marked license or card under section~~
20 ~~39-08-01.5 and who delivers alcoholic beverages to that individual is guilty of a class B-~~
21 ~~misdemeanor. The court shall order the license or card of an individual who violates this section~~
22 ~~marked for one year.~~

23 ~~— **SECTION 2.** A new section to chapter 5-02 of the North Dakota Century Code is created~~
24 ~~and enacted as follows:~~

1 ~~— **Sale prohibited to individuals with marked license – Penalty.**~~

2 ~~— A retail licensee may not sell alcohol to an individual with a marked license under section~~
3 ~~39-08-01.5. If a retail licensee in determining proof of age under section 5-01-08.3 is presented~~
4 ~~proof that shows an address within this state, the retail licensee shall require the presentation of~~
5 ~~state-issued identification from the individual attempting to purchase alcoholic beverages. If the~~
6 ~~state-issued identification is from this state, the only valid identification is an operator's license~~
7 ~~or nondriver photo identification card from this state. A violation of this section is an infraction.~~

8 ~~— **SECTION 3.** A new subsection to section 39-01-01 of the North Dakota Century Code is~~
9 ~~created and enacted as follows:~~

10 ~~"Advanced technology ignition interlock" means a fuel cell breath testing device that~~
11 ~~will not allow a motor vehicle to start with a breath test result that is over a breath~~
12 ~~alcohol level of at least twenty five one-thousandths of one percent. The device must~~
13 ~~include a camera that takes images of the individual taking the breath test and must~~
14 ~~include active global position satellite technology to determine the precise location of~~
15 ~~the vehicle. The device must transmit the results of every test via cellular network in~~
16 ~~real time and these results must be available in real time to the director. The device~~
17 ~~must meet standards of the director and must be recalibrated at intervals of sixty days,~~
18 ~~unless the device has been certified to maintain calibration standards for a period of~~
19 ~~one hundred eighty days, in which case, the device may be calibrated at a~~
20 ~~one hundred eighty day interval.~~

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

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

25 ~~— a.— Ninety oneThree hundred sixty five days if the operator's record shows the~~
26 ~~person has not violated section 39-08-01 or equivalent ordinance within the five~~
27 ~~years preceding the last violation.~~

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

1 ~~_____ c. Three hundred sixty five days~~ Five years if the operator's record shows the
2 person has once violated section 39-08-01 or equivalent ordinance within the five-
3 years preceding the last violation.

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

8 ~~_____ e. Two~~ Ten years if the operator's record shows the person has at least twice
9 violated section 39-08-01 or equivalent ordinance within the five years preceding
10 the last violation.

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

15 ~~_____ **SECTION 5. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~_____ **39-06.1-11. Temporary restricted license -- Ignition interlock device.**~~

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

24 ~~_____ 2. If the director has suspended a license under chapter 39-20, or after a violation of~~
25 ~~section 39-08-01 or equivalent ordinance, upon written application of the offender the~~
26 ~~director may issue for good cause a temporary restricted license that takes effect after~~
27 ~~thirty days of the suspension have been served after a first offense under section~~
28 ~~39-08-01 or chapter 39-20. The director may not issue a temporary restricted license~~
29 ~~to any offender whose operator's license has been revoked under section 39-20-04 or~~
30 ~~suspended upon a second or subsequent offense under section 39-08-01 or chapter~~
31 ~~39-20, except that a temporary restricted license may be issued for good cause if the~~

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

11 ~~3.~~ The director may not issue a temporary restricted license for a period of license
12 revocation or suspension imposed under subsection 5 of section 39-06-17 or section
13 39-06-31. A temporary restricted license may be issued for suspensions ordered under
14 subsection 7 of section 39-06-32 if it could have been issued had the suspension
15 resulted from in-state conduct.

16 ~~4.3.~~ A restricted license issued under this section is solely for the use of a motor vehicle
17 during the licensee's normal working hours and may contain any other restrictions
18 authorized by section 39-06-17. Violation of a restriction imposed according to this
19 section is deemed a violation of section 39-06-17.

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

1 program does not preclude the offender's eligibility for a temporary restricted driver's
2 license under any other provisions of this section.

