

2013 SENATE TRANSPORTATION

SB 2240

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2240
February 01, 2013
Recording Job Number 18148

☐ Conference Committee

Committee Clerk Signature

Devi E. Berg

Explanation or reason for introduction of bill/resolution:

Relating to marked licenses for driving under the influence and an ignition interlock restricted license and to provide a penalty.

Minutes:

Attached testimony: 4

Chairman Oehlke Opened the hearing on SB 2240

Senator Tim Mathern (District 27) Introduced the bill, which reforms North Dakota's DUI laws with a three pronged approach: marking drivers' licenses, a requirement of ignition interlocks and dramatic increases in penalties with treatment components. See attached testimony # 1. Distributed amendment to the bill drafted with the help of the Department of Corrections, see attachment # 2. Recommends do pass.

In response to multiple questions from committee members **Senator Mathern** said that: In Montana the use of treatment approach in a residential setting instead of prison translates into dramatic reduction in cost and a success rate of seventy five percent. The amendment only applies to anything above the felony level. We are talking about impaired driving of any sort. Statistics show that people that abuse substances generally abuse alcohol (over eighty percent).

Chairman Oehlke The amendment talks about judges being able to have some flexibility they "may" but other places in this bill say "shall", how come.

Senator Mathern believe it is important that we have some mandatory activity in this regard.

Senator Flakoll quoted message from Judge Tom Davis (11:05) Municipal Court in Fargo, indicating there is no interlock device vendor availability.

Senator Mathern there is a representative here today. They develop a contract with a number of North Dakota shops that would be involved in the installation process. The equipment is such that the data is transferred immediately, it is hooked up with a GPS, a satellite system.

Senator Flakoll How would it work in, for example, a farm operation where you have a dozen or more vehicles and it might be the farmer or one of the employees who has had the conviction.

Senator Mathern In the sentencing process, following the conviction, the specific implementation of the interlocking device would be discussed. There is a mandatory fine which can be reduced to the degree that the convicted person agrees to install one in the vehicle. That will work itself out. I can see the device going into more than one vehicle.

Senator Flakoll There are fines up to a hundred thousand dollars, how will that affect a low income person?

Senator Mathern Getting to the hundred thousand dollar fine means having this offense on a number of occasions. I believe persons of low income are amenable to treatment. I don't think they will get to that point. For the interlocking device you will see in the fiscal note a method for the low income person to have that service in place. Essentially this is a burden for the offender.

Senator Sitte Our jail is full in Burleigh County, all are felons, and so how many jail beds will be needed under this bill? Will people be able to choose/pay for an alternative to jail? Also if I host a party and provide some beverages how do I know that someone in the crowd has a DUI, if I serve alcoholic beverage to that person I wind up with a marked driver's license. I don't understand how you can be holding second parties guilty for something they may have no control over or don't know at all.

Senator Mathern there are a number of features in the bill, this bill is an attempt to say there is a cultural problem in our society wherein there is too much acceptance of driving and drinking. Let us do these things to address that. If you have another idea for another technology that has the same outcome, less people driving and drinking, we want it on this bill. I believe hosts are responsible, this is part of the culture we are trying to change it is a culture that allows us to believe we are not responsible

Senator Flakoll Why isn't there mandatory server training, who is responsible? The chain of command will be different for off-sales, like college dorms?

Senator Mathern The hospitality industry has some training. The chain of responsibility, I believe is the seller and the buyer; this bill does not get into how far this goes. It will lead to a situation where you as a seller will think twice before selling multiple alcoholic beverages to one person; It has gotten to a point that for driving deaths to go down in our state we have to change our behavior. We have statutes in place to address selling to someone under age. Our intent was not to change those statutes.

Representative Ed Gruchalla (District 45) Co-sponsor of this bill There are some things that were left out of this bill that I would have liked to have there. Written testimony #3

Senator Flakoll bill focuses more on frequency (repeat offenders) than intensity (.08 vs. .24). Is this also important?

Rep Gruchalla Many states deal with the problem that way. Studies show that the lower alcohol levels are the ones having more crashes. As we know, the first thing that goes is judgment. The federal level for commercial drivers is .04, because at that point judgment starts to deteriorate. I think we should treat them all the same.

Vice Chairman Armstrong Assuming this law was implemented and, over time, the number of DUIs went down based on the strict penalties. This takes time; I don't see anything in the bill that is addressing that. They (courts) are overwhelmed so there will be more trials. What tools are there to deal with the influx of more jury trials?

Rep Gruchalla I agree DUIs do not drop overnight. I think it will drop off rapidly once they see the strict handling of it.

Senator Sitte we want rehabilitation not punishment so severe that it will destroy their lives.

Rep Gruchalla I don't think families of fatalities will say we are being too hard with these people. We have to be hard with them up front to make a deterrent effect before we start to see the changes.

Senator Flakoll isn't alcoholism a disease? What percent of those DUIs are from out of state?

Rep Gruchalla I don't know the numbers. We can ask North Dakota Department of Transportation (DOT) that question. One third of DUIs arrested offend again. There is a DUI bill in the House. The Attorney General instituted a 24/7 program which we copied from SD. We had a pilot. That is in the bill. The SCRAM (Secure Continuous Remote Alcohol Monitor) bracelets are optional. The ignition interlock device is not used in North Dakota, there are some problems with it and we don't want to infringe too much with people who need to work. With the ignition interlock you can still drive while under suspension there are options in the bill.

Chairman Oehlke Are there parts of the state where this would not be enforceable?

Rep Gruchalla In some reservations, it depends on the reservation.

Senator Sitte What is the average blood alcohol for DUI?

Rep Gruchalla Average DUI arrest was .17 percent.

Vice Chairman Armstrong is the federal poverty line language in here the same that is used for determining indigence in the court system? You said something about work permits currently we do not allow work permits for second and subsequent offenses; the interlock would allow it?

Rep Gruchalla I don't know, it would be up to the judge, the courts

Senator Howard Anderson District 8 The most common complain we get from our constituents (other than taxes) is drunk or impaired driving. It behooves us to take as close a look as we can to devise as many solutions as we can I encourage you to give judges as much flexibility as possible. Treatment does work and if we give the judges the tools, sometimes we have to pay, sometimes the individual can pay. It is up to the judge, based on their resources. We work with impaired individuals all the time, once they have something to lose and they realize that treatment works ninety percent of the time they will comply. I encourage you to give the judges as many tools as you can. In the end the voters can hold them (judges) accountable.

Senator Axness You favor rehab as a preferred option over jail?

Senator Anderson Yes I do, even where it says mandatory give the judge discretion

Senator Flakoll What is the breakdown between arrests for driving under the influence of alcohol compared to under drugs or prescription medicine?

Senator Anderson I guess alcohol 80%, most on alcohol not on drugs, most on drugs also on alcohol.

Frank Harris State Legislative Affairs Manager with Mothers Against Drunk Drivers Favors this bill. In his written testimony (#4) he provided statics about crashes involving drunk drivers in North Dakota, detailed information about the use of ignition interlock; what the ignition interlock is, how it works (page 5) and status of state ignition interlock laws (page 6). Supports ignition interlocks because they have looked at what does and doesn't work. License suspensions and work restricted licenses don't work. What works is technology, treatment and the deterrent of possible incarceration.

Arlene Deutscher, with husband Tom, son Colin and daughter Elisa.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

Senate Bill 2240
February 01, 2013
Recording Job Number 18183

☐ Conference Committee

Committee Clerk Signature

Dore E. Peay

Explanation or reason for introduction of bill/resolution:

Relating to marked licenses for driving under the influence, an ignition interlock restricted license and to provide a penalty.

Minutes:

Attached testimony: 5

Arlene Deutscher Bismarck North Dakota (with husband Tom, son Colin and daughter Alyssa) It is our responsibility to recognize we have an important role in changing society's attitude about driving drunk. Our first step is strengthening our DUI legislation. It is time for progressive and meaningful change. Please do pass. (A son, daughter-in-law, granddaughter, and unborn grandchild were killed by a drunk driver on July 6, 2012)

Juan Ruiz Newburg North Dakota In favor of this bill in hopes that no other families will have to go through what his went through when on July 8, 2012 a drunk driver ran over the tent in which his two sons (Cyrus and Alaricus Ruiz) slept, killing them. (Attached testimony #1) (Segment 2:13 to 10:39)

Sandra Hernandez Newburg North Dakota, Mother of Cyrus and Alaricus Ruiz In favor of this bill, not just for her but also for all the families that have lost loved ones to a drunk driver. (Segment 8:21 to 11:40)

Wayne Stautz Casselton, North Dakota In favor of this bill. Angered by the senseless death of the Ruiz children and the Deutscher family, he knew he had to do something. He wrote down ideas, sent them to the governor. Governor's secretary called and told him to send the letter to all state legislators. He did and got replies. Senator Mathern asked if he would like to see this in bill format. Walked the committee through the parts of the bill based on his ideas (segments 11:44 to 20:30).

Cynthia Auen, Bismarck North Dakota, Written testimony in favor of this bill (#2) (segments 21:08 to 25:46). Seize the day for the sixty four people in North Dakota who lost their lives in alcohol related accidents in 2011. This bill does not inconvenience those who make responsible decisions.

Brenda Gjesdal, Wahpeton, North Dakota In favor of this bill. Daughter killed by drunk driver. Written testimony #3

No additional testimony in favor. Testimony in opposition:

Russell J. Myhre North Dakota Association of Criminal Defense Lawyers We are not for drunk driving , we ask for common sense legislation that will accomplish the purpose for which it was drafted. SB 2240 does not accomplish the purposes expressed here today. House Bill with 24/7 programs can be workable, not this one at this time. Distributed written testimony (#4) opposing this bill and suggesting an Interim Study.

Senator Axness Your suggestion to do a study over the next biennium could potentially result in a hundred and twenty more deaths in North Dakota. In this bill, are there any specific parts which the NDACDL will like to see taken out, so that we can move forward?

Russell J. Myhre We like the interlock ignition system, if used properly. From the House bill we would like the expansion of the 24/7 program and the utilization of that as a means by which persons can rehabilitate themselves.

Senator Flakoll How did your group arrive at opposing the bill? Which bill do you prefer this one of the House Bill?

Russell J. Myhre We got a legislative committee, basically volunteers. Our role has been basically to inform our members. We had a seminar in Grand Forks, which the majority of our members attended, and we came to a consensus about how we felt about the bill. The position I am expressing reflects our members. We will oppose both bills, neither one is comprehensive enough to encompass the issues we feel are important, not just in terms of drunk driving but in terms the culture of alcohol in North Dakota . None of the bills incorporates enough of the mechanisms we feel are important to help drivers who want to rehabilitate themselves do so. Enhanced penalties are a matter of policies for this legislature to decide, we don't feel it will be appropriate to have a minimum mandatory first offense.

Vice Chairman Armstrong Requested Mr. Myhre explain the mechanics of how a DUI prosecution or suspension works thru the court system under current law.

Russell J. Myhre Proceeded to explain the process in Valley City, Barnes County, North Dakota, where he practices law (segments 52:15 to 57:18).

No additional testimony in opposition. Neutral testimony:

Leann K Bertsch, Director, North Dakota Department of Correction and Rehabilitation (DOCR) neutral on this bill. Submitted written testimony (#5), highlighting the effect the passage of this bill would have on DOCR. It would add hundreds of offenders per year to the caseload of parole and probation officers. That impact is not reflected on the fiscal note, nor does it include the additional cost of incarceration. Additional enforcement and treatment should be considered as an alternative to incarceration. The county impact of this bill is not reflected in the fiscal note. We did a comparison analysis with South Dakota (it has more punitive sentencing practices). We compared every crime we had to every crime they had. We noted that stiffer penalties had no deterrent effect on their drinking and driving practices.

Vice Chairman Armstrong Is there a way to quantify the fiscal impact of this bill on county jails?

Leann K Bertsch According to the Association of Cities it would be two point four million dollars per biennium.

Brad Froerlich Director, Government Relations, Consumer Safety Technology, a Des Moines, IA based ignition interlock provider. The average cost of one of these devices is seventy five dollars and ninety five cents (\$75.95) per month. It is a lease fee paid by the offender (except in Colorado where the state pays for indigent first offenders). We do not sell them, in all states they are leased out because of the back-end service that comes with them (the data support/reporting). The devices run on fuel cells, the same technology used in the preliminary breath testers used by the police. Our devices also have their own separate battery, so it's not relying on the conditions of the vehicle's battery.

Senator Campbell Let's say the person leaves the car idling while they go into a bar. What happens next?

Brad Froerlich When the car is started, at random intervals determined by the state, the device will require rolling retests. The enhanced technology also includes a camera, GPS, and real time reporting. While they take the test the camera snaps a picture, the cellular mechanism sends it to our servers with a GPS coordinate saying exactly where that is. This is available 24/7 to the monitoring entity; in this case it would be North Dakota Department of Transportation (DOT). In addition we send immediate violation notices. We ask the state to define what they consider to be a violation (tampering, circumvention of the device, high BAC, missing or refusing to take one of the rolling retests). If they want immediate notification, we set it up that way and within seconds the agency will have the information via email or text. For implementation we subcontract with shops in the state, our first choice is the shops that do remote starts and things like that. This system is very similar to the remote start system. They will only do installations and de-installations. Since it is real time reporting there is no need for data downloads. For calibrating the device we do an exchange method. NHTSA (National Highway Traffic Safety Administration) recommends a minimum of sixty days. The standard is that the device must hold its calibration to .01 (in laymen's terms if BAC was .08 that device better read between .07 and .09 in stress conditions for the entire sixty days). We check how long the device will stay calibrated, in states that they allow that, we will go for six months, the minimum mandatory sentence, and we will ship them a new recalibrated handset (the portion of the device that has the fuel cell in it).

Senator Flakoll Is the data generated prohibited from open records requests in all states?

Brad Froerlich There are two ways these programs are run. One is judicial (interlock is court ordered). The other is administrative (whatever agency handles driver's licenses). There will be two different standards. We take the higher standard by not giving access to that data to anyone other than the monitoring agency or the entities allowed access by statute (i.e. New York allows the Probation Dept. access, others states allow treatment providers). Failing the test, in itself, is not grounds for DUI. The data would be relayed to

the police who locate them and follow their standard procedures. We do not install them on motorcycles, for liability reasons. We do not believe it is safe.

No more questions. No other testimony. Hearing closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

Senate Bill 2240
February 07, 2013
Job Number 18541

☐ Conference Committee

Committee Clerk Signature

Doris E. Perez

Explanation or reason for introduction of bill/resolution:

Relating to marked licenses for driving under the influence, an ignition interlock restricted license and to provide a penalty.

Minutes:

Attached testimony: /

Chairman Oehlke opened the discussion on SB 2240.

Chairman Oehlke mentioned the information supplied by the Department of Corrections comparing North and South Dakota and highlighted that the number of Native Americans in South Dakota is much higher, therefore higher alcoholism problems. **Vice Chairman Armstrong** said that most studies show that suspension of drivers licenses do not work as a deterrent; and that; maybe, a better public transportation system would have a stronger impact on DUIs. **Chairman Oehlke** said that huge penalties do not seem to work either and impose an incredible expense to the state in terms of jail time.

Chairman Oehlke We have to start with something that has a potential for doing it right. Senator Armstrong took Senators Mathern's, Representatives Kelsh and Koppelman's bills, the Century Code and existing case law and came up with amendments.

Vice Chairman Armstrong In my opinion the intent of these bills was to drastically tighten up DUI law and create better DUI policy in North Dakota. There were some mechanical problems with the bill that made it almost impossible to implement not the least of which was the very large unfunded mandate that would have gone to the counties and local people. There would never ever be a guilty plea for a DUI, they did not address the refusal issue, and everybody in this state would have refused the chemical test because of the penalties. There were some glaring defects in that. It is time to seriously reform this issue. Municipal court judges will not like this because we will take away their second offense deal.

Vice Chairman Armstrong proceeded to walk the committee thru the proposed amendment 13.0517.02003 (attachment #1)

Section 1 amendment subsection 7 regarding suspension periods, (recording segment 11:04 to 16:52)

Section 2 amendment regarding temporary restricted license - Ignition interlock device (recording segment 16:53 to 20:03)

Section 3 amendment is the criminal portion of the DUIs this is where we deal with the loopholes in both of the aforementioned bills. (Recording segment 20:10 to 34:10 and segment 49:19 to 51:40)

Section 4 amendment regarding special punishment for causing injury or death while DUI (recording segment 34:11 to 35:11)

Section 5 amendment the implied consent statute, when you get a DUI thirty days after arrest person has implied consent hearing with the North Dakota Department of Transportation (DOT) this is an administrative procedure (recording segment 35:12 to 36:28)

Section 6 amendment regarding actions following test results, subsection 5 giving the choice of the twenty-four seven sobriety program (recording segment 38:24 to 38:35)

Section 7 amendment regarding revocation of refusal to submit to testing is now made a crime; we are also lowering the refusal suspension (recording segment 38:40 to 43:00)

Section 8 amendment changes all the "lookbacks" to seven years (recording segment 43:01 to 43:10)

Section 9 amendment deals with the administrative hearing, the person can elect to participate in the twenty-four seven sobriety program, the rest is language on how you comply with the twenty four seven program as it sits. (Recording segment 43:11 to 46:00)

Sections 10 and 11 amendments are compliance language

Section 12 amendment regarding restricted license upon twenty-four seven sobriety program participation (recording segment 46:03 to 48:11)

Section 13 will bring fiscal note down to the state, there is going to be an unfunded mandate to the counties that is going to have to be talked about in conference. This is a one point two million dollar appropriation to buy SCRAM bracelets. (Recording segment 48:12 to 49:18)

General discussion followed. Suggestions were made to amend parts of this amendment.
Hearing closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2240
February 08, 2013
Job Number 18573
☐ Conference Committee

Committee Clerk Signature

Donis & Perez

Explanation or reason for introduction of bill/resolution:

Relating to marked licenses for driving under the influence, an ignition interlock restricted license and to provide a penalty.

Minutes:

Attached testimony 3

Chairman Oehlke Opened the discussion on SB 2240

Senator Flakoll Submitted copy of e-mail from Keith Ternes, Chief of Police, Fargo, ND regarding number of DUI arrests who driving with suspended driver's licenses. Attachment #1

Vice Chairman Armstrong Voiced concerns about extended jail time and its effect on counties. In page 6, subsection h, of proposed amendment 13.0517.02003, which says that, no matter what your sentence is under this chapter, if you go to inpatient treatment you get day for day credit. There are not enough in-patient treatment centers in North Dakota which might be a problem. Attachment #2

Senator Flakoll Moved to adopt amendment 13.0517.02003 and to change on page 10, sub-section 1 b, to two years instead of three years (the first word of that sentence). Requested roll call vote, in conference committee this will be an advantage because the other chamber might be divided.

Senator Sitte seconded

Roll call vote: Yes: 7 No: 0 Absent: 0

Vice Chairman Armstrong moved to amend SB 2240 with the proposed amendment 13.0517.02004 Attachment #3

Senator Sitte seconded

Roll call vote: Yes: 7 No: 0 Absent: 0

Senator Sinner moved do pass SB 2240 as amended twice and rerefer to appropriations

Senator Axness Seconded

Roll call vote: Yes 7 No 0 Absent 0

Carrier: Senator Armstrong

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,137,948 | | \$1,187,766 |
| Expenditures | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |
| Appropriations | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements, license marking, and the use of ignition interlock devices.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to Department of Corrections - To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All time incarcerated for 3rd and 4th and subsequent DUI offenses will be served at DOCR or DOCR contracted facilities, and treated as Felony C offenses; 3) Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th and subsequent DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) No probation; 7) No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated. Estimated impact to DOT: License issuance will increase. It is estimated that of the roughly 6900 DUI's we receive each year, 95% will be eligible for the marked license. Of these, it is estimated that 95% will want to get a new license without the mark after one year. This will drive 25,565 additional license prints per biennium, except for the 2013 biennium, which will be 19,337 due to implementation lag. Effective management of this program will require an additional FTE. The most significant increase is the requirement for the DOT to fund costs for interlock use of indigent offenders.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

DOT revenue from duplicate license fees: \$154,698 1st biennium and \$204,516 2nd biennium. DOT revenue from non-indigent defendants: \$983,250 1st biennium and \$983,250 2nd biennium. Total revenue: \$1,137,948 1st biennium and \$1,187,766 2nd biennium.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Corrections impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 411 in FY15, 626 in FY16 and 845 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 257, FY16 - 475 and FY17 - 698. Costs estimated for the purpose of this fiscal note include medical, food, and contract housing. Est Fiscal Impact 2013-15 - \$8.5 million. Est Fiscal Impact 2015-17 - \$34 million. The DOT impact was determined by estimating number of DUI convictions received (6900) and using 95% for marked licensing (6555) and 95% for re-licensing (6227). We also used a 25% calculus for the number of indigents the DOT would fund for interlock use (1639). NDDOT's costs to implement this program during the first biennium would consist of training (\$1,200), IT costs ((\$8,000), additional license card costs (\$77,349), 1 FTE (\$130,000), interlock device costs (\$983,850). Total first biennium NDDOT costs would be \$1,200,399. Second biennium NDDOT costs would total \$1,216,108

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Department of Corrections and the Department of Transportation would require additional appropriations as follows: 2013 Biennium: Dept of Corrections \$8,485,259 + NDDOT \$1,200,399 = \$9,685,658 2015 Biennium: Dept of Corrections \$34,029,338 + NDDOT \$1,216,108 = \$35,245,446

Name: Glenn Jackson

Agency: NDDOT

Telephone: 328-4792

Date Prepared: 01/29/2013

February 8, 2013

2/9/13
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PROPOSED AMENDMENTS TO SENATE BILL NO. 2240

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 7 of section 39-06.1-10, sections 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, subsection 6 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~seven~~ years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - e. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

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

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

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

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

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue ~~for good cause a~~ temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director may issue a temporary restricted license that takes effect after fifteen days of the suspension have been served. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued in accordance with subsection 5 if the offender is participating in the twenty-four seven sobriety program under chapter 54-12 or for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.

