

Sixty-third
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1302

Introduced by

Representatives K. Koppelman, Keiser, Kiefert, Klemin, Ruby, Delmore

Senators Hogue, Luick, Lyson, Dotzenrod, O'Connell

1 A BILL for an Act to create and enact a new subsection to section 27-20-10 and section
2 27-20-31 of the North Dakota Century Code, relating to juveniles driving under the influence; to
3 amend and reenact subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01,
4 39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsection 6 of section
5 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to chemical tests for
6 driving under the influence of alcohol or drugs; to provide for a legislative management study; to
7 provide a penalty; to provide an effective date; and to declare an emergency.

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

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

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

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

19 If a child is adjudicated delinquent for a violation of section 39-08-01 or equivalent
20 ordinance, or if a child is found to have an alcohol concentration of at least two
21 one-hundredths of one percent by weight at the time of performance of a test within
22 two hours after driving or being in physical control of a motor vehicle, the juvenile court
23 may require the child to participate in the twenty-four seven sobriety program under
24 chapter 54-12.

1 **SECTION 3. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 7. The period of suspension imposed for a violation of section 39-08-01 or equivalent
4 ordinance is:

5 a. Ninety-one days if the operator's record shows the person has not violated
6 section 39-08-01 or equivalent ordinance within the five~~ten~~ years preceding the
7 last violation.

8 b. One hundred eighty days if the operator's record shows the person has not
9 violated section 39-08-01 or equivalent ordinance within five~~ten~~ years preceding
10 the last violation and the violation was for an alcohol concentration of at least
11 eighteen one-hundredths of one percent by weight.

12 c. Three hundred sixty-five days if the operator's record shows the person has once
13 violated section 39-08-01 or equivalent ordinance within the five~~ten~~ years
14 preceding the last violation.

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

19 e. Two years if the operator's record shows the person has at least twice violated
20 section 39-08-01 or equivalent ordinance within the five~~ten~~ years preceding the
21 last violation.

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

26 g. An individual who has a temporary restricted driver's license with the restriction
27 the individual participates in the twenty-four seven sobriety program under
28 chapter 54-12 is not subject to the suspension periods under this subsection.

29 **SECTION 4. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

- 2 1. Except as provided under subsection 2, if the director has suspended a license under
3 section 39-06.1-10 or has extended a suspension or revocation under section
4 39-06-43, upon receiving written application from the offender affected, the director
5 may for good cause issue a temporary restricted operator's license valid for the
6 remainder of the suspension period after seven days of the suspension period have
7 passed.
- 8 2. If the director has suspended a license under chapter 39-20, or after a violation of
9 section 39-08-01 or equivalent ordinance, upon written application of the offender the
10 director may issue for good cause a temporary restricted license that takes effect after
11 thirty days of the suspension have been served after a first offense under section
12 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
13 sobriety program under chapter 54-12, the director may issue a temporary restricted
14 license that takes effect after fifteen days of the suspension have been served. The
15 director may not issue a temporary restricted license to any offender whose operator's
16 license has been revoked under section 39-20-04 or suspended upon a second or
17 subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary
18 restricted license may be issued in accordance with subsection 5 of this section if the
19 offender is participating in the twenty-four seven sobriety program under chapter
20 54-12, or for good cause if the offender has not committed an offense for a period of
21 two years before the date of the filing of a written application that must be
22 accompanied by a report from an appropriate licensed addiction treatment program or
23 if the offender is participating in the drug court program and has not committed an
24 offense for a period of three hundred sixty-five days before the date of the filing of a
25 written application that must be accompanied by a recommendation from the district
26 court. The director may conduct a hearing for the purposes of obtaining information,
27 reports, and evaluations from courts, law enforcement, and citizens to determine the
28 offender's conduct and driving behavior during the prerequisite period of time. The
29 director may also require that an ignition interlock device be installed in the offender's
30 vehicle.