3 ~~SECTION 6. AMENDMENT.~~ Subsection 4 of section 39-08-01 of the North Dakota Century
4 Code is amended and reenacted as follows:

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

12 ~~a.~~ For a first offense, the sentence must include both at least thirty days'
13 imprisonment or placement in a minimum security facility, of which forty-eight
14 hours must be served consecutively; a fine of at least two hundred fiftyfive
15 thousand dollars and an order for addiction evaluation by an appropriate licensed
16 addiction treatment program.

17 ~~b.~~ For a second offense within five years, the sentence must include at least five one
18 hundred eighty days' imprisonment or placement in a minimum security facility, of
19 which forty-eight hours must be served consecutively, or thirty days' community
20 service; a fine of at least five hundred two thousand dollars; and an order for
21 addiction evaluation by an appropriate licensed addiction treatment program.

22 ~~c.~~ For a third offense within five years, the sentence must include at least sixty three
23 hundred sixty-four days' imprisonment or placement in a minimum security
24 facility, of which forty-eight hours must be served consecutively; a fine of one
25 hundred thousand dollars; and an order for addiction evaluation by an
26 appropriate licensed addiction treatment program.

27 ~~d.~~ For a fourth or subsequent offense within seven years, the sentence must include
28 one hundred eighty days' five years' imprisonment or placement in a minimum
29 security facility, of which forty-eight hours must be served consecutively; a fine of
30 one hundred thousand dollars; and an order for addiction evaluation by an
31 appropriate licensed treatment program.

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

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

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

~~**SECTION 7. AMENDMENT.** Subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:~~

1 ~~5. As used in subdivision ba of subsection 4, the term "imprisonment" includes house-~~
2 ~~arrest. As a condition of house arrest, a defendant may not consume alcoholic~~
3 ~~beverages. The house arrest must include a program of electronic home detention in-~~
4 ~~which the defendant is tested at least twice daily for the consumption of alcohol. The~~
5 ~~defendant shall defray all costs associated with the electronic home detention. This~~
6 ~~subsection does not apply to individuals committed to or under the supervision and~~
7 ~~management of the department of corrections and rehabilitation.~~

8 ~~**SECTION 8. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~**39-08-01.3. Alcohol-related traffic offenses - Ignition interlock devices and the**~~
11 ~~**seizure, forfeiture, and sale of motor vehicles.**~~

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

19 ~~**SECTION 9.** Section 39-08-01.5 of the North Dakota Century Code is created and enacted~~
20 ~~as follows:~~

21 ~~**39-08-01.5. Marked driver's license for driving while under the influence - Alcohol**~~
22 ~~**prohibited - Consumption prohibited - Penalties.**~~

23 ~~1. A court shall order for an individual who violates section 39-08-01 that the director~~
24 ~~place a conspicuous mark on the operator's license or nondriver photo identification~~
25 ~~card of that individual for the amount of time as specified in this section. The court~~
26 ~~shall notify the department of the order. After the suspension of an operator's license~~
27 ~~for a violation of section 39-08-01, the mark must remain on the license or card for at~~
28 ~~least one year. If the individual who violated section 39-08-01 was involved in an~~
29 ~~accident resulting in bodily injury or property damage of another person, the mark~~
30 ~~must remain on the license or card for at least five years, and if the accident results in~~
31 ~~the death of another individual, the mark must remain on the license or card for the life~~

1 ~~of the individual. The mark may not be removed except by court order. A court may~~
2 ~~order the removal of the mark after the amount of time ordered if the individual~~
3 ~~provides proof to the court that the individual has attended and has complied with the~~
4 ~~recommendations of an appropriate licensed addiction treatment program and is no~~
5 ~~longer a habitual user of alcohol in a degree that renders the individual incapable of~~
6 ~~safely driving a motor vehicle.~~

7 ~~2. An individual may not consume alcoholic beverages for the term specified in the order~~
8 ~~for the marked license or card. A violation of this subsection is a class B misdemeanor~~
9 ~~for a first offense and a class A misdemeanor for a subsequent offense. The court~~
10 ~~shall order an extension of at least five years for the mark on the license of an~~
11 ~~individual for a violation of this subsection. If the violation is evidenced by a violation of~~
12 ~~section 39-08-01 which involves the death or serious bodily injury of another~~
13 ~~individual, however, the court shall order the license marked for an additional twenty~~
14 ~~years.~~

15 ~~SECTION 10. A new section to chapter 39-08 of the North Dakota Century Code is created~~
16 ~~and enacted as follows:~~