4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's ~~permit~~license to the offender ~~only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety program upon~~ under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program by the offender to receive a temporary restricted license. ~~If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.~~

SECTION 4. AMENDMENT. Section 39-08-01 of 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 eight 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. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first ~~or second~~ offense in a five-year period, of a class A misdemeanor for a second or third offense in a five-year ~~seven-year~~ period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period ~~felony for any fourth or subsequent offense regardless of the length of time since the previous offense~~. 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 a subsequent offense finding based on other evidence.
3. Upon conviction of a second or subsequent offense within ~~five~~ seven years under this section or equivalent ordinance, the court ~~must~~ may order the motor vehicle number plates of all of the motor vehicles 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. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a coowner of the motor vehicle, ~~but not including or if the offender is participating in the twenty-four~~ seven sobriety program.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
 - a. For a first offense, the sentence must include both a fine of at least ~~two hundred fifty~~ five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program. If the convicted person has an alcohol concentration of at least eighteen 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, the sentence must include at least two days' imprisonment or twenty hours of community service.
 - b. For a second offense within ~~five~~ seven years, the sentence must include at least ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served~~

~~consecutively, or thirty days' community service; a fine of at least five hundredone thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~

- c. For a third offense within ~~five~~seven years, the sentence must include at least ~~sixtyone hundred twenty~~ days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~oneat least two~~ thousand dollars; ~~and an order for addiction evaluation by an appropriate licensed addiction treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~
- d. For a fourth or subsequent offense ~~within seven years,~~ the sentence must include at least one hundred eighty days' ~~year and one day's~~ imprisonment ~~or placement in a minimum security facility, 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 treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.~~
- 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 this section.~~
- f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence. If the offense is subject to subdivision c, the district court may suspend a sentence, except for one hundred twenty days' imprisonment, under subsection 3 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 offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 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 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.g. 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~~section.
- g.h. 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.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which ~~and the defendant is tested at least twice daily for the consumption of alcohol~~shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. ~~This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. For an offense under subsection c of subsection 4, no more than ninety percent of the sentence may be house arrest.~~
6. As used in this title, participation in the twenty-four seven sobriety program under chapter 12-54 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees; except upon a finding of indigence the court may waive fifty percent of the twenty-four seven sobriety program fees.
7. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests required under sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

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

1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least ~~one~~two year's imprisonment if the individual was an adult at the time of the offense.

2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.
3. If an individual is convicted of a second or subsequent offense within seven years of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class C felony and the sentence must include at least one year and one day's imprisonment if the individual was at least eighteen years of age at the time of the offense.
4. The imposition of sentence may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.
5. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The court shall impose not less than one year of supervised probation and shall require participation in the twenty-four seven sobriety program for at least twelve months as a mandatory condition of probation. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.

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

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

1. Any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being

in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.

3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol, drugs, or a combination of alcohol and drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to four years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two 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, the following procedures apply:

1. The law enforcement officer 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 the 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, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.
5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may elect to participate in the twenty-four seven sobriety program under chapter 54-12 in lieu of the administrative hearing under this chapter if the individual's driver's license is not subject to an unrelated

suspension or revocation. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty-four seven sobriety program upon application by the individual with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program under chapter 54-12.

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

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

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

- a. One year if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been

suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

- b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under subdivision a of subsection 1 if all of the following criteria are met:
- a. An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~

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

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

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

1. After the receipt of the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's driving privileges as follows:
 - a. For ninety-one days if the person's driving record shows that, within the ~~five~~seven years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.
 - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. For three hundred sixty-five days if the person's driving record shows that, within the ~~five~~seven years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's 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 person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. Upon completion of the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If no hearing is requested within the time limits in this section, ~~and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, and if the individual has not provided the~~ director with written notice of election to participate in the twenty-four seven sobriety program under chapter 54-12, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at

least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample ~~from~~electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designee, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening

test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system which is received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and~~
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

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

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

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certificate of the director of the state crime laboratory designating the director's designees.
 - e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
 - e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

SECTION 12. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests.

1. Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol.
2. An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient.
3. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test will may result in a revocation for at least one hundred eighty days and up to four years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. ~~However, the~~
4. The director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident.
5. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein.
6. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

SECTION 13. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

Restricted license upon twenty-four seven sobriety program participation.

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

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

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

Renumber accordingly

FISCAL NOTE
Requested by Legislative Council
02/11/2013

Amendment to: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,794,160 | | \$1,978,062 |
| Expenditures | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |
| Appropriations | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements and increased usage of the 24/7 Sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will impact the Office of the Attorney General through increased usage of the 24/7 Sobriety program and the Department of Corrections and Rehabilitation through increased incarceration requirements. As amended, the bill should have no material fiscal impact on the Department of Transportation. Additionally, the bill may impact local jurisdictions, however we have no way to determine what that impact may be.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increased revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 Sobriety program and the related fees. These funds are deposited into the 24/7 Sobriety Program fund and are subject to a continuing appropriation. See attached schedule 9.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures are a direct result of expected increased usage of the 24/7 Sobriety program and increased incarceration requirements. See attached schedules 1, 4, 7, and 8.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill provides a \$1.2 million dollar appropriation from the general fund to the Office of the Attorney General for the 2013-2015 biennium. Additionally, revenues to the 24/7 Sobriety Program fund are subject to a continuing appropriation. However, this bill as amended does not provide any appropriation of the remaining \$5,166,456 of costs that would be incurred by the Office of the Attorney General (\$1,440,340) and the Department of Corrections and Rehabilitation (\$3,726,116) for the 2013-2015 biennium. Therefore, the Office of the Attorney General and the Department of Corrections would need additional appropriations of \$3,726,116 and \$1,440,340 respectively beyond the appropriation of \$1.2 million provided in this bill and the 24/7 Sobriety Program continuing appropriation. Please see attached schedules 3,6,10, and 11.

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 02/14/2013

Amended SB2240
State Agency Impacts

Attorney General

| | 13-15 biennium | 15-17 Biennium |
|---|---------------------|---------------------|
| Schedule 1 - Expenditures | | |
| SCRAM bracelets and base stations | \$ 1,684,900 | |
| Other costs | 2,749,600 | \$ 3,031,434 |
| Total AG costs | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |
| Schedule 2 - Funding Source | | |
| General Fund | \$ 2,640,340 | \$ 1,053,372 |
| 24/7 Sobriety Program participant revenues - Special Funds | 1,794,160 | 1,978,062 |
| Total Funding Sources | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |
| Schedule 3 - Appropriations | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total GF appn | 2,640,340 | 1,053,372 |
| Special Funds - 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total - all appropriations | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |

Department of Corrections & Rehabilitation

| | | |
|--|---------------------|---------------------|
| Schedule 4 - Total Expenditures | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |
| Schedule 5 - Funding Source | | |
| General Fund | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |
| Schedule 6 - Appropriations | | |
| General Fund - Not in Bill | \$ 3,726,116 | \$ 9,011,896 |

Combined State Impact

| | | |
|---|---------------------|----------------------|
| Schedule 7 - Expenditures by Agency | | |
| Office of the Attorney General | \$ 4,434,500 | \$ 3,031,434 |
| Department of Corrections and Rehabilitation | 3,726,116 | 9,011,896 |
| Total Expenditures | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |
| Schedule 8 - Expenditures by Fund | | |
| General Fund | \$ 6,366,456 | \$ 10,065,268 |
| Special Fund | 1,794,160 | 1,978,062 |
| Total Expenditures | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |
| Schedule 9 - Revenues | | |
| Special Funds | | |
| 24/7 Sobriety Program participant revenues | <u>\$ 1,794,160</u> | <u>\$ 1,978,062</u> |
| Schedule 10 - Total Appropriations | | |
| Attorney General | | |
| General Fund | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total Attorney General - General Funds | 2,640,340 | 1,053,372 |
| Special Funds | | |
| 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total Attorney General - All funds | 4,434,500 | 3,031,434 |
| Department of Corrections & Rehabilitation | | |
| General Fund - Not in Bill | 3,726,116 | 9,011,896 |
| Total Appropriations | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |
| Schedule 11 - Appropriations Recap | | |
| General Fund | | |
| General Fund - Appropriated in bill | \$ 1,200,000 | |
| General Fund - Not appropriated in bill | 5,166,456 | \$ 10,065,268 |
| Total General Fund Appropriation | 6,366,456 | 10,065,268 |
| Special Funds | | |
| Continuing Appropriation - 24/7 Sobriety Program Fund | 1,794,160 | 1,978,062 |
| Total - All required Appropriations | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,137,948 | | \$1,187,766 |
| Expenditures | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |
| Appropriations | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements, license marking, and the use of ignition interlock devices.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to Department of Corrections - To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All time incarcerated for 3rd and 4th and subsequent DUI offenses will be served at DOCR or DOCR contracted facilities, and treated as Felony C offenses; 3) Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th and subsequent DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) No probation; 7) No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated. Estimated impact to DOT: License issuance will increase. It is estimated that of the roughly 6900 DUI's we receive each year, 95% will be eligible for the marked license. Of these, it is estimated that 95% will want to get a new license without the mark after one year. This will drive 25,565 additional license prints per biennium, except for the 2013 biennium, which will be 19,337 due to implementation lag. Effective management of this program will require an additional FTE. The most significant increase is the requirement for the DOT to fund costs for interlock use of indigent offenders.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

- A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

DOT revenue from duplicate license fees: \$154,698 1st biennium and \$204,516 2nd biennium. DOT revenue from non-indigent defendants: \$983,250 1st biennium and \$983,250 2nd biennium. Total revenue: \$1,137,948 1st biennium and \$1,187,766 2nd biennium.

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The Department of Corrections impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 411 in FY15, 626 in FY16 and 845 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 257, FY16 - 475 and FY17 - 698. Costs estimated for the purpose of this fiscal note include medical, food, and contract housing. Est Fiscal Impact 2013-15 - \$8.5 million. Est Fiscal Impact 2015-17 - \$34 million. The DOT impact was determined by estimating number of DUI convictions received (6900) and using 95% for marked licensing (6555) and 95% for re-licensing (6227). We also used a 25% calculus for the number of indigents the DOT would fund for interlock use (1639). NDDOT's costs to implement this program during the first biennium would consist of training (\$1,200), IT costs (\$8,000), additional license card costs (\$77,349), 1 FTE (\$130,000), interlock device costs (\$983,850). Total first biennium NDDOT costs would be \$1,200,399. Second biennium NDDOT costs would total \$1,216,108

- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

The Department of Corrections and the Department of Transportation would require additional appropriations as follows: 2013 Biennium: Dept of Corrections \$8,485,259 + NDDOT \$1,200,399 = \$9,685,658 2015 Biennium: Dept of Corrections \$34,029,338 + NDDOT \$1,216,108 = \$35,245,446

Name: Glenn Jackson

Agency: NDDOT

Telephone: 328-4792

Date Prepared: 01/29/2013

Date: 2/08/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2240

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0517.02003

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Flakoll Seconded By Senator Sitte

| Senators | Yes | No | Senator | Yes | No |
|-------------------------------|-----|----|-----------------------|-----|----|
| Chairman Dave Oehlke | ✓ | | Senator Tyler Axness | ✓ | |
| Vice Chairman Kelly Armstrong | ✓ | | Senator George Sinner | ✓ | |
| Senator Margaret Sitte | ✓ | | | | |
| Senator Tim Flakoll | ✓ | | | | |
| Senator Tom Campbell | ✓ | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/8/13
Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2240**

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0517.02004

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Armstrong Seconded By Senator Sitte

| Senators | Yes | No | Senator | Yes | No |
|-------------------------------|-----|----|-----------------------|-----|----|
| Chairman Dave Oehlke | X | | Senator Tyler Axness | X | |
| Vice Chairman Kelly Armstrong | X | | Senator George Sinner | X | |
| Senator Margaret Sitte | X | | | | |
| Senator Tim Flakoll | X | | | | |
| Senator Tom Campbell | X | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

To replace on page 10, subsection 1 b, "three years" by "two years"

Date: 2/08/13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2240

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0517.02005

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sumner Seconded By Senator Axness

| Senators | Yes | No | Senator | Yes | No |
|-------------------------------|-----|----|-----------------------|-----|----|
| Chairman Dave Oehlke | ✓ | | Senator Tyler Axness | ✓ | |
| Vice Chairman Kelly Armstrong | ✓ | | Senator George Sinner | ✓ | |
| Senator Margaret Sitte | ✓ | | | | |
| Senator Tim Flakoll | ✓ | | | | |
| Senator Tom Campbell | ✓ | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2240: Transportation Committee (Sen. Oehlke, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2240 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 7 of section 39-06.1-10, sections 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, subsection 6 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~seven~~ years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - e. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

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

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

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

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

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue ~~for good cause a~~ temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director may issue a temporary restricted license that takes effect after fifteen days of the suspension have been served. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued in accordance with subsection 5 if the offender is participating in the twenty-four seven sobriety program under chapter 54-12 or for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
5. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit license to the offender only for the purpose of participation upon the restriction the offender participate in the twenty-four seven sobriety

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

SECTION 4. AMENDMENT. Section 39-08-01 of 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 eight 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. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a second or third offense in a five-year seven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense regardless of the length of time since the previous offense. 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 a subsequent offense finding based on other evidence.

3. Upon conviction of a second or subsequent offense within ~~five~~seven years under this section or equivalent ordinance, the court ~~must~~may order the motor vehicle number plates of all of the motor vehicles 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. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a coowner of the motor vehicle, ~~but not including or if the offender is participating in the twenty-four seven sobriety program.~~
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
 - a. For a first offense, the sentence must include both a fine of at least ~~two hundred fifty~~five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program. If the convicted person has an alcohol concentration of at least eighteen 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, the sentence must include at least two days' imprisonment or twenty hours of community service.
 - b. For a second offense within ~~five~~seven years, the sentence must include at least ~~five~~ten days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service;~~ a fine of at least ~~five hundred~~one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
 - c. For a third offense within ~~five~~seven years, the sentence must include at least ~~sixty~~one hundred twenty days' imprisonment ~~or placement in a minimum security facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~at least two thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
 - d. For a fourth or subsequent offense ~~within seven years,~~ the sentence must include at least one hundred eighty days' year and one day's imprisonment ~~or placement in a minimum security facility, 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 treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

- 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 this section.~~
 - f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence. If the offense is subject to subdivision c, the district court may suspend a sentence, except for one hundred twenty days' imprisonment, under subsection 3 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 offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 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 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.g. 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~~section.
 - g.h. 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.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention ~~in which and the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program.~~ The defendant shall defray all costs associated with the electronic home detention. ~~This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. For an offense under subsection c of subsection 4, no more than ninety percent of the sentence may be house arrest.~~

6. As used in this title, participation in the twenty-four seven sobriety program under chapter 12-54 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees; except upon a finding of indigence the court may waive fifty percent of the twenty-four seven sobriety program fees.
7. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests required under sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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

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

1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least ~~one~~two year's imprisonment if the individual was an adult at the time of the offense.
2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.
3. If an individual is convicted of a second or subsequent offense within seven years of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class C felony and the sentence must include at least one year and one day's imprisonment if the individual was at least eighteen years of age at the time of the offense.
4. The imposition of sentence may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.
5. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The court shall impose not less than one year of supervised probation and shall require participation in the twenty-four seven sobriety program for at least twelve months as a mandatory condition of probation. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.

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

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

1. Any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol, drugs, or a combination of alcohol and drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to four years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

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

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

If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two 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, the following procedures apply:

1. The law enforcement officer 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 the 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, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test

show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

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

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

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

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 this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in

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

- a. ~~One year~~hundred eighty days if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under subdivision a of subsection 1 if all of the following criteria are met:
- a. An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and

- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

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

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

1. After the receipt of the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's driving privileges as follows:
 - a. For ninety-one days if the person's driving record shows that, within the ~~five~~seven years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.
 - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. For three hundred sixty-five days if the person's driving record shows that, within the ~~five~~seven years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's 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 person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. Upon completion of the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If no hearing is requested within the time limits in this section, ~~and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, and if the individual has not provided the director with written notice of election to participate in the twenty-four seven sobriety program under chapter 54-12,~~ the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had

reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designee, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime

laboratory or the director's designee on the crime laboratory information management system which is received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; and

- b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

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

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certificate of the director of the state crime laboratory designating the director's designees.
 - e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
 - e.f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

SECTION 12. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests.

1. Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol.
2. An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient.
3. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime

laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test will may result in a revocation for at least one hundred eighty days and up to four years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. ~~However, the~~

4. The director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident.
5. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein.
6. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

SECTION 13. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

Restricted license upon twenty-four seven sobriety program participation.

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

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

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

Renumber accordingly

2013 SENATE APPROPRIATIONS

SB 2240

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2240
February 15, 2013
Job # 19061

☐ Conference Committee

Committee Clerk Signature

Rose Loring

Explanation or reason for introduction of bill/resolution:

This bill relates to driving while under the influence.

Minutes:

Testimony attached # 1

Legislative Council - Brady Larson
OMB - Laney Herauf

Chairman Holmberg opened the hearing on SB 2240. All committee members were present.

Senator Mathern, District 11, Fargo
Bill Sponsor

There was a hearing in the Policy Committee where we had many families testify. The bill has been amended as you have seen on the Senate floor. I would appreciate giving some attention to one family, to describe their situation to the prime author of the amendments that were adopted by the Senator from Dickinson and then some further discussion if you have questions about the fiscal note. The fiscal note has dramatically been reduced from the original bill to the present bill, and we also have the Department of Corrections here that can give some detail about that. First, we will hear from the family, and then from the senator with the amendments.

Tom & Arlene Deutscher, Bismarck, ND

Our son and daughter-in-law were killed in a car accident on July 6, 2012. We are here to ask them to take a look at the bill and hope it will be a substantial cultural change within the state. I know there is a lot of talk about the money and how much its going to cost, but I have to tell you with the emotional cost aside it's a tremendous financial liability on the parts of the family. I can't tell you how much it is. If you want to sit down with me sometime I can tell you what it cost when you're not prepared for this. There were no survivors so it fell back upon the parents. I am getting old. I was planning on retiring sometime but it happened earlier so I retired earlier about half salary. My wife retired we had a great deal of funeral expenses, a great deal of medical expenses as you can imagine. The sibling's one of them took a demotion in their job, so it impacts families such as ours financially also. I've probably paid a good portion of some of the budget that we're already talking about. That aside, I would like to appeal to you because I've met a lot of good people through this whole

ordeal. Most of our law enforcement officers who worked tirelessly I think trying to take drunk drivers off the road, and then only to see them back the next day. I think we owe them the respect that is due to them. My encouragement to you as a committee, is really understanding that there is a big financial commitment from families and those that are devastated by the sorts of things. So we're paying it all for already in one respect for another. I would ask you to look in your hearts and look at passing this appropriation. Instead of worrying about filling our jails, let's worry about filling our cemeteries and take of this issue that is changing this culture. Something has got to happen now.

Chairman Holmberg Our thoughts and prayers are certainly with you and the ordeal you went through, earlier. Yes, we will be looking at this and of course as state legislators we have to look at the cost but there are things that are our high priority, and things that are lessor priority. I think by the end of the session, there will be some legislation that will be passed that will try to address the situations of drunk drivers. I don't know what it will look like, but I believe that the legislature is going to be doing something in the area. I hope you're proud of what we do at the end of the day.

Tom Deutscher Well so far, we're very optimistic about what we've seen and heard. We get a certain sense that everybody's on the same side as us but just really struggling with how we do it and how we finance it. So, any consideration you give to that I would appreciate it. My family would appreciate it.

