

**HOUSE BILL NO. 1191**

Introduced by

Representatives Carlisle, R. Kelsch, Maragos

Senators Lyson, Robinson, Stenehjem

1 A BILL for an Act to amend and reenact section 39-08-01 of the North Dakota Century Code,  
2 relating to the drug court program.

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

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

6 **39-08-01. (~~Effective through July 31, 2003~~) Persons under the influence of**  
7 **intoxicating liquor or any other drugs or 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

- 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. A person violating this section or equivalent ordinance is guilty of a class B  
4           misdemeanor for the first or second offense in a five-year period, of a class A  
5           misdemeanor for a third offense in a five-year period, of a class A misdemeanor for  
6           the fourth offense in a seven-year period, and of a class C felony for a fifth or  
7           subsequent offense in a seven-year period. The minimum penalty for violating this  
8           section is as provided in subsection 4. The court shall take judicial notice of the  
9           fact that an offense would be a subsequent offense if indicated by the records of  
10          the director or may make a subsequent offense finding based on other evidence.
- 11          3. Upon conviction, the court may order the motor vehicle number plates of the motor  
12          vehicle owned and operated by the offender at the time of the offense to be  
13          impounded for the duration of the period of suspension or revocation of the  
14          offender's driving privilege by the licensing authority. The impounded number  
15          plates must be sent to the director who must retain them for the period of  
16          suspension or revocation, subject to their disposition by the court.
- 17          4. A person convicted of violating this section, or an equivalent ordinance, must be  
18          sentenced in accordance with this subsection. For purposes of this subsection,  
19          unless the context otherwise requires, "drug court program" means a district  
20          court-supervised treatment program approved by the supreme court which  
21          combines judicial supervision with alcohol and drug testing and chemical addiction  
22          treatment in a licensed treatment program. The supreme court may adopt rules,  
23          including rules of procedure, for drug courts and the drug court program.
- 24           a. For a first offense, the sentence must include both a fine of at least two  
25           hundred fifty dollars and an order for addiction evaluation by an appropriate  
26           licensed addiction treatment program.
- 27           b. For a second offense within five years, the sentence must include at least five  
28           days' imprisonment or placement in a minimum security facility, of which  
29           forty-eight hours must be served consecutively, or thirty days' community  
30           service; a fine of at least five hundred dollars; and an order for addiction  
31           evaluation by an appropriate licensed addiction treatment program.

- 1           c. For a third offense within five years, the sentence must include at least sixty  
2           days' imprisonment or placement in a minimum security facility, of which  
3           forty-eight hours must be served consecutively; a fine of one thousand dollars;  
4           and an order for addiction evaluation by an appropriate licensed addiction  
5           treatment program.
- 6           d. For a fourth or subsequent offense within seven years, the sentence must  
7           include one hundred eighty days' imprisonment or placement in a minimum  
8           security facility, of which forty-eight hours must be served consecutively; a  
9           fine of one thousand dollars; and an order for addiction evaluation by an  
10          appropriate licensed treatment program.
- 11          e. The execution or imposition of sentence under this section may not be  
12          suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an  
13          offense subject to subdivision a or b. If the offense is subject to subdivision c  
14          or d, the district court may suspend a sentence, except for ten days'  
15          imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition  
16          that the defendant first undergo and complete an evaluation for alcohol and  
17          substance abuse treatment and rehabilitation. If the defendant is found to be  
18          in need of alcohol and substance abuse treatment and rehabilitation, the  
19          district court may order the defendant placed under the supervision and  
20          management of the department of corrections and rehabilitation and is subject  
21          to the conditions of probation under section 12.1-32-07. The district court  
22          shall require the defendant to complete alcohol and substance abuse  
23          treatment and rehabilitation under the direction of the drug court program as a  
24          condition of probation in accordance with rules adopted by the supreme court.  
25          If the district court finds that a defendant has failed to undergo an evaluation  
26          or complete treatment or has violated any condition of probation, the district  
27          court shall revoke the defendant's probation and shall sentence the defendant  
28          in accordance with this subsection.
- 29          f. For purposes of this section, conviction of an offense under a law or  
30          ordinance of another state which is equivalent to this section must be

1                   considered a prior offense if such offense was committed within the time  
2                   limitations specified in this subsection.

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

10                  5. As used in subdivision b of subsection 4, the term "imprisonment" includes house  
11                  arrest. As a condition of house arrest, a defendant may not consume alcoholic  
12                  beverages. The house arrest must include a program of electronic home detention  
13                  in which the defendant is tested at least twice daily for the consumption of alcohol.  
14                  The defendant shall defray all costs associated with the electronic home detention.  
15                  This subsection does not apply to individuals committed to or under the supervision  
16                  and management of the department of corrections and rehabilitation.

17                  ~~(Effective after July 31, 2003) Persons under the influence of intoxicating liquor or~~  
18                  ~~any other drugs or substances not to operate vehicle – Penalty.~~

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

22                  a. ~~That person has an alcohol concentration of at least ten one hundredths of~~  
23                  ~~one percent by weight at the time of the performance of a chemical test within~~  
24                  ~~two hours after the driving or being in actual physical control of a vehicle.~~

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

26                  e. ~~That person is under the influence of any drug or substance or combination of~~  
27                  ~~drugs or substances to a degree which renders that person incapable of~~  
28                  ~~safely driving.~~

29                  d. ~~That person is under the combined influence of alcohol and any other drugs~~  
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