17 ~~**Ignition interlock temporary restricted license - Penalty.**~~

18 ~~1. If the director has suspended or revoked a license under chapter 39-20, or after a~~
19 ~~violation of section 39-08-01 or equivalent ordinance, upon the written application of~~
20 ~~the offender or court order, the director shall issue an ignition interlock temporary~~
21 ~~restricted license after seven days of the suspension or revocation period have passed~~
22 ~~for the duration of the suspension or revocation. As a condition of this license, the~~
23 ~~offender must have installed an advanced technology ignition interlock device on any~~
24 ~~vehicle operated by the offender. In addition, this license must remain in effect~~
25 ~~regardless of the original duration of the restriction until the department receives a~~
26 ~~declaration from the offender's ignition interlock device vendor, certifying that there~~
27 ~~have been none of the following incidents in the four consecutive months before the~~
28 ~~date of release:~~

29 ~~a. An attempt to start the vehicle with breath alcohol concentration of at least four~~
30 ~~one-hundredths of one percent by weight;~~

31 ~~b. Failure to take or pass any required retest; or~~

- 1 ~~c. Failure of the offender to appear at the ignition interlock device vendor if required~~
2 ~~for maintenance, repair, calibration, monitoring, inspection, or replacement of the~~
3 ~~device.~~
- 4 ~~2. If an offender has been charged with, or convicted of, a second or subsequent~~
5 ~~violation of section 39-08-01 or equivalent ordinance and the offender driver's license~~
6 ~~is not subject to an unrelated suspension or revocation, the director shall issue an~~
7 ~~ignition interlock temporary restricted license to the offender upon submission of proof~~
8 ~~of financial responsibility and proof of participation in the drug court, twenty four seven~~
9 ~~sobriety program, or an appropriate licensed addiction treatment program approved by~~
10 ~~the director. If an offender has violated a condition of the drug court, the twenty four~~
11 ~~seven sobriety program, or a licensed addiction treatment program, the department~~
12 ~~may order the ignition interlock temporary restricted license to be revoked and take~~
13 ~~possession of this license.~~
- 14 ~~3. The duration of an ignition interlock temporary restricted license must be extended a~~
15 ~~minimum of six additional months by court order or six months upon application for an~~
16 ~~individual who violates section 39-08-01.4.~~
- 17 ~~4. The use of an ignition interlock temporary restricted license issued upon application~~
18 ~~must be counted against any subsequent duration of an order by a court for the use of~~
19 ~~a device. The minimum fine under section 39-08-01 is fifty percent of the amount listed~~
20 ~~for an offender who has had an ignition interlock temporary restricted license issued~~
21 ~~upon application.~~
- 22 ~~5. The court shall order and the offender agrees upon application to pay the cost to~~
23 ~~comply with the ignition interlock requirements unless the offender is indigent. The~~
24 ~~department shall pay for the installation, maintenance, and removal of interlock~~
25 ~~devices of offenders who are indigent on a sliding scale. An offender is indigent if the~~
26 ~~offender has a household income that is at or below one hundred fifty percent of the~~
27 ~~nonfarm federal poverty line for the continental United States. An indigent defendant~~
28 ~~may not pay more than one half of the cost of equipping each motor vehicle and~~
29 ~~one half the cost of maintaining and removing the ignition interlock device.~~
30 ~~Nonindigent offenders shall pay the department an additional fee of one hundred~~

~~dollars upon removal of the ignition interlock device for deposit in the state highway fund.~~

~~6. An individual with an ignition interlock temporary restricted license who operates a motor vehicle on a highway in violation of the restriction or who tampers with, defrauds, or alters the ignition interlock device in any way is guilty of a class C felony.~~

~~**SECTION 11. AMENDMENT.** Subsection 1 of section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:~~

~~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 deny to the person the issuance of a license or permit for the appropriate period under~~

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

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

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

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

23 ~~**SECTION 12. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~**39-20-04.1. Administrative sanction for driving or being in physical control of a**~~
26 ~~**vehicle while having certain alcohol concentration.**~~

27 ~~1. After the receipt of the certified report of a law enforcement officer and if no written~~
28 ~~request for hearing has been received from the arrested person under section~~
29 ~~39-20-05, or if that hearing is requested and the findings, conclusion, and decision~~
30 ~~from the hearing confirm that the law enforcement officer had reasonable grounds to~~
31 ~~arrest the person and test results show that the arrested person was driving or in~~