Chairman Holmberg We will be addressing what this committee is going to recommend to the full Senate if you stay around until closer to noon.

Senator Armstrong I think the fiscal note will go down year after year. The 24-7 program as implemented in SD has a 12 %-17% decrease in drinking. This program won't work without the \$1.2 that we asked for. I've seen the new fiscal note, and I don't think you can factor in a couple of things. One, if you're incentivizing sobriety and people are keeping their jobs, there not going on other government services. Those are monies we are spending somewhere else. Second if you're incentivizing sobriety and getting somebody to stay sober for an entire year the likelihood of reoffending goes down significantly. So that's where you start seeing this fiscal note on the 4th or 5th DUI's. Hopefully this program isn't just punishing people its also keeping them from ever getting to the 4th offense DUI. Over the long term I just believe the program is going to work. So if it's a priority this is the most reasoned approach to doing this, factoring in all of the local factors, our factors, financial factors, and rehabilitation factors.

Senator Wanzek - I have a daughter 28, son 26 - the culture needs to change. Observing my children and their friends I think there is a shift in the culture. I mean they are much better than when I was a young man, in securing a designated driver and I know there have been a number of times they get a call on Sunday morning asking will you drive me back to whatever bar? Did you have party last night, yes, but, I just notice with that generation, and thankfully I do believe there is a culture shift. Do you see that yourself in your generation?

Senator Armstrong - Yes, but not as significantly as it should be. I think your problem occurs with the, the problem with alcoholism I don't know if the rates are going down much from when they were when my Dad was a kid. I think one of the cultural things is people to

some degree are now more willing to get help. I think as it pertains to the base legislation if you have a 2nd offense and you have a drinking problem and you have this bracelet on ankle for a year, if you're an alcoholic you are going to need to get help no matter how bad you want to change. That is part of what we're trying to do because we're trying to create a situation where they get help. It is easy to tell an alcoholic you can't drink for one year; it is a lot harder for an alcoholic not to drink for a year. With this they will be forced to address that issue or they will be back in court.

Senator Mathern - You had a suggested amendment - the technical correction?

Senator Armstrong replied on page 10, line 21, of the engrossed bill, we need to change 4 to 3 and the reason we need to do that is those are those little tiny things that defense attorneys love. It is just making it consistent with the rest of the statute. It is no substantive change it's just matching something in another section of the code.

Chairman Holmberg We will take that and if we approve that and approve the bill it will go back to your committee and you could explain the change.

Senator Howard Anderson Dist. 8. When I signed on to this bill I signed on to it because as many of you indicated we need to do something about keeping repeat offenders off our roads. We need to keep them off there before they hurt somebody if we can do that. I ask the Policy Committee to try and massage this bill, I told them I didn't agree with everything that was in it. I think they've done a good job of that. The second thing I hear from my constituents after lower my taxes, is get the DUI problem a little more solved. I think many of them are willing to spend some of the money we ask of them back in a tax reduction or whatever to help solve this problem. I would encourage you to support these efforts.

(14:15)

Leann K. Bertsch, Director, ND Department of Corrections and Rehabilitation
Testimony attached # 1 - Fiscal Note
- explained the fiscal note.

Chairman Holmberg We want to talk about the current fiscal note dated 2/11.

Senator Carlisle - In Senator Armstrong's observation that that this may come down based on what he said do you kind of agree with that or potential at least?

Leann Bertsch - Looking at SD 24-7 program will have some deterrent effect but I am telling you that most deterrent effect will probably be on your first and second time DUI's hopefully. But by the time you're getting a third and a subsequent DUI I don't think anything is really going to deter you too much because you're not thinking of the consequences. We have the SCRAM bracelets. We use about anywhere from 70 people on SCRAM bracelets and they still have a failure rate. People even with the SCRAM bracelets drink and fail and end up coming in. South Dakota looking at what they experience with the tougher DUI's but they peaked probably with over 520 people in prison in 2009 with the 3rd and subsequent DUI's sensors, which is a lot of offenders.

Senator Carlisle Compared to where are at that same time then?

Leann Bertsch replied at around 20. That is filling up a whole, that's like JRCC plus. There are about 450 DUI offenders now in SD. They thought that was probably the effect of the 24-7. But it still when you're talking about this is the number 1 crime in North Dakota you just need to understand it will have an impact. Obviously it's the number one crime and it does need to be addressed. This fiscal note is a lot less reduced than the original one.

Chairman Holmberg closed the hearing on SB 2240.

Senator Mathern moved amendment of technical corrections which changed the number "four" to the number "three" on page 10, line 21.
Senator Warner seconded the motion.
The amendment carried by voice vote.

Senator Mathern moved Do Pass as Amended on SB 2240.
V. Chairman Bowman seconded the motion.

Discussion:

Senator Robinson commented that we have a long way to go because the problem is deeply impeded in our culture in ND and he felt we have to start somewhere.

A roll call vote was taken. Yea: 13 Nay: 0 Absent: 0

The bill will go to the Transportation committee and Senator Armstrong will carry the bill on the floor.

FISCAL NOTE
Requested by Legislative Council
02/11/2013

Amendment to: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,794,160 | | \$1,978,062 |
| Expenditures | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |
| Appropriations | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements and increased usage of the 24/7 Sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will impact the Office of the Attorney General through increased usage of the 24/7 Sobriety program and the Department of Corrections and Rehabilitation through increased incarceration requirements. As amended, the bill should have no material fiscal impact on the Department of Transportation. Additionally, the bill may impact local jurisdictions, however we have no way to determine what that impact may be.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increased revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 Sobriety program and the related fees. These funds are deposited into the 24/7 Sobriety Program fund and are subject to a continuing appropriation. See attached schedule 9.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures are a direct result of expected increased usage of the 24/7 Sobriety program and increased incarceration requirements. See attached schedules 1, 4, 7, and 8.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill provides a \$1.2 million dollar appropriation from the general fund to the Office of the Attorney General for the 2013-2015 biennium. Additionally, revenues to the 24/7 Sobriety Program fund are subject to a continuing appropriation. However, this bill as amended does not provide any appropriation of the remaining \$5,166,456 of costs that would be incurred by the Office of the Attorney General (\$1,440,340) and the Department of Corrections and Rehabilitation (\$3,726,116) for the 2013-2015 biennium. Therefore, the Office of the Attorney General and the Department of Corrections would need additional appropriations of \$3,726,116 and \$1,440,340 respectively beyond the appropriation of \$1.2 million provided in this bill and the 24/7 Sobriety Program continuing appropriation. Please see attached schedules 3,6,10, and 11.

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 02/14/2013

Amended SB2240
State Agency Impacts

Attorney General

| | 13-15 biennium | 15-17 Biennium |
|---|---------------------|---------------------|
| Schedule 1 - Expenditures | | |
| SCRAM bracelets and base stations | \$ 1,684,900 | |
| Other costs | 2,749,600 | \$ 3,031,434 |
| Total AG costs | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |
| Schedule 2 - Funding Source | | |
| General Fund | \$ 2,640,340 | \$ 1,053,372 |
| 24/7 Sobriety Program participant revenues - Special Funds | 1,794,160 | 1,978,062 |
| Total Funding Sources | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |
| Schedule 3 - Appropriations | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total GF appn | 2,640,340 | 1,053,372 |
| Special Funds - 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total - all appropriations | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |

Department of Corrections & Rehabilitation

| | | |
|--|---------------------|---------------------|
| Schedule 4 - Total Expenditures | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |
| Schedule 5 - Funding Source | | |
| General Fund | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |
| Schedule 6 - Appropriations | | |
| General Fund - Not in Bill | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |

Combined State Impact

| | | |
|---|---------------------|----------------------|
| Schedule 7 - Expenditures by Agency | | |
| Office of the Attorney General | \$ 4,434,500 | \$ 3,031,434 |
| Department of Corrections and Rehabilitation | 3,726,116 | 9,011,896 |
| Total Expenditures | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |
| Schedule 8 - Expenditures by Fund | | |
| General Fund | \$ 6,366,456 | \$ 10,065,268 |
| Special Fund | 1,794,160 | 1,978,062 |
| Total Expenditures | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |
| Schedule 9 - Revenues | | |
| Special Funds | | |
| 24/7 Sobriety Program participant revenues | <u>\$ 1,794,160</u> | <u>\$ 1,978,062</u> |
| Schedule 10 - Total Appropriations | | |
| Attorney General | | |
| General Fund | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total Attorney General - General Funds | 2,640,340 | 1,053,372 |
| Special Funds | | |
| 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total Attorney General - All funds | 4,434,500 | 3,031,434 |
| Department of Corrections & Rehabilitation | | |
| General Fund - Not in Bill | 3,726,116 | 9,011,896 |
| Total Appropriations | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |
| Schedule 11 - Appropriations Recap | | |
| General Fund | | |
| General Fund - Appropriated in bill | \$ 1,200,000 | |
| General Fund - Not appropriated in bill | 5,166,456 | \$ 10,065,268 |
| Total General Fund Appropriation | 6,366,456 | 10,065,268 |
| Special Funds | | |
| Continuing Appropriation - 24/7 Sobriety Program Fund | 1,794,160 | 1,978,062 |
| Total - All required Appropriations | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,137,948 | | \$1,187,766 |
| Expenditures | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |
| Appropriations | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements, license marking, and the use of ignition interlock devices.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to Department of Corrections - To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All time incarcerated for 3rd and 4th and subsequent DUI offenses will be served at DOCR or DOCR contracted facilities, and treated as Felony C offenses; 3) Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th and subsequent DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) No probation; 7) No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated. Estimated impact to DOT: License issuance will increase. It is estimated that of the roughly 6900 DUI's we receive each year, 95% will be eligible for the marked license. Of these, it is estimated that 95% will want to get a new license without the mark after one year. This will drive 25,565 additional license prints per biennium, except for the 2013 biennium, which will be 19,337 due to implementation lag. Effective management of this program will require an additional FTE. The most significant increase is the requirement for the DOT to fund costs for interlock use of indigent offenders.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

- A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

DOT revenue from duplicate license fees: \$154,698 1st biennium and \$204,516 2nd biennium. DOT revenue from non-indigent defendants: \$983,250 1st biennium and \$983,250 2nd biennium. Total revenue: \$1,137,948 1st biennium and \$1,187,766 2nd biennium.

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The Department of Corrections impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 411 in FY15, 626 in FY16 and 845 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 257, FY16 - 475 and FY17 - 698. Costs estimated for the purpose of this fiscal note include medical, food, and contract housing. Est Fiscal Impact 2013-15 - \$8.5 million. Est Fiscal Impact 2015-17 - \$34 million. The DOT impact was determined by estimating number of DUI convictions received (6900) and using 95% for marked licensing (6555) and 95% for re-licensing (6227). We also used a 25% calculus for the number of indigents the DOT would fund for interlock use (1639). NDDOT's costs to implement this program during the first biennium would consist of training (\$1,200), IT costs (\$8,000), additional license card costs (\$77,349), 1 FTE (\$130,000), interlock device costs (\$983,850). Total first biennium NDDOT costs would be \$1,200,399. Second biennium NDDOT costs would total \$1,216,108

- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

The Department of Corrections and the Department of Transportation would require additional appropriations as follows: 2013 Biennium: Dept of Corrections \$8,485,259 + NDDOT \$1,200,399 = \$9,685,658 2015 Biennium: Dept of Corrections \$34,029,338 + NDDOT \$1,216,108 = \$35,245,446

Name: Glenn Jackson

Agency: NDDOT

Telephone: 328-4792

Date Prepared: 01/29/2013

13.0517.03001
Title.04000

Prepared by the Legislative Council staff for
Senate Appropriations Committee
February 15, 2013

2/15/13
TV

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2240

Page 10, line 21, overstrike "four" and insert immediately thereafter "three"

Renumber accordingly

Date: 2-15-13Roll Call Vote # 12013 SENATE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 2240Senate Appropriations Committee☐ Check here for Conference Committee

Legislative Council Amendment Number

technical amendment
change 4 to 3

Action Taken

Do Pass

Motion Made By

Matherne

Seconded By

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Ray Holmberg | | | Senator Tim Matherne | | |
| Co-Vice Chairman Bill Bowman | | | Senator David O'Connell | | |
| Co-Vice Chair Tony Grindberg | | | Senator Larry Robinson | | |
| Senator Ralph Kilzer | | | Senator John Warner | | |
| Senator Karen Krebsbach | | | | | |
| Senator Robert Erbele | | | | | |
| Senator Terry Wanzek | | | | | |
| Senator Ron Carlisle | | | | | |
| Senator Gary Lee | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

4 - to 3Vote
Carried

Date: 2-15-13Roll Call Vote # 22013 SENATE STANDING COMMITTEE
ROLL CALL VOTESBILL/RESOLUTION NO. 2240Senate Appropriations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as AmendedMotion Made By Mathern Seconded By Bowman

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|-------------------------|-----|----|
| Chairman Ray Holmberg | ✓ | | Senator Tim Mathern | ✓ | |
| Co-Vice Chairman Bill Bowman | ✓ | | Senator David O'Connell | ✓ | |
| Co-Vice Chair Tony Grindberg | ✓ | | Senator Larry Robinson | ✓ | |
| Senator Ralph Kilzer | ✓ | | Senator John Warner | ✓ | |
| Senator Karen Krebsbach | ✓ | | | | |
| Senator Robert Erbele | ✓ | | | | |
| Senator Terry Wanzek | ✓ | | | | |
| Senator Ron Carlisle | ✓ | | | | |
| Senator Gary Lee | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 13 No 0

Absent _____

Floor Assignment goes back to Transportation
Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2240, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2240
was placed on the Sixth order on the calendar.

Page 10, line 21, overstrike "four" and insert immediately thereafter "three"

Renumber accordingly

2013 HOUSE TRANSPORTATION

SB 2240

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

SB 2240
03-14-13
Job # 19929

☐ Conference Committee

Committee Clerk Signature

Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to the twenty-four seven sobriety program; relating to driving while under the influence; to provide a penalty; and to provide an appropriation.

Minutes:

Attachments 1-6

Chairman Ruby opened the hearing on SB 2240.

Senator Kelly Armstrong, District 36, Criminal Defense Attorney, introduced SB 2240. Written testimony was provided. The outline walks through the changes in the bill as it came to the House Transportation Committee. See attachment #1.

Senator Armstrong explained how a DUI works. (3:00 - 7:00)

Senator Armstrong: One of the concerns that I have is the vast number of criminal trials that you would have had with these high first offense minimum mandatory sentences. Currently DUIs are the number one criminal trial that is tried in the state as the law currently stands. If you start putting large first offense minimum mandatories on first time DUIs, I can tell you, from personal experience that I would never plead one guilty ever again. There would be no benefit to pleading it guilty. That means that you are going to take what is already the number one criminal trial in the state of North Dakota, and it will immediately double or triple. In my jurisdiction we are already at 150% higher than two years ago, we are five officers down in the sheriff's office, five officers down in the police department, and our prosecutor's work load is 200% of what it was five years ago. I don't know what will happen in the future. When we started dealing with this we tried to balance out what the concerns were, and look to other jurisdictions to see what works. One thing that we have broad support on is increasing the penalties for second and subsequent offenses, and also realizing that hard license suspensions don't work. Those suspensions take away someone's ability to make a living which just perpetuates the problem. It doesn't solve the problem. (Additional discussion on changes as listed in attachment #1. Starts at 10:10) I think the bill does a good job of increasing penalties and incentivizing sobriety.

Chairman Ruby asked Senator Armstrong to go over each section of the bill. (21:35)

Section 1 (22:00)

Chairman Ruby: Did you look at keeping the look-back period at 10 years?

Senator Armstrong: We did look at it, but I think that when you are raising all of these second and subsequent offenses significantly, it becomes an issue of cost to the communities. We felt that seven years is reasonable.

Chairman Ruby: You said that to be a felony it had to be a fifth offense. Was that in seven years or five years?

Senator Armstrong: It was seven years for the felony distinction.

Section 2-4 (24:18)

Representative Delmore: On the second and third offense, does the blood alcohol level matter?

Senator Armstrong: No, it doesn't because we doubled the minimum mandatories across the board. A second offense is going to be 10 days in jail no matter what. The third offense is doubling the jail time from 60 to 120 days and two year's supervised probation.

Representative Heller: On line 16 page 6, it says at least \$2000. What is the maximum amount there?

Senator Armstrong: The maximum fine is \$2000.

Representative Weisz: On the A and Bs, none of the sentence can be suspended correct?

Senator Armstrong: No, a lot of it can be suspended. If you get a 30 day sentence, you can suspend all but 10 days.

Representative Weisz: Can the mandatory minimum be suspended?

Senator Armstrong: No, it can't.

Section 5 (38:30)

Chairman Ruby: If you are on House Arrest, are you allowed to go to work?

Senator Armstrong: Yes, you would especially with the bracelets.

Representative Delmore: Do we require a blood test now for a DUI? To go to court and be proven, does it have to be a blood test?

Senator Armstrong: No, it can be blood, breath, or urine. It is up to the discretion of the officer.

Section 6 (41:34)

Representative Delmore: If I refuse the test, am I eligible for the 24/7?

Senator Armstrong: Yes, but assume it is a second offense; you will lose your license for two years. You won't get the benefit of your bargain. On the first offense we don't allow 24/7, but you can get a regular restricted license after 30 days, but you would have 180 days suspension for refusing.

Representative Heller: On page 10 line 21, why does that change from 4 to 3 years?

Senator Armstrong: When we take the refusal part out of this you go from 4 to 3 years. That is the top end suspension for any of these offenses.

Section 7-8-9 (45:32)

Section 10-11-12-13-14 (47:31)

Chairman Ruby: Is the appropriation of 1.2M for the ankle bracelets?

Senator Armstrong: Yes, if we are going to require this with the 24/7, we need to provide the enforcement agencies with the mechanisms to enforce it.

Chairman Ruby: How many will this buy?

Senator Armstrong: I'm not sure. I think that they are about \$5000 each. We are charging fees on them, so they pay themselves off.

Representative Weisz: Are we asking them to pay the cost of the bracelets?

Senator Armstrong: It is \$25.00 to set it up, \$25.00 to take it off, and \$5.00 a day.

Chairman Ruby: It talks about the indigent exemption. If these people can afford alcohol, can't they afford the bracelet?

Senator Armstrong: That is a valid concern.

Representative Becker: I am concerned with the legislature playing judge. If you cause a death when you were drunk, you would be charged with manslaughter, correct?

Senator Armstrong: There is a Chapter 39 level of it, where it is vehicular homicide or things of that nature. Then if it is alcohol related, it is aggravated DUI as well. We are not putting it in the manslaughter charge; we are putting it in the specific aggregating factor of the vehicle intoxication portion of it. Right now you can suspend the sentence for extraordinary circumstances. We essentially took that away.

Representative Becker: So, for a .08 and a .24 each of those people would be charged with a minimum mandatory sentence for a death, correct?

Senator Armstrong: Yes, if the DUI portion of the crime is proven, you will go to jail no matter what the blood alcohol level.

Representative Becker: Going to a two year minimum for death, doesn't provide any deterrents at all, because the crime is deciding to drive when you are drunk. There is going to be an extraordinarily percentage of people that get into an accident and cause a death. Everyone thinks that will not happen to them. The crime is choosing to drive when you are intoxicated. If an accident or death occurs, there are other avenues that the judge and prosecuting attorney have to charge the drunk driver. It seems like most of the bill is well thought out, but then this portion is just plopped in where it didn't need to be.

Senator Armstrong: It actually just enhances what is already there and took out the restriction. Often times in these accidents the reality of the criminal prosecution of these cases is that they steer clear of the DUI portion of it. A lot of it has to do with what is going on the side of the road. There are strict requirements of how you get evidence in a DUI case. When accidents are involved and there is serious injury, a lot of those things don't happen right because they are more concerned about everything else at the scene. So, this would only be if you could prove DUI. I think that what we are saying is, you are playing Russian roulette with other people's lives, if you lose, you are going to jail for two years. This isn't the deterrent portion, it is punishment.

Representative Becker: Do you think that this bill makes it more likely if a terrible tragedy like this occurs, that a judge will say there is already a two year minimum in prison, so we won't pursue the manslaughter charge with a maximum sentence of ten years? Might this have that effect?

Senator Armstrong: A lot of that depends on the criminal record and history of the defendant. These cases are very difficult. Often times you have someone who has never violated any other law. On misdemeanors the minimum mandatories tend to become the sentence. On felonies the minimum mandatories don't usually become the sentence; many times people get sentenced to more at the felony level. (59:50)

Representative Gruchella: How many first time DUI offenders are reduced reckless driving or get a reduced sentence that is not an alcohol conviction?

Senator Armstrong: I would say... a lot.

Representative Gruchella: Would it surprise you to know that in some jurisdictions in North Dakota if there are no extenuation circumstances, it is an automatic reduction to reckless driving?