- 1 3. The director may not issue a temporary restricted license for a period of license
2 revocation or suspension imposed under subsection 5 of section 39-06-17 or section
3 39-06-31. A temporary restricted license may be issued for suspensions ordered under
4 subsection 7 of section 39-06-32 if it could have been issued had the suspension
5 resulted from in-state conduct.
- 6 4. A restricted license issued under this section is solely for the use of a motor vehicle
7 during the licensee's normal working hours, or as provided under subsection 5 of this
8 section, and may contain any other restrictions authorized by section 39-06-17.
9 Violation of a restriction imposed according to this section is deemed a violation of
10 section 39-06-17.
- 11 5. If an offender has been charged with, or convicted of, a second or subsequent
12 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
13 subject to suspension under chapter 39-20 and the offender's driver's license is not
14 subject to an unrelated suspension or revocation, the director shall issue a temporary
15 restricted driver's ~~permit~~license to the offender ~~only for the purpose of~~
16 ~~participation upon the restriction the offender participate~~ in the twenty-four seven
17 sobriety program ~~upon~~under chapter 54-12. The offender shall submit an application
18 to the director for a temporary restricted license along with submission of proof of
19 financial responsibility and proof of participation in the twenty-four seven sobriety
20 program ~~by the offender, in order to receive a temporary restricted license~~. If a court or
21 the parole board finds that an offender has violated a condition of the twenty four
22 seven sobriety program, the court or parole board may order the temporary restricted
23 driver's permit be revoked and take possession of the temporary restricted driver's
24 permit. The court or the parole board shall send a copy of the order to the director who
25 shall record the revocation of the temporary restricted driver's permit. Revocation of a
26 temporary restricted driver's permit for violation of a condition of the twenty four seven
27 sobriety program does not preclude the offender's eligibility for a temporary restricted
28 driver's license under any other provisions of this section.

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

1 **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or**
2 **substances not to operate vehicle - Penalty.**

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

6 a. That person has an alcohol concentration of at least eight one-hundredths of one
7 percent by weight at the time of the performance of a chemical test within two
8 hours after the driving or being in actual physical control of a vehicle.

9 b. That person is under the influence of intoxicating liquor.

10 c. That person is under the influence of any drug or substance or combination of
11 drugs or substances to a degree which renders that person incapable of safely
12 driving.

13 d. That person is under the combined influence of alcohol and any other drugs or
14 substances to a degree which renders that person incapable of safely driving.

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

20 2. Unless as otherwise provided in section 39-08-01.2, an individual violating this section
21 or equivalent ordinance is guilty of a class B misdemeanor for the first ~~or second~~
22 ~~offense in a five-year period~~, of a class A misdemeanor for a ~~third~~second offense in a
23 ~~five-year~~ten-year period, of a class A misdemeanor for the ~~fourth~~ offense in a
24 ~~seven-year period~~, and of a class C felony for a ~~fifth or subsequent~~third offense in a
25 ~~seven-year~~ten-year period, and a class C felony for any fourth or subsequent offense,
26 regardless how long it has been since the previous offense. The minimum penalty for
27 violating this section is as provided in subsection 4. The court shall take judicial notice
28 of the fact that an offense would be a subsequent offense if indicated by the records of
29 the director or may make a subsequent offense finding based on other evidence. If an
30 individual has spent time in custody for any offense, the time spent in custody may not
31 be included as part of any period of time under this section.

- 1 3. Upon conviction of a second or subsequent offense within ~~five~~ten years under this
2 section or equivalent ordinance, the court ~~must~~shall order the motor vehicle number
3 plates of all of the motor vehicles owned and operated by the offender at the time of
4 the offense to be impounded for the duration of the period of suspension or revocation
5 of the offender's driving privilege by the licensing authority. The impounded number
6 plates must be sent to the director who must retain them for the period of suspension
7 or revocation, subject to their disposition by the court. The court may make an
8 exception to this subsection, on an individual basis, to avoid undue hardship to an
9 individual who is completely dependent on the motor vehicle for the necessities of life,
10 including a family member of the convicted individual and a coowner of the motor
11 vehicle, ~~but not including~~or if the offender is participating in the twenty-four seven
12 sobriety program.
- 13 4. A person convicted of violating this section, or an equivalent ordinance, must be
14 sentenced in accordance with this subsection. For purposes of this subsection, unless
15 the context otherwise requires, "drug court program" means a district court-supervised
16 treatment program approved by the supreme court which combines judicial
17 supervision with alcohol and drug testing and chemical addiction treatment in a
18 licensed treatment program. The supreme court may adopt rules, including rules of
19 procedure, for drug courts and the drug court program.
- 20 a. For a first offense, if the alcohol concentration is at least eight-hundredths of one
21 percent by weight but less than twenty-one-hundredths of one percent by weight,
22 the sentence must include a fine of at least five hundred dollars and an order for
23 an addiction evaluation by an appropriate licensed addiction treatment program.
24 If the alcohol concentration is at least twenty-one-hundredths of one percent by
25 weight, or if the individual refused to submit to a chemical test, or a test required
26 under section 39-06.2-10.2, 39-20-01, or 39-20-14, the sentence must include
27 both at least ten days' imprisonment, of which forty-eight hours must be served
28 consecutively; a fine of at least ~~two~~seven hundred fifty dollars ~~and;~~ an order for
29 addiction evaluation by an appropriate licensed addiction treatment program; at
30 least six months' probation; and participation in the twenty-four seven sobriety
31 program under chapter 54-12 as a mandatory condition of probation.