1 physical control of a vehicle while having an alcohol concentration of at least eight
2 one-hundredths of one percent by weight or, with respect to a person under
3 twenty-one years of age, an alcohol concentration of at least two one-hundredths of
4 one percent by weight at the time of the performance of a test within two hours after
5 driving or being in physical control of a motor vehicle, the director shall suspend the
6 person's driving privileges as follows:

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

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

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

26 ~~d. For twoten years if the person's driving record shows that within the five years~~
27 ~~preceding the date of the arrest, the person's operator's license has once been~~
28 ~~suspended, revoked, or issuance denied under this chapter, or for a violation of~~
29 ~~section 39-08-01 or equivalent ordinance, with the last violation or suspension for~~
30 ~~an alcohol concentration of at least eighteen one-hundredths of one percent by~~
31 ~~weight or if the person's driving record shows that within the five years preceding~~

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

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

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

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

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

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

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

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

12 **SECTION 2.** A new subsection to section 39-06.1-10 of the North Dakota Century Code is
13 created and enacted as follows:

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

17 **SECTION 3. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

- 20 1. Except as provided under subsection 2, if the director has suspended a license under
21 section 39-06.1-10 or has extended a suspension or revocation under section
22 39-06-43, upon receiving written application from the offender affected, the director
23 may for good cause issue a temporary restricted operator's license valid for the
24 remainder of the suspension period after seven days of the suspension period have
25 passed.
- 26 2. If the director has suspended a license under chapter 39-20, or after a violation of
27 section 39-08-01 or equivalent ordinance, upon written application of the offender the
28 director may issue ~~for good cause~~ a temporary restricted license that takes effect after
29 thirty days of the suspension have been served after a first offense under section
30 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
31 sobriety program under chapter 54-12, the director may issue a temporary restricted

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

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

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

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

1 sobriety program ~~upon~~ under chapter 54-12. The offender shall submit an application
2 to the director for a temporary restricted license along with submission of proof of
3 financial responsibility and proof of participation in the twenty-four seven sobriety
4 program ~~by the offender~~ to receive a temporary restricted license. ~~If a court or the~~
5 ~~parole board finds that an offender has violated a condition of the twenty-four seven-~~
6 ~~sobriety program, the court or parole board may order the temporary restricted driver's~~
7 ~~permit be revoked and take possession of the temporary restricted driver's permit. The~~
8 ~~court or the parole board shall send a copy of the order to the director who shall record~~
9 ~~the revocation of the temporary restricted driver's permit. Revocation of a temporary-~~
10 ~~restricted driver's permit for violation of a condition of the twenty four seven sobriety-~~
11 ~~program does not preclude the offender's eligibility for a temporary restricted driver's~~
12 ~~license under any other provisions of this section.~~

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

15 **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or**
16 **substances not to operate vehicle - Penalty.**

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

29 The fact that any person charged with violating this section is or has been legally
30 entitled to use alcohol or other drugs or substances is not a defense against any
31 charge for violating this section, unless a drug which predominately caused

1 impairment was used only as directed or cautioned by a practitioner who legally
2 prescribed or dispensed the drug to that person.