Senator Armstrong: That is between the voters and their State's Attorney. That is where it has to come from. It has to be a policy made in a local municipality.

Representative Delmore: Are you familiar with the 24/7 program? Have you seen what the results can be? It seems to be the right approach to get at the problem, rather than penalties and fines.

Senator Armstrong: We don't use it a lot in our jurisdiction. Right now in North Dakota it is only used a condition of pre-trial release. Since 1993 South Dakota has increased their DUI penalties and fines and minimum mandatory jail sentence, and it has not had a significant effect. In 2008 they implemented the 24/7 program. Since 2008 they have had between a 14-17% drop in DUIs.

Representative Fransvog: Could you address the impact on the court systems again?

Senator Armstrong: I practice in the SW part of the state. In my jurisdiction we have three State's Attorneys case load is between 150-200% from where it was five years ago. We have five sheriff's openings. Dun County just lost their sheriff and a deputy. Hettinger County is having trouble finding law enforcement. The city of Dickinson is still trying to hire law enforcement agents. There will be an impact because every time you put these minimum mandatories on a first offense, it will go to trial. The reason for that is that the judge will not sentence more than the minimum mandatory anyway. If you put a 10 day penalty on a first offense DUI, very rarely will a first offense Class B misdemeanor ever get any jail time, let alone 10 days. As a defense attorney, I would never plead a DUI guilty again. We would want the charge dropped to reckless driving, or we would go to trial. So, the prosecutor's office will have to make a determination whether to reduce the charge, or have the trial. They don't have time to work on extra cases, and it is even difficult to get a date in the court system right now. The court dockets are significantly full. All of the municipal cases that go to trial get transferred to into District Court, because you can't have a jury trial in Municipal Court. You will just run a cycle of DUI trial, after DUI trial. Two or three years from now the increased penalty may or may not have a deterrent. Even if it does, how do we get from now until three years from now, with what is going on in western North Dakota. I think it will have the unintended consequence of having even more reckless drivings, if you want my opinion.

Representative Fransvog: Are you saying that we are going to need more judges immediately?

Senator Armstrong: We will need more prosecutors and cops for sure. The answer starts there. You will need more State's Attorneys, and more city attorneys, and law enforcement agents. If you have five DUI trials a week, you are paying the law enforcement agent overtime or taking him off of the streets for the entire day while he is at the trial. Often there is more than one officer. It is a real problem that has to be addressed. I know it is not the issue that you want to hear when you are talking about the deterrent, but it doesn't do any good to pass a law that the municipalities are not equipped to enforce. That goes for jail time too. If we need a bed for this, a bunch of other people is getting cut loose. It is the same in the rest of the state. As the median income goes up and more people have money, they defend these things because of the insurance and license ramifications.

Representative Kreun: You don't think this will just present a problem in the courts in the west, but in the whole state?

Senator Armstrong: DUIs are the number one criminal trial all over the state. If we start placing minimum mandatories on first time DUI offenses it will double or triple the court case. I don't think our North Dakota court system is equipped to handle it.

Vice Chairman Owens: Can you describe a SCRAM bracelet for us?

Senator Armstrong: Right now 24/7 works by testing twice a day and blow into a SD-5. In some jurisdictions you put a bracelet on your ankle. It tests your skin for alcohol all of the time. You can't drink at all; it doesn't matter if you are driving. If you drink, you will violate the conditions of your release. We are essentially requiring that on your second offense in seven years, we are going to make you stay sober for a year.

Vice Chairman Owens: I am familiar with the interlocks, which has worked wonders in changing behavior, which is what we want to do. This actually sound better that that.

Senator Armstrong: I think this is a better program because it follows the driver not the vehicle.

Representative Gruchella, District 45, testified in support of SB 2240. He explained the original purpose of the bill and provided written testimony. (1:14:38) See attachment #2.

Russel J Meyre, registered lobbyist for the Criminal Defense Attorneys, testified in support of SB 2240. Written testimony was provided. See attachment # 3. (1:22:43-1:37:37) Our position is that we don't necessarily support either of the DUI bills, but do support the version that Senator Armstrong got through the Senate.

Representative Gruchella: What is the cost to hire an attorney of a first time DUI, and also what is your win percentage?

Russell Myhyre: My fee is about \$3500 - \$5000 for a criminal charge on a first offense DUI. Others might charge between \$5000 and \$10,000. I don't keep records of wins, and a win to me might be a reduced sentence. I would guess it would be 25-30%.

Representative Gruchella: One of the best sobriety tests is the SD-5 breath test device. Do you think that should be admissible in a criminal trial because it isn't now?

Russell Myhyre: I don't know the reliability of the SD-5.

Representative Delmore: Is it a crime in all states to not submit to a test?

Russell Myhyre: I can't tell you specifically, in some states it is.

Aaron Burst, Association of Counties, Office of the State's Attorney, stood to support SB 2240 in its amended form and stated that they also support HB 1302. We hope that they end up in a conference committee.

Representative Delmore: Can you answer the question about how different states handle the refusal to submit?

Aaron Burst: Not a lot of states have criminalized refusal. I can provide you the information of the ones that have, in addition to the conviction rates of DUIs in North Dakota. It varies from 75-80%. The numbers have been driven by cities like Fargo, which have conviction rates of 90%. Some areas might be 60%. That is not a legal problem, it is a political problem.

Arlene Deutscher, Bismarck, North Dakota testified in support of SB 2240. Written testimony was provided. (1:50:30) See attachment #4.

Tom Deutscher, Bismarck, North Dakota, asks for support of SB 2240 and encouraging the strengthening of the bill. He explained the story of how they lost their son, daughter-in-law, and granddaughter in a drunken driving accident. He argues that the DUI laws are not strong enough. Written testimony was provided. (1:53:12) See attachment #5.

Juan Ruis, spoke to support SB 2240 and any other bills that deter DUI. He described the accident that happened when they were camping at Lake Metigoshe, and the loss that his family suffered when a drunken driver ran off the road and over the tent that his two boys were sleeping in. Cyris and Alaries were both killed. He provided written testimony. (2:01:00) See attachment #5.

Juan Ruis: There are two bills in the legislature, I urge you to do your research and put together a law that will have a real effect in reducing DUI fatalities. I don't want this to happen to you or anyone else. It is one of the worst pains that a human can experience. Research shows that if laws are strengthened in the right ways, the fatalities will decrease. I ask for change, awareness, responsibility, and accountability.

Sandy Ruis, mother of Cyris and Alaries Ruis: I support this bill, and I would like to see change, not just for us now but for people in the future. I am afraid to have kids because I am afraid of society doing stuff like this again. We need to do something about this now. There is a responsible way to drink. I hope you can pass this bill.

Mike Reitan, Assistant Chief of Law Enforcement, West Fargo, North Dakota spoke in support of SB 2240. He explained that in the fall different groups worked on this bill. He thinks that not including the State's Attorneys was a mistake because the bill would have been more advanced at this point. We also did not bring in families for their input. We ended up with two bills that are drastically different, and a lot of excuses why we can't do this. It costs too much, we don't have the jail space, it is inconvenient to be put in jail on a day other than a non-work day, it is inconvenient and economically challenging for a defendant to miss work, or maybe some don't want these penalties for themselves if they get caught driving drunk. Obviously we have taken the wrong mindset when addressing this very serious problem. We need to come together to come up with the best bill. SB 2240 and HB 1302 each have great components, and I would hope that they will go into conference and it will be the first step in passing good legislation. We need to come back next session. Both of these bills need to have work done to make a comprehensive DUI law. We need people to understand that you cannot drive drunk in North Dakota. The study in the interim will address some issues, but we need to start this session and move forward to make a change in North Dakota.

There was no further support for SB 2240.
There was no further testimony on SB 2240.
The hearing was closed on SB 2240.

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

SB 2240

03-15-13

Job # 19986 (Recording 0:00 - 021:50)

☐ Conference Committee

Committee Clerk Signature

Jeannette Cook

Minutes:

Chairman Ruby brought SB 2240 back before the committee. He explained that there have been a lot of changes to the original bill. We need to study the bill get it into a form that we could support. I would like to look at the minimum mandatory items, and a few other areas of the bill.

Representative Weisz: In general, I like what the Senate did. One of the things that I like was the way that the "refusals" are handled; it is better than current law. I would agree that we need to look at shifting some of those back, so they can stay in Municipal Court. There is a need to look at the effect of what we do as it moves through the whole system, and what is the practical effect.

Representative Schatz: One of the things on a refusal, we do have a Miranda Act that says that you have a right to remain silent. Doesn't that take that away? I would like to hear what others have to say about that.

Chairman Ruby: That probably ties into the two different processes that take place, the administrative and the criminal process. The administrative side will kick in because of something like that as well. No matter what happens with the criminal side, your license can still be gone administratively. It could be used criminally, but it is immediately used for the administrative side. There are a lot of attorneys that have a problem with that; it is like you are being punished twice. It has been allowed in law.

Representative Schatz: We also have the right not to testify against yourself. Is giving blood a violation of that? You are being forced to give blood that you don't want to give, in order to prove your own guilt. Those are two things that I question when I think about Constitutional Law and people's rights.

Chairman Ruby: You don't have to do it; there is just a consequence to NOT doing it.

Representative Delmore: This is a major shift in both bills. I agree that it is a big change. I am looking forward to seeing what Aaron Burst provides us that shows what other states are doing because it isn't automatically assumed a major crime in other areas

Representative Schatz: It bothers me in DUI laws, when you do something terrible and people die, that to me is much different than just driving while you are intoxicated. We seem to be treating them the same.

Chairman Ruby: That is why I asked the question, should we bump some of the penalties up right away?

Representative Drovdal: I am frustrated over these bills. When I hear about these horrible accidents, I feel partially responsible. When I ask people, "What law could we put on the books that would have stopped this accident?" the answer is usually, "Nothing." These people are just not paying attention. Most people pay attention to the law, but some just don't. I don't know what we can law we can put on the books that will make a difference. What can we do to change the culture?

Representative Schatz: If you are going to go with the levels of intoxication, are they going to take blood?

Chairman Ruby: If you refuse, they wouldn't take your blood, you would just have to take the penalty for that level.

Representative Weisz: On the refusal, it goes to the maximum penalty, so there is no advantage to refusal. The SCRAM bracelets in this bill make sense, if the goal is to keep intoxicated drivers off of the road. It gives the driver a chance to turn it around instead of being in jail. There are three components that we can look at: rehabilitation, punishment, and public safety. We have to decide what to do in each of these areas. I think part of what we are doing is increasing the consequences for doing something that has a high risk of impacting someone else.

Representative Becker: If you cause a death, in my opinion this bill should be dealing with anything that can deter drunk driving and it should deal with the consequences of driving drunk. We already have in other areas of the law consequences for causing a death. That is not the intent of this bill. We have a big social outcry for the need to crack down. I don't like idea that if you kill someone because of negligence and it had to do with DUI, now let's put in more punishments. The idea that we determine the punishment, I believe that is supposed to be the judge's job. I look at the refusal to take a test, not so much as a way out, but as a Constitutional Right. If someone refuses three times, do they go to prison? We are dealing with driving while intoxicated in this bill. The idea of dealing with punishment is the job of the judge.

Representative Fransvog: I am convinced that we need to educate the young people on this. It is like the seatbelt law; the young children have been taught, and they automatically use seatbelt. That is where it has to start. We can change these laws as much as we want, and I will support it, but until we start doing an educational process with our young people, we will not see the results that we hope for.

Chairman Ruby: It is part of the cultural change that Representative Drovdal was talking about.

We have had some very good discussion. We will form a subcommittee: Representative Gruchella, Representative Becker, and Representative Weisz.

(HOUSE) (SENATE) BILL NO. 2240 SUBCOMMITTEE OF THE
Transportation STANDING COMMITTEE

Meeting location: Fort Totten Room

Date of meeting: 3-22-13

Time meeting called to order: 10:55 am

Members present: Rep. Weisz, Rep. Gruchalla,
Rep. Becker

Others present (may attach attendance sheet):

Rep. Ruby, Rep. Heller
* Zach A. Schack, Bismarck

Topics discussed:

Refusal process as a criminal offense.
Differences between SB 2240 and HB 1302.
Mandatory minimums and blood alcohol level
SCRAM Bradelets/24-7 program. Deterrent vs. punish
Proposed amendment by Rep. Ruby. (Attach. #1) men
Drug court. *Deterrents from the perspective
of a young person who has had 2 DUI's.

Motion and vote:

Time of adjournment: 11:50 am

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

(HOUSE) (SENATE) BILL NO. 2240 SUBCOMMITTEE OF THE

Transportation **STANDING COMMITTEE**

Meeting location: Fort Totten Room

Date of meeting: 3/23/13

Time meeting called to order: 10:30

Members present: Rep. Weisz, Rep. Gruchalla, Rep. Heller,
Rep. Becker

Others present (may attach attendance sheet):

Barney Tomanek - Parole / Probation

Topics discussed:

SCRAM bracelets - Mr. Tomanek explained the
use of SCRAM bracelets and answered questions.

Refusals: AG's office states that criminalizing a refusal
is legal. Committee satisfied with "refusal" section.

Comparison of present law, HB 1302, and
SB 2240, Attachment #1

Motion and vote:

Time of adjournment: 11:15 am

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

SB 2240
03/28/13
Job #20620

☐ Conference Committee

Committee Clerk Signature

Jeanette Cook

Minutes:

Chairman Ruby brought SB 2240 back before the committee.

Representative Weisz: The subcommittee met twice. We received comparisons of SB 2240, HB 1302, and current law, which made it easier to see the differences. We received information on refusals. There were questions raised in committee on whether those violated due process. I visited with the Attorney General's Office, and the refusals have held up in court, however, there is a case in Oklahoma currently pending. You are not automatically guilty, but you are automatically charged with a DUI; you can go to court. I think the subcommittee was comfortable with that. We heard from a young person that experienced the system in Montana with the use of SCRAM bracelets. We also heard from a Parole and Probation officer. He gave us information on their use of SCRAM bracelets. I was surprised at the success ratio they are having with them.

Chairman Ruby: What areas are they using the SCRAM bracelets?

Representative Weisz: When someone is released on parole, if they do have an alcohol issue, part of their condition of release from the penitentiary is to wear the bracelet. If it triggers, they violate their parole. Of the 84 they have used, 78 have had no violation. It was useful information from the standpoint of the subcommittee. In the end the subcommittee does not have any recommendations. After discussions with the chairman and others it appears that HB 1302 will be the final product as far as the DUI bill. It won't necessarily be what is in 1302. We felt that it wouldn't be beneficial to amend 2240, if it is not going to pass. HB 1302 will probably be going to Conference Committee. My understanding is that 1302 will look much like 2240 does right now.

Chairman Ruby: I spoke with a couple of the senators on the Transportation Committee to see what they are going to be doing. I wanted to make sure that they are not going to kill the DUI bill, and to make sure that we have a vehicle to work with. If they weren't we would pass this one out. They stated that they are going to change HB 1302 to make it similar to 2240. They are interested in making some changes. They didn't like the one day mandatory jail sentence on a non-work day. They liked this version (2240), so they were going to move back to that. Initially, my plan was to pass this one, get it to appropriations,

have some work done on it, and see what they were going to do with the money. Then get them both into Conference Committee. I spoke to our leadership, and the problem is that it was a mistake when the two bills were split up in two different committees (Judicial in House and Transportation in Senate). It takes it out of our (House Transportation) hands. We had some discussions, and I have confirmation that when 1302 comes over, it will go to appropriations for concurrence or do not concur. Then if we need to take a look at it, there will be one member from this committee, one from Judiciary, one member from Appropriations. Everyone will have a seat at the table, work out the dollars, and make sure that if there is anything that is not in there that we've talked about, it is added. I think they understand some of the concerns that we have. The problem of having two bills, and then having a conference committee with one Transportation Committee from the House and one Judiciary from the House it was going to get complicated. I recommend that we do not pass this bill through. We can work to make sure that our points are carried on to that bill. Representative Gruchella said that this was not the bill that he signed on to. They did work on areas in ways that I think will pass the body. Being tougher on repeat offenders is good. I spoke with them about not going immediately to the Class A misdemeanor which will pull all of those cases out of the Municipal Court and put them into District Courts.

Representative Becker moved a DO NOT PASS on SB 2240.
Representative Weisz seconded the motion.

Representative Weisz: I agree with what you are saying. One thing that needs to be noted, even if you go back to Class B, you can still have the minimum fine where it is for a Class A. The mandatory minimums can still be up there. It is just that the maximum would be less, and judges almost never give a maximum sentence.

Chairman Ruby: Senator Armstrong is thinking about putting in a provision for vehicular homicide and the provisions and penalties that go along with that. We don't have that currently.

Representative Oversen: I know where we are going with the bill, and I appreciate the reasoning behind not wanting to overfill the jails through this. But, the consequences of the actions that are taken far outweigh overfilling the jails. We can fix that problem in other ways. If we are going to be serious about taking action to reduce the incidences of drunken driving, we need to do it. I don't see that we are being serious about creating consequences that are going to have any real effect on people's actions. I will resist the DO NOT PASS.

A roll call vote was taken on SB 2240. Aye 10 Nay 4 Absent 0
The motion carried.
Representative Weisz will carry SB 2240.

FISCAL NOTE
Requested by Legislative Council
02/11/2013

Amendment to: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,794,160 | | \$1,978,062 |
| Expenditures | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |
| Appropriations | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements and increased usage of the 24/7 Sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will impact the Office of the Attorney General through increased usage of the 24/7 Sobriety program and the Department of Corrections and Rehabilitation through increased incarceration requirements. As amended, the bill should have no material fiscal impact on the Department of Transportation. Additionally, the bill may impact local jurisdictions, however we have no way to determine what that impact may be.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increased revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 Sobriety program and the related fees. These funds are deposited into the 24/7 Sobriety Program fund and are subject to a continuing appropriation. See attached schedule 9.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures are a direct result of expected increased usage of the 24/7 Sobriety program and increased incarceration requirements. See attached schedules 1, 4, 7, and 8.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill provides a \$1.2 million dollar appropriation from the general fund to the Office of the Attorney General for the 2013-2015 biennium. Additionally, revenues to the 24/7 Sobriety Program fund are subject to a continuing appropriation. However, this bill as amended does not provide any appropriation of the remaining \$5,166,456 of costs that would be incurred by the Office of the Attorney General (\$1,440,340) and the Department of Corrections and Rehabilitation (\$3,726,116) for the 2013-2015 biennium. Therefore, the Office of the Attorney General and the Department of Corrections would need additional appropriations of \$3,726,116 and \$1,440,340 respectively beyond the appropriation of \$1.2 million provided in this bill and the 24/7 Sobriety Program continuing appropriation. Please see attached schedules 3,6,10, and 11.