- 1 b. For a second offense within ~~five~~ten years, the sentence must include at least
2 ~~five~~sixty days' imprisonment ~~or placement in a minimum security facility~~, of which
3 ~~forty-eight~~ hours must be served consecutively, ~~or thirty days' community service~~;
4 a fine of at least one thousand five hundred dollars; ~~and~~ an order for addiction
5 evaluation by an appropriate licensed addiction treatment program; ~~and at least~~
6 twelve months' probation; and participation in the twenty-four seven sobriety
7 program under chapter 54-12 as a mandatory condition of probation.
- 8 c. For a third offense within ~~five~~ten years, the sentence must include at least
9 ~~sixtyone hundred eighty~~ days' imprisonment ~~or placement in a minimum security~~
10 ~~facility~~, of which ~~forty-eight~~ hours must be served consecutively; a fine of ~~one at~~
11 least two thousand dollars; ~~and~~ an order for addiction evaluation by an
12 appropriate licensed addiction treatment program; ~~and at least twelve months'~~
13 probation; and participation in the twenty-four seven sobriety program under
14 chapter 54-12 as a mandatory condition of probation.
- 15 d. For a fourth or subsequent offense ~~within seven years~~, the sentence must include
16 at least one hundred eighty days' year and one day's imprisonment ~~or placement~~
17 ~~in a minimum security facility~~, of which ~~forty-eight~~ hours must be served
18 ~~consecutively~~; a fine of ~~one at~~ least three thousand dollars; ~~and~~ an order for
19 addiction evaluation by an appropriate licensed treatment program; at least two
20 years' probation; and participation in the twenty-four seven sobriety program
21 under chapter 54-12 as a mandatory condition of probation.
- 22 e. The ~~execution or~~ imposition of sentence under this section may not be
23 ~~suspended or deferred~~ under subsection ~~3 or~~ 4 of section 12.1-32-02 for an
24 offense subject to this section.
- 25 f. If the offense is subject to subdivision a or b, a municipal court or district court
26 may suspend a sentence under subsection 3 of section 12.1-32-02 if the alcohol
27 concentration is at least eight-hundredths of one percent by weight but less than
28 twenty-one-hundredths of one percent by weight. If the alcohol concentration is at
29 least twenty-one-hundredths of one percent by weight, or if the individual refused
30 to submit to a chemical test, or a test required under section 39-06.2-10.2,
31 39-20-01, or 39-20-14, a municipal court or district court may suspend a

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

28 f.g. If the court sentences an individual to the legal and physical custody of the
29 department of corrections and rehabilitation, the department may place the
30 defendant in an alcohol treatment program designated by the department. Upon
31 the individual's successful completion of the alcohol treatment program, the

1 department shall release the individual from imprisonment to serve the remainder
2 of the sentence of imprisonment on probation, which may include placement in
3 another facility or treatment program. If an individual is placed in another facility
4 or treatment program after release from imprisonment, the remainder of the
5 individual's sentence of imprisonment must be considered time spent in custody.
6 A court may not order the department to be responsible for the costs of treatment
7 in a private treatment facility.