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

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

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

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

- 1 a. For a first offense, the sentence must include both a fine of at least ~~two hundred-~~
2 ~~fifty~~five hundred dollars and an order for addiction evaluation by an appropriate
3 licensed addiction treatment program. If the convicted person has an alcohol
4 concentration of at least eighteen one-hundredths of one percent by weight at the
5 time of the performance of a chemical test within two hours after the driving or
6 being in actual physical control of a vehicle, the sentence must include at least
7 two days' imprisonment or twenty hours of community service.
- 8 b. For a second offense within ~~five~~seven years, the sentence must include at least
9 ~~five~~ten days' imprisonment ~~or placement in a minimum security facility~~, of which
10 forty-eight hours must be served consecutively, ~~or thirty days' community service~~;
11 a fine of at least ~~five hundred~~one thousand dollars; ~~and~~ an order for addiction
12 evaluation by an appropriate licensed addiction treatment program; and at least
13 twelve months' participation in the twenty-four seven sobriety program under
14 chapter 54-12 as a mandatory condition of probation.
- 15 c. For a third offense within ~~five~~seven years, the sentence must include at least
16 ~~sixtyone hundred twenty~~ days' imprisonment ~~or placement in a minimum security~~
17 ~~facility, of which forty-eight hours must be served consecutively~~; a fine of ~~one~~at
18 least two thousand dollars; ~~and~~ an order for addiction evaluation by an
19 appropriate licensed addiction treatment program; at least two years' supervised
20 probation; and participation in the twenty-four seven sobriety program under
21 chapter 54-12 as a mandatory condition of probation.
- 22 d. For a fourth or subsequent offense ~~within seven years~~, the sentence must include
23 at least one hundred eighty days' year and one day's imprisonment ~~or placement~~
24 ~~in a minimum security facility, of which forty-eight hours must be served~~
25 ~~consecutively~~; a fine of one thousand dollars; ~~and~~ an order for addiction
26 evaluation by an appropriate licensed treatment program; at least two years'
27 supervised probation; and participation in the twenty-four seven sobriety program
28 under chapter 54-12 as a mandatory condition of probation.
- 29 e. The ~~execution or~~ imposition of sentence under this section may not be
30 ~~suspended or~~ deferred under subsection ~~3 or~~ 4 of section 12.1-32-02 for an
31 offense subject to this section.

1 f. If the offense is subject to subdivision a or b, a municipal court or district court
2 may not suspend a sentence. If the offense is subject to subdivision c, the district
3 court may suspend a sentence, except for one hundred twenty days'
4 imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the
5 defendant first undergo and complete an evaluation for alcohol and substance
6 abuse treatment and rehabilitation. If the offense is subject to subdivision d, the
7 district court may suspend a sentence, except for one year's imprisonment, under
8 subsection 3 of section 12.1-32-02 on the condition that the defendant first
9 undergo and complete an evaluation for alcohol and substance abuse treatment
10 and rehabilitation. If the offense is subject to subdivision c or d, the district court
11 may suspend a sentence, except for ten days' imprisonment, under subsection 3
12 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and
13 complete an evaluation for alcohol and substance abuse treatment and
14 rehabilitation. If the defendant is found to be in need of alcohol and substance
15 abuse treatment and rehabilitation, the district court may order the defendant
16 placed under the supervision and management of the department of corrections
17 and rehabilitation and is subject to the conditions of probation under section
18 12.1-32-07. The district court shall require the defendant to complete alcohol and
19 substance abuse treatment and rehabilitation under the direction of the drug
20 court program as a condition of probation in accordance with rules adopted by
21 the supreme court. If the district court finds that a defendant has failed to undergo
22 an evaluation or complete treatment or has violated any condition of probation,
23 the district court shall revoke the defendant's probation and shall sentence the
24 defendant in accordance with this subsection.

25 f.g. For purposes of this section, conviction of an offense under a law or ordinance of
26 another state which is equivalent to this section must be considered a prior
27 offense if such offense was committed within the time limitations specified in this
28 ~~subsection~~section.

29 g-h. If the penalty mandated by this section includes imprisonment or placement upon
30 conviction of a violation of this section or equivalent ordinance, and if an
31 addiction evaluation has indicated that the defendant needs treatment, the court

1 may order the defendant to undergo treatment at an appropriate licensed
2 addiction treatment program and the time spent by the defendant in the treatment
3 must be credited as a portion of a sentence of imprisonment or placement under
4 this section.

5 5. As used in subdivision b of subsection 4, the term "imprisonment" includes house
6 arrest. As a condition of house arrest, a defendant may not consume alcoholic
7 beverages. The house arrest must include a program of electronic home detention ~~in~~
8 ~~which~~ and the defendant ~~is tested at least twice daily for the consumption of~~
9 ~~alcohol~~ shall participate in the twenty-four seven sobriety program. The defendant shall
10 defray all costs associated with the electronic home detention. ~~This subsection does~~
11 ~~not apply to individuals committed to or under the supervision and management of the~~
12 ~~department of corrections and rehabilitation.~~ For an offense under subsection c of
13 subsection 4, no more than ninety percent of the sentence may be house arrest.

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

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

25 **SECTION 5. AMENDMENT.** Section 39-08-01.2 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **39-08-01.2. Special punishment for causing injury or death while operating a vehicle**
28 **while under the influence of alcohol.**

29 1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is
30 based in part on the evidence of the individual's operation of a motor vehicle while

1 under the influence of alcohol or drugs, the sentence imposed must include at least
2 ~~one~~two year's imprisonment if the individual was an adult at the time of the offense.