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 02/14/2013

Amended SB2240
State Agency Impacts

Attorney General

| <i>Schedule 1 - Expenditures</i> | 13-15 biennium | 15-17 Biennium |
|-----------------------------------|---------------------|---------------------|
| SCRAM bracelets and base stations | \$ 1,684,900 | |
| Other costs | 2,749,600 | \$ 3,031,434 |
| Total AG costs | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |

Schedule 2 - Funding Source

| | | |
|--|---------------------|---------------------|
| General Fund | \$ 2,640,340 | \$ 1,053,372 |
| 24/7 Sobriety Program participant revenues - Special Funds | 1,794,160 | 1,978,062 |
| Total Funding Sources | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |

Schedule 3 - Appropriations

| | | |
|---|---------------------|---------------------|
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total GF appn | 2,640,340 | 1,053,372 |
| Special Funds - 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total - all appropriations | <u>\$ 4,434,500</u> | <u>\$ 3,031,434</u> |

Department of Corrections & Rehabilitation

| | | |
|--|---------------------|---------------------|
| <i>Schedule 4 - Total Expenditures</i> | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |
|--|---------------------|---------------------|

Schedule 5 - Funding Source

| | | |
|--------------|---------------------|---------------------|
| General Fund | <u>\$ 3,726,116</u> | <u>\$ 9,011,896</u> |
|--------------|---------------------|---------------------|

Schedule 6 - Appropriations

| | | |
|----------------------------|--------------|--------------|
| General Fund - Not in Bill | \$ 3,726,116 | \$ 9,011,896 |
|----------------------------|--------------|--------------|

Combined State Impact

Schedule 7 - Expenditures by Agency

| | | |
|--|---------------------|----------------------|
| Office of the Attorney General | \$ 4,434,500 | \$ 3,031,434 |
| Department of Corrections and Rehabilitation | 3,726,116 | 9,011,896 |
| Total Expenditures | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |

Schedule 8 - Expenditures by Fund

| | | |
|--------------------|---------------------|----------------------|
| General Fund | \$ 6,366,456 | \$ 10,065,268 |
| Special Fund | 1,794,160 | 1,978,062 |
| Total Expenditures | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |

Schedule 9 - Revenues

| | | |
|--|--------------|--------------|
| Special Funds | | |
| 24/7 Sobriety Program participant revenues | \$ 1,794,160 | \$ 1,978,062 |

Schedule 10 - Total Appropriations

| | | |
|---|---------------------|----------------------|
| Attorney General | | |
| General Fund | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total Attorney General - General Funds | 2,640,340 | 1,053,372 |
| Special Funds | | |
| 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total Attorney General - All funds | 4,434,500 | 3,031,434 |
| Department of Corrections & Rehabilitation | | |
| General Fund - Not in Bill | 3,726,116 | 9,011,896 |
| Total Appropriations | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |

Schedule 11 - Appropriations Recap

| | | |
|---|---------------------|----------------------|
| General Fund | | |
| General Fund - Appropriated in bill | \$ 1,200,000 | |
| General Fund - Not appropriated in bill | 5,166,456 | \$ 10,065,268 |
| Total General Fund Appropriation | 6,366,456 | 10,065,268 |
| Special Funds | | |
| Continuing Appropriation - 24/7 Sobriety Program Fund | 1,794,160 | 1,978,062 |
| Total - All required Appropriations | <u>\$ 8,160,616</u> | <u>\$ 12,043,330</u> |

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,137,948 | | \$1,187,766 |
| Expenditures | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |
| Appropriations | | | \$8,485,259 | \$1,200,399 | \$34,029,338 | \$1,216,108 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements, license marking, and the use of ignition interlock devices.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated impact to Department of Corrections - To arrive at an estimate the DOCR obtained DUI conviction data from the State's District Courts from the period January 1, 2007 thru December 31, 2012. Over that time period there was a total of 19,331 DUI related convictions for an average of 3,222 DUI related convictions per year. The following assumptions were used: 1) All time incarcerated for 1st and 2nd DUI offenses will be served at the county level and will have no fiscal impact to the DOCR; 2) All time incarcerated for 3rd and 4th and subsequent DUI offenses will be served at DOCR or DOCR contracted facilities, and treated as Felony C offenses; 3) Estimated number of 3rd offense DUI's per year - 102 and estimated number of 4th and subsequent DUI's per year 213; 4) All DUI offenses occur evenly throughout the year; 5) Actual time incarcerated is equal to minimum sentence; 6) No probation; 7) No deterrent effect was used in the estimate. Important to note: in estimating the fiscal effect of this bill the same inmate population projection was used as that to build the 2013-15 DOCR executive recommendation. The current actual average inmate population as of December 2012 (1,536) already exceeds the estimated June 30, 2015 ending inmate population (1,490). If actual inmate populations continue to exceed the project 2013-15 inmate population, the reported fiscal effect of this bill is understated. Estimated impact to DOT: License issuance will increase. It is estimated that of the roughly 6900 DUI's we receive each year, 95% will be eligible for the marked license. Of these, it is estimated that 95% will want to get a new license without the mark after one year. This will drive 25,565 additional license prints per biennium, except for the 2013 biennium, which will be 19,337 due to implementation lag. Effective management of this program will require an additional FTE. The most significant increase is the requirement for the DOT to fund costs for interlock use of indigent offenders.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

DOT revenue from duplicate license fees: \$154,698 1st biennium and \$204,516 2nd biennium. DOT revenue from non-indigent defendants: \$983,250 1st biennium and \$983,250 2nd biennium. Total revenue: \$1,137,948 1st biennium and \$1,187,766 2nd biennium.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Corrections impact was determined by estimating 102 3rd offenses per year and 213 4th or more offenses per year. These offenses would increase the prison population by 157 in FY14, 411 in FY15, 626 in FY16 and 845 in FY17. This would cause DOCR facilities to reach capacity in FY14 resulting in a need to contract for additional bed space as follows: FY15 - 257, FY16 - 475 and FY17 - 698. Costs estimated for the purpose of this fiscal note include medical, food, and contract housing. Est Fiscal Impact 2013-15 - \$8.5 million. Est Fiscal Impact 2015-17 - \$34 million. The DOT impact was determined by estimating number of DUI convictions received (6900) and using 95% for marked licensing (6555) and 95% for re-licensing (6227). We also used a 25% calculus for the number of indigents the DOT would fund for interlock use (1639). NDDOT's costs to implement this program during the first biennium would consist of training (\$1,200), IT costs (\$8,000), additional license card costs (\$77,349), 1 FTE (\$130,000), interlock device costs (\$983,850). Total first biennium NDDOT costs would be \$1,200,399. Second biennium NDDOT costs would total \$1,216,108

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Department of Corrections and the Department of Transportation would require additional appropriations as follows: 2013 Biennium: Dept of Corrections \$8,485,259 + NDDOT \$1,200,399 = \$9,685,658 2015 Biennium: Dept of Corrections \$34,029,338 + NDDOT \$1,216,108 = \$35,245,446

Name: Glenn Jackson

Agency: NDDOT

Telephone: 328-4792

Date Prepared: 01/29/2013

Date: 3-28-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2240

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Becker Seconded By Weisz

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|-----------------------|-----|----|
| Chairman Dan Ruby | ✓ | | Rep. Lois Delmore | | ✓ |
| Vice Chairman Mark Owens | ✓ | | Rep. Edmund Gruchalla | | ✓ |
| Rep. Rick Becker | ✓ | | Rep. Kylie Oversen | | ✓ |
| Rep. David Drovdal | | ✓ | | | |
| Rep. Robert Frantsvog | ✓ | | | | |
| Rep. Brenda Heller | ✓ | | | | |
| Rep. Curtiss Kreun | ✓ | | | | |
| Rep. Mike Schatz | ✓ | | | | |
| Rep. Gary Sukut | ✓ | | | | |
| Rep. Don Vigasaa | ✓ | | | | |
| Rep. Robin Weisz | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 10 No 4

Absent 0

Floor Assignment Weisz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2240, as reengrossed: Transportation Committee (Rep. Ruby, Chairman)
recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).
Reengrossed SB 2240 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2240

Senate Transportation Committee

February 1, 2013

Senator Tim Mathern

Chairman Oehlke and Members of the Senate Transportation Committee

My name is Senator Tim Mathern. I am a Fargo resident here to introduce SB 2240. Passage of this bill adds new options to our law to end driving under the influence of alcohol. This bill reforms North Dakota's DUI laws with a three pronged approach; marking drivers' licenses, a requirement of ignition interlocks and dramatic increases in penalties with treatment components.

I will note some of the social problems related to alcohol and driving. Representative Gruchalla will describe the bill in detail and a number of citizens with concerns will testify. Our goal is to be comprehensive but not duplicative in respect of your time constraints.

Members of the Committee, **driving and drinking leads to death and injury.**

Alcohol related fatalities on our roadways were as follows:

2009 = 56, 2010 = 55, and 2011 = 66.

The Department of Transportation has just reported its statistics of fatalities for 2012 to the Appropriations Committee where I serve.

There were 170 deaths on our roadways with one half being alcohol related. **85 people died in 2012 in an alcohol related accident.**

From the Department of Human Services we have learned that;

- Almost half (48%) of all arrests are alcohol and drug related
- 65% of incarcerated individuals have a substance abuse disorder

-Alcohol is a contributing factor in 44% of new domestic violence cases

-Every 8 hours there is an alcohol-related car crash

-Underage drinking alone cost the citizens of ND \$168 million in 2010

-93 % of North Dakotans agree that alcohol and other drug prevention programs are a good investment because they save lives and money.

All of the statistics I shared with you this morning can be corroborated with the official reports of state I have noted.

Mr. Chairman and members of the committee, the time to act is now. And while you see a large fiscal note with this bill it is an investment we need to make. The costs to not pass SB 2240 are greater yet. I have done some research and learned that of our neighboring states Montana has developed a cost effective way to incarcerate and treat DUI offenders with amazing results. The attached amendment which Department of Corrections help me draft is for your consideration and adoption.

Thank you for the attention you will be giving to the presenters coming before you today. I ask for a Do Pass recommendation on SB 2240.

13.0517.02001
Title.

Prepared by the Legislative Council staff for
Senator Mathern

January 30, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2240

Page 6, line 10, after the period insert "If a defendant is placed under the supervision and management of the department of corrections and rehabilitation, the court may order the defendant into a residential treatment program operated or approved by the department. If the defendant successfully completes the residential treatment program, the remainder of the sentence must be served on probation."

Renumber accordingly

SB2240

Testimony of Rep. Ed Gruchalla, Dist. 45 Fargo, ND

Mr. Chairman and members of the Senate Transportation Committee.

North Dakota is the only State where the percentage of alcohol related fatalities is on the rise. This demonstrates that present practices are not working. The attitude that "everyone can make a mistake" keeps us from making any progress. We have got to stop making excuses for these people. Two thirds of drunken driving arrests are first time offenders. The average drunk driver drives 80 times per year under the influence. Every once in a while one of these drivers is involved in a serious traffic crash. North Dakota has experienced several of these recently and will experience more in the future if something doesn't change.

This bill will dramatically change the way North Dakotans view the offence of Drinking and Driving. We don't believe that making minor or incremental changes to our statute will get anyone's attention. Does anyone care if the fine increases a few hundred dollars?

The basic premise of this bill is to create a strong enough penalty to create deterrence. This approach is proven to work in some other countries where drunk drivers are punished severely.

I have been dealing with this issue for 35 years. During my time in Law Enforcement I arrested over 1000 drunk drivers. I taught DUI detection to basic Law Enforcement classes for 20 years. In those classes we would dose volunteer drinkers to varying alcohol levels and ask the officers to test them to determine which ones were over the legal limit. What I learned is that after a couple drinks almost every volunteer lost track of how much they drank.

This shows that when someone goes out drinking they MUST have the attitude that they may become impaired and plan ahead not to drive. In some foreign countries, drunk drivers are very rare because society treats the offence seriously and has very stringent penalties.

There are three ways DUI's are penalized:

1. Fines
2. Jail time
3. License suspension

When we studied penalties from other jurisdictions we found wide variations. We did not want to be the highest so we picked a number that would place North Dakota toward the top in all three categories.

The fines were set at \$5,000, \$25,000, \$100,000. (the violator may reduce this amount by 50% by installing an ignition interlock.) Several States are higher than this, AZ is \$7500 and OR is \$125,000 on a fourth offence.

Jail time was sent at 30 days (4 days served consecutively), 180 days (4 days served consecutively) and 1 year (4 days served consecutively). LA is 10 days to 6 months on a first offence; third offence is 60 days to 30 years.

Suspensions were set at 1 year, 2 years, and 5 years. (On a first offence the violator may begin driving as soon as the ignition interlock device is installed).

Members of the committee, you are probably aware that there is another bill over in the house. I didn't know that another bill was forthcoming. I was appraised that this was the only bill being drafted by legislative council. However they didn't know that one was drafted elsewhere. I have looked at the other bill and found some similarities. My hope is that we can pass both bills and later combine them and take the best things from both.

Prosecutors and Judges need to have as many tools in their toolboxes as possible. They contend that one size does not fit all in dealing with the DUI problem.

One of the loudest criticisms of stronger penalties is that our jails are already full. Members of this committee we contend that passage of this bill will actually reduce the jail population. With strong enough penalties up front, potential drunk drivers will weigh the risk and decide not to drink and drive. Over time the number of arrests will decline. Again two thirds of drunken driving arrests are first timers.

When faced with difficult problems we find ways to deal with them. We are spending Billions of dollars on health issues like cancer and obesity. We are just beginning to deal with these issues by going after the root cause and looking at prevention rather than waiting until the problems manifest and treating the disease. When need to get out in front of the DUI problems and treat the causes.

When faced with a lack of water for oil drilling in the patch this State is spending hundreds of millions of dollars to resolve the problem. The eastern part of the State is faced with a flooding issue. We will spend up to two Billion dollars on a diversion. Members of the committee don't let lame arguments like it's too expensive to fix the DUI problem.

The term Zero Tolerance is used liberally in society. Until we set a Zero Tolerance policy for drunk drivers do not look for much change.

Mr. Chairman and members of the committee. When you listen to the testimony of those families that have been personally affected by the tragedies related to DUI crashes, remember the costs that they have incurred.

Mr. Chairman and members of the committee, there are others here that want to offer testimony.

Thank you for considering this bill and feel free offer and amendments or changes that will make it more acceptable.

Rep. Ed Gruchalla, District 45 Fargo



**Frank Harris
State Legislative Affairs Manager
Mothers Against Drunk Driving
Testimony Supporting Senate Bill 2240
Senate Transportation Committee
1 February 2013**

Thank you Mr. Chairman and members of the committee for allowing MADD the opportunity to testify in support of Senate Bill 2240, which expands the use of ignition interlocks for all convicted drunk drivers in North Dakota. My name is Frank Harris, State Legislative Affairs Manager, with Mothers Against Drunk Driving.

MADD supports the use of ignition interlocks for convicted drunk drivers as these devices are one of the most effective measures available in stopping drunk driving. MADD urges this committee to advance SB 2240, which will improve North Dakota's drunk driving law. The legislation requires the use of interlocks for at least one year on a first offense and for longer periods for repeat offenders. It should be noted that the program will not undermine the current 24/7 program and will instead make North Dakota's drunk driving law more effective in rehabilitating offenders and protecting families.

This committee and the legislature must enact this lifesaving legislation, because the fight against drunk driving is not over. Drunk driving is a 100 percent preventable crime. Yet in 2011, 64 people were killed in crashes involving a drunk driver in North Dakota—representing 43 percent of all traffic fatalities in the state. North Dakota's drunk driving deaths have increased from 42 in 2006 to 64 in 2011. In contrast, nationwide, drunk driving deaths have decreased by 26 percent (from 13,491 to 9,878). Clearly, more action is needed to stop drunk driving.

Since MADD was formed in 1980, drunk driving deaths have dropped dramatically. However, in the 1990's, DUI fatalities began leveling off. As a result of this stagnation, MADD renewed our focus on advocating for measures that are effective and proven to stop drunk driving. In November 2006, MADD launched the national Campaign to Eliminate Drunk Driving. Prior to

the Campaign launching in 2006, only one state, New Mexico, had a law requiring ignition interlocks for all first time convicted drunk drivers. Now, seventeen states plus a pilot program in California have laws requiring or highly incentivizing interlock usage for all first time convicted drunk drivers. Currently, North Dakota is one of only nine states with an interlock law where judges have complete discretion. Ignition interlocks are supported by other traffic safety groups besides MADD. Last month, the National Transportation Safety Board, NTSB, and AAA recommended that all states require ignition interlocks for all convicted drunk drivers.

Studies show that 50 to 75 percent of convicted drunk drivers will continue to drive on a suspended license. With an ignition interlock, offenders are still able to go to work, school, the grocery store, or anywhere else they want to go. They just can't drive while they are drunk. In addition, studies show that interlocks reduce repeat offenses by 67 percent compared to offenders sentenced to license suspension.

SB 2240, requiring ignition interlocks for all convicted drunk drivers, will help prevent repeat offenses, and in so doing, save lives. Interlock laws with similar provisions in Arizona and Oregon have helped decrease drunk driving fatalities by 46 and 35 percent respectively. In Louisiana, drunk driving deaths are down by 40 percent. In New Mexico, drunk driving deaths have decreased by 33 percent. In each of these states, ignition interlocks were the centerpiece of DUI reform and each of these states has achieved dramatic reductions in impaired driving fatalities.

Ignition interlocks are an invaluable tool to stop drunk driving. The interlock acts as a virtual probation officer riding in the front seat. It should be noted that the convicted drunk driver pays for the device so that the taxpayer is not further burdened with subsidizing drunk drivers. If an offender is determined to be indigent or unable to afford the interlock, under current SB 2240, an indigent offender will have an interlock at a reduced cost. These costs will be covered by a \$100 fee paid by non-indigent convicted drunk drivers. Any costs to North Dakota in administering this program can be offset with administrative fees. Additionally, as a result of the federal highway bill (MAP-21) passed by Congress last year, if SB 2240 becomes law, North Dakota could qualify for a share of \$20 million in interlock incentive grant funds from the federal

government, providing the bill requires the use of interlocks for all convicted drunk drivers.

Interlocks have anti-circumvention technology, making it difficult to bypass. Depending on the device, an offender typically must hum, blow and then suck when trying to start an interlocked vehicle. Interlocks are calibrated to have “rolling retests,” which require a driver to provide breath tests at regular intervals, preventing drivers from asking a sober friend to start the car, drink while driving, or leave the car idling in a bar parking lot. Under this bill, interlocks would also have cameras to verify who is using the device and GPS tracking.

Some may argue that requiring ignition interlocks for first time offenders is too harsh. This is not the case. We know that the average first time offender has driven drunk before—the most conservative study showed drunk drivers getting on the road an average of 80 times before the first arrest.

You also will hear talk about punishing those who are one sip over the legal limit. The illegal level in North Dakota begins at a .08 blood alcohol concentration (BAC). The *National Institute on Alcohol Abuse and Alcoholism* notes that to get to a .08 BAC, men must typically consume 5 or more drinks, and women must typically consume 4 or more drinks, in about 2 hours.¹ This dispels the myth that someone can be arrested for DUI after one beer at a ball game or a glass of champagne at a wedding.

Ignition interlocks for all convicted drunk drivers do not stop people from drinking alcohol. These devices deal with those convicted of driving drunk with an illegal BAC of .08 or greater. When drivers reach a .08 BAC, their critical driving skills, like judging distance and speed, steering, visual tracking, concentration, braking, and staying in driving lanes are severely impaired. At a .08 BAC level, a person is 11 times more likely to be involved in a fatal crash than someone who has had nothing to drink.

Some may say ignition interlocks should remain discretionary for first offenders with a BAC of .08 to .14 and only be required for “hard-core” offenders or repeat offenders or those first

¹ A standard drink is defined as 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of 72-proof distilled spirits, all of which contain the same amount of alcohol—about .54 ounces. National Highway Traffic Safety Administration. “Alcohol Screening and Brief Intervention in the Medical Setting.” DOT HS 809 467. Washington, DC: National Highway Traffic Safety Administration, July 2002.

offenders with a BAC of .15. Also, a September 7, 2006 report from the Insurance Institute for Highway Safety details why focusing on this "hard-core" set of DWI offenders is bad policy, stating: "The hard-core group isn't the whole DWI problem or even the biggest part, so it doesn't make sense to focus too narrowly on this group."

MADD is not against the sale or consumption of alcohol for people aged 21 and over, but it is always best to plan ahead and designate a sober driver. From 2006 to 2012 in the United States, the use of ignition interlocks for convicted drunk drivers has increased from 100,000 to 279,000.² During this time, fighting through a tough economy, alcohol sales have actually increased in the United States.^{3,4,5,6,7} Ignition interlocks do not stop the general public from drinking alcohol responsibly, they help stop those convicted of driving drunk from reoffending, helping to save lives and prevent injuries.

In conclusion, MADD urges this Committee to advance Senate Bill 2240, assuring that ignition interlocks are mandatory for all convicted drunk drivers. By working together with the existing 24/7 program, this lifesaving legislation is a common sense solution to a deadly problem. Allow convicted drunk drivers to keep driving. Protect the public from drunk driver reoffending. Enclosed is more information on ignition interlocks.

Thank you.

