

2017 SENATE JUDICIARY

SB 2176

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2176
1/24/2017
27283

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to driving under the influence.

Minutes: **No written testimony**

Chairman Armstrong called the committee to order on SB 2176. All committee members were present.

Chairman Armstrong is testifying so **Senator Larson** is taking over as active chair.

Senator Armstrong introduced and testified in support of the bill.

"The DUI law we created four years ago needed to be cleaned up. That is the point of this bill. We need to fix some stuff in statute that makes it compliant with the Supreme Court decision and this bill does that."

Senator Armstrong returned back to committee and took over as acting chair.

Aaron Birst, Association of Counties, testified in support of the bill. No written testimony. "States attorneys are the attorneys that enforce state law, however, they are county based. We support this bill which is a DUI clean up bill. We passed this law in 2013 because in 2012, that was one of the largest traffic fatality years in history, with 87 people dying from alcohol impairment."

Aaron Birst told a story of a couple car accidents that happened from alcohol impairment which sparked the incentive for DUI legislation.

"The legislation passed in 2013 saved lives, one of the requirements in the 2013 legislation was that you can refuse a blood test, but if you did refuse a blood test, urine test, or screening tests, you will be charged with a crime. This bill says it's not a crime for you to refuse a screening test."

Chairman Armstrong: "Are screening tests admissible in court?"

Aaron Birst: "They are not admissible in court."

Senator Larson: "This warrant for a blood test when someone is unconscious, is it difficult to get one for highway patrol when they are somewhere out on the highway?"

Aaron Birst: "It can be in some rural jurisdictions that don't have a judge immediately on call. But there are now electronic means that officers can use to get those search warrants quickly, but it may be hard to use those electronic means in rural jurisdictions."

Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers, testified in support of the bill. No written testimony. He described how this cleans the DUI bill up and that he is in agreement with law enforcement and prosecutors that this bill should be passed.

Senator Larson asked a question regarding a story where a person was drunk and ran over a tent where children were camping, she wondered if police would have to get a warrant before they could draw blood from the driver if the driver was unconscious when police arrived at the scene.

Jackson Lofgren: "If he was unconscious then you would have to get a warrant."

Chairman Armstrong closed the hearing on SB 2176.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2176 Committee Work
2/1/2017
27719

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to driving under the influence.

Minutes: **No written testimony**

Chairman Armstrong began discussion on SB 2176. All committee members were present.

Chairman Armstrong went over the bill for the committee and visitors in the room.

"Basically, this bill means that if you get pulled over and refuse a breathalyzer test you can get charged with a crime. The cop can say, 'Okay, I'm going to charge you with so and so and arrest you.' However, if you refuse to submit to a blood test, the cop cannot tell you what crimes you can be charged with until after he gets a warrant to administer the blood test."

Senators Larson and Myrdal had questions regarding the blood test and the way the bill was written. Chairman Armstrong reiterated the purpose of the bill and explained the process of refusing to submit to a blood test.

Chairman Armstrong: "Here's what happens. I pull you over, Senator Myrdal, and you've clearly been drinking, you're in trouble. You refuse to submit to a breathalyzer. I tell you that failure to submit to a breathalyzer when asked by law enforcement will result with me charging you with a crime, and I could suspend your license up to five years. Now will you submit to the test? So now I'm in another county and I pull over Senator Larson, and she is also noticeably intoxicated, but I know that our breathalyzer machine is broken down at the Sheriff's Office, and I need you to submit to a blood test. You tell me you don't want to do a blood test. I tell you okay, I'm going to secure a warrant to administer a blood test. That's all I can tell you, I can't tell you any crimes; what you're charged with; can't tell you anything. But I can tell you I'm going to secure a warrant to get a blood test. I can arrest Senator Myrdal for refusing a breathalyzer, but I can't arrest Senator Larson for refusing a blood test."

Senator Larson motioned to Adopt the Amendment. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Luick motioned Do Pass as Amended. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong ended the discussion on SB 2176.