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

9 3. If an individual is convicted of a second or subsequent offense within seven years of
10 violating section 39-08-01, or section 39-08-03 based in part on the evidence of the
11 individual's operation of a motor vehicle while under the influence of alcohol or drugs
12 and the violation caused serious bodily injury, as defined in section 12.1-01-04, to
13 another individual, that individual is guilty of a class C felony and the sentence must
14 include at least one year and one day's imprisonment if the individual was at least
15 eighteen years of age at the time of the offense.

16 4. The imposition of sentence may not be deferred under subsection 4 of section
17 12.1-32-02 for an offense subject to this section.

18 5. ~~The sentence under this section may not be suspended unless the court finds that~~
19 ~~manifest injustice would result from imposition of the sentence.~~ The court shall impose
20 not less than one year of supervised probation and shall require participation in the
21 twenty-four seven sobriety program for at least twelve months as a mandatory
22 condition of probation. Before a sentence under this section applies, a defendant must
23 be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict,
24 the verdict form must indicate that the jury found the elements that create the
25 minimum sentence.

26 **SECTION 6. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

29 1. Any individual who operates a motor vehicle on a highway or on public or private
30 areas to which the public has a right of access for vehicular use in this state is deemed
31 to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a

1 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the
2 alcohol concentration or presence of other drugs, or combination thereof, in the
3 individual's blood, breath, or urine. As used in this chapter, the word "drug" means any
4 drug or substance or combination of drugs or substances which renders an individual
5 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean
6 any test to determine the alcohol concentration or presence of other drugs, or
7 combination thereof, in the individual's blood, breath, or urine, approved by the
8 director of the state crime laboratory or the director's designee under this chapter.

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

17 3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota
18 law requires the individual to take the test to determine whether the individual is under
19 the influence of alcohol, drugs, or a combination of alcohol and drugs: that refusal to
20 take the test directed by the law enforcement officer is a crime punishable in the same
21 manner as driving under the influence; and that refusal of the individual to submit to
22 the test ~~determined appropriate will~~ directed by the law enforcement officer may result
23 in a revocation for a minimum of one hundred eighty days and up to four years of the
24 individual's driving privileges. The law enforcement officer shall determine which of the
25 tests is to be used.

26 4. When an individual under the age of eighteen years is taken into custody for violating
27 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt
28 to contact the individual's parent or legal guardian to explain the cause for the custody.
29 Neither the law enforcement officer's efforts to contact, nor any consultation with, a
30 parent or legal guardian may be permitted to interfere with the administration of
31 chemical testing requirements under this chapter. The law enforcement officer shall

1 mail a notice to the parent or legal guardian of the minor within ten days after the test
2 results are received or within ten days after the minor is taken into custody if the minor
3 refuses to submit to testing. The notice must contain a statement of the test performed
4 and the results of that test; or if the minor refuses to submit to the testing, a statement
5 notifying of that fact. The attempt to contact or the contacting or notification of a parent
6 or legal guardian is not a precondition to the admissibility of chemical test results or
7 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

8 **SECTION 7. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **39-20-03.1. Action following test result for a resident operator.**

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

- 17 1. The law enforcement officer shall immediately issue to that person a temporary
18 operator's permit if the person then has valid operating privileges, extending driving
19 privileges for the next twenty-five days, or until earlier terminated by the decision of a
20 hearing officer under section 39-20-05. The law enforcement officer shall sign and
21 note the date on the temporary operator's permit. The temporary operator's permit
22 serves as the director's official notification to the person of the director's intent to
23 revoke, suspend, or deny driving privileges in this state.
- 24 2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by
25 drawing blood as provided in section 39-20-02 and the individual tested is not a
26 resident of an area in which the law enforcement officer has jurisdiction, the law
27 enforcement officer shall, on receiving the analysis of the urine or blood from the
28 director of the state crime laboratory or the director's designee and if the analysis
29 shows that individual had an alcohol concentration of at least eight one-hundredths of
30 one percent by weight or, with respect to an individual under twenty-one years of age,
31 an alcohol concentration of at least two one-hundredths of one percent by weight,

1 either proceed in accordance with subsection 1 during that individual's reappearance
2 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
3 enforcement agency having jurisdiction where the individual lives. On that notification,
4 that law enforcement agency shall, within twenty-four hours, forward a copy of the
5 temporary operator's permit to the law enforcement agency making the arrest or to the
6 director. The law enforcement agency shall issue to that individual a temporary
7 operator's permit as provided in this section, and shall sign and date the permit as
8 provided in subsection 1.