² Dr. Richard Roth. Roth Interlock 2012 Survey of Currently-Installed Interlocks in the U.S. <http://www.rothinterlock.org/2012surveyofcurrentlyinstalledinterlocksintheus.pdf>

³ Caroline Fairchild. "Increase In Liquor Sales At Restaurants, Bars Linked To Economic Recovery: Study" *Huffington Post*. December 4, 2012. http://www.huffingtonpost.com/2012/12/04/liquor-sales-economic-recovery_n_2238444.html

⁴ Mike Esterl. "After Long Downturn, Beer Sales Are Back." *Wall Street Journal*. October 2, 2012. <http://online.wsj.com/article/SB10000872396390444083304578016193481145184.html>

⁵ Charles Sizemore. "A hangover in Booze Stocks?" *Forbes* January 23, 2013. <http://www.forbes.com/sites/moneybuilder/2013/01/23/a-hangover-in-booze-stocks/>

⁶ Clementine Fletcher. "Diageo Profit Rises as Emerging Markets Bolster Revenue." *Bloomberg* August 23, 2012. <http://www.bloomberg.com/news/2012-08-23/diageo-profit-rises-as-emerging-markets-bolster-revenue.html>

⁷ Olivia Barrow. "Restaurants report rising alcohol sales." *Dayton Business Journal*. December 7, 2012. http://www.bizjournals.com/dayton/blog/morning_call/2012/12/restaurants-report-rising-alcohol-sales.html



Support Ignition Interlocks for All Convicted Drunk Drivers

S 2240 will save lives and protect North Dakota families

An ignition interlock is a small breath test device linked to a vehicle's ignition system. When a convicted drunk driver wishes to start his or her vehicle, he or she must first blow into the device. The vehicle will not start unless the driver's Blood Alcohol Concentration (BAC) is below a preset level. **Costs of the interlock are borne by the offender, not the taxpayer.**

- **Interlocks are effective.** According to the Centers for Disease Control (CDC), interlocks are effective in saving lives and reducing drunk driving repeat offenses by 67 percent.⁸ Specifically, all offender interlock laws, when implemented well, are found to reduce repeat offenses significantly.⁹
- **Interlock installation should occur immediately.** MADD supports immediate reinstatement of driving privileges for drunk drivers providing the offender uses an ignition interlock. An interlock is more effective than license suspension alone, as 50 to 75 percent of convicted drunk drivers continue to drive on a suspended license.¹⁰
- **Interlocks save lives.** States requiring all convicted drunk drivers to use an ignition interlock, such as Arizona, Oregon, New Mexico and Louisiana have cut DUI deaths by over 30 percent.¹¹
- **The public supports interlocks for all convicted drunk drivers.** Three different surveys indicate support of 76 to 88 percent.¹²
 - **88 percent support** interlocks for all convicted drunk drivers.
 - **84 percent support** ignition interlocks for convicted drunk drivers.
 - **Over 3 of 4 persons support** requiring interlocks for first-time convicted drunk drivers.
- **All-offender interlock laws are widespread.** 17 states and a California pilot program (covering a population of over 13 million) have laws requiring ignition interlocks for all first-time convicted drunk drivers. As of July 2012, there are approximately 279,000 interlocks in use in the United States.¹³
- **First offenders are serious offenders.** Conservative estimates show DUI offenders have driven drunk at least 80 times before they are arrested.¹⁴ Additionally, research has found that first offenders' patterns of recidivism are generally similar to a repeat offender.¹⁵
- **Safety groups supporting ignition interlocks for all convicted drunk drivers,** including all first offenders with an illegal BAC of .08 or greater.
 - Advocates for Auto and Highway Safety
 - American Automobile Association (AAA)
 - Auto Alliance
 - Centers for Disease Control and Prevention (CDC)
 - Insurance Institute for Highway Safety (IIHS)
 - International Association of Chiefs of Police (IACP)
 - National Safety Council
 - National Transportation Safety Board (NTSB)

⁸ Centers for Disease Control. Guide to Community Preventive Services. "Reducing Alcohol-Impaired Driving: Ignition Interlocks." 2011. <http://www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html>

⁹ McCartt, Anne, et al. "Washington State's Alcohol Ignition Interlock Law: Effects on Recidivism Among First-Time DUI Offenders." March 2012. <http://www.iihs.org/research/topics/pdf/r1168.pdf>

¹⁰ Nichols, James, and H. Lawrence Ross. "The Effectiveness of Legal Sanctions in Dealing with Drinking Drivers." Alcohol, Drugs and Driving 6(2) (1990): 335S. and

Peck, Raymond, R. Jean Wilson, and Lawrence Sutton. "Driver License Strategies for Controlling the Persistent DUI Offender," Strategies for Dealing with the Persistent Drinking Driver. Transportation Research Board, Transportation Research Circular No. 437. Washington, D.C.: National Research Council, 1999.

¹¹ National Highway Traffic Safety Administration. FARS Data, 2006-2011.

¹² 76 percent: AAA Foundation for Traffic Safety. "2011 Traffic Safety Index." January 2012. <http://www.aaafoundation.org/pdf/2011T5CIndex.pdf>

84 percent: Insurance Institute for Highway Safety. "Public is Ready to Lock out Driving over the Legal Limit." Status Report, September 17, 2009. <http://www.iihs.org/externaldata/srdata/docs/sr4408.pdf>

88 percent: Center for Excellent in Rural Safety. "CERS Survey." Rural Safety News. June 2010. <http://www.ruralsafety.umn.edu/publications/ruralsafetynews/2010/02/>

¹³ Based on survey data from interlock manufacturers.

¹⁴ Centers for Disease Control. "Vital Signs: Alcohol-Impaired Driving Among Adults — United States, 2010." <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6039a4.htm>

¹⁵ Jones, R. K., and Lacey, J. H. "State of Knowledge of Alcohol Impaired Driving: Research on Repeat DWI Offenders." DOT HS 809 027. Washington, DC: National Highway Traffic Safety Administration, 2000.

Status of State Ignition Interlock Laws

C A M P A I G N T O
**ELIMINATE
DRUNK DRIVING**
madd™

| Interlock requirement starts on the first conviction | | | |
|--|----------------------|--|------------------------------------|
| Mandatory with a BAC of .08 or greater | | Mandatory with a BAC of .15 or greater | |
| Alaska (1/09) | Louisiana (7/07) | Alabama (9/12) | New Hampshire .16 BAC (7/07) |
| Arizona (9/07) | Missouri (10/13) | Delaware (7/09) | North Carolina (12/07) |
| Arkansas (4/09) | Nebraska (1/09) | Florida (10/08) | Oklahoma (11/11) |
| California Pilot Program* (7/10) | New Mexico (6/05) | Maryland (10/11) | Tennessee (1/11) |
| Colorado** (1/09) | New York (8/10) | Michigan .17 BAC (10/10) | Texas*** (9/05) |
| Connecticut (12/12) | Oregon (1/08) | Minnesota** .16 BAC (7/11) | West Virginia (7/08) |
| Hawaii (1/11) | Utah (7/09) | Nevada .18 BAC (7/05) | Wisconsin (7/10) |
| Illinois** (1/09) | Virginia (7/12) | New Jersey (1/10) | Wyoming (7/09) |
| Kansas (7/11) | Washington (1/09) | | |

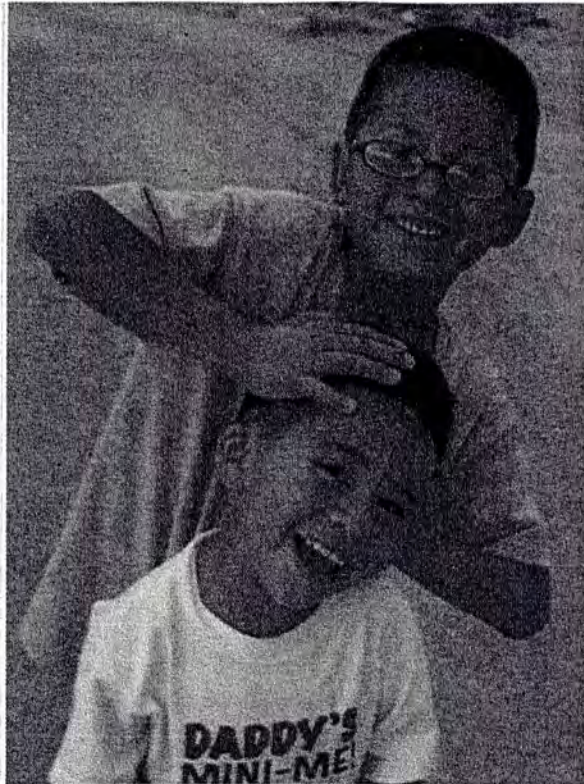
(month/year listed note effective date)

*California's pilot program covers the counties of Los Angeles, Alameda, Sacramento, and Tulare. These counties combined have a population of over 13 million.

**Interlocks are highly incentivized in that, if the offender chooses not to use the device, he or she has a year long license suspension.

***Mandatory as a condition of probation.

Testimony /



Cyris Ruiz
9 years old

Alaries Ruiz
5 years old

Killed by a drunk
driver in North
Dakota on July 8,
2012

Let's change the law, so
that other families do not
have to suffer such a
tremendous loss.



On the night of July 8, 2012, our sons, Cyris and Alaries, were camping at Lake Metigoshe with their dad and friends. They had enjoyed a beautiful day of swimming, playing, and fishing. It was a great day, unforgettable. Our boys were so sweet, kind, and adventurous. They loved their dog Nena. They loved life.

Then, the unthinkable. . . a drunk driver came into the park, going too fast, driving recklessly. The drunk driver ran over the tent in which our sons slept, tragically killing them. Our lives will never be the same. We will mourn their loss forever.

We urge the North Dakota legislature to pass comprehensive DUI reform. We can stop this from happening to other families by changing the law and by working together as a community to prevent drunk driving. Sincerely,

Juan and Sandy

Personal testimony for Senate Bill No. 2240

Hearing before Transportation Committee on February 1, 2013

Good Morning Chairmen Oehlke and Members of the Transportation Committee.

My name is Cynthia Auen and I am from Bismarck. I am in favor of Senate Bill No. 2240 for the following reasons.

Studies show stiffer penalties proactively reform culture (1). Marked licenses will aid our Hospitality industry in the fight against repeat offenders. And interlock devices will help keep impaired drivers off the roads.

This bill is not about filling up our jails. It's about NOT filling up our cemeteries.

This bill does not take away the right to drink OR the right to drive. This bill addresses the decisions made when those two rights are not responsibly reconciled. It says North Dakota seriously cares about the safety of the people on our highways.

This bill is not about emotion. It is about our future. It is about saving the dancers, the baseball players, the journalists, engineers, nurses, farmers, teachers, and business owners whose contributions to this state would go sorely missing if their lives were taken by a drunk driver.

This bill does not inconvenience those who make responsible decisions. On "9/11", 2997 people were killed ... about equivalent to 60 people per state (2). Today we stand in stocking feet holding our bags of tiny liquid containers, waiting in long lines to be scanned and probed so that we may fly safely. This nation went to war for the "60 people in every state". This ... done in the name of safety not inconvenience. In 2011, 64 people in North Dakota lost their lives in alcohol related automobile accidents (3). That statistic is closely repeated ... every year. In light of this perspective, isn't it time for Senate Bill 2240? Isn't it time to take the safety of travelers on North Dakota's roads seriously?

Change takes courage. I ask that you seize this opportunity for change. Carpe' Diem for those 64 people not here because of impaired driving. Carpe' Diem for the rest of us who are missing the gifts and services they contributed to our society. Carpe' Diem for the future.

Chairmen Oehlke and Members of the Transportation Committee ... I respectfully submit my deepest gratitude for your courage to give Senate Bill No. 2240 a "Do Pass" recommendation.

(1) <http://www.duinnorthdakota.com/news.cfm/Article/6221/New-CDC-Study-Shows-Stronger-State.html>

(2) <http://en.wikipedia.org/wiki/9/11>

(3) <http://www.alcoholalert.com/drunk-driving-statistics-north-dakota.html>

<http://www.madd.org/blog/2012/december/2011-State-data.html>

Mr. Chairman and members of the committee:

My name is Brenda Gjesdal and I am from Wahpeton, ND. I am here to tell you that I favor Bill # 2240. On September 29, 2009, my daughter, Annie, was killed when a sugar beet truck driver ignored a red light and crashed into my daughter's car. Annie was killed instantly from her injuries. Annie was 18 years old, and had just started college at the North Dakota State College of Science in the nursing program.

The day after the accident I found out the driver of the sugar beet truck had multiple arrests and convictions, which included one DUI, multiple charges of possession of drugs and drug paraphernalia and multiple Driving after Suspensions. In many of her arrests, the amount of jail time or probation she was given was minimal. She continued to get into alcohol and illegal drug trouble time and time again, but never seemed to quite "get it." Please keep in mind this woman is not a teenager, but a mother, a grandmother, an aunt. She has always been smart enough to hire attorneys to help her get the least restrictive sentences, but unwilling to give up her driving privileges in the effort to save lives even though her arrest record certainly indicates she had serious substance abuse problems.

The driver of the truck, Cathleen Dean, was charged with Negligent Homicide in the crash that took Annie's life. She pleaded guilty, and was sentenced to one year and one day at the North Dakota State Penitentiary in New England, ND. She took my daughter's life.

When I look at Cathleen Dean's record, it shows me that the minimal fines and jail time she received for what we all consider serious offenses never stopped her from committing more alcohol and illegal drug crimes. For many of her crimes, she was given what the general public considers a slap on the wrist, until she eventually caused the death of an 18 year old neighbor, co-worker, classmate, best friend, cousin, niece,my daughter....my only child. I believe if Bill #2240 had been in effect prior to September 29, 2009, it might mean Annie would be alive today. There are some people who simply should not be allowed behind the wheel of a vehicle and they should be kept off the road so they cannot hurt more of our family members. I ask each of you to think about someone you know from your family, or the North Dakota community you are here representing, who has been devastated by the horrific actions of an impaired driver. I will never call a death caused by a driver who is under the influence of alcohol or illegal drugs an accident, because that driver made the choice to get behind the wheel of his or her vehicle.

Please consider passing Bill # 2240 so perhaps other families do not have to experience the heartache that alcohol and illegal drug impaired drivers have caused far too many families in North Dakota.

Location: Southeast District [Help](#)

Search By: Defendant Exact Name: on Party Search Mode: Name Last Name: Cantrell First Name: Cathleen Case Status:
All Sort By: Filed Date

| Case Number | Citation Number | Defendant Info | Filed/Location/Judicial Officer | Type/Status | Charge(s) |
|----------------------|-----------------|-----------------------|---|-----------------------|---|
| <u>41-98-K-00277</u> | | Cantrell, Cathleen M. | 12/02/1998 -- Sargent County Goodman, Ronald E | Misdemeanor Closed | UNLAWFUL POSSESSION OF DRUGS |
| <u>41-98-K-00278</u> | | Cantrell, Cathleen M. | 12/02/1998 -- Sargent County | Misdemeanor Closed | POSSESSION OF CONTROLLED SUBSTANCE |
| <u>39-99-K-00334</u> | 0003884044 | Cantrell, Cathleen M. | 06/21/1999 -- Richland County Grosz, Richard W | Misdemeanor Closed | DRIVING WHILE LICENSE PRIVILEGE REVOKED |
| <u>39-00-K-00123</u> | 0003980127 | Cantrell, Cathleen M. | 02/23/2000 -- Richland County Grosz, Richard W | Misdemeanor Closed | DRIVING WHILE LICENSE PRIVILEGE REVOKED |
| <u>39-02-K-00280</u> | 0004114089 | Cantrell, Cathleen M. | 04/15/2002 -- Richland County Grosz, Richard W | Misdemeanor Closed | DRIVING WHILE LICENSE PRIVILEGE REVOKED |
| <u>39-03-K-00472</u> | 0004285693 | Cantrell, Cathleen M. | 07/09/2003 -- Richland County Goodman, Ronald E | Misdemeanor Closed | DRIVING WHILE LICENSE PRIVILEGE REVOKED |
| <u>39-04-K-00024</u> | 0004306642 | Cantrell, Cathleen M. | 01/06/2004 -- Richland County Grosz, Richard W | Misdemeanor Closed | DRIVING WHILE LICENSE PRIVILEGE REVOKED |
| <u>39-04-K-00025</u> | | Cantrell, Cathleen M. | 01/06/2004 -- Richland County Grosz, Richard W | Felony Closed | POSSESSION OF DRUG PARAPHEMERALS |
| <u>39-04-K-00026</u> | | Cantrell, Cathleen M. | 01/06/2004 -- Richland County Grosz, Richard W | Felony Closed | POSSESSION OF CONTROLLED SUBSTANCE |
| <u>39-05-K-00866</u> | | Cantrell, Cathleen M. | 12/16/2005 -- Richland County Goodman, Ronald E | Felony Closed | HINDERING LAW ENFORCEMENT |
| <u>39-07-K-00199</u> | | Cantrell, Cathleen M. | 04/13/2007 -- Richland County Grosz, Richard W | Misdemeanor Closed | POSSESSION OF DRUG PARAPHEMERALS |
| <u>39-07-K-00200</u> | | Cantrell, Cathleen M. | 04/13/2007 -- Richland County Grosz, Richard W | Felony Closed | POSSESSION OF CONTROLLED SUBSTANCE |



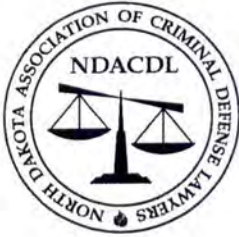
*Testimony 3 Page:***Criminal Case Records Search Results**

Logout My Account Search Menu New Criminal Search Refine Search

Location : Southeast District Help

Record Count: 1**Search By:** Defendant **Exact Name:** on **Party Search Mode:** Name **Last Name:** Dean **First Name:** Cathleen **Case Status:** All **Sort By:** Filed Date

| Case Number | Citation Number | Defendant Info | Filed/Location/Judicial Officer | Type/Status | Charge(s) |
|----------------------|-----------------|-----------------------------|---|------------------|--------------------|
| <u>39-09-K-00472</u> | | Dean, Cathleen Mary 1956 | 10/12/2009 -- Richland County Narum, Daniel D | Felony Closed | NEGLIGENT HOMICIDE |



NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

To: Senate Transportation Committee, Chairman Dave Oehlke

Re: Marked licenses for driving under the influence and ignition interlocks, and penalty – SB 2240

Recommendation: NDACDL recommends a “Do Not Pass” of SB 2240 and an Interim Study on appropriate solutions to address the problems that arise from North Dakota’s culture of alcohol.

The North Dakota Association of Criminal Defense Lawyers (NDACDL), an association formed in 2010 that now as approximately 80 members recommends that SB 2240 receive a “Do Not Pass” vote from this Senate Transportation Committee. Rather, NDACDL suggests that an Interim Study be passed so that true solutions to the problems that arise from alcohol in North Dakota can be curbed. NDACDL recognizes the tragedies that occurred in 2012 as a result of drunk driving. However, for the following reasons, SB 2240 is not the solution to drunk driving and will cause more harm than good.

Quick Facts

1. SB 2240 creates a large unfunded mandate back to the cities and counties to house inmates that are sentenced to the mandatory penalties under the bill. This cost could reach upwards of \$15.6 million per biennium, in addition to the \$32.5 million fiscal note attached to SB 2240.

2. SB 2240's severe penalties will cause a number of people to go on welfare because of loss of employment, removal from school, and loss of housing.

3. Judges lose all discretion, and local control, when they are unable to sentence the individual and must hand down a predetermined sentence.

4. The true beneficiaries of SB 2240 will be criminal defense lawyers.

5. An interim study would be best to find appropriate solutions to solve the problems that stem from North Dakota's culture of alcohol. This interim study would allow all stakeholders the opportunity to find appropriate solutions.

First, SB 2240 is a large unfunded mandate back to the cities and counties. Assuming approximately \$65/day to house an inmate, the mandatory sentences outlined in section six (6) will cost cities and counties upwards to \$15.6 million per biennium in addition to the \$32.5 million fiscal note. Additionally, this comes at a time when certain counties, especially in the central and western part of North Dakota are already at or above capacity in their county jails.

Second, both the suspension penalties and mandatory sentences in sections four (4) and six (6) are a one-size-fits-all approach that won't work. Judges won't have any discretion to sentence the individual before them, but rather will be forced to hand down a predetermined sentence. From the collective experience of NDACDL, this is another unfunded mandate in SB 2240. You will see people lose jobs, get kicked out of school, and have to seek hand-outs from the government rather than working.

Finally, the penalties proposed in SB 2240 will truly only benefit criminal defense attorneys. Nearly every future client charged with DUI will have no choice but to fight the charge. This will mean more trials taking place on an already taxed court system in North Dakota.

SENATE TRANSPORTATION COMMITTEE

Dave Oehlke, Chairman

February 1, 2013

North Dakota Department of Corrections and Rehabilitation

Leann K. Bertsch, Director

Presenting Testimony Concerning: SENATE BILL 2240

Chairman Oehlke and Members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation (DOCR). The DOCR is neutral on Senate Bill 2240.

Senate Bill 2240 significantly increases the penalty for driving while under the influence (DUI). Under current law, a DUI does not become a felony until the fifth or subsequent offense within a seven-year period. This bill makes a third or subsequent offense within a ten-year period a class C felony. This bill will increase the number of DUI offenders who will now be convicted felons. All felony offenders sentenced to a period of probation for all or a portion of their sentence must be supervised by the Parole and Probation Division of the Department of Corrections and Rehabilitation. The DOCR believes this major change to the DUI penalty structure will eventually add hundreds of offenders per year to the caseloads of our parole and probation officers that already carry heavy caseloads. However, that impact is not reflected in the fiscal note, as the assumptions are that initial impact would be on the incarcerated populations.

Financial concerns and resources should not override sound policies on issues of public safety, nor should they be ignored. Impaired drivers kill people. By the time an offender is being prosecuted for their third DUI, it is apparent that the offender poses a significant risk to others on our highways. Increasing the DUI penalties and thereby widening the net so that more DUI offenders are incarcerated for longer periods of time or placed on supervised probation may increase public safety and reduce the risk that impaired drivers

pose. However, these offenders need to be adequately supervised and that will require additional parole and probation officers.