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

12 i. An individual who operates a motor vehicle on a highway or on public or private
13 areas to which the public has a right of access for vehicular use in this state who
14 refuses to submit to a chemical test, or a test required under sections
15 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

23 5. As used in subdivision b of subsection 4, the term "imprisonment" ~~includes~~may include
24 house arrest. As a condition of house arrest, a defendant may not consume alcoholic
25 beverages. The house arrest must include a program of electronic home detention in-
26 ~~which~~and the defendant is tested at least twice daily for the consumption of
27 ~~alcohol~~shall participate in the twenty-four seven sobriety program as a condition of
28 house arrest. The defendant shall ~~defray~~pay all costs associated with the electronic
29 home detention and participation in the twenty-four seven sobriety program. This-
30 ~~subsection does not apply to individuals committed to or under the supervision and~~
31 ~~management of the department of corrections and rehabilitation.~~

1 6. As used in this title, participation in the twenty-four seven sobriety program under
2 chapter 12-54 means compliance with sections 54-12-27 through 54-12-31, and
3 requires sobriety breath testing twice per day seven days per week or electronic
4 alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for
5 all twenty-four seven sobriety program fees and the court may not waive the fees.

6 **SECTION 6. AMENDMENT.** Section 39-08-01.2 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-08-01.2. Special punishment for causing injury or death while operating a vehicle**
9 **while under the influence of alcohol.**

- 10 1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is
11 based in part on the evidence of the individual's operation of a motor vehicle while
12 under the influence of alcohol or drugs, the sentence imposed must include at least
13 ~~one year's~~two years' imprisonment if the individual was an adult at the time of the
14 offense.
- 15 2. If an individual is convicted of a first offense violating section 39-08-01, or section
16 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle
17 while under the influence of alcohol or drugs, and the violation caused serious bodily
18 injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of
19 a class A misdemeanor and the sentence must include at least ninety days'
20 imprisonment if the individual was an adult at the time of the offense.
- 21 3. If an individual is convicted of a second or subsequent offense in ten years of violating
22 section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's
23 operation of a motor vehicle while under the influence of alcohol or drugs, and the
24 violation caused serious bodily injury, as defined in section 12.1-01-04, to another
25 individual, that individual is guilty of a class C felony and the sentence must include at
26 least one year and one day's imprisonment if the individual was an adult at the time of
27 the offense.
- 28 4. The imposition of sentence may not be deferred under subsection 4 of section
29 12.1-32-02 for an offense subject to this section.
- 30 5. The sentence under this section may ~~not~~ be suspended ~~unless the court finds that~~
31 ~~manifest injustice would result from imposition of the sentence,~~ except for ninety days

1 for a first offense, and one year for a second or subsequent offense in ten years. The
2 court shall impose not less than one year of supervised probation and shall require
3 participation in the twenty-four seven sobriety program for at least twelve months as a
4 mandatory condition of probation. Before a sentence under this section applies, a
5 defendant must be notified of the minimum mandatory sentence. If the finding of guilt
6 is by jury verdict, the verdict form must indicate that the jury found the elements that
7 create the minimum sentence.

8 6. An individual who is convicted under this section shall serve the sentence imposed by
9 the court without benefit of parole.

10 **SECTION 7. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

13 1. Any individual who operates a motor vehicle on a highway or on public or private
14 areas to which the public has a right of access for vehicular use in this state is deemed
15 to have given consent, and shall consent, subject to the provisions of this chapter, to a
16 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the
17 alcohol concentration or presence of other drugs, or combination thereof, in the
18 individual's blood, breath, or urine. As used in this chapter, the word "drug" means any
19 drug or substance or combination of drugs or substances which renders an individual
20 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean
21 any test to determine the alcohol concentration or presence of other drugs, or
22 combination thereof, in the individual's blood, breath, or urine, approved by the
23 director of the state crime laboratory or the director's designee under this chapter.

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

1 3. The law enforcement officer also shall ~~also~~ inform the individual charged that North
2 Dakota law requires the individual to take the test to determine whether the individual
3 is under the influence of alcohol, drugs, or a combination of alcohol and drugs, that
4 refusal to take the test directed by the law enforcement officer is a crime, and that
5 refusal of the individual to submit to the test ~~determined appropriate will~~directed by the
6 law enforcement officer may result in a revocation for up to four years of the
7 individual's driving privileges. The law enforcement officer shall determine which of the
8 tests is to be used.