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

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

1 certified copy of the analytical report for a blood or urine test for all tests administered
2 at the direction of the officer.

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

11 **SECTION 8. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
14 **testing.**

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

1 officer has, through the officer's observations, formulated an opinion that the person's
2 body contains alcohol, that the person was lawfully arrested if applicable, and that the
3 person had refused to submit to the test or tests under section 39-20-01 or 39-20-14,
4 shall revoke that person's license or permit to drive and any nonresident operating
5 privilege for the appropriate period under this section, or if the person is a resident
6 without a license or a permit to operate a motor vehicle in this state, the director shall
7 deny to the person the issuance of a license or permit for the appropriate period under
8 this section after the date of the alleged violation, subject to the opportunity for a
9 prerevocation hearing and postrevocation review as provided in this chapter. In the
10 revocation of the person's operator's license the director shall give credit for time in
11 which the person was without an operator's license after the day of the person's
12 refusal to submit to the test except that the director may not give credit for time in
13 which the person retained driving privileges through a temporary operator's permit
14 issued under this section or section 39-20-03.2. The period of revocation or denial of
15 issuance of a license or permit under this section is:

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

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

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

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

1 **SECTION 9. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-20-04.1. Administrative sanction for driving or being in physical control of a**
4 **vehicle while having certain alcohol concentration.**

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

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

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

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

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

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

SECTION 10. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the

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

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

1 of at least two one-hundredths of one percent by weight. For purposes of this section,
2 a copy of a certified copy of an analytical report of a blood or urine sample
3 ~~from~~electronically posted by the director of the state crime laboratory or the director's
4 designee on the crime laboratory information management system and certified by a
5 law enforcement officer or individual who has authorized access to the crime
6 laboratory management system through the criminal justice data information sharing
7 system or a certified copy of the checklist and test records from a certified breath test
8 operator and a copy of a certified copy of a certificate of the director of the state crime
9 laboratory designating the director's designee. establish prima facie the alcohol
10 concentration or the presence of drugs, or a combination thereof, shown therein.
11 Whether the individual was informed that the privilege to drive might be suspended
12 based on the results of the test is not an issue.

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

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

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

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

1 alcohol concentration of at least two one-hundredths of one percent by weight, the
2 hearing officer shall immediately take possession of the person's temporary operator's
3 permit issued under this chapter. If the hearing officer does not find against the
4 person, the hearing officer shall sign, date, and mark on the person's permit an
5 extension of driving privileges for the next twenty days and shall return the permit to
6 the person. The hearing officer shall report the findings, conclusions, and decisions to
7 the director within ten days of the conclusion of the hearing. If the hearing officer has
8 determined in favor of the person, the director shall return the person's operator's
9 license by regular mail to the address on file with the director under section 39-06-20.

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

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

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

1 state crime laboratory division of the attorney general at the attorney general website,
2 and shall include in the record:

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

19 **SECTION 12. 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 years of that individual's
14 driving privileges. If such individual refuses to submit to such screening test or tests,
15 none may be given, but such refusal is sufficient cause to revoke such individual's
16 license or permit to drive in the same manner as provided in section 39-20-04, and a
17 hearing as provided in section 39-20-05 and a judicial review as provided in section
18 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 13.** A new section to chapter 39-20 of the North Dakota Century Code is created
30 and enacted as follows:

1 **Restricted license upon twenty-four seven sobriety program participation.**
2 Any driver suspended under this chapter may elect to participate in the twenty-four seven
3 sobriety program under chapter 54-12. The director may issue a temporary restricted license
4 that takes effect after fifteen days of the suspension have been served provided that the driver
5 is not subject to any unrelated suspension.

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

13 **SECTION 15. APPROPRIATION.** There is appropriated out of any moneys in the general
14 fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the
15 sum as may be necessary, to the attorney general for the purpose of purchasing secure
16 continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program,
17 for the biennium beginning July 1, 2013, and ending June 30, 2015.