

HOUSE BILL NO. 1075

Introduced by

Representatives Carlisle, Henegar, R. Kelsch, Mahoney, Martinson

Senator Nalewaja

1 A BILL for an Act to amend and reenact section 39-08-01 of the North Dakota Century Code,
2 relating to penalties for driving under the influence.

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

4 **SECTION 1. AMENDMENT.** Section 39-08-01 of the 1995 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

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

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

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

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

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, ~~and of a class A misdemeanor for a later third offense in a five-year period. Notwithstanding the other provisions of this subsection, a person violating this section or equivalent ordinance is guilty~~ of a class A misdemeanor for the fourth ~~or subsequent~~ offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make ~~such~~ a subsequent offense finding based on other evidence.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment, of which forty-eight hours must be served consecutively;

1 a fine of one thousand dollars, and an order for addiction evaluation by an
2 appropriate licensed addiction treatment program.

3 d. For a fourth or subsequent offense within seven years, the sentence must
4 include one hundred eighty days' imprisonment, of which forty-eight hours
5 must be served consecutively and a fine of one thousand dollars.

6 e. The execution or imposition of sentence under this section may not be
7 suspended or deferred under subsection 3 or 4 of section 12.1-32-02 except
8 that a fine or a sentence of imprisonment may be suspended in any of the
9 following instances:

10 (1) Upon conviction of being in actual physical control of a motor vehicle in
11 violation of this section or equivalent ordinance.

12 (2) If the defendant is under age eighteen when convicted except that if the
13 defendant has, within the preceding five years, previously been
14 convicted of violating section 39-08-01 or equivalent ordinance, the
15 sentence must include at least forty-eight consecutive hours
16 imprisonment or in a minimum security facility or at least ten days of
17 community service. The execution of the sentence may not be
18 suspended nor the imposition of sentence deferred under subsection 3
19 or 4 of section 12.1-32-02.

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

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