The fiscal note prepared by the DOCR on Senate Bill 2240 anticipates an increase in the number of DUI offenders who will be incarcerated. The DOCR's inmate projections, upon which our 2013-2015 budget was built, does not include the additional cost to incarcerate the additional DUI offenders that will be sentenced to prison as result of the increased penalties. Incarcerating impaired drivers will certainly keep them off of our highways. However, the added costs to the correctional system must be fully considered and addressed. If the intended result of SB 2240 is to increase public safety by reducing the number of impaired drivers on our highways, additional enforcement and treatment resources should be considered as an alternative to incarceration.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2240

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven program; amend and reenact subsection 7 of section 39-06.1-10, sections 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, 39-20-05, subsection 6 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving while under the influence; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~seven~~ years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - e. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation.
 - f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - g. An individual who has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety

program under chapter 54-12 is not subject to the suspension periods under this section.

SECTION 2. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue ~~for good cause~~ a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director may issue a temporary restricted license that takes effect after fifteen days of the suspension have been served. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued in accordance with subsection 5 if the offender is participating in the twenty-four seven sobriety program under chapter 54-12 or for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours, or as provided under subsection 5, and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

5. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's driver's license is not subject to an unrelated suspension or revocation, the director shall issue a temporary restricted driver's permit to the offender only for the purpose of participation upon the restriction of the offender participate in the twenty-four seven sobriety program upon under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program by the offender to receive a temporary restricted license. If a court or the parole board finds that an offender has violated a condition of the twenty-four seven sobriety program, the court or parole board may order the temporary restricted driver's permit be revoked and take possession of the temporary restricted driver's permit. The court or the parole board shall send a copy of the order to the director who shall record the revocation of the temporary restricted driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition of the twenty-four seven sobriety program does not preclude the offender's eligibility for a temporary restricted driver's license under any other provisions of this section.

SECTION 3. AMENDMENT. Section 39-08-01 of 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 eight 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.
 - e. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests required under sections 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

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. Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a second or third offense in a five-year seven-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period felony for any fourth or subsequent offense regardless of the length of time since the previous offense. 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 a subsequent offense finding based on other evidence.
3. Upon conviction of a second or subsequent offense within five seven years under this section or equivalent ordinance, the court ~~must~~ may order the motor vehicle number plates of all of the motor vehicles 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. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a coowner of the motor vehicle, ~~but not including or if the offender is participating in the twenty-four seven sobriety program.~~
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program. If the convicted person has an alcohol concentration of at least eighteen 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, the sentence must include at least two days' imprisonment or twenty hours of community service.
 - b. For a second offense within five seven years, the sentence must include at least five ten days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, ~~or thirty days' community service~~; a fine of at least five

hundredone thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

- c. For a third offense within ~~five~~seven years, the sentence must include at least ~~sixtyone~~ hundred twenty days' imprisonment or placement in a minimum security facility, of which ~~forty-eight~~ hours must be served consecutively; a fine of ~~oneat least two~~ thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
- d. For a fourth or subsequent offense ~~within seven years~~, the sentence must include at least one hundred eighty days' year and one day's imprisonment or placement in a minimum security facility, 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 treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
- 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 this section.
- f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence. If the offense is subject to subdivision c, the district court may suspend a sentence, except for one hundred twenty days' imprisonment, under subsection 3 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 offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 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 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.g. 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~~section.
 - g.h. 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.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in ~~which and~~ the defendant ~~is tested at least twice daily for the consumption of alcohol~~ shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. ~~This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.~~ For an offense under subsection c of subsection 4, no more than ninety percent of the sentence may be house arrest.
 6. As used in this title, participation in the twenty-four seven sobriety program under chapter 12-54 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees; except upon a finding of indigence the court may waive fifty percent of the twenty-four seven sobriety program fees.

SECTION 4. AMENDMENT. Section 39-08-01.2 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least ~~one~~two year's imprisonment if the individual was an adult at the time of the offense.
2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.

3. If an individual is convicted of a second or subsequent offense within seven years of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of a class C felony and the sentence must include at least one year and one day's imprisonment if the individual was at least eighteen years of age at the time of the offense.
4. The imposition of sentence may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.
5. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The court shall impose not less than one year of supervised probation and shall require participation in the twenty-four seven sobriety program for at least twelve months as a mandatory condition of probation. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.

SECTION 5. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, ~~and shall consent,~~ subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.
3. The law enforcement officer shall also inform the individual charged that North Dakota law requires the individual to take the test to determine

whether the individual is under the influence of alcohol, drugs, or a combination of alcohol and drugs, that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence, and that refusal of the individual to submit to the test determined appropriate will directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to four years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.

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

SECTION 6. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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

If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two 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, the following procedures apply:

1. The law enforcement officer 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 the 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, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by

weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.

3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.
5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may elect to participate in the twenty-four seven sobriety program under chapter 54-12 in lieu of the administrative hearing under this chapter if the individual's driver's license is not subject to an unrelated suspension or revocation. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty-four seven sobriety program upon application by the individual with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program under chapter 54-12.

SECTION 7. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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 this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:
 - a. One year~~hundred eighty days~~ if the person's driving record shows that within the five~~seven~~ years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. Three years if the person's driving record shows that within the five~~seven~~ years preceding the most recent violation of this section, the person's operator's license has been once previously suspended,

revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

- c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under subdivision a of subsection 1 if all of the following criteria are met:
 - a. An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
 - f. ~~The person has never been convicted under section 39-08-01 or equivalent ordinance.~~
 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

SECTION 8. AMENDMENT. Section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. After the receipt of the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's driving privileges as follows:
 - a. For ninety-one days if the person's driving record shows that, within the five~~seven~~ years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.
 - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five~~the seven~~ years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. For three hundred sixty-five days if the person's driving record shows that, within the five~~seven~~ years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's 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 9. 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 person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. Upon completion of the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If no hearing is requested within the time limits in this section, ~~and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, and if the individual has not provided the~~ director with written notice of election to participate in the twenty-four seven sobriety program under chapter 54-12, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance

or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample ~~from~~ electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designee, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this

chapter, the following are deemed regularly kept records of the director and state crime laboratory:

- a. Any copy of a certified copy of an analytical report of a blood or urine sample electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system received by the director from the ~~director of the state crime laboratory or the director's designee or a~~ law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
 6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section

39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 10. AMENDMENT. Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certificate of the director of the state crime laboratory designating the director's designees.
 - e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
 - e-f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

SECTION 11. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests.

1. Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the

individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol.

2. An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient.
3. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test will may result in a revocation for at least one hundred eighty days and up to four years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the
4. The director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident.
5. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein.
6. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

SECTION 12. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

Restricted license upon twenty-four seven sobriety program participation.

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

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

Renumber accordingly

Flakoll, Tim

From: Tim Flakoll <tim.flakoll@gmail.com>
Sent: Thursday, February 07, 2013 8:44 PM
To: Flakoll, Tim
Subject: Fwd: Information you Requested

----- Forwarded message -----
From: **Keith Ternes** <KTernes@cityoffargo.com>
Date: Tue, Feb 5, 2013 at 12:20 PM
Subject: Information you Requested
To: Tim Flakoll <tim.flakoll@gmail.com>

SB 2240

Tim,

After cross-referencing some of our data, here is the information you requested:

Of the 1017 DUI drivers arrested by the Fargo Police Department in 2012, the number who were also driving with a suspended drivers license was 124 – or approximately 12%. I think it is safe to assume this is the ratio we would find in previous years as well.

Please note that the reason for the suspension of the drivers license for the 124 people listed could have been for any number of reasons, not necessarily a previous DUI conviction.

Please let me know if you need anything further.

Keith

NDLA, S TRN - Perez, Doris

From: NDLA, Intern 06 - Hagel, Justin
Sent: Thursday, February 07, 2013 10:02 AM
To: Oehlke, H. Dave; Flakoll, Tim; Axness, Tyler; Sinner, George B.; Sitte, Margaret A.; Campbell, Tom S.
Cc: Armstrong, Kelly; NDLA, S TRN - Perez, Doris
Subject: FW: DUI legislation

From: Kelly Armstrong [<mailto:Kelly@reichert-armstrong.com>]
Sent: Thursday, February 07, 2013 9:58 AM
To: NDLA, Intern 06 - Hagel, Justin
Subject: Fwd: DUI legislation

Please forward this to all the members of the committee. This comes from the Municipal Court Judge in Dickinson.

Kelly

Begin forwarded message:

From: Robert Keogh <Bob@keogh-lawoffice.com>
Date: February 5, 2013, 10:57:51 PM CST
To: Kelly Armstrong <kelly@reichertlaw.com>
Subject: DUI legislation

Sen. Armstrong:

You and I have had previous communications about the proposed increased DUI minimum penalties. I do not know where the legislation is at right now, but I have some concerns as this law would impact Municipal Courts.

One is the cost because of the increased jail costs the city would pay if there was a minimum jail sentence on the first offense. Cities must pay for their own jail costs; the state does not help with those obligations. The Southwest Multi County Correction Center here in Dickinson charges us \$75 per day (1hr-24 hrs). While I attempt to have Defendants repay the City for those costs, it does not happen in all cases, and in some is difficult to collect. If there is a minimum 4 days as I have heard proposed, that will mean so much more additional expense to the city, and perhaps much more to collect from Defendants.

An increased minimum fine, while perhaps somewhat overdue just considering inflation, may seem to be a benefit to the cities in the sense of increased revenue, but most of the time the courts have to work very hard to collect the monies they are owed, so this b would not necessarily know the offender had any prior convictions, but she would then transfer the case to the District Court.

I would believe that the vast majority of our licensed drivers are deterred from drunk driving either by their own responsible behavior or the present DUI laws. I believe that most first time DUI offenders are deterred by the present penalties from committing a second offense.

I think there are some repeat offenders who will not be deterred by any increased penalties.

I believe that license suspension is a great deterrent to most first time offenders, who find even a short suspension a significant penalty. But there are those persons who are so addicted that no penalty will deter them, and there are those persons who will drive regardless of their suspensions.

Bob Keogh, Dickinson Municipal Judge

13.0517.02004
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
February 7, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2240

Page 1, line 7, after the semicolon insert "to provide a legislative management study;"

Page 13, after line 15, insert:

"SECTION 13. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Leann Bertsch
SB 2240
2-15-13 #1

FISCAL NOTE
Requested by Legislative Council
02/11/2013

Amendment to: SB 2240

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$1,794,160 | | \$1,978,062 |
| Expenditures | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |
| Appropriations | | | \$6,366,456 | \$1,794,160 | \$10,065,268 | \$1,978,062 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for increased incarceration requirements and increased usage of the 24/7 Sobriety program.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill contains several sections that will impact the Office of the Attorney General through increased usage of the 24/7 Sobriety program and the Department of Corrections and Rehabilitation through increased incarceration requirements. As amended, the bill should have no material fiscal impact on the Department of Transportation. Additionally, the bill may impact local jurisdictions, however we have no way to determine what that impact may be.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The increased revenues shown in Part 1A of this fiscal note result from an increased number of participants in the 24/7 Sobriety program and the related fees. These funds are deposited into the 24/7 Sobriety Program fund and are subject to a continuing appropriation. See attached schedule 9.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures are a direct result of expected increased usage of the 24/7 Sobriety program and increased incarceration requirements. See attached schedules 1, 4, 7, and 8.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill provides a \$1.2 million dollar appropriation from the general fund to the Office of the Attorney General for the 2013-2015 biennium. Additionally, revenues to the 24/7 Sobriety Program fund are subject to a continuing appropriation. However, this bill as amended does not provide any appropriation of the remaining \$5,166,456 of costs that would be incurred by the Office of the Attorney General (\$1,440,340) and the Department of Corrections and Rehabilitation (\$3,726,116) for the 2013-2015 biennium. Therefore, the Office of the Attorney General and the Department of Corrections would need additional appropriations of \$3,726,116 and \$1,440,340 respectively beyond the appropriation of \$1.2 million provided in this bill and the 24/7 Sobriety Program continuing appropriation. Please see attached schedules 3, 6, 10, and 11.

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 02/14/2013

Amended SB2240
State Agency Impacts

Attorney General

| | 13-15 biennium | 15-17 Biennium |
|---|----------------|----------------|
| Schedule 1 - Expenditures | | |
| SCRAM bracelets and base stations | \$ 1,684,900 | |
| Other costs | 2,749,600 | \$ 3,031,434 |
| Total AG costs | \$ 4,434,500 | \$ 3,031,434 |
| Schedule 2 - Funding Source | | |
| General Fund | \$ 2,640,340 | \$ 1,053,372 |
| 24/7 Sobriety Program participant revenues - Special Funds | 1,794,160 | 1,978,062 |
| Total Funding Sources | \$ 4,434,500 | \$ 3,031,434 |
| Schedule 3 - Appropriations | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total GF appn | 2,640,340 | 1,053,372 |
| Special Funds - 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total - all appropriations | \$ 4,434,500 | \$ 3,031,434 |

Department of Corrections & Rehabilitation

| | | |
|--|--------------|--------------|
| Schedule 4 - Total Expenditures | \$ 3,726,116 | \$ 9,011,896 |
| Schedule 5 - Funding Source | | |
| General Fund | \$ 3,726,116 | \$ 9,011,896 |
| Schedule 6 - Appropriations | | |
| General Fund - Not in Bill | \$ 3,726,116 | \$ 9,011,896 |

Combined State Impact

| | | |
|---|--------------|---------------|
| Schedule 7 - Expenditures by Agency | | |
| Office of the Attorney General | \$ 4,434,500 | \$ 3,031,434 |
| Department of Corrections and Rehabilitation | 3,726,116 | 9,011,896 |
| Total Expenditures | \$ 8,160,616 | \$ 12,043,330 |
| Schedule 8 - Expenditures by Fund | | |
| General Fund | \$ 6,366,456 | \$ 10,065,268 |
| Special Fund | 1,794,160 | 1,978,062 |
| Total Expenditures | \$ 8,160,616 | \$ 12,043,330 |
| Schedule 9 - Revenues | | |
| Special Funds | | |
| 24/7 Sobriety Program participant revenues | \$ 1,794,160 | \$ 1,978,062 |
| Schedule 10 - Total Appropriations | | |
| Attorney General | | |
| General Fund | | |
| Contained in bill - General Fund | \$ 1,200,000 | |
| General Fund - Not in Bill | 1,440,340 | \$ 1,053,372 |
| Total Attorney General - General Funds | 2,640,340 | 1,053,372 |
| Special Funds | | |
| 24/7 Sobriety Program Fund continuing appropriation | 1,794,160 | 1,978,062 |
| Total Attorney General - All funds | 4,434,500 | 3,031,434 |
| Department of Corrections & Rehabilitation | | |
| General Fund - Not in Bill | 3,726,116 | 9,011,896 |
| Total Appropriations | \$ 8,160,616 | \$ 12,043,330 |
| Schedule 11 - Appropriations Recap | | |
| General Fund | | |
| General Fund - Appropriated in bill | \$ 1,200,000 | |
| General Fund - Not appropriated in bill | 5,166,456 | \$ 10,065,268 |
| Total General Fund Appropriation | 6,366,456 | 10,065,268 |
| Special Funds | | |
| Continuing Appropriation - 24/7 Sobriety Program Fund | 1,794,160 | 1,978,062 |

DUI LAW CURRENT

First offense - B Misdemeanor

- \$250 fine, \$250 fees, mandatory addiction evaluation, SR-22
- 91/180 day DL suspension--work permit after 30 days

Second Offense - B Misdemeanor

- \$500 fine, \$250 fees, addiction evaluation, SR-22
- Five days in jail
- 1/2 year DL suspension--no work permit
- 24/7 used mostly as a condition of pretrial release

Third Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, addiction evaluation, SR-22
- 60 days in jail
- 3 year DL suspension--no work permit
- 24/7 used mostly as a condition of pretrial release

Fourth Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, addiction evaluation, SR-22
- 180 days in jail
- 3 year DL suspension--no work permit
- 24/7 used mostly as a condition of pretrial release

Refusal To Submit to Testing

- Not a crime--still charged as DUI--Difficult to get a conviction
- First offense 1 year DL suspension, no work permit. (May "cure" refusal by pleading guilty to DUI w/in 25 days)
- 2nd offense 3 year DL suspension, no work permit. (Cannot "cure")
- 3rd offense 4 year DL suspension, no work permit. (Cannot "cure")

PROPOSED CHANGES

First Offense - B Misdemeanor

- \$500 fine, \$250 fees, mandatory addiction evaluation, SR-22
- 2 days in jail or 20 hours community service if C over .18
- 91/180 day DL suspension--work permit after 30 days

Second Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, mandatory addiction evaluation, SR-22
- 1 year participation in the 24/7 program
- 10 days in jail (doubles)
- 1/2 year DL suspension but may get a restricted license if compliant in the 24/7 program

Third Offense - A Misdemeanor

- \$2,000 fine (max), \$325 fees, mandatory addiction evaluation, SR-22
- 2 year supervised probation and 24/7 program
- 120 days in jail (doubles)
- 3 year DL suspension but may get a restricted license if compliant in the 24/7 program

Fourth Offense - C Felony

- \$1,000 fine, \$500 fees, mandatory addiction evaluation, SR-22
- 2 years supervised probation and 24/7 program
- 1 year and 1 day in prison
- 3 Year DL suspension but may get restricted license if compliant in the 24/7 program

Refusal to submit to chemical testing

- Crime of DUI under subsection of 39-08-01
- Treated just like a DUI
- License suspensions are:
 - 180 days - 1st offense
 - 2 years - 2nd offense
 - 3 years - 3rd and subsequent
- Restricted licenses would work the same as any other DUI
- Makes refusals easier to prosecute as a DUI.
- Makes it the same as a DUI not an additional crime (MN. makes it a separate crime)
- Closes a DL loophole that exists now.

Additional Changes

- Appropriation of \$1.2 million for scam bracelets used in monitoring 24/7.
- Fiscal Note will decrease compared to current.
- 2 year minimum mandatory sentence for any death (Cannot be suspended).
- 1 year minimum mandatory sentence for any injury caused for a second or subsequent offense (Cannot be suspended).
 - 50% reduction in fees for 24/7 upon a finding of indigency
 - House arrest can be imposed for 90% of any jail sentence
 - Inpatient treatment is given day for day for any jail sentence

DUI LAW CURRENT

First offense - B Misdemeanor

- \$250 fine, \$250 fees, mandatory addiction evaluation, SR-22
- 91/180 day DL suspension--work permit after 30 days

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- Not a crime--still charged as DUI--Difficult to get a conviction
- First offense 1 year DL suspension, no work permit. (May "cure" refusal by pleading guilty to DUI w/in 25 days)
- 2nd offense 3 year DL suspension, no work permit. (Cannot "cure")
- 3rd offense 4 year DL suspension, no work permit. (Cannot "cure")

PROPOSED CHANGES

First Offense - B Misdemeanor

- \$500 fine, \$250 fees, mandatory addiction evaluation, SR-22
- 2 days in jail or 20 hours community service if BAC over .18
- 91/180 day DL suspension--work permit after 30 days

Second Offense - A Misdemeanor

- \$1,000 fine, \$325 fees, mandatory addiction evaluation, SR-22
- 1 year participation in the 24/7 program
- 10 days in jail (doubles)

- 1/2 year DL suspension but may get a restricted license if compliant in the 24/7 program

Third Offense - A Misdemeanor

- \$2,000 fine (max), \$325 fees, mandatory addiction evaluation, SR-22
- 2 years supervised probation and 24/7 program
- 120 days in jail (doubles)
- 3 year DL suspension but may get a restricted license if compliant in the 24/7 program

Fourth Offense - C Felony

- \$1,000 fine, \$500 fees, mandatory addiction evaluation, SR-22
- 2 years supervised probation and 24/7 program
- 1 year and 1 day in prison
- 3 Year DL suspension but may get restricted license if compliant in the 24/7 program

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- Crime of DUI under subsection of 39-08-01
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- Restricted licenses would work the same as any other DUI
- Makes refusals easier to prosecute as a DUI.
- Makes it the same as a DUI not an additional crime (MN. makes it a separate crime)
- Closes a DL loophole that exists now.

SB2240

Testimony of Rep. Ed Gruchalla, Dist. 45 Fargo, ND

Mr. Chairman and members of the House Transportation Committee.

This bill in its initial form would have dramatically changed the way North Dakotans view the offence of Drinking and Driving.

This bill has been "Hog housed" and doesn't look at all like the bill we started with.

The basic premise of the bill was to create a strong enough penalty to create deterrence.

I have been dealing with this issue of drunk driving for 35 years. During my time in Law Enforcement I arrested over 1000 drunk drivers. I taught DUI detection to basic Law Enforcement classes for 20 years. In those classes we would dose volunteer drinkers to varying alcohol levels and ask the officers to test them to determine which ones were over the legal limit. What I learned is that after a couple drinks almost every volunteer lost track of how much they drank.