9 4. When an individual under the age of eighteen years is taken into custody for violating
10 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt
11 to contact the individual's parent or legal guardian to explain the cause for the custody.
12 Neither the law enforcement officer's efforts to contact, nor any consultation with, a
13 parent or legal guardian may be permitted to interfere with the administration of
14 chemical testing requirements under this chapter. The law enforcement officer shall
15 mail a notice to the parent or legal guardian of the minor within ten days after the test
16 results are received or within ten days after the minor is taken into custody if the minor
17 refuses to submit to testing. The notice must contain a statement of the test performed
18 and the results of that test; or if the minor refuses to submit to the testing, a statement
19 notifying of that fact. The attempt to contact or the contacting or notification of a parent
20 or legal guardian is not a precondition to the admissibility of chemical test results or
21 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

24 **39-20-03.1. Action following test result for a resident operator.**

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

- 1 1. The law enforcement officer shall immediately issue to that person a temporary
2 operator's permit if the person then has valid operating privileges, extending driving
3 privileges for the next twenty-five days, or until earlier terminated by the decision of a
4 hearing officer under section 39-20-05, or unless terminated by participation in the
5 twenty-four seven sobriety program as provided under subsection 5 of this section.
6 The law enforcement officer shall sign and note the date on the temporary operator's
7 permit. The temporary operator's permit serves as the director's official notification to
8 the person of the director's intent to revoke, suspend, or deny driving privileges in this
9 state.
- 10 2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by
11 drawing blood as provided in section 39-20-02 and the individual tested is not a
12 resident of an area in which the law enforcement officer has jurisdiction, the law
13 enforcement officer shall, on receiving the analysis of the urine or blood from the
14 director of the state crime laboratory or the director's designee and if the analysis
15 shows that individual had an alcohol concentration of at least eight one-hundredths of
16 one percent by weight or, with respect to an individual under twenty-one years of age,
17 an alcohol concentration of at least two one-hundredths of one percent by weight,
18 either proceed in accordance with subsection 1 during that individual's reappearance
19 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
20 enforcement agency having jurisdiction where the individual lives. On that notification,
21 that law enforcement agency shall, within twenty-four hours, forward a copy of the
22 temporary operator's permit to the law enforcement agency making the arrest or to the
23 director. The law enforcement agency shall issue to that individual a temporary
24 operator's permit as provided in this section, and shall sign and date the permit as
25 provided in subsection 1.
- 26 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
27 enforcement agency making the arrest may mail a temporary operator's permit to the
28 individual who submitted to the blood or urine test, whether or not the individual is a
29 resident of the area in which the law enforcement officer has jurisdiction. The third day
30 after the mailing of the temporary operator's permit is considered the date of issuance.
31 Actual notice of the opportunity for a hearing under this section is deemed to have

1 occurred seventy-two hours after the notice is mailed by regular mail to the address
2 submitted by the individual to the law enforcement officer. The temporary operator's
3 permit serves as the director's official notification to the individual of the director's
4 intent to revoke, suspend, or deny driving privileges in this state.

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

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

28 **SECTION 9. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
2 **testing.**

3 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may
4 be given, but the law enforcement officer shall immediately take possession of the
5 person's operator's license if it is then available and shall immediately issue to that
6 person a temporary operator's permit, if the person then has valid operating privileges,
7 extending driving privileges for the next twenty-five days or until earlier terminated by a
8 decision of a hearing officer under section 39-20-05. The law enforcement officer shall
9 sign and note the date on the temporary operator's permit. The temporary operator's
10 permit serves as the director's official notification to the person of the director's intent
11 to revoke driving privileges in this state and of the hearing procedures under this
12 chapter. The director, upon the receipt of that person's operator's license and a
13 certified written report of the law enforcement officer in the form required by the
14 director, forwarded by the officer within five days after issuing the temporary operator's
15 permit, showing that the officer had reasonable grounds to believe the person had
16 been driving or was in actual physical control of a motor vehicle while in violation of
17 section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had
18 reason to believe that the person committed a moving traffic violation or was involved
19 in a traffic accident as a driver, and in conjunction with the violation or accident the
20 officer has, through the officer's observations, formulated an opinion that the person's
21 body contains alcohol, that the person was lawfully arrested if applicable, and that the
22 person had refused to submit to the test or tests under section 39-20-01 or 39-20-14,
23 shall revoke that person's license or permit to drive and any nonresident operating
24 privilege for the appropriate period under this section, or if the person is a resident
25 without a license or a permit to operate a motor vehicle in this state, the director shall
26 deny to the person the issuance of a license or permit for the appropriate period under
27 this section after the date of the alleged violation, subject to the opportunity for a
28 prerevocation hearing and postrevocation review as provided in this chapter. In the
29 revocation of the person's operator's license the director shall give credit for time in
30 which the person was without an operator's license after the day of the person's
31 refusal to submit to the test except that the director may not give credit for time in

