

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Monday, the sixth day of January,  
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1075  
(Representatives Carlisle, Henegar, R. Kelsch, Mahoney, Martinson)  
(Senator Nalewaja)

AN ACT to amend and reenact subsection 1 of section 39-01-01 and section 39-08-01 of the North Dakota Century Code, relating to the definition of an appropriate licensed addiction treatment program and to penalties for driving under the influence.

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

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

1. "Appropriate licensed addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed by the department of human services or conducted by a licensed individual specifically trained in addiction treatment.

**SECTION 2. AMENDMENT.** Section 39-08-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

2. 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~~<sup>1</sup>, 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; a fine of one thousand dollars, and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
  - 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 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
    - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
    - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.
  - 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 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 under this section.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1075.

House Vote:      Yeas    90      Nays    0      Absent    7

Senate Vote:    Yeas    47      Nays    0      Absent    2

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1997.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1997.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1997,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State