This shows that when someone goes out drinking he MUST have the attitude that they may become impaired and plan ahead not to drive. In some foreign countries, drunk drivers are very rare because society treats the offence seriously and has very stringent penalties.

There are three ways DUI's are penalized:

1. Fines
2. Jail time
3. License suspension

When we studied penalties from other jurisdictions we found wide variations. We did not want to be the highest so we picked a number that would place North Dakota toward the top in all three categories.

The fines were set at \$5,000, \$25,000, \$125,000. Several States are higher than this; AZ is \$7500 and OR is \$125,000 on a fourth offence. (The violator can reduce the fine by 50% if an ignition interlock is installed in his vehicle).

Jail time was set at 30 days (4 days served consecutively), 180 days (4 days served consecutively) and 1 year (4 days served consecutively). LA is 10 days to 6 months on a first offence; third offence is 60 days to 30 years.

We set Suspensions at 1 year, 2 years, and 5 years. (On a first offence the violator can begin driving again as soon as the ignition interlock is installed.)

Members of the committee, you are probably aware that there is another bill that will be heard over in the Senate this afternoon. Last year when I was contacted by some families and asked to do something about the DUI problem I began working with Legislative Council. I kept checking with Leg. Council to see

if anyone else was working on a bill. I was told that if anyone came in they would send that person my way. Rep. Hunsker and Sen. Mathern contacted me and we decided to put our heads together on a bill.

Shortly before the session there was a press conference in West Fargo announcing another bill. We didn't know that this would happen as I was appraised that this was the only bill being drafted by legislative council. However, the Council didn't know that one was drafted elsewhere.

MR Chairman and members of the committee, my hope, at this point is that this bill passes and ends up in a conference committee. Maybe then some teeth can be put back in.

It is truly unfortunate that Law Enforcement and States Attorneys are not fully supportive. To not want to do something about the horrendous problems caused by drunk drivers because it will cost too much money is a travesty. If money is a problem then we could place an appropriation on this bill and funnel the dollars to the counties to assist in implementation of tougher penalties.

This Legislature will cut millions of dollars of taxes for out of State Corporation's this session. We can find the dollars to address issue if we really want to.

Thank you Mr. Chairman and members of the Committee.



#3

NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

TO: REPRESENTATIVE DAN RUBY, CHAIRMAN
HOUSE TRANSPORTATION COMMITTEE

FROM: NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
Russell J. Myhre
NDACDL Legislative Committee

SUBJECT: Senate Bill No. 2240

This Memorandum is in response to your request for NDACDL to submit written comments on Senate Bill No. 2240.

First and foremost, NDACDL does not favor intoxicated persons driving automobiles. This is a crime and a criminal act which endangers property and lives, and it is appropriate to punish those who violate the laws prohibiting this criminal behavior.

NDACDL also recognizes that drinking and driving is only a part of a much larger societal problem, of the impacts which alcohol and alcoholism has upon the lives of all our families. Alcohol has much broader implications than persons who drink and drive illegally. NDACDL notes that throughout this process testimony was received by the Senate Transportation Committee that between 50% and 85% of all crime resulted from the direct and indirect consequences of drinking. Other testimony cited statistics that related alcohol and drug usage to domestic violence, assaults, and other crimes of violence. While there was little testimony about the consequences of criminal convictions, a DUI conviction can result in the loss of employment, a loss of residence, child support arrearages, bankruptcy, and additional subsequent convictions for driving under suspension. The impacts are felt, not just upon the guilty person, but also upon their families, their businesses, and their creditors, and in more than enough situations, the taxpayers end up supporting not just the guilty person, but also his dependents.

NDACDL is taking the position that with SB 2240 there are good parts of this bill which would provide useful tools in terms of sentencing defendants. However, the increase in the minimum mandatory sentences, especially the requirement for a mandatory jail term for a

first offense, will not address the larger issues related to drinking and driving.

NDACDL urges the North Dakota Legislature to conduct a two-year study of the ways to change and counteract the Culture of Alcohol in North Dakota, regardless of how it chooses to address these issues in the current session. The problems are much broader than just drunken driving, and while it may feel satisfying to increase minimum mandatory jail sentences for drunk drivers, the associated \$50 million costs do little to address the overall Culture of Alcohol. Rather, a two-year study will allow North Dakota time to pull the "best-of-the-best" approaches for dealing with DUI from other states. This legislature can then enact amendments to existing DUI laws knowing that it will have a meaningful and lasting impact to change the Culture of Alcohol in North Dakota.

During this process NDACDL provided traffic safety statistics which clearly show, "the main culprit of traffic fatality accidents [where the driver has been drinking] are drivers with a BAC above .15 or higher." In other words, imposing increased minimum mandatory sentences for first offense Driving under the Influence does not address the real safety issue involved in alcohol-related accidents, injuries, and deaths.

NDACDL believes the best approach to reducing the number of alcohol-related accidents, injuries, and deaths is to follow a comprehensive program which includes:

- Enhanced law enforcement, including support to cities and counties for additional officers and equipment to target drunk driving. Put more law enforcement officers on the streets and give them the tools to enforce the law;
- Increase support for alcohol and drug rehabilitation programs and treatment facilities, especially in rural areas;
- Support public awareness programs and publicity aimed toward drinking responsibly if one chooses to drink, promoting taxi cab voucher and designated driver awareness, and reporting intoxicated drivers;
- Support local programs to provide alternative transportation to intoxicated persons, especially in rural areas, such as public transportation subsidies, volunteer programs, and other programs designed to keep intoxicated persons off the roads;

- Adopt and support technologies and programs such as the advanced technology ignition interlock systems and the Twenty-Four Seven Sobriety program to deal with persons who are convicted of driving under the influence and to provide courts with more options to deal with sentencing alternatives ;

- Conduct a two-year interim study to address how to change the Culture of Alcohol which exists, which would include an examination of whether changes in DUI laws are appropriate and whether more severe penalties need to be put in place on alcohol establishment owners; and

- Enforce the existing DUI laws and provide courts with the tools to impose sentences which are greater than the existing minimum mandatory sentences already on the books.

NDACDL is generally supportive of Senate Bill No. 2240. NDACDL believes the best parts of these bills are the temporary restricted license provisions that allow a driver to install an interlock device or participate in the 24/7 program in order to maintain employment. NDACDL sees these provisions as positive changes in our existing law because these changes will allow a person to retain their job, pay their court fines and fees, and by keeping their job they will not go on public assistance.

NDACDL however prefers either the removal or amendments to some of the specific parts of Senate Bill No. 2240. The reasons are as follows:

- The costs associated with implementing SB 2240 could be high and disproportionate to the desired result, to eliminate drunk driving. NDACDL would suggest these amounts of money would be better spent by increasing support for the *comprehensive program* components supported by NDACDL.

- If either bill were enacted, there would be other and additional costs associated with increasing the mandatory minimum sentence, including requiring between 4 to 30 days incarceration for a first offense, which are not included in these fiscal notes. These costs would create additional strain on the entire criminal justice system. The number of DUI trials, especially jury trials, would increase dramatically. The costs of jury trials to counties would increase. The increase in the number of DUI trials would require hiring additional staff to prosecute these offenses. The costs of incarcerating drunk drivers on the first offense and dramatically increasing the penalties for a second

offense would fall back on counties and cities, which would increase local taxes.

-The addition of creating a new offense (Page 8, Section 4, Subsection 7, lines 19 through 22) for refusing to submit to a breath test has serious constitutional ramifications and could be subject to challenge.

-NDACDL opposes increasing minimum mandatory sentences, at least for first offense DUI convictions, but favors giving judges, prosecutors, and attorneys more alternatives at sentencing, which would include specific grounds which could aggravate or mitigate the sentence. This would include allowing a convicted driver to have access to alternative programs such as the advanced technology ignition interlock system and the Twenty-Four Seven Sobriety Program. It would also provide specific grounds for a judge to consider whether a sentence in excess of the minimum mandatory sentence would be appropriate in each case.

-While generally, NDACDL opposes minimum mandatory sentences on general principles because minimum mandatory sentences take away a judge's discretion. However, NDACDL recognizes that in regard to DUI sentences, there are minimum mandatory jail terms, fines, and fees which have already been adopted.

-NDACDL opposes the imposition of a mandatory jail term for first time offenders. It should be remembered that there are already a considerable number of direct consequences which affect a person convicted of DUI, which include fines, costs, payment of fees for evaluations, payment of reinstatement fees, high-risk insurance requirements, attorney's fees and court fees (even if indigent, there are required fees), and possible incarceration. There may be other collateral consequences to a DUI conviction, such as landlords refusing to rent or terminating leases, employers terminating employment or not hiring, and other forms of discrimination. Under SB 2240, NDACDL believes that increasing the minimum mandatory sentence required for DUI convictions would cost at least \$50 million. However, no one has demonstrated how increasing minimum mandatory sentences would significantly reduce drunken driving in North Dakota.

On behalf of NDACDL, thank you for your consideration.

Good morning Chairman Ruby and Transportation Committee members. My name is Arlene Deutscher and I'm from Bismarck. I know some of you have heard my testimony at other hearings and hope I don't sound like a broken record.

Many of you enter this building through the west doors and may remember the wrecked vehicle that was on display in mid-January. That was my son's car. Our family had looked forward to July 6th, 2012, for many months. We had scheduled a family reunion for that weekend. Instead of a fun-filled weekend, we were planning three funerals. My son, Aaron, his pregnant wife, Allison, and their 18-month old daughter, Brielle, were killed by a drunk driver going the wrong way on Interstate 94. The impaired driver had previous drinking and driving violations. I don't have to tell you that North Dakota is near the top among states in drunken driving deaths per capita with alcohol involved in more than half of our fatal crashes. This is a real problem in this state.

I'm here to emphasize my position on the need for change in our current DUI culture. It's not okay to drive drunk. We can't begin to make a difference if we don't approach this aggressively. I feel stiffer penalties would be a first step in reforming this culture.

I have followed the numerous amendments of the original SB 2240 to how it currently reads. It has changed considerably from the marked licenses and interlock devices to adding the 24/7 sobriety program and re-writing some of the penalties. I feel the 24/7 program is one step in the right direction.

Human costs and losses are immeasurable. I know this first hand, and for the last 8 months, all of Aaron's, Allison's and Brielle's family and friends, have suffered immense pain because of their senseless deaths. Words cannot describe the sadness we feel every day.

It is the responsibility of each of us as North Dakota's citizens, to recognize we have a very important role in changing society's attitude about driving drunk. Our first step is strengthening our DUI legislation. It's time for progressive change, and I look to you as legislators to help North Dakota move in that direction. Thank you.

2240

Good morning chairman Ruby and distinguished committee members. My name is Tom Deutscher and I am from Bismarck. I am here today asking that you support and strengthen SB2240. As you may know, my son Aaron, his wife Allison and baby Brielle were killed on July 6th by a drunk driver travelling the wrong way on interstate. For those of you who are unaware of the story...we had been planning a family reunion..... It had been 3 years since the entire family was together and many changes had taken place. 3 grandchildren and 1 on the way. The yard was filled with games and a children's pool in anticipation of an afternoon of joy.....and everyone was in the garage waiting for the last arrivals...Aaron, Allison and Brielle.....but the only car to drive into our driveway that evening was the highway patrol. Alyssa was to ride with them....fortunately she was allowed to leave work early or we would have lost her too.....My last words to Aaron were "I love you and drive carefully". It has been said that when a parent loses a child a little bit of them dies with them. I will tell you for a fact this is true as I have spent the last 8

months trying to hold together what remains of my family because of a senseless.... and preventable act. I do not wish this personal hell on anyone. I will not bore you with the statistics.....you've heard where we stand both as a people and as a State. Some say our DUI laws are strong enough and that our jails are already full....I would argue that they are not strong enough and that our cemeteries are full. If you think stricter legislation will come as an additional cost to the taxpayer.....(and take the unimaginable emotional toll aside)....come visit with me and I'll discuss with you the financial burden my family and my extended family is experiencing because someone chose to ignore their drinking and driving responsibility. Issues raised such as cost and jail space are merely obstaclesnot reasons to weaken our approach. I have watched law enforcement work tirelessly to remove drunk drivers from our roads ...and the frustration they experience when the same drivers repeat.

It continues each day.....and will do so until we act.

This bill intends to protect the innocent and punish the responsible but cannot be effective without necessary

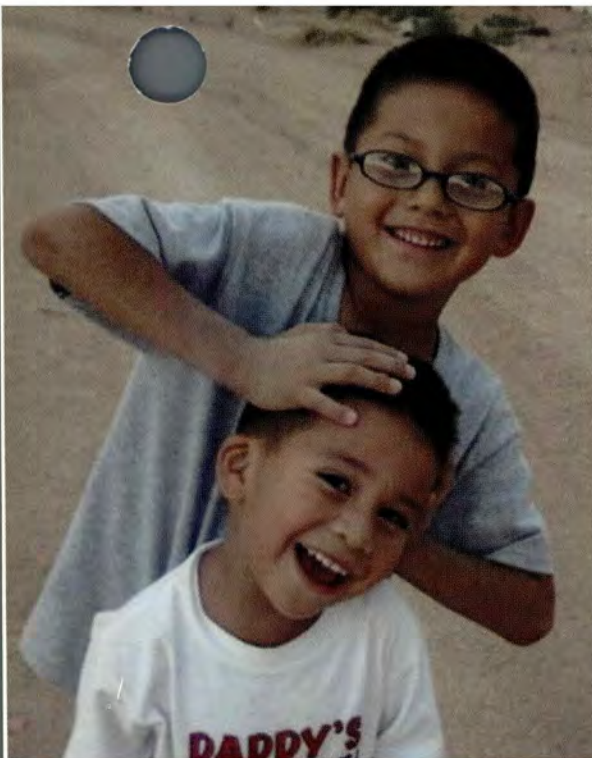
Comments....

Any bill that strives to strengthen our DUI laws and remind ourselves to take our driving responsibility seriously... has our support.

Not doing anything also bears a cost. I believe that the citizens of north Dakota are tired of bearing the cost for the actions of irresponsible people.

It is not okay to drive drunk.....

To simply do nothing is the biggest crime as doing nothing also bears a tremendous cost to the citizens of north Dakota for the actions of irresponsible people

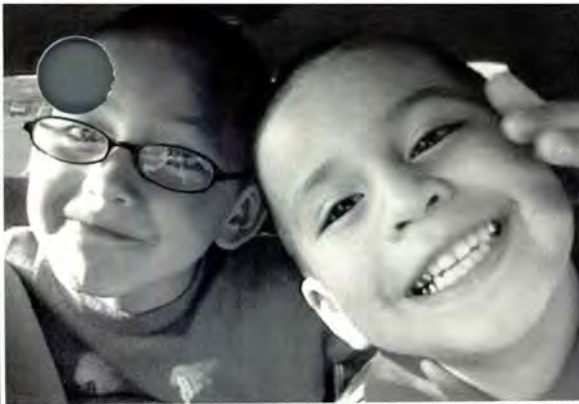


Cyris Ruiz
9 years old

Alaries Ruiz
5 years old

Killed by a drunk
driver in North
Dakota on July 8,
2012

Let's change the law, so
that other families do not
have to suffer such a
tremendous loss.



On the night of July 8, 2012, our sons, Cyris and [redacted], were camping at Lake Metigoshe with their dad and friends. They had enjoyed a beautiful day of swimming, playing, and fishing. It was a great day, unforgettable. Our boys were so sweet, kind, and adventurous. They loved their dog Nena. They loved life.

Then, the unthinkable. . . a drunk driver came into the park, going too fast, driving recklessly. The drunk driver ran over the tent in which our sons slept, tragically killing them. Our lives will never be the same. We will mourn their loss forever.

We urge the North Dakota legislature to pass comprehensive DUI reform. We can stop this from happening to other families by changing the law and by working together as a community to prevent drunk driving. Sincerely,

Juan and Sandy

COMPARISON OF PRESENT DRIVING UNDER THE INFLUENCE LAW TO SENATE AND HOUSE BILLS

The following compares present driving while under the influence of alcohol laws with Reengrossed House Bill No. 1302 and Reengrossed Senate Bill No. 2240. There are two tables because there are two separate actions for driving under the influence of alcohol. There is an administrative action on the operator's license with remedial action in the form of a suspension or revocation of the license (a license is revoked if the driver refuses to submit to blood alcohol content (BAC) testing) and a criminal action with punishment in the form of fines and imprisonment. The following tables detail these actions and the consequences for the driver:

| Present Law | Administrative | | | Other |
|---|---|---------------------|--|--|
| | Suspension | Revocation | Temporary Restricted License | |
| 1 st offense within 5 years | <ul style="list-style-type: none"> 91 days if under .18 BAC 180 days if .18 BAC or over | 1 year | Director may issue for good cause after 30 days of suspension | Revocation to suspension upon admission allowed for <i>first</i> offense |
| 2 nd offense within 5 years | <ul style="list-style-type: none"> 365 days if under .18 BAC 2 years if .18 BAC or over | 3 years | Director may issue for good cause if no offense within previous 2 years and report of treatment program or, if a drug court, no offense within previous year | |
| 3 rd offense within 5 years | <ul style="list-style-type: none"> 2 years if under .18 BAC 3 years if .18 BAC or over | 4 years | | |
| 24/7 sobriety program | No suspension if participating in 24/7 sobriety program | | 2 nd or subsequent offense | |
| House Bill No. 1302 | | | | |
| 1 st offense within 10 years | Same as present law but within 10 years | Same as present law | | Revocation to suspension upon admission allowed for <i>any</i> refusal |
| 2 nd offense within 10 years | | | | |
| 3 rd offense within 10 years | | | | |
| 24/7 sobriety program | In lieu of suspension | | Director may issue after 15 days | |
| Senate Bill No. 2240 | | | | |
| 1 st offense within 7 years | Same as present law but within 7 years | 180 days | | Revocation to suspension upon admission allowed for <i>any</i> refusal |
| 2 nd offense within 7 years | | 2 years | | |
| 3 rd offense within 7 years | | 3 years | | |
| 24/7 sobriety program | In lieu of suspension | | Director may issue after 15 days | |

| Criminal | | | | | | |
|---|--------------|---|--|---------------------|------------------------------|---|
| | Imprisonment | | Minimum Fine | Level | Minimum Mandatory Probation | Other |
| | Maximum | Minimum Mandatory | | | | |
| Present Law | | | | | | |
| 1 st offense within 5 years | 30 days | | \$250 | Class B misdemeanor | | Serious bodily injury, Class A misdemeanor with 90 days' mandatory imprisonment |
| 2 nd offense within 5 years | 30 days | 5 days | \$500 | Class B misdemeanor | | |
| 3 rd offense within 5 years | 1 year | 60 days, serve at least 10 days | \$1,000 | Class A misdemeanor | | |
| 4 th offense within 7 years | 1 year | 180 days, serve at least 10 days | \$1,000 | Class A misdemeanor | | |
| 5 th offense within 7 years | 5 years | 180 days, serve at least 10 days | \$1,000 | Class C felony | | |
| House Bill No. 1302 | | | | | | Provision for juvenile to participate in 24/7 if over .02 BAC |
| 1 st offense within 10 years | 30 days | <ul style="list-style-type: none"> None if under .21 BAC 10 days serve at least 1 nonworking day if .21 BAC or more | \$500 \$750 if 21 years of age or older | Class B Misdemeanor | 6 months if .21 BAC and over | |
| 2 nd offense within 10 years | 1 year | 60 days, serve at least 10 days | \$1,500 | Class A Misdemeanor | 1 year | Serious bodily injury Class C felony with 1 year and 1 day sentence |
| 3 rd offense within 10 years | 5 years | 180 days, serve at least 60 days | \$2,000 | Class C Felony | 1 year | Serious bodily injury Class C felony with 1 year and 1 day sentence |
| 4 th offense within 10 years | 5 years | 1 year and 1 day, serve at least 1 year | \$3,000 | Class C Felony | 2 years | Serious bodily injury Class C felony with 1 year and 1 day sentence |
| <i>Refusal to test is an offense</i> | | | | | | |
| Senate Bill No. 2240 | | | | | | |
| 1 st offense within 7 years | 30 days | 2 days or 24 hours community service if .18 BAC or over | \$500 | Class B Misdemeanor | | |
| 2 nd offense within 7 years | 1 year | 10 days | \$1,000 | Class A Misdemeanor | | Serious bodily injury, Class C felony with 1 year and 1 day sentence |
| 3 rd offense within 7 years | 1 year | 120 days, serve at least 120 days, limits house arrest to 90 percent | \$2,000 | Class A Misdemeanor | 2 years | Serious bodily injury, Class C felony with 1 year and 1 day sentence |
| 4 th offense | 5 years | 1 year and 1 day, serve at least 1 year | \$1,000 | Class C Felony | 2 years | Serious bodily injury, Class C felony with 1 year and 1 day sentence |
| <i>Refusal to test is an offense</i> | | | | | | |