1 which the person retained driving privileges through a temporary operator's permit
2 issued under this section or section 39-20-03.2. The period of revocation or denial of
3 issuance of a license or permit under this section is:

- 4 a. One year if the person's driving record shows that within the fiveten years
5 preceding the most recent violation of this section, the person's operator's license
6 has not previously been suspended, revoked, or issuance denied for a violation
7 of this chapter or section 39-08-01 or equivalent ordinance.
- 8 b. Three years if the person's driving record shows that within the fiveten years
9 preceding the most recent violation of this section, the person's operator's license
10 has been once previously suspended, revoked, or issuance denied for a violation
11 of this chapter or section 39-08-01 or equivalent ordinance.
- 12 c. Four years if the person's driving record shows that within the fiveten years
13 preceding the most recent violation of this section, the person's operator's license
14 has at least twice previously been suspended, revoked, or issuance denied under
15 this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any
16 combination of the same, and the suspensions, revocations, or denials resulted
17 from at least two separate arrests.

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

- 20 a. An administrative hearing is not held under section 39-20-05;
- 21 b. The person mails an affidavit to the director within twenty-five days after the
22 temporary operator's permit is issued. The affidavit must state that the person:
- 23 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent
24 ordinance within twenty-five days after the temporary operator's permit is
25 issued;
- 26 (2) Agrees that the person's driving privileges must be suspended as provided
27 under section 39-06.1-10;
- 28 (3) Acknowledges the right to a section 39-20-05 administrative hearing and
29 section 39-20-06 judicial review and voluntarily and knowingly waives these
30 rights; and

- 1 (4) Agrees that the person's driving privileges must be revoked as provided
2 under this section without an administrative hearing or judicial review, if the
3 person does not plead guilty within twenty-five days after the temporary
4 operator's permit is issued, or the court does not accept the guilty plea, or
5 the guilty plea is withdrawn;
- 6 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance
7 within twenty-five days after the temporary operator's permit is issued;
- 8 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
9 the director within twenty-five days after the temporary operator's permit is
10 issued; and
- 11 e. A copy of the final order or judgment of conviction evidencing the acceptance of
12 the person's guilty plea is received by the director prior to the return or
13 reinstatement of the person's driving privileges; ~~and~~
- 14 f. ~~The person has never been convicted under section 39-08-01 or equivalent~~
15 ~~ordinance.~~
- 16 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to
17 violating section 39-08-01, or equivalent ordinance, to the director within ten days after
18 it is ordered. Upon receipt of the order, the director shall immediately revoke the
19 person's driving privileges as provided under this section without providing an
20 administrative hearing.

21 **SECTION 10. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **39-20-04.1. Administrative sanction for driving or being in physical control of a**
24 **vehicle while having certain alcohol concentration.**

- 25 1. After the receipt of the certified report of a law enforcement officer and if no written
26 request for hearing has been received from the arrested person under section
27 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
28 from the hearing confirm that the law enforcement officer had reasonable grounds to
29 arrest the person and test results show that the arrested person was driving or in
30 physical control of a vehicle while having an alcohol concentration of at least eight
31 one-hundredths of one percent by weight or, with respect to a person under

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

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

1 and the suspensions, revocations, or denials resulted from at least two separate
2 arrests with the last violation or suspension for an alcohol concentration of under
3 eighteen one-hundredths of one percent by weight.

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

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

15 **SECTION 11. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **39-20-05. Administrative hearing on request - Election to participate in the**
18 **twenty-four seven sobriety program.**

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

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

1 that the privilege to drive might be suspended based on the results of the test is not an
2 issue.

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

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

26 a. Any copy of a certified copy of an analytical report of a blood or urine sample
27 received by the director from the director of the state crime laboratory or the
28 director's designee or electronically posted by the director of the state crime
29 laboratory or the director's designee on the crime laboratory information
30 management system and certified by, and received from, a law enforcement
31 officer or individual who has authorized access to the crime laboratory