February 1, 2017

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2176

Page 1, line 2, replace "section 39-20-03" with "sections 39-20-03.1 and 39-20-03.2, subsection 2 of section 39-20-05"

Page 1, line 3, after "influence" insert "; and to repeal section 39-20-03 of the North Dakota Century Code, relating to driving under the influence"

Page 2, replace lines 7 through 13 with:

"SECTION 3. 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, ~~or 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.

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2-1-17
p. 2 of 4

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. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer. 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 4. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator.

If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, or 39-20-02, ~~or 39-20-03~~ and the test results show the person to have an

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2-1-17
P. 3 of 4

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 performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and 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, and of the hearing procedures under this chapter.
2. If the test was administered by urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing 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, shall mail or issue to the individual a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and 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. If the individual was issued a temporary operator's permit because of the individual's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. 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.

SECTION 5. AMENDMENT. Subsection 2 of section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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 the director of the state crime laboratory or the director's designee, or 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 designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein."

Page 2, line 21, after the period insert "The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take a test to determine whether the individual is under the influence of alcohol or drugs and that refusal of the individual to submit to any test directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges. The individual also must be informed refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant."

Page 3, after line 2, insert:

"**SECTION 7. REPEAL.** Section 39-20-03 of the North Dakota Century Code is repealed."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2176**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.0775.01001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Larson Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2176**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.0775.01001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2176: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2176 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "section 39-20-03" with "sections 39-20-03.1 and 39-20-03.2, subsection 2 of section 39-20-05"

Page 1, line 3, after "influence" insert "; and to repeal section 39-20-03 of the North Dakota Century Code, relating to driving under the influence"

Page 2, replace lines 7 through 13 with:

"SECTION 3. 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, ~~or 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. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer. 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 4. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator.

If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, or 39-20-02, ~~or 39-20-03~~ and the test results show the 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 performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer

under section 39-20-05. The temporary permit must be signed and dated by the officer and 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, and of the hearing procedures under this chapter.

2. If the test was administered by urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing 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, shall mail or issue to the individual a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and 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. If the individual was issued a temporary operator's permit because of the individual's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. 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.

SECTION 5. AMENDMENT. Subsection 2 of section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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 the director of the state crime laboratory or the director's designee, or 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 designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein."

Page 2, line 21, after the period insert "The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take a test to determine whether the individual is under the influence of alcohol or drugs and that refusal of the individual to submit to any test directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges. The individual also must be informed refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant."

Page 3, after line 2, insert:

"**SECTION 7. REPEAL.** Section 39-20-03 of the North Dakota Century Code is repealed."

Renumber accordingly

2017 HOUSE JUDICIARY

SB 2176

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2176
3/14/2017
29156

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to driving under the influence and to repeal section 39-20-14 of the North Dakota Century Code, relating to driving under the influence.

Minutes:

1-2

Chairman K. Koppelman: Opened the hearing on SB 2176.

Senator Armstrong: This is a cleanup bill. (attachment1) Handout out a proposed amendment. Other states don't have the same laws so if you are from out of state we require you to go on a 24/7. Every state has a program so this amendment would allow this. Other states don't have the same law. (2:32)

Chairman K. Koppelman: Explained the 24/7 program. This is a program that our attorney general instigated in our state a few years before that and it originated in South Dakota. If you are clean you stay out of jail by wearing an ankle bracelet and coming in twice a day to blow a test if you stay clean you stay on probation if not, you go to jail this has been very successful. (4:11)

Senator Armstrong: Went over the bill changes. I think it is time to address the issue of out of state licenses anyway. Section 7 in the bill does need to go. Section 1 gets rid of criminalizing on site screening tests. On site screening tests are not admissible in court for proof. Section 2 sets the men 'Section rate culpability as to the general intense statute in 12.02-05. Section 3 is removing the 39-20-03. Section 6 states the current law after the Birchfield decision 39-20-14.

Representative Klemin: In section 6 you said this was done on the Birch Field Case. You need a warrant to obtain a blood test but not a breath test.

Representative Paur: With the legalization of marijuana there will be that whole area of driving under the influence, would this cover that?

Senator Armstrong: 3908 and 3920 both cover driving under the influence of drugs. It would be an understatement to say everybody from prosecutors to defense attorneys, the cops and judges would agree that it does not adequately cover driving under the influence of drugs. Even in DUI cases we have 3 reasons why they get arrested for DUI. We have refusal, per se, driving under the influence.

It does not adequately cover drug tests. Driving under the influence of drugs including marijuana. Each individual drug would require a special test. My best answer is we should see what works and what doesn't?

Representative Vetter: On Section 1 we are getting rid of the onsite test and we are no longer doing the onsite tests?

Senator Armstrong: We are getting rid the crime of refusing the onsite test. They can still offer the onsite test and they will.

Representative Vetter: So they don't have to take the onsite test but when they bring them to the station they need to take some kind of test?

Senator Armstrong: Once they are arrested if they are offered the breath test they have to take it. If they are offered a blood test they have to take it or request a warrant. If a warrant is issued, then they have to take it or if they refuse it they will be charged with a DUI refusal which is the same penalty as a DUI.

Chairman K. Koppelman: So the constitutional issue comes from the field test but not from the test when under the arrest?

Senator Armstrong: One is the pre arrest test and the other is post arrest test.

Representative Klemin: Section 6 language alcohol or drugs; does that include marijuana?

Senator Armstrong: Marijuana is a class one scheduled narcotic. It will continue to be a class one scheduled narcotic regardless of what we do with the medical marijuana.

Representative Klemin: Then this does cover marijuana when it says alcohol and drugs?

Senator Armstrong: You can also be under the influence of prescribed drugs.

Rep. Paur: I cannot figure out your amendment? Does it go into page 1 after line 20?

Senator Armstrong: This was before the bill was amended. I trust this committee to find the right place to put it.

Representative Jones: On the word change in section 6 the last part of that is underlined "the officer may not inform the individual of any criminal penalty until the officer has first secured a search warrant" is that to prevent them from using a tread?

Senator Armstrong: Yes that is language is from a Supreme Court case.

Representative Simons: You referred to the case where breathalyzers they can't ask for them. What made them think that they can do that?

Senator Armstrong: The invasiveness of a blood draw requires a warrant. There is a right to privacy so someone cannot stick a needle in your arm.

Aaron Birst: Association of Counties: (attachment 2) Went over the handout. Now we say you can still drive if you are on a 24/7 program. The bill you passed in 2013 saved lives. (80% of the tests done are breath tests and it is easier the negative part of this is the breath test only picks up alcohol. I do have one amendment on page 7 starting on line 10 -19 all the underlined language would be moved into a different section because it is not appropriate to be in the 30-20-14 section which purely talks about screening tests refusal. That language should not be in there.
(30:00)

Representative Roers Jones: Now that we have the Birchfield one of the decisions surrounding that was the process of getting a warrant and the need to get a warrant if it was the middle of the night. What is ND's process for this and how is it working?

Aaron Birst: North Dakota has always had on the books the process of getting of what getting what is called the electronic warrant where you could call the judge during the night so that you don't have to go see the judge.

Representative Roers Jones: Can you give us an idea of how much time passes on getting a warrant and does that have an effect on the blood alcohol count?

Aaron Birst: It is difficult to average it. From the time an officer determines to get a warrant it is ½ or to an hour. The longer it takes to get a test result; the lower the test will be. If we can stay within that 2 hours that will be good to go we don't have to prove the time, it does become pragmatic especially if we can't determine the of the driving. The chief is trying to stream line that system to make it quicker. In Grand Forks they haven't even used the electronic even though. they have the capability.

Chairman K. Koppelman: In 2013 that is why we enhanced the bill.

Representative Klemin: The section 2 amendment; what is the reason for the amendment in section 2?

Aaron Birst: Section 2 deals with vehicle homicide. We never had a specific D UI vehicle homicide in 2023 we added that in.

Representative Vetter: Between the breath and blood test; does the police officer determine what test you should take or does the person said which one they want?

Aaron Birst: Under our law it is complete officer determination of what test to offer. Most of the time if the officer tries to comply if the person has a problem with the blood test for an example. The reason the law structures it is the officer's choice is because what if there isn't

any possibility of getting a blood test out in the sticks because there is no hospital around then if the officer says "all I have available is the breath test" it is the officer's discretion.

Representative Nelson: Let's say you have someone obviously intoxicated so the law says don't inform the guy of the penalty so you decide to do a blood test but the law says don't inform the guy of the penalties until you have the warrant now you already warned the guy of the penalties and now you want a blood test. Am I being a bit picky?

Aaron Birst: No you are not being picky. We are going to battle this out regardless of whether you are going to pass this or not. They will always point out some scenario like that.

Representative Hanson: DUI's are the most litigated DUIs? Did you say there are 7,000-8,000 DUIs in North Dakota a year?

Aaron Birst: Generally we have about 6,500 or so arrests and we have about mid 80s conviction rate.

Chairman K. Koppelman: We did have a provision with the double legal limit which is the lynch pin for imprisonment.

Aaron Birst: The current state of the law is DUIs the first and second are B misdemeanors The max you can do are 30 days. Once you get to your 3rd you go A misdemeanor and then when you go your 4th then you are looking at your C felony and only when you get to your 4th are you eligible to go to the state penitentiary.

Chairman K. Koppelman: So the people are not sitting in jail for 30 days either. Those probations are the 24/7 program that we talked about. Double the limit is that 2 days? He thinks it was written before the amendment. Where is that placed?

Aaron Birst: I am aware of that and did visit with Senator Armstrong It would go under 39-08-01 subsection 1. Section would find itself in there.

Chairman K. Koppelman: 24/7 keeps the person from driving drunk.

Aaron Birst: There is one substitute of law that the committee will be reviewing in this bill and that is under the amendment that I passed which is the language that I found in the bill it does make the argument that breath and urine have the same standards. If you pass this there is the possibility that the Supreme Court will say urine has the blood requirement.

Representative Klemin: If the supreme Court says that urine is like blood Is there something we could do to anticipate this and not have to change this in 2 years?

Aaron Birst: Yes you could if you want to error on the side of saying North Dakota Supreme Court is going to treat urine like blood so we are going to treat urine like blood, I think as you pass it as it as is I will argue to the courts that the legislature has spoken 2-32 and blood is like urine. The court will do what it wants to do.

Chairman K. Koppelman: Our court has upheld what we did in 2013.

Jackson Laffor: President of Defense Lawyers: We are in favor of SB 2176. The proposed amendment that Mr. Birst passed out answered questions I had on the bill that the language in section 6 of the 1st engrossment should be in 39-21 not 39-20-14. I think the amendment that Mr. Birst provided fixes that. This bill is a cleanup bill. I urge a do pass.

Chairman K. Koppelman: Is there any further Opposition? any neutral testimony? We will close the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES


Judiciary Committee
Prairie Room, State Capitol

SB 2176
3/14/2017

29199

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to driving under the influence; and to repeal section 39-20-03 of the North Dakota Century Code, relating to driving under the influence.

Minutes:

Attachment 1-2

Chairman K. Koppelman: Opened the meeting on SB 2176. This is the cleanup bill purposed for the DUI. There are 2 suggested amendments and one was recommended by Senator Armstrong and the other by Mr. Birst. The one from Senator needs to be renumbered appropriately if we adopt that but there is an understanding that it should be inserted at the end of section 1 and then renumbered. The one that was proposed by Mr. Birst is in proper style and form. (see attachment 1-2)

Rep. Roers Jones: I move the adoption of both of those amendments.

Rep. Karls: Seconded.

Chairman K. Koppelman: We will take a voice vote on the motion to amend all those in favor. The motion is passed thus the amendment is attached to the bill.

Rep. Karls: Moved a do pass as amended.

Rep. Roers Jones: Seconded

Chairman K. Koppelman: Discussion? We will call the roll on a do pass as amended motion on engrossed SB 2176. Yes 15 No 0 Absent 0 Floor Assignment Rep. Koppelman

March 14, 2017

3/14/17 PA
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2176

Page 1, line 1, after the comma insert "subsection 7 of section 39-08-01,"

Page 1, line 2, after the first comma insert "subdivision a of subsection 3 of section 39-20-01,"

Page 1, line 4, remove " and"

Page 1, line 5, after "influence" insert "; and to provide a penalty"

Page 1, after line 22, insert:

"SECTION 2. AMENDMENT. Subsection 7 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 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. For purposes of this section, the twenty-four seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment."

Page 2, after line 8, insert:

"SECTION 4. AMENDMENT. Subdivision a of subsection 3 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take thea chemical test to determine whether the individual is under the influence of alcohol or drugs; ~~that refusal to take the and that refusal of the individual to submit to a~~ 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 directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges may result in a revocation of the individual's driving privileges for a minimum of one hundred eighty days and up to three years.~~ In addition, the law enforcement officer shall inform the individual refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant."

3/14/17 DR
2 of 2

Page 7, line 10, remove "The law enforcement officer shall inform the"

Page 7, remove lines 11 through 18

Page 7, line 19, remove "secured a search warrant."

Renumber accordingly

Date: 3/14
Roll Call Vote 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2176

House Judiciary

Committee

both amendments at same time

☐ Subcommittee

Amendment LC# or Description: *page 2 after line 8 insert N.D. law requires chemical test*
7. As used in this title, participation in the twenty-four seven

Recommendation: ☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By Rep. Roers Jones Seconded By Rep. Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. _____

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

Voice Vote carried

Date: 3/14
Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2176

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.0775.02001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Karls Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

0
Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2176, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2176 was placed on the Sixth order on the calendar.

Page 1, line 1, after the comma insert "subsection 7 of section 39-08-01,"

Page 1, line 2, after the first comma insert "subdivision a of subsection 3 of section 39-20-01,"

Page 1, line 4, remove " and"

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Page 1, after line 22, insert:

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Page 2, after line 8, insert:

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Page 7, line 10, remove "The law enforcement officer shall inform the"

Page 7, remove lines 11 through 18

Page 7, line 19, remove "secured a search warrant."

Renumber accordingly

2017 TESTIMONY

SB 2176

#1
SB 2176
3-14-2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2176

Page 2, after line 8 insert:

"SECTION 3. AMENDMENT. Subsection a of section 39-20-01(3) of the North Dakota Century Code is amended and reenacted as follows:

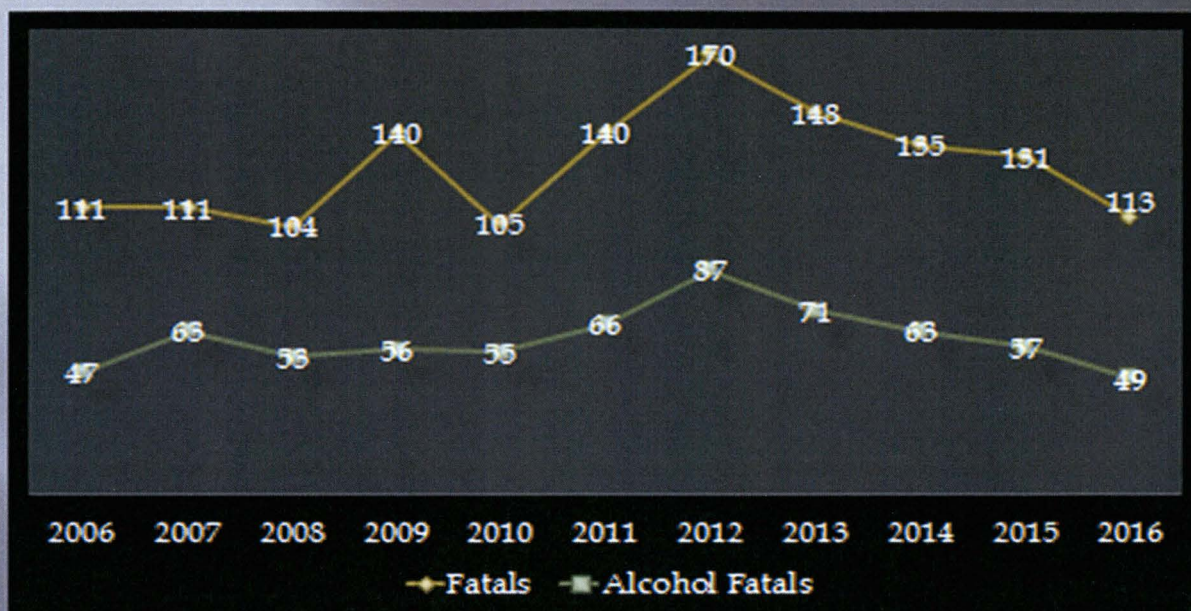
a. The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take a chemical ~~the~~ test to determine whether the individual is under the influence of alcohol or drugs and; that refusal of the individual to submit to any to take the test directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges. The individual also must be informed refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant; is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges."

Page 7, line 10, after "39-20-01" through line 19 after the word "warrant" remove all the underlined wording.

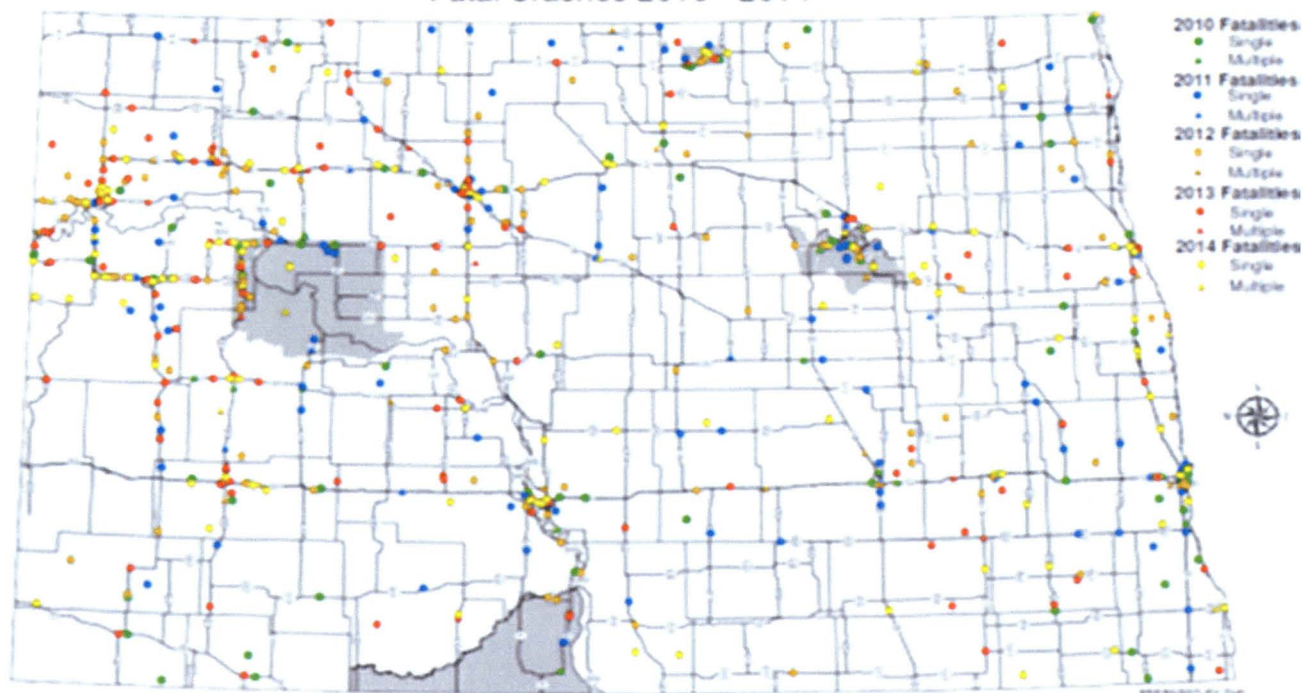
Renumber accordingly

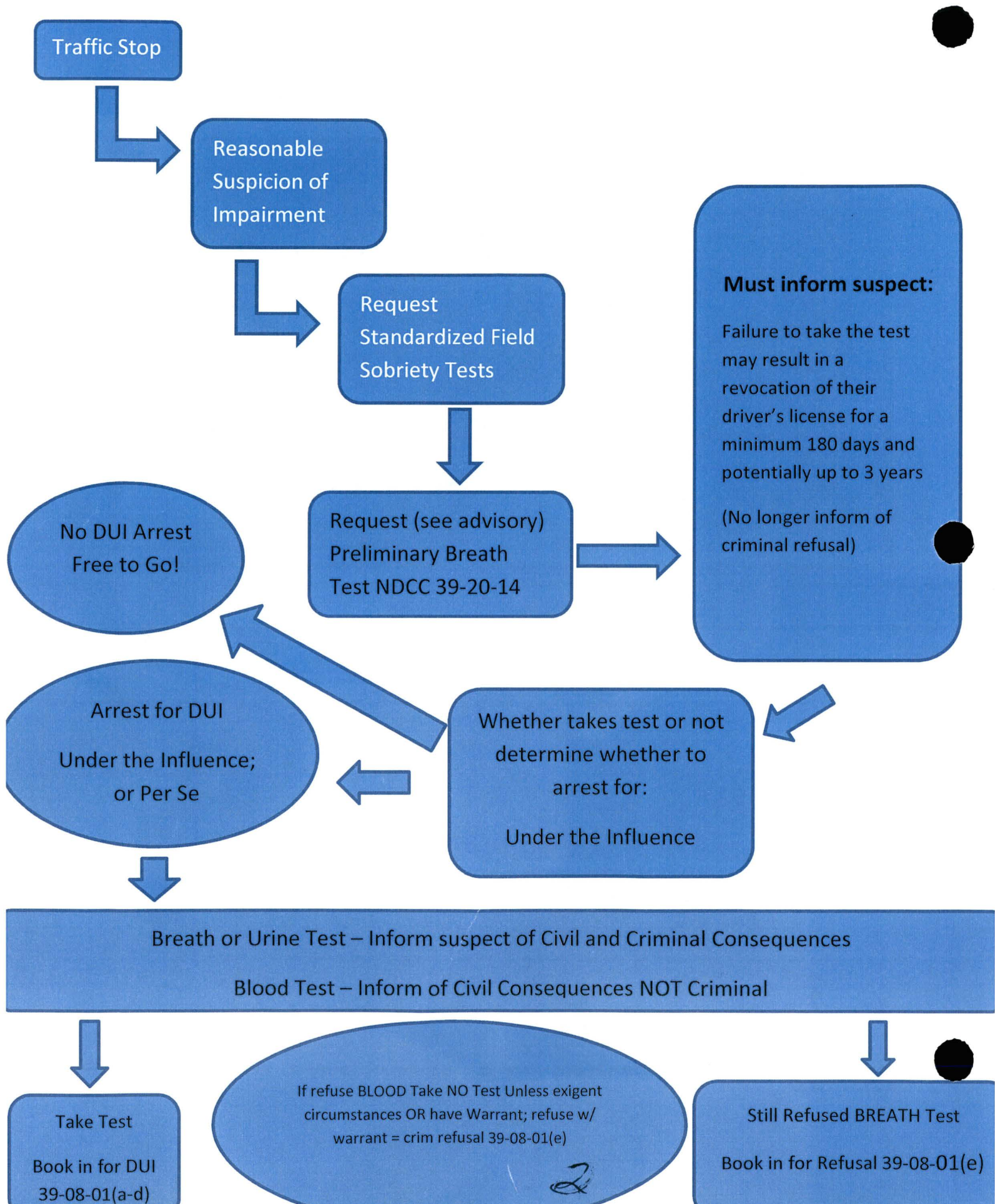
#2
2176
3-14-17

Fatal Crashes in ND



Fatal Crashes 2010 - 2014





att 1
S B 2176
3-14-17

PROPOSED AMENDMENT TO S.B. 2176

Page 1, after line 20, insert:

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att 2
SR 2176
3-14-17

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