- 1 management system through the criminal justice data information sharing system
2 or a certified copy of the checklist and test records received by the director from a
3 certified breath test operator; ~~and~~
- 4 b. Any copy of a certified copy of a certificate of the director of the state crime
5 laboratory or the director's designee relating to approved methods, devices,
6 operators, materials, and checklists used for testing for alcohol concentration or
7 the presence of drugs received by the director from the director of the state crime
8 laboratory or the director's designee, or that have been electronically posted with
9 the state crime laboratory division of the attorney general at the attorney general
10 website; and
- 11 c. Any copy of a certified copy of a certificate of the director of the state crime
12 laboratory designating the director's designees.
- 13 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
14 officer's findings of fact, conclusions of law, and decision based on the findings and
15 conclusions and shall immediately deliver to the person a copy of the decision. If the
16 hearing officer does not find in favor of the person, the copy of the decision serves as
17 the director's official notification to the person of the revocation, suspension, or denial
18 of driving privileges in this state. If the hearing officer finds, based on a preponderance
19 of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or
20 that the person had an alcohol concentration of at least eight one-hundredths of one
21 percent by weight or, with respect to a person under twenty-one years of age, an
22 alcohol concentration of at least two one-hundredths of one percent by weight, the
23 hearing officer shall immediately take possession of the person's temporary operator's
24 permit issued under this chapter. If the hearing officer does not find against the
25 person, the hearing officer shall sign, date, and mark on the person's permit an
26 extension of driving privileges for the next twenty days and shall return the permit to
27 the person. The hearing officer shall report the findings, conclusions, and decisions to
28 the director within ten days of the conclusion of the hearing. If the hearing officer has
29 determined in favor of the person, the director shall return the person's operator's
30 license by regular mail to the address on file with the director under section 39-06-20.

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

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

21 **SECTION 12. AMENDMENT.** Subsection 6 of section 39-20-07 of the North Dakota
22 Century Code is amended and reenacted as follows:

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

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

17 **SECTION 13. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-20-14. Screening tests.**

- 20 1. Any individual who operates a motor vehicle upon the public highways of this state is
21 deemed to have given consent to submit to an onsite screening test or tests of the
22 individual's breath for the purpose of estimating the alcohol concentration in the
23 individual's breath upon the request of a law enforcement officer who has reason to
24 believe that the individual committed a moving traffic violation or was involved in a
25 traffic accident as a driver, and in conjunction with the violation or the accident the
26 officer has, through the officer's observations, formulated an opinion that the
27 individual's body contains alcohol.
- 28 2. An individual may not be required to submit to a screening test or tests of breath while
29 at a hospital as a patient if the medical practitioner in immediate charge of the
30 individual's case is not first notified of the proposal to make the requirement, or objects

1 to the test or tests on the ground that such would be prejudicial to the proper care or
2 treatment of the patient.

3 3. The screening test or tests must be performed by an enforcement officer certified as a
4 chemical test operator by the director of the state crime laboratory or the director's
5 designee and according to methods and with devices approved by the director of the
6 state crime laboratory or the director's designee. The results of such screening test
7 must be used only for determining whether or not a further test shall be given under
8 the provisions of section 39-20-01. The officer shall inform the individual that North
9 Dakota law requires the individual to take the screening test to determine whether the
10 individual is under the influence of alcohol, that refusal to take the screening test is a
11 crime, and that refusal of the individual to submit to a screening test ~~will~~may result in a
12 revocation for up to four years of that individual's driving privileges. If such individual
13 refuses to submit to such screening test or tests, none may be given, but such refusal
14 is sufficient cause to revoke such individual's license or permit to drive in the same
15 manner as provided in section 39-20-04, and a hearing as provided in section
16 39-20-05 and a judicial review as provided in section 39-20-06 must be available.

17 ~~However, the~~

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

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

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

28 **SECTION 14. LEGISLATIVE MANAGEMENT STUDY - DRIVING UNDER THE**

29 **INFLUENCE.** During the 2013-14 interim, the legislative management shall consider studying
30 the feasibility and desirability of North Dakota Century Code provisions that relate to
31 administrative hearings and administrative sanctions for driving while under the influence of

1 alcohol or drugs. With the assistance of the department of corrections and rehabilitation and the
2 department of human services, the study must include the need for supervision, methods of
3 treatment, and penalties for repeat driving while under the influence of alcohol or drug
4 offenders. The legislative management shall report its findings and recommendations, together
5 with any legislation required to implement the recommendations, to the sixty-fourth legislative
6 assembly.

7 **SECTION 15. EFFECTIVE DATE.** This Act becomes effective May 1, 2013.

8 **SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure.