

Sixty-third
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1302

Introduced by

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

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

1 A BILL ~~for an Act to create and enact a new subsection to section 27-20-10 and section~~
 2 ~~27-20-31 of the North Dakota Century Code, relating to juveniles driving under the influence; to~~
 3 ~~amend and reenact subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01,~~
 4 ~~39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsection 6 of section~~
 5 ~~39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to chemical tests for~~
 6 ~~driving under the influence of alcohol or drugs; to provide for a legislative management study; to~~
 7 ~~provide a penalty; to provide an effective date; and to declare an emergency.~~ for an Act to create
 8 and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section
 9 to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety
 10 program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section
 11 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-08-01.3, 39-08-01.4, 39-20-01,
 12 39-20-01.1, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsections 6, 9, and 10 of
 13 section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code,
 14 relating to driving while under the influence and city penalties; to provide for an underage
 15 drinking prevention program; to provide for a legislative management study; to provide a
 16 penalty; and to provide appropriations.

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

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

20 ~~If a child is subject to informal adjustment for a violation of section 39-08-01 or~~
 21 ~~equivalent ordinance, or if a child is found to have an alcohol concentration of at least~~
 22 ~~two one hundredths of one percent by weight at the time of performance of a test~~
 23 ~~within two hours after driving or being in physical control of a motor vehicle, the~~

~~juvenile court may require the child to participate in the twenty-four seven sobriety program under chapter 54-12 for up to nine months.~~

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

~~If a child is adjudicated delinquent for a violation of section 39-08-01 or equivalent ordinance, or if a child is found to have 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 juvenile court may require the child to participate in the twenty-four seven sobriety program under chapter 54-12.~~

~~SECTION 3. 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~~ten~~ 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~~ten~~ 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~~ten~~ 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~~ten~~ 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~~ten~~ years preceding the last violation.~~

1 ~~_____ f. Three years if the operator's record shows the person has at least twice violated~~
2 ~~section 39-08-01 or equivalent ordinance within the fiveten years preceding the~~
3 ~~last violation and the violation is for an alcohol concentration of at least eighteen-~~
4 ~~one-hundredths of one percent by weight.~~

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

8 ~~— **SECTION 4. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is-~~
9 ~~amended and reenacted as follows:~~

10 ~~— **39-06.1-11. Temporary restricted license – Ignition interlock device.**~~

11 ~~— 1. Except as provided under subsection 2, if the director has suspended a license under~~
12 ~~section 39-06.1-10 or has extended a suspension or revocation under section-~~
13 ~~39-06-43, upon receiving written application from the offender affected, the director~~
14 ~~may for good cause issue a temporary restricted operator's license valid for the~~
15 ~~remainder of the suspension period after seven days of the suspension period have~~
16 ~~passed.~~

17 ~~— 2. If the director has suspended a license under chapter 39-20, or after a violation of~~
18 ~~section 39-08-01 or equivalent ordinance, upon written application of the offender the~~
19 ~~director may issue for good cause a temporary restricted license that takes effect after~~
20 ~~thirty days of the suspension have been served after a first offense under section-~~
21 ~~39-08-01 or chapter 39-20, but if the offender is participating in the twenty four seven-~~
22 ~~sobriety program under chapter 54-12, the director may issue a temporary restricted-~~
23 ~~license that takes effect after fifteen days of the suspension have been served. The~~
24 ~~director may not issue a temporary restricted license to any offender whose operator's~~
25 ~~license has been revoked under section 39-20-04 or suspended upon a second or~~
26 ~~subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary~~
27 ~~restricted license may be issued in accordance with subsection 5 of this section if the-~~
28 ~~offender is participating in the twenty four seven sobriety program under chapter~~
29 ~~54-12, or for good cause if the offender has not committed an offense for a period of~~
30 ~~two years before the date of the filing of a written application that must be~~
31 ~~accompanied by a report from an appropriate licensed addiction treatment program or~~

1 if the offender is participating in the drug court program and has not committed an
2 offense for a period of three hundred sixty-five days before the date of the filing of a
3 written application that must be accompanied by a recommendation from the district
4 court. The director may conduct a hearing for the purposes of obtaining information,
5 reports, and evaluations from courts, law enforcement, and citizens to determine the
6 offender's conduct and driving behavior during the prerequisite period of time. The
7 director may also require that an ignition interlock device be installed in the offender's
8 vehicle.

9 ~~3. The director may not issue a temporary restricted license for a period of license~~
10 ~~revocation or suspension imposed under subsection 5 of section 39-06-17 or section~~
11 ~~39-06-31. A temporary restricted license may be issued for suspensions ordered under~~
12 ~~subsection 7 of section 39-06-32 if it could have been issued had the suspension~~
13 ~~resulted from in-state conduct.~~

14 ~~4. A restricted license issued under this section is solely for the use of a motor vehicle~~
15 ~~during the licensee's normal working hours, or as provided under subsection 5 of this~~
16 ~~section, and may contain any other restrictions authorized by section 39-06-17.~~
17 ~~Violation of a restriction imposed according to this section is deemed a violation of~~
18 ~~section 39-06-17.~~

19 ~~5. If an offender has been charged with, or convicted of, a second or subsequent~~
20 ~~violation of section 39-08-01 or equivalent ordinance, or if the offender's license is~~
21 ~~subject to suspension under chapter 39-20 and the offender's driver's license is not~~
22 ~~subject to an unrelated suspension or revocation, the director shall issue a temporary~~
23 ~~restricted driver's permit license to the offender only for the purpose of~~
24 ~~participation upon the restriction the offender participate in the twenty-four seven~~
25 ~~sobriety program upon under chapter 54-12. The offender shall submit an application~~
26 ~~to the director for a temporary restricted license along with submission of proof of~~
27 ~~financial responsibility and proof of participation in the twenty-four seven sobriety~~
28 ~~program by the offender, in order to receive a temporary restricted license. If a court or~~
29 ~~the parole board finds that an offender has violated a condition of the twenty-four~~
30 ~~seven sobriety program, the court or parole board may order the temporary restricted~~
31 ~~driver's permit be revoked and take possession of the temporary restricted driver's~~

1 permit. The court or the parole board shall send a copy of the order to the director who
2 shall record the revocation of the temporary restricted driver's permit. Revocation of a
3 temporary restricted driver's permit for violation of a condition of the twenty-four seven-
4 sobriety program does not preclude the offender's eligibility for a temporary restricted
5 driver's license under any other provisions of this section.

6 ~~SECTION 5. AMENDMENT.~~ Section 39-08-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 ~~39-08-01. Persons under the influence of intoxicating liquor or any other drugs or~~
9 ~~substances not to operate vehicle -- Penalty.~~

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

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

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

17 ~~c. That person is under the influence of any drug or substance or combination of~~
18 ~~drugs or substances to a degree which renders that person incapable of safely~~
19 ~~driving.~~

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

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

27 ~~2. Unless as otherwise provided in section 39-08-01.2, an individual violating this section~~
28 ~~or equivalent ordinance is guilty of a class B misdemeanor for the first or second~~
29 ~~offense in a five-year period, of a class A misdemeanor for a third~~second~~ offense in a~~
30 ~~five-year~~ten year~~ period, of a class A misdemeanor for the fourth offense in a~~
31 ~~seven-year period, and of a class C felony for a fifth or subsequent~~third~~ offense in a~~

1 ~~seven-year period, and a class C felony for any fourth or subsequent offense,~~
2 ~~regardless how long it has been since the previous offense. The minimum penalty for~~
3 ~~violating this section is as provided in subsection 4. The court shall take judicial notice~~
4 ~~of the fact that an offense would be a subsequent offense if indicated by the records of~~
5 ~~the director or may make a subsequent offense finding based on other evidence. If an~~
6 ~~individual has spent time in custody for any offense, the time spent in custody may not~~
7 ~~be included as part of any period of time under this section.~~

8 ~~3. Upon conviction of a second or subsequent offense within five years under this~~
9 ~~section or equivalent ordinance, the court must~~shall ~~order the motor vehicle number~~
10 ~~plates of all of the motor vehicles owned and operated by the offender at the time of~~
11 ~~the offense to be impounded for the duration of the period of suspension or revocation~~
12 ~~of the offender's driving privilege by the licensing authority. The impounded number~~
13 ~~plates must be sent to the director who must retain them for the period of suspension~~
14 ~~or revocation, subject to their disposition by the court. The court may make an~~
15 ~~exception to this subsection, on an individual basis, to avoid undue hardship to an~~
16 ~~individual who is completely dependent on the motor vehicle for the necessities of life,~~
17 ~~including a family member of the convicted individual and a coowner of the motor~~
18 ~~vehicle, but not including~~or if the offender is participating in the twenty four seven
19 ~~sobriety program.~~

20 ~~4. A person convicted of violating this section, or an equivalent ordinance, must be~~
21 ~~sentenced in accordance with this subsection. For purposes of this subsection, unless~~
22 ~~the context otherwise requires, "drug court program" means a district court supervised~~
23 ~~treatment program approved by the supreme court which combines judicial~~
24 ~~supervision with alcohol and drug testing and chemical addiction treatment in a~~
25 ~~licensed treatment program. The supreme court may adopt rules, including rules of~~
26 ~~procedure, for drug courts and the drug court program.~~

27 ~~a. For a first offense, if the alcohol concentration is at least eight hundredths of one~~
28 ~~percent by weight but less than twenty one hundredths of one percent by weight,~~
29 ~~the sentence must include a fine of at least five hundred dollars and an order for~~
30 ~~an addiction evaluation by an appropriate licensed addiction treatment program.~~
31 ~~If the alcohol concentration is at least twenty one hundredths of one percent by~~

1 ~~weight, or if the individual refused to submit to a chemical test, or a test required~~
2 ~~under section 39-06.2-10.2, 39-20-01, or 39-20-14, the sentence must include~~
3 ~~both at least ten days' imprisonment, of which forty-eight hours must be served~~
4 ~~consecutively; a fine of at least two seven hundred fifty dollars and; an order for~~
5 ~~addiction evaluation by an appropriate licensed addiction treatment program; at~~
6 ~~least six months' probation; and participation in the twenty-four seven sobriety~~
7 ~~program under chapter 54-12 as a mandatory condition of probation.~~

8 ~~b. For a second offense within five ten years, the sentence must include at least~~
9 ~~five sixty days' imprisonment or placement in a minimum security facility, of which~~
10 ~~forty-eight hours must be served consecutively, or thirty days' community service;~~
11 ~~a fine of at least one thousand five hundred dollars; and an order for addiction~~
12 ~~evaluation by an appropriate licensed addiction treatment program; and at least~~
13 ~~twelve months' probation; and participation in the twenty-four seven sobriety~~
14 ~~program under chapter 54-12 as a mandatory condition of probation.~~

15 ~~c. For a third offense within five ten years, the sentence must include at least~~
16 ~~sixty one hundred eighty days' imprisonment or placement in a minimum security~~
17 ~~facility, of which forty-eight hours must be served consecutively; a fine of one at~~
18 ~~least two thousand dollars; and an order for addiction evaluation by an~~
19 ~~appropriate licensed addiction treatment program; and at least twelve months'~~
20 ~~probation; and participation in the twenty-four seven sobriety program under~~
21 ~~chapter 54-12 as a mandatory condition of probation.~~

22 ~~d. For a fourth or subsequent offense within seven years, the sentence must include~~
23 ~~at least one hundred eighty days' year and one day's imprisonment or placement~~
24 ~~in a minimum security facility, of which forty-eight hours must be served~~
25 ~~consecutively; a fine of one at least three thousand dollars; and an order for~~
26 ~~addiction evaluation by an appropriate licensed treatment program; at least two~~
27 ~~years' probation; and participation in the twenty-four seven sobriety program~~
28 ~~under chapter 54-12 as a mandatory condition of probation.~~

29 ~~e. The execution or imposition of sentence under this section may not be~~
30 ~~suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an~~
31 ~~offense subject to this section.~~

~~f. If the offense is subject to subdivision a or b, a municipal court or district court may suspend a sentence under subsection 3 of section 12.1-32-02 if the alcohol concentration is at least eight hundredths of one percent by weight but less than twenty-one hundredths of one percent by weight. If the alcohol concentration is at least twenty-one hundredths of one percent by weight, or if the individual refused to submit to a chemical test, or a test required under section 39-06.2-10.2, 39-20-01, or 39-20-14, a municipal court or district court may suspend a sentence, except for one day's imprisonment on a day the defendant is not scheduled for employment, 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 db of this subsection, 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 offense is subject to subdivision c of this subsection, the district court may suspend a sentence, except for sixty 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 of this subsection, 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 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~~

1 an evaluation or complete treatment or has violated any condition of probation,
2 the district court shall revoke the defendant's probation and shall sentence the
3 defendant in accordance with this subsection.

4 ~~f.g. If the court sentences an individual to the legal and physical custody of the~~
5 ~~department of corrections and rehabilitation, the department may place the~~
6 ~~defendant in an alcohol treatment program designated by the department. Upon~~
7 ~~the individual's successful completion of the alcohol treatment program, the~~
8 ~~department shall release the individual from imprisonment to serve the remainder~~
9 ~~of the sentence of imprisonment on probation, which may include placement in~~
10 ~~another facility or treatment program. If an individual is placed in another facility~~
11 ~~or treatment program after release from imprisonment, the remainder of the~~
12 ~~individual's sentence of imprisonment must be considered time spent in custody.~~
13 ~~A court may not order the department to be responsible for the costs of treatment~~
14 ~~in a private treatment facility.~~

15 ~~h. For purposes of this section, conviction of an offense under a law or ordinance of~~
16 ~~another state which is equivalent to this section must be considered a prior~~
17 ~~offense if such offense was committed within the time limitations specified in this~~
18 ~~subsectionsection.~~

19 ~~i. An individual who operates a motor vehicle on a highway or on public or private~~
20 ~~areas to which the public has a right of access for vehicular use in this state who~~
21 ~~refuses to submit to a chemical test, or a test required under sections~~
22 ~~39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.~~

23 ~~g.j. If the penalty mandated by this section includes imprisonment or placement upon~~
24 ~~conviction of a violation of this section or equivalent ordinance, and if an~~
25 ~~addiction evaluation has indicated that the defendant needs treatment, the court~~
26 ~~may order the defendant to undergo treatment at an appropriate licensed~~
27 ~~addiction treatment program and the time spent by the defendant in the treatment~~
28 ~~must be credited as a portion of a sentence of imprisonment or placement under~~
29 ~~this section.~~

30 ~~5. As used in subdivision b of subsection 4, the term "imprisonment" includesmay include~~
31 ~~house arrest. As a condition of house arrest, a defendant may not consume alcoholic~~

1 beverages. The house arrest must include a program of electronic home detention in
2 which and the defendant is tested at least twice daily for the consumption of
3 alcohol shall participate in the twenty-four seven sobriety program as a condition of
4 house arrest. The defendant shall defray pay all costs associated with the electronic
5 home detention and participation in the twenty-four seven sobriety program. This
6 subsection does not apply to individuals committed to or under the supervision and
7 management of the department of corrections and rehabilitation.

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

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

15 ~~39-08-01.2. Special punishment for causing injury or death while operating a vehicle~~
16 ~~while under the influence of alcohol.~~

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

22 ~~2. If an individual is convicted of a first offense violating section 39-08-01, or section~~
23 ~~39-08-03 based in part on the evidence of the individual's operation of a motor vehicle~~
24 ~~while under the influence of alcohol or drugs, and the violation caused serious bodily~~
25 ~~injury, as defined in section 12.1-01-04, to another individual, that individual is guilty of~~
26 ~~a class A misdemeanor and the sentence must include at least ninety days'~~
27 ~~imprisonment if the individual was an adult at the time of the offense.~~

28 ~~3. If an individual is convicted of a second or subsequent offense in ten years of violating~~
29 ~~section 39-08-01, or section 39-08-03 based in part on the evidence of the individual's~~
30 ~~operation of a motor vehicle while under the influence of alcohol or drugs, and the~~
31 ~~violation caused serious bodily injury, as defined in section 12.1-01-04, to another~~

1 ~~individual, that individual is guilty of a class C felony and the sentence must include at~~
2 ~~least one year and one day's imprisonment if the individual was an adult at the time of~~
3 ~~the offense.~~

4 ~~4. The imposition of sentence may not be deferred under subsection 4 of section~~
5 ~~12.1-32-02 for an offense subject to this section.~~

6 ~~5. The sentence under this section may not be suspended unless the court finds that~~
7 ~~manifest injustice would result from imposition of the sentence, except for ninety days~~
8 ~~for a first offense, and one year for a second or subsequent offense in ten years. The~~
9 ~~court shall impose not less than one year of supervised probation and shall require~~
10 ~~participation in the twenty four seven sobriety program for at least twelve months as a~~
11 ~~mandatory condition of probation. Before a sentence under this section applies, a~~
12 ~~defendant must be notified of the minimum mandatory sentence. If the finding of guilt~~
13 ~~is by jury verdict, the verdict form must indicate that the jury found the elements that~~
14 ~~create the minimum sentence.~~

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

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

19 ~~**39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**~~

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

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

9 ~~3.~~ The law enforcement officer also shall also inform the individual charged that North
10 Dakota law requires the individual to take the test to determine whether the individual
11 is under the influence of alcohol, drugs, or a combination of alcohol and drugs, that
12 refusal to take the test directed by the law enforcement officer is a crime, and that
13 refusal of the individual to submit to the test determined appropriate will directed by the
14 law enforcement officer may result in a revocation for up to four years of the
15 individual's driving privileges. The law enforcement officer shall determine which of the
16 tests is to be used.

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

30 ~~SECTION 8. AMENDMENT.~~ Section 39-20-03.1 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 ~~— **39-20-03.1. Action following test result for a resident operator.**~~

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

8 ~~— 1.— The law enforcement officer shall immediately issue to that person a temporary-~~
9 ~~operator's permit if the person then has valid operating privileges, extending driving~~
10 ~~privileges for the next twenty-five days, or until earlier terminated by the decision of a~~
11 ~~hearing officer under section 39-20-05, or unless terminated by participation in the~~
12 ~~twenty-four seven sobriety program as provided under subsection 5 of this section.-~~

13 ~~The law enforcement officer shall sign and note the date on the temporary operator's~~
14 ~~permit. The temporary operator's permit serves as the director's official notification to~~
15 ~~the person of the director's intent to revoke, suspend, or deny driving privileges in this~~
16 ~~state.~~

17 ~~— 2.— If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by~~
18 ~~drawing blood as provided in section 39-20-02 and the individual tested is not a~~
19 ~~resident of an area in which the law enforcement officer has jurisdiction, the law~~
20 ~~enforcement officer shall, on receiving the analysis of the urine or blood from the~~
21 ~~director of the state crime laboratory or the director's designee and if the analysis~~
22 ~~shows that individual had an alcohol concentration of at least eight one-hundredths of~~
23 ~~one percent by weight or, with respect to an individual under twenty-one years of age,~~
24 ~~an alcohol concentration of at least two one-hundredths of one percent by weight,~~
25 ~~either proceed in accordance with subsection 1 during that individual's reappearance~~
26 ~~within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law~~
27 ~~enforcement agency having jurisdiction where the individual lives. On that notification,~~
28 ~~that law enforcement agency shall, within twenty-four hours, forward a copy of the~~
29 ~~temporary operator's permit to the law enforcement agency making the arrest or to the~~
30 ~~director. The law enforcement agency shall issue to that individual a temporary~~

1 operator's permit as provided in this section, and shall sign and date the permit as
2 provided in subsection 1.

3 ~~3. If the test results indicate an alcohol concentration at or above the legal limit, the law~~
4 ~~enforcement agency making the arrest may mail a temporary operator's permit to the~~
5 ~~individual who submitted to the blood or urine test, whether or not the individual is a~~
6 ~~resident of the area in which the law enforcement officer has jurisdiction. The third day~~
7 ~~after the mailing of the temporary operator's permit is considered the date of issuance.~~
8 ~~Actual notice of the opportunity for a hearing under this section is deemed to have~~
9 ~~occurred seventy-two hours after the notice is mailed by regular mail to the address~~
10 ~~submitted by the individual to the law enforcement officer. The temporary operator's~~
11 ~~permit serves as the director's official notification to the individual of the director's~~
12 ~~intent to revoke, suspend, or deny driving privileges in this state.~~

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

28 ~~5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may~~
29 ~~elect to participate in the twenty-four seven sobriety program under chapter 54-12 in~~
30 ~~lieu of the administrative hearing under this chapter if the individual's driver's license is~~
31 ~~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 9. 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~~

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

10 ~~a. One year if the person's driving record shows that within the fiveten years~~
11 ~~preceding the most recent violation of this section, the person's operator's license~~
12 ~~has not previously been suspended, revoked, or issuance denied for a violation~~
13 ~~of this chapter or section 39-08-01 or equivalent ordinance.~~

14 ~~b. Three years if the person's driving record shows that within the fiveten years~~
15 ~~preceding the most recent violation of this section, the person's operator's license~~
16 ~~has been once previously suspended, revoked, or issuance denied for a violation~~
17 ~~of this chapter or section 39-08-01 or equivalent ordinance.~~

18 ~~c. Four years if the person's driving record shows that within the fiveten years~~
19 ~~preceding the most recent violation of this section, the person's operator's license~~
20 ~~has at least twice previously been suspended, revoked, or issuance denied under~~
21 ~~this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any~~
22 ~~combination of the same, and the suspensions, revocations, or denials resulted~~
23 ~~from at least two separate arrests.~~

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

26 ~~a. An administrative hearing is not held under section 39-20-05;~~

27 ~~b. The person mails an affidavit to the director within twenty five days after the~~
28 ~~temporary operator's permit is issued. The affidavit must state that the person:~~

29 ~~(1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent~~
30 ~~ordinance within twenty five days after the temporary operator's permit is~~
31 ~~issued;~~

1 ~~————— (2) — Agrees that the person's driving privileges must be suspended as provided~~
2 ~~under section 39-06.1-10;~~

3 ~~————— (3) — Acknowledges the right to a section 39-20-05 administrative hearing and~~
4 ~~section 39-20-06 judicial review and voluntarily and knowingly waives these~~
5 ~~rights; and~~

6 ~~————— (4) — Agrees that the person's driving privileges must be revoked as provided~~
7 ~~under this section without an administrative hearing or judicial review, if the~~
8 ~~person does not plead guilty within twenty-five days after the temporary~~
9 ~~operator's permit is issued, or the court does not accept the guilty plea, or~~
10 ~~the guilty plea is withdrawn;~~

11 ~~————— c. — The person pleads guilty to violating section 39-08-01 or equivalent ordinance~~
12 ~~within twenty-five days after the temporary operator's permit is issued;~~

13 ~~————— d. — The court accepts the person's guilty plea and a notice of that fact is mailed to~~
14 ~~the director within twenty-five days after the temporary operator's permit is~~
15 ~~issued; and~~

16 ~~————— e. — A copy of the final order or judgment of conviction evidencing the acceptance of~~
17 ~~the person's guilty plea is received by the director prior to the return or~~
18 ~~reinstatement of the person's driving privileges; and~~

19 ~~————— f. — The person has never been convicted under section 39-08-01 or equivalent~~
20 ~~ordinance.~~

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

26 ~~———— **SECTION 10. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is~~
27 ~~amended and reenacted as follows:~~

28 ~~———— **39-20-04.1. Administrative sanction for driving or being in physical control of a**~~
29 ~~**vehicle while having certain alcohol concentration.**~~

30 ~~———— 1. — After the receipt of the certified report of a law enforcement officer and if no written~~
31 ~~request for hearing has been received from the arrested person under section~~

1 ~~39-20-05, or if that hearing is requested and the findings, conclusion, and decision-~~
2 ~~from the hearing confirm that the law enforcement officer had reasonable grounds to~~
3 ~~arrest the person and test results show that the arrested person was driving or in~~
4 ~~physical control of a vehicle while having an alcohol concentration of at least eight~~
5 ~~one-hundredths of one percent by weight or, with respect to a person under~~
6 ~~twenty-one years of age, an alcohol concentration of at least two one-hundredths of~~
7 ~~one percent by weight at the time of the performance of a test within two hours after~~
8 ~~driving or being in physical control of a motor vehicle, the director shall suspend the~~
9 ~~person's driving privileges as follows:~~

10 ~~a. For ninety one days if the person's driving record shows that, within the fiveten~~
11 ~~years preceding the date of the arrest, the person has not previously violated~~
12 ~~section 39-08-01 or equivalent ordinance or the person's operator's license has~~
13 ~~not previously been suspended or revoked under this chapter and the violation~~
14 ~~was for an alcohol concentration of at least eight one-hundredths of one percent~~
15 ~~by weight or, with respect to a person under twenty-one years of age, an alcohol~~
16 ~~concentration of at least two one-hundredths of one percent by weight, and under~~
17 ~~eighteen one-hundredths of one percent by weight.~~

18 ~~b. For one hundred eighty days if the operator's record shows the person has not~~
19 ~~violated section 39-08-01 or equivalent ordinance within fiveten years preceding~~
20 ~~the last violation and the last violation was for an alcohol concentration of at least~~
21 ~~eighteen one-hundredths of one percent by weight.~~

22 ~~c. For three hundred sixty-five days if the person's driving record shows that, within~~
23 ~~the fiveten years preceding the date of the arrest, the person has once previously~~
24 ~~violated section 39-08-01 or equivalent ordinance or the person's operator's~~
25 ~~license has once previously been suspended or revoked under this chapter with~~
26 ~~the last violation or suspension for an alcohol concentration under eighteen~~
27 ~~one-hundredths of one percent by weight.~~

28 ~~d. For two years if the person's driving record shows that within the fiveten years~~
29 ~~preceding the date of the arrest, the person's operator's license has once been~~
30 ~~suspended, revoked, or issuance denied under this chapter, or for a violation of~~
31 ~~section 39-08-01 or equivalent ordinance, with the last violation or suspension for~~

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

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

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

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

22 ~~39-20-05. Administrative hearing on request - Election to participate in the~~
23 ~~twenty-four seven sobriety program.~~

24 ~~1.~~ Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
25 39-20-04.1, the director shall afford that person an opportunity for a hearing if the
26 person mails or communicates by other means authorized by the director a request for
27 the hearing to the director within ten days after the date of issuance of the temporary
28 operator's permit. ~~Before the hearing, an individual may elect to participate in the~~
29 ~~twenty-four seven sobriety program under chapter 54-12.~~ The hearing must be held
30 within thirty days after the date of issuance of the temporary operator's permit. If no
31 hearing is requested within the time limits in this section, and no affidavit is submitted

1 ~~within the time limits under subsection 2 of section 39-20-04, and if the individual has~~
2 ~~not provided the director with written notice of election to participate in the twenty four~~
3 ~~seven sobriety program under chapter 54-12, the expiration of the temporary~~
4 ~~operator's permit serves as the director's official notification to the person of the~~
5 ~~revocation, suspension, or denial of driving privileges in this state.~~

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

1 ~~checklist and test records from a certified breath test operator, and a copy of a certified~~
2 ~~copy of a certificate of the director of the state crime laboratory designating the~~
3 ~~director's designee, establish prima facie the alcohol concentration or the presence of~~
4 ~~drugs, or a combination thereof, shown therein. Whether the individual was informed~~
5 ~~that the privilege to drive might be suspended based on the results of the test is not an~~
6 ~~issue.~~

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

26 ~~4. At a hearing under this section, the regularly kept records of the director and state~~
27 ~~crime laboratory may be introduced. Those records establish prima facie their contents~~
28 ~~without further foundation. For purposes of this chapter, the following are deemed~~
29 ~~regularly kept records of the director and state crime laboratory:-~~

30 ~~a. Any copy of a certified copy of an analytical report of a blood or urine sample~~
31 ~~received by the director from the director of the state crime laboratory or the~~

1 ~~director's designee or electronically posted by the director of the state crime-~~
2 ~~laboratory or the director's designee on the crime laboratory information-~~
3 ~~management system and certified by, and received from, a law enforcement-~~
4 ~~officer or individual who has authorized access to the crime laboratory-~~
5 ~~management system through the criminal justice data information sharing system-~~
6 ~~or a certified copy of the checklist and test records received by the director from a-~~
7 ~~certified breath test operator; and~~

8 ~~b. Any copy of a certified copy of a certificate of the director of the state crime-~~
9 ~~laboratory or the director's designee relating to approved methods, devices,-~~
10 ~~operators, materials, and checklists used for testing for alcohol concentration or-~~
11 ~~the presence of drugs received by the director from the director of the state crime-~~
12 ~~laboratory or the director's designee, or that have been electronically posted with-~~
13 ~~the state crime laboratory division of the attorney general at the attorney general-~~
14 ~~website; and~~

15 ~~c. Any copy of a certified copy of a certificate of the director of the state crime-~~
16 ~~laboratory designating the director's designees.~~

17 ~~5. At the close of the hearing, the hearing officer shall notify the person of the hearing-~~
18 ~~officer's findings of fact, conclusions of law, and decision based on the findings and-~~
19 ~~conclusions and shall immediately deliver to the person a copy of the decision. If the-~~
20 ~~hearing officer does not find in favor of the person, the copy of the decision serves as-~~
21 ~~the director's official notification to the person of the revocation, suspension, or denial-~~
22 ~~of driving privileges in this state. If the hearing officer finds, based on a preponderance-~~
23 ~~of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or-~~
24 ~~that the person had an alcohol concentration of at least eight one-hundredths of one-~~
25 ~~percent by weight or, with respect to a person under twenty-one years of age, an-~~
26 ~~alcohol concentration of at least two one-hundredths of one percent by weight, the-~~
27 ~~hearing officer shall immediately take possession of the person's temporary operator's-~~
28 ~~permit issued under this chapter. If the hearing officer does not find against the-~~
29 ~~person, the hearing officer shall sign, date, and mark on the person's permit an-~~
30 ~~extension of driving privileges for the next twenty days and shall return the permit to-~~
31 ~~the person. The hearing officer shall report the findings, conclusions, and decisions to-~~

1 the director within ten days of the conclusion of the hearing. If the hearing officer has
2 determined in favor of the person, the director shall return the person's operator's
3 license by regular mail to the address on file with the director under section 39-06-20.

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

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

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

26 ~~6. The director of the state crime laboratory or the director's designee may appoint, train,
27 certify, and supervise field inspectors of breath testing equipment and its operation,
28 and the inspectors shall report the findings of any inspection to the director of the state
29 crime laboratory or the director's designee for appropriate action. Upon approval of the
30 methods or devices, or both, required to perform the tests and the individuals qualified
31 to administer them, the director of the state crime laboratory or the director's designee~~

1 shall prepare, certify, and electronically post a written record of the approval with the
2 state crime laboratory division of the attorney general at the attorney general website,
3 and shall include in the record:

4 ~~a. An annual register of the specific testing devices currently approved, including~~
5 ~~serial number, location, and the date and results of last inspection.~~

6 ~~b. An annual register of currently qualified and certified operators of the devices,~~
7 ~~stating the date of certification and its expiration.~~

8 ~~c. The operational checklist and forms prescribing the methods currently approved~~
9 ~~by the director of the state crime laboratory or the director's designee in using the~~
10 ~~devices during the administration of the tests.~~

11 ~~d. The certificate of the director of the state crime laboratory designating the~~
12 ~~director's designees.~~

13 ~~e. The certified records electronically posted under this section may be~~
14 ~~supplemented when the director of the state crime laboratory or the director's~~
15 ~~designee determines it to be necessary, and any certified supplemental records~~
16 ~~have the same force and effect as the records that are supplemented.~~

17 ~~e.f. The state crime laboratory shall make the certified records required by this~~
18 ~~section available for download in a printable format on the attorney general~~
19 ~~website.~~

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

22 ~~**39-20-14. Screening tests.**~~

23 ~~1. Any individual who operates a motor vehicle upon the public highways of this state is~~
24 ~~deemed to have given consent to submit to an onsite screening test or tests of the~~
25 ~~individual's breath for the purpose of estimating the alcohol concentration in the~~
26 ~~individual's breath upon the request of a law enforcement officer who has reason to~~
27 ~~believe that the individual committed a moving traffic violation or was involved in a~~
28 ~~traffic accident as a driver, and in conjunction with the violation or the accident the~~
29 ~~officer has, through the officer's observations, formulated an opinion that the~~
30 ~~individual's body contains alcohol.~~

1 ~~2.~~ An individual may not be required to submit to a screening test or tests of breath while
2 at a hospital as a patient if the medical practitioner in immediate charge of the
3 individual's case is not first notified of the proposal to make the requirement, or objects
4 to the test or tests on the ground that such would be prejudicial to the proper care or
5 treatment of the patient.

6 ~~3.~~ The screening test or tests must be performed by an enforcement officer certified as a
7 chemical test operator by the director of the state crime laboratory or the director's
8 designee and according to methods and with devices approved by the director of the
9 state crime laboratory or the director's designee. The results of such screening test
10 must be used only for determining whether or not a further test shall be given under
11 the provisions of section 39-20-01. The officer shall inform the individual that North-
12 Dakota law requires the individual to take the screening test to determine whether the
13 individual is under the influence of alcohol, that refusal to take the screening test is a
14 crime, and that refusal of the individual to submit to a screening test will may result in a
15 revocation for up to four years of that individual's driving privileges. If such individual
16 refuses to submit to such screening test or tests, none may be given, but such refusal
17 is sufficient cause to revoke such individual's license or permit to drive in the same
18 manner as provided in section 39-20-04, and a hearing as provided in section
19 39-20-05 and a judicial review as provided in section 39-20-06 must be available.
20 However, the

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

25 ~~5.~~ No provisions of this section may supersede any provisions of chapter 39-20, nor may
26 any provision of chapter 39-20 be construed to supersede this section except as
27 provided herein.

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

1 ~~— SECTION 1. LEGISLATIVE MANAGEMENT STUDY -- DRIVING UNDER THE~~
2 ~~INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying~~
3 ~~the feasibility and desirability of North Dakota Century Code provisions that relate to~~
4 ~~administrative hearings and administrative sanctions for driving while under the influence of~~
5 ~~alcohol or drugs. With the assistance of the department of corrections and rehabilitation and the~~
6 ~~department of human services, the study must include the need for supervision, methods of~~
7 ~~treatment, and penalties for repeat driving while under the influence of alcohol or drug~~
8 ~~offenders. The legislative management shall report its findings and recommendations, together~~
9 ~~with any legislation required to implement the recommendations, to the sixty-fourth legislative~~
10 ~~assembly.~~

11 ~~— SECTION 15. EFFECTIVE DATE. This Act becomes effective May 1, 2013.~~

12 ~~— SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.~~

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

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

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

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

29 **SECTION 3. AMENDMENT.** Subsection 3 of section 29-06-15 of the North Dakota Century
30 Code is amended and reenacted as follows:

1 3. If a law enforcement officer has reasonable cause to believe an individual has violated
2 a lawful order of a court of this state which requires the individual to participate in the
3 twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31,
4 the law enforcement officer may immediately take the individual into custody without a
5 warrant. An individual taken into custody under this subsection may not be released on
6 bail or on the individual's personal recognizance unless the individual has made a
7 personal appearance before a magistrate.

8 **SECTION 4. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 7. The period of suspension imposed for a violation of section 39-08-01, 39-08-01.2, or
11 39-08-01.4 or equivalent ordinance is:
- 12 a. Ninety-one days if the operator's record shows the person has not violated
13 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
14 the last violation.
 - 15 b. One hundred eighty days if the operator's record shows the person has not
16 violated section 39-08-01 or equivalent ordinance within ~~five~~the seven years
17 preceding the last violation and the violation was for an alcohol concentration of
18 at least eighteen one-hundredths of one percent by weight.
 - 19 c. Three hundred sixty-five days if the operator's record shows the person has once
20 violated section 39-08-01 or equivalent ordinance within the five~~seven~~ years
21 preceding the last violation.
 - 22 d. Two years if the operator's record shows the person has at least once violated
23 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
24 the last violation and the violation was for an alcohol concentration of at least
25 eighteen one-hundredths of one percent by weight.
 - 26 e. Two years if the operator's record shows the person has at least twice violated
27 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
28 the last violation.
 - 29 f. Three years if the operator's record shows the person has at least twice violated
30 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding

1 the last violation and the violation is for an alcohol concentration of at least
2 eighteen one-hundredths of one percent by weight.

3 **SECTION 5.** A new subsection to section 39-06.1-10 of the North Dakota Century Code is
4 created and enacted as follows:

5 If an individual has a temporary restricted driver's license with the restriction the
6 individual participates in the twenty-four seven sobriety program under chapter 54-12,
7 the individual may operate a motor vehicle during the suspension periods under this
8 section.

9 **SECTION 6. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is
10 amended and reenacted as follows:

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

- 12 1. Except as provided under subsection 2, if the director has suspended a license under
13 section 39-06.1-10 or has extended a suspension or revocation under section
14 39-06-43, upon receiving written application from the offender affected, the director
15 may for good cause issue a temporary restricted operator's license valid for the
16 remainder of the suspension period after seven days of the suspension period have
17 passed.
- 18 2. If the director has suspended a license under chapter 39-20, or after a violation of
19 section 39-08-01 or equivalent ordinance, upon written application of the offender the
20 director may issue ~~for good cause~~ a temporary restricted license that takes effect after
21 thirty days of the suspension have been served after a first offense under section
22 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
23 sobriety program under chapter 54-12, the director may issue a temporary restricted
24 license that takes effect after fourteen days of the suspension have been served if the
25 driver is not subject to any unrelated suspension or revocation. The director may not
26 issue a temporary restricted license to any offender whose operator's license has
27 been revoked under section 39-20-04 or suspended upon a second or subsequent
28 offense under section 39-08-01 or chapter 39-20, except that a temporary restricted
29 license may be issued ~~for good cause~~ in accordance with subsection 5 if the offender is
30 participating in the twenty-four seven sobriety program under chapter 54-12 or if the
31 offender has not committed an offense for a period of two years before the date of the

1 filing of a written application that must be accompanied by a report from an
2 appropriate licensed addiction treatment program or if the offender is participating in
3 the drug court program and has not committed an offense for a period of three
4 hundred sixty-five days before the date of the filing of a written application that must
5 be accompanied by a recommendation from the district court. The director may
6 conduct a hearing for the purposes of obtaining information, reports, and evaluations
7 from courts, law enforcement, and citizens to determine the offender's conduct and
8 driving behavior during the prerequisite period of time. The director may also require
9 that an ignition interlock device be installed in the offender's vehicle.

10 3. The director may not issue a temporary restricted license for a period of license
11 revocation or suspension imposed under subsection 5 of section 39-06-17 or section
12 39-06-31. A temporary restricted license may be issued for suspensions ordered under
13 subsection 7 of section 39-06-32 if it could have been issued had the suspension
14 resulted from in-state conduct.

15 4. A restricted license issued under this section is solely for the use of a motor vehicle
16 during the licensee's normal working hours, or as provided under subsection 5, and
17 may contain any other restrictions authorized by section 39-06-17. Violation of a
18 restriction imposed according to this section is deemed a violation of section 39-06-17.

19 5. If an offender has been charged with, or convicted of, a second or subsequent
20 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
21 subject to suspension under chapter 39-20 and the offender's driver's license is not
22 subject to an unrelated suspension or revocation, the director shall issue a temporary
23 restricted driver's ~~permit~~license to the offender ~~only for the purpose of~~
24 ~~participation~~upon the restriction the offender participate in the twenty-four seven
25 sobriety program ~~upon~~under chapter 54-12. The offender shall submit an application
26 to the director for a temporary restricted license along with submission of proof of
27 financial responsibility and proof of participation in the twenty-four seven sobriety
28 program ~~by the offender~~to receive a temporary restricted license. ~~If a court or the~~
29 ~~parole board finds that an offender has violated a condition of the twenty-four seven-~~
30 ~~sobriety program, the court or parole board may order the temporary restricted driver's~~
31 ~~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 7. 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. That individual refuses to submit to any of the following:

- (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
- (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or

1 combination thereof, in the individual's blood, breath, or urine, at the
2 direction of a law enforcement officer under section 39-20-01; or

3 (3) An onsite screening test, or tests, of the individual's breath for the purpose
4 of estimating the alcohol concentration in the individual's breath upon the
5 request of a law enforcement officer under section 39-20-14.

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

11 2. ~~Unless as otherwise provided in section 39-08-01.2, an~~An individual who operates a
12 motor vehicle on a highway or on public or private areas to which the public has a right
13 of access for vehicular use in this state who refuses to subject to a chemical test, or
14 tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an
15 offense under this section.

16 3. An individual violating this section or equivalent ordinance is guilty of a class B
17 misdemeanor for the first or second offense in a ~~five-year~~seven-year period, of a
18 class A misdemeanor for a third offense in a ~~five-year~~seven-year period, of a class ~~A-~~
19 misdemeanor for the fourth offense in a seven-year period, and of a class C felony for
20 a ~~fifth or subsequent offense in a seven-year period~~C felony for any fourth or
21 subsequent offense regardless of the length of time since the previous offense. The
22 minimum penalty for violating this section is as provided in subsection 45. The court
23 shall take judicial notice of the fact that an offense would be a subsequent offense if
24 indicated by the records of the director or may make a subsequent offense finding
25 based on other evidence.

26 ~~3.4.~~ Upon conviction of a second or subsequent offense within ~~five~~seven years under this
27 section or equivalent ordinance, the court ~~must~~may order the motor vehicle number
28 plates of all of the motor vehicles owned and operated by the offender at the time of
29 the offense to be impounded for the duration of the period of suspension or revocation
30 of the offender's driving privilege by the licensing authority. The impounded number
31 plates must be sent to the director who must retain them for the period of suspension

1 or revocation, subject to their disposition by the court. The court may make an
2 exception to this subsection, on an individual basis, to avoid undue hardship to an
3 individual who is completely dependent on the motor vehicle for the necessities of life,
4 including a family member of the convicted individual and a coowner of the motor
5 vehicle, ~~but not including~~ or if the offender is participating in the twenty-four seven
6 sobriety program.

7 4.5. A person convicted of violating this section, or an equivalent ordinance, must be
8 sentenced in accordance with this subsection. For purposes of this subsection, unless
9 the context otherwise requires, "drug court program" means a district court-supervised
10 treatment program approved by the supreme court which combines judicial
11 supervision with alcohol and drug testing and chemical addiction treatment in a
12 licensed treatment program. The supreme court may adopt rules, including rules of
13 procedure, for drug courts and the drug court program.

14 a. (1) For a first offense, the sentence must include both a fine of at least ~~two-~~
15 ~~hundred-fifty~~ five hundred dollars and an order for addiction evaluation by an
16 appropriate licensed addiction treatment program.

17 (2) In addition, for a first offense when the convicted person has an alcohol
18 concentration of at least sixteen one-hundredths of one percent by weight,
19 the offense is an aggravated first offense and the sentence must include a
20 fine of at least seven hundred fifty dollars and at least two days'
21 imprisonment.

22 b. For a second offense within ~~five~~ seven years, the sentence must include at least
23 ~~five~~ ten days' imprisonment ~~or placement in a minimum security facility,~~ of which
24 forty-eight hours must be served consecutively, ~~or thirty days' community service;~~
25 a fine of ~~at least one thousand~~ five hundred dollars; ~~and~~ an order for addiction
26 evaluation by an appropriate licensed addiction treatment program; and at least
27 twelve months' participation in the twenty-four seven sobriety program under
28 chapter 54-12 as a mandatory condition of probation.

29 c. For a third offense within ~~five~~ seven years, the sentence must include at least
30 ~~sixty~~ one hundred twenty days' imprisonment ~~or placement in a minimum security-~~
31 ~~facility, of which forty-eight hours must be served consecutively;~~ a fine of ~~one~~ at

1 least two thousand dollars; ~~and~~ an order for addiction evaluation by an
2 appropriate licensed addiction treatment program; at least one year's supervised
3 probation; and participation in the twenty-four seven sobriety program under
4 chapter 54-12 as a mandatory condition of probation.

5 d. For a fourth or subsequent offense ~~within seven years~~, the sentence must include
6 at least one hundred eighty days' year and one day's imprisonment ~~or placement~~
7 ~~in a minimum security facility, of which forty-eight hours must be served~~
8 ~~consecutively~~; a fine of ~~one~~ at least two thousand dollars; ~~and~~ an order for
9 addiction evaluation by an appropriate licensed treatment program; at least two
10 years' supervised probation; and participation in the twenty-four seven sobriety
11 program under chapter 54-12 as a mandatory condition of probation.

12 e. The ~~execution or~~ imposition of sentence under this section may not be
13 ~~suspended or~~ deferred under subsection ~~3 or~~ 4 of section 12.1-32-02 for an
14 offense subject to this section.

15 f. If the offense is subject to subdivision a or b, a municipal court or district court
16 may not suspend a sentence, but may convert each day of a term of
17 imprisonment to ten hours of community service for an offense subject to
18 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district
19 court may suspend a sentence, except for sixty days' imprisonment, under
20 subsection 3 of section 12.1-32-02 on the condition that the defendant first
21 undergo and complete an evaluation for alcohol and substance abuse treatment
22 and rehabilitation and upon completion of the twenty-four seven sobriety
23 program. If the offense is subject to subdivision d, the district court may suspend
24 a sentence, except for one year's imprisonment, under subsection 3 of section
25 12.1-32-02 on the condition that the defendant first undergo and complete an
26 evaluation for alcohol and substance abuse treatment and rehabilitation. If the
27 ~~offense is subject to subdivision c or d, the district court may suspend a~~
28 ~~sentence, except for ten days' imprisonment, under subsection 3 or 4 of section~~
29 ~~12.1-32-02 on the condition that the defendant first undergo and complete an~~
30 ~~evaluation for alcohol and substance abuse treatment and rehabilitation. If the~~
31 defendant is found to be in need of alcohol and substance abuse treatment and

1 rehabilitation, the district court may order the defendant placed under the
2 supervision and management of the department of corrections and rehabilitation
3 and is subject to the conditions of probation under section 12.1-32-07. The district
4 court ~~shall~~ may require the defendant to complete alcohol and substance abuse
5 treatment and rehabilitation under the direction of the drug court program as a
6 condition of probation in accordance with rules adopted by the supreme court. If
7 the district court finds that a defendant has failed to undergo an evaluation or
8 complete treatment or has violated any condition of probation, the district court
9 shall revoke the defendant's probation and shall sentence the defendant in
10 accordance with this subsection.

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

15 g.h. If the penalty mandated by this section includes imprisonment or placement upon
16 conviction of a violation of this section or equivalent ordinance, and if an
17 addiction evaluation has indicated that the defendant needs treatment, the court
18 may order the defendant to undergo treatment at an appropriate licensed
19 addiction treatment program under subdivision g of subsection 1 of section
20 12.1-32-02 and the time spent by the defendant in the treatment must be credited
21 as a portion of a sentence of imprisonment or placement under this section. A
22 court may not order the department of corrections and rehabilitation to be
23 responsible for the costs of treatment in a private treatment facility.

24 i. If the court sentences an individual to the legal and physical custody of the
25 department of corrections and rehabilitation, the department may place the
26 individual in an alcohol treatment program designated by the department. Upon
27 the individual's successful completion of the alcohol treatment program, the
28 department shall release the individual from imprisonment to serve the remainder
29 of the sentence of imprisonment on probation, which may include placement in
30 another facility or treatment program. If an individual is placed in another facility

or treatment program after release from imprisonment the remainder of the individual's sentence of imprisonment must be considered time spent in custody.

~~5.6.~~ As used in ~~subdivision b~~ subdivisions b and c 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 subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.

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.

8. 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 section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

SECTION 8. 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 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. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. 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.~~

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.

3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an

offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

SECTION 9. AMENDMENT. Section 39-08-01.3 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.3. Alcohol-related traffic offenses - ~~Ignition interlock devices and the seizure~~Seizure, forfeiture, and sale of motor vehicles.

A motor vehicle owned and operated by ~~a person~~an individual upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the ~~person~~individual is in violation of section 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent ordinance at least one other time within the ~~five~~seven years preceding the violation. ~~The court may also require that an ignition interlock device be installed in the person's vehicle for a period of time that the court deems appropriate.~~

SECTION 10. AMENDMENT. Section 39-08-01.4 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.4. Driving while under the influence of alcohol while being accompanied by a minor - Penalty.

It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle. If an individual has a previous conviction for a violation of section 39-08-01.4, a violation of this section is a class C felony.

SECTION 11. 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

1 drug or substance or combination of drugs or substances which renders an individual
2 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean
3 any test to determine the alcohol concentration or presence of other drugs, or
4 combination thereof, in the individual's blood, breath, or urine, approved by the
5 director of the state crime laboratory or the director's designee under this chapter.

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

14 3. The law enforcement officer shall ~~also~~ inform the individual charged that North Dakota
15 law requires the individual to take the test to determine whether the individual is under
16 the influence of alcohol or drugs; that refusal to take the test directed by the law
17 enforcement officer is a crime punishable in the same manner as driving under the
18 influence; and that refusal of the individual to submit to the test ~~determined appropriate~~
19 ~~will~~ directed by the law enforcement officer may result in a revocation for a minimum of
20 one hundred eighty days and up to ~~four~~three years of the individual's driving
21 privileges. The law enforcement officer shall determine which of the tests is to be
22 used.

23 4. When an individual under the age of eighteen years is taken into custody for violating
24 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt
25 to contact the individual's parent or legal guardian to explain the cause for the custody.
26 Neither the law enforcement officer's efforts to contact, nor any consultation with, a
27 parent or legal guardian may be permitted to interfere with the administration of
28 chemical testing requirements under this chapter. The law enforcement officer shall
29 mail a notice to the parent or legal guardian of the minor within ten days after the test
30 results are received or within ten days after the minor is taken into custody if the minor
31 refuses to submit to testing. The notice must contain a statement of the test performed

1 and the results of that test; or if the minor refuses to submit to the testing, a statement
2 notifying of that fact. The attempt to contact or the contacting or notification of a parent
3 or legal guardian is not a precondition to the admissibility of chemical test results or
4 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

5 **SECTION 12. AMENDMENT.** Section 39-20-01.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.**

- 8 1. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~if the driver of a vehicle is
9 involved in ~~an accident~~a crash resulting in the death of another ~~person~~individual, and
10 there is probable cause to believe that the driver is in violation of section 39-08-01 ~~or~~
11 ~~has committed a moving violation as defined in section 39-06.1-09, the driver must be~~
12 ~~compelled by~~ a ~~police~~law enforcement officer ~~shall request the driver~~ to submit to a
13 ~~chemical~~ test or tests of the driver's blood, breath, or urine to determine the alcohol
14 concentration or the presence of other drugs or substances, ~~or both~~.
- 15 2. ~~Notwithstanding section 39-20-01 or 39-20-04, when~~if the driver of a vehicle is
16 involved in ~~an accident~~a crash resulting in the serious bodily injury, as defined in
17 section 12.1-01-04, of another ~~person~~individual, and there is probable cause to believe
18 that the driver is in violation of section 39-08-01, a law enforcement officer ~~may~~
19 ~~compel~~shall request the driver to submit to a test or tests of the driver's blood, breath,
20 or urine to determine the alcohol concentration or the presence of other drugs or
21 substances, ~~or both~~. ~~The methods and techniques established by the director of the~~
22 ~~state crime laboratory must be followed in collecting and preserving a specimen or~~
23 ~~conducting a test~~.
- 24 3. ~~If the driver refuses to submit to a chemical test or tests of the driver's blood, breath,~~
25 ~~or urine and exigent circumstances are not present, the law enforcement officer shall~~
26 ~~request a search warrant to compel the driver to submit to a chemical test or tests of~~
27 ~~the driver's blood, breath, or urine to determine the alcohol concentration or the~~
28 ~~presence of other drugs or substances, or both~~.
- 29 4. ~~The approved methods of the director of the state crime laboratory or the director's~~
30 ~~designee must be followed in collecting and preserving a sample of the driver's blood,~~

breath, or urine and conducting a chemical test or tests to determine the alcohol concentration or the presence of other drugs or substances, or both.

SECTION 13. 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

1 director. The law enforcement agency shall issue to that individual a temporary
2 operator's permit as provided in this section, and shall sign and date the permit as
3 provided in subsection 1.

4 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
5 enforcement agency making the arrest may mail a temporary operator's permit to the
6 individual who submitted to the blood or urine test, whether or not the individual is a
7 resident of the area in which the law enforcement officer has jurisdiction. The third day
8 after the mailing of the temporary operator's permit is considered the date of issuance.
9 Actual notice of the opportunity for a hearing under this section is deemed to have
10 occurred seventy-two hours after the notice is mailed by regular mail to the address
11 submitted by the individual to the law enforcement officer. The temporary operator's
12 permit serves as the director's official notification to the individual of the director's
13 intent to revoke, suspend, or deny driving privileges in this state.

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

29 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
30 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
31 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 14. 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

1 person had refused to submit to the test or tests under section 39-20-01 or 39-20-14,
2 shall revoke that person's license or permit to drive and any nonresident operating
3 privilege for the appropriate period under this section, or if the person is a resident
4 without a license or a permit to operate a motor vehicle in this state, the director shall
5 deny to the person the issuance of a license or permit for the appropriate period under
6 this section after the date of the alleged violation, subject to the opportunity for a
7 prerevocation hearing and postrevocation review as provided in this chapter. In the
8 revocation of the person's operator's license the director shall give credit for time in
9 which the person was without an operator's license after the day of the person's
10 refusal to submit to the test except that the director may not give credit for time in
11 which the person retained driving privileges through a temporary operator's permit
12 issued under this section or section 39-20-03.2. The period of revocation or denial of
13 issuance of a license or permit under this section is:

- 14 a. One ~~year~~hundred eighty days if the person's driving record shows that within the
15 ~~five~~seven years preceding the most recent violation of this section, the person's
16 operator's license has not previously been suspended, revoked, or issuance
17 denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 18 b. ~~Three~~Two years if the person's driving record shows that within the ~~five~~seven
19 years preceding the most recent violation of this section, the person's operator's
20 license has been once previously suspended, revoked, or issuance denied for a
21 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 22 c. ~~Four~~Three years if the person's driving record shows that within the ~~five~~seven
23 years preceding the most recent violation of this section, the person's operator's
24 license has at least twice previously been suspended, revoked, or issuance
25 denied under this chapter, or for a violation of section 39-08-01 or equivalent
26 ordinance, or any combination of the same, and the suspensions, revocations, or
27 denials resulted from at least two separate arrests.
- 28 2. A person's driving privileges are not subject to revocation under subdivision a of
29 subsection 1 if all of the following criteria are met:
- 30 a. An administrative hearing is not held under section 39-20-05;

- 1 b. The person mails an affidavit to the director within twenty-five days after the
2 temporary operator's permit is issued. The affidavit must state that the person:
3 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent
4 ordinance within twenty-five days after the temporary operator's permit is
5 issued;
6 (2) Agrees that the person's driving privileges must be suspended as provided
7 under section 39-06.1-10;
8 (3) Acknowledges the right to a section 39-20-05 administrative hearing and
9 section 39-20-06 judicial review and voluntarily and knowingly waives these
10 rights; and
11 (4) Agrees that the person's driving privileges must be revoked as provided
12 under this section without an administrative hearing or judicial review, if the
13 person does not plead guilty within twenty-five days after the temporary
14 operator's permit is issued, or the court does not accept the guilty plea, or
15 the guilty plea is withdrawn;

16 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance
17 within twenty-five days after the temporary operator's permit is issued;

18 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
19 the director within twenty-five days after the temporary operator's permit is
20 issued; and

21 e. A copy of the final order or judgment of conviction evidencing the acceptance of
22 the person's guilty plea is received by the director prior to the return or
23 reinstatement of the person's driving privileges; and.

24 ~~f. The person has never been convicted under section 39-08-01 or equivalent~~
25 ~~ordinance.~~

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

1 | **SECTION 15. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is
2 | amended and reenacted as follows:

3 | **39-20-04.1. Administrative sanction for driving or being in physical control of a**
4 | **vehicle while having certain alcohol concentration.**

5 | 1. After the receipt of the certified report of a law enforcement officer and if no written
6 | request for hearing has been received from the arrested person under section
7 | 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
8 | from the hearing confirm that the law enforcement officer had reasonable grounds to
9 | arrest the person and test results show that the arrested person was driving or in
10 | physical control of a vehicle while having an alcohol concentration of at least eight
11 | one-hundredths of one percent by weight or, with respect to a person under
12 | twenty-one years of age, an alcohol concentration of at least two one-hundredths of
13 | one percent by weight at the time of the performance of a test within two hours after
14 | driving or being in physical control of a motor vehicle, the director shall suspend the
15 | person's driving privileges as follows:

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

1 person mails or communicates by other means authorized by the director a request for
2 the hearing to the director within ten days after the date of issuance of the temporary
3 operator's permit. Upon completion of the hearing, an individual may elect to
4 participate in the twenty-four seven sobriety program under chapter 54-12. The
5 hearing must be held within thirty days after the date of issuance of the temporary
6 operator's permit. If no hearing is requested within the time limits in this section, and
7 no affidavit is submitted within the time limits under subsection 2 of section 39-20-04,
8 and if the individual has not provided the director with written notice of election to
9 participate in the twenty-four seven sobriety program under chapter 54-12, the
10 expiration of the temporary operator's permit serves as the director's official
11 notification to the person of the revocation, suspension, or denial of driving privileges
12 in this state.

- 13 2. If the issue to be determined by the hearing concerns license suspension for operating
14 a motor vehicle while having an alcohol concentration of at least eight one-hundredths
15 of one percent by weight or, with respect to an individual under twenty-one years of
16 age, an alcohol concentration of at least two one-hundredths of one percent by weight,
17 the hearing must be before a hearing officer assigned by the director and at a time and
18 place designated by the director. The hearing must be recorded and its scope may
19 cover only the issues of whether the arresting officer had reasonable grounds to
20 believe the individual had been driving or was in actual physical control of a vehicle in
21 violation of section 39-08-01 or equivalent ordinance or, with respect to an individual
22 under twenty-one years of age, the individual had been driving or was in actual
23 physical control of a vehicle while having an alcohol concentration of at least two
24 one-hundredths of one percent by weight; whether the individual was placed under
25 arrest, unless the individual was under twenty-one years of age and the alcohol
26 concentration was less than eight one-hundredths of one percent by weight, then
27 arrest is not required and is not an issue under any provision of this chapter; whether
28 the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if
29 applicable, section 39-20-02; and whether the test results show the individual had an
30 alcohol concentration of at least eight one-hundredths of one percent by weight or,
31 with respect to an individual under twenty-one years of age, an alcohol concentration

1 of at least two one-hundredths of one percent by weight. For purposes of this section,
2 a copy of a certified copy of an analytical report of a blood or urine sample from the
3 director of the state crime laboratory or the director's designee, or electronically posted
4 by the director of the state crime laboratory or the director's designee on the crime
5 laboratory information management system and certified by a law enforcement officer
6 or individual who has authorized access to the crime laboratory management system
7 through the criminal justice data information sharing system or a certified copy of the
8 checklist and test records from a certified breath test operator, and a copy of a certified
9 copy of a certificate of the director of the state crime laboratory designating the
10 director's designees, establish prima facie the alcohol concentration or the presence of
11 drugs, or a combination thereof, shown therein. Whether the individual was informed
12 that the privilege to drive might be suspended based on the results of the test is not an
13 issue.

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

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

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

7 a. Any copy of a certified copy of an analytical report of a blood or urine sample
8 received by the director from the director of the state crime laboratory or the
9 director's designee or electronically posted by the director of the state crime
10 laboratory or the director's designee on the crime laboratory information
11 management system and certified by, and received from, a law enforcement
12 officer or an individual who has authorized access to the crime laboratory
13 management system through the criminal justice data information sharing
14 system, or a certified copy of the checklist and test records received by the
15 director from a certified breath test operator; ~~and~~

16 b. Any copy of a certified copy of a certificate of the director of the state crime
17 laboratory or the director's designee relating to approved methods, devices,
18 operators, materials, and checklists used for testing for alcohol concentration or
19 the presence of drugs received by the director from the director of the state crime
20 laboratory or the director's designee, or that have been electronically posted with
21 the state crime laboratory division of the attorney general at the attorney general
22 website; and

23 c. Any copy of a certified copy of a certificate of the director of the state crime
24 laboratory designating the director's designees.

25 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
26 officer's findings of fact, conclusions of law, and decision based on the findings and
27 conclusions and shall immediately deliver to the person a copy of the decision. If the
28 hearing officer does not find in favor of the person, the copy of the decision serves as
29 the director's official notification to the person of the revocation, suspension, or denial
30 of driving privileges in this state. If the hearing officer finds, based on a preponderance
31 of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or

1 that the person had an alcohol concentration of at least eight one-hundredths of one
2 percent by weight or, with respect to a person under twenty-one years of age, an
3 alcohol concentration of at least two one-hundredths of one percent by weight, the
4 hearing officer shall immediately take possession of the person's temporary operator's
5 permit issued under this chapter. If the hearing officer does not find against the
6 person, the hearing officer shall sign, date, and mark on the person's permit an
7 extension of driving privileges for the next twenty days and shall return the permit to
8 the person. The hearing officer shall report the findings, conclusions, and decisions to
9 the director within ten days of the conclusion of the hearing. If the hearing officer has
10 determined in favor of the person, the director shall return the person's operator's
11 license by regular mail to the address on file with the director under section 39-06-20.

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

24 **SECTION 17. AMENDMENT.** Subsection 6 of section 39-20-07 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 6. The director of the state crime laboratory or the director's designee may appoint, train,
27 certify, and supervise field inspectors of breath testing equipment and its operation,
28 and the inspectors shall report the findings of any inspection to the director of the state
29 crime laboratory or the director's designee for appropriate action. Upon approval of the
30 methods or devices, or both, required to perform the tests and the individuals qualified
31 to administer them, the director of the state crime laboratory or the director's designee

1 shall prepare, certify, and electronically post a written record of the approval with the
2 state crime laboratory division of the attorney general at the attorney general website,
3 and shall include in the record:

- 4 a. An annual register of the specific testing devices currently approved, including
5 serial number, location, and the date and results of last inspection.
6 b. An annual register of currently qualified and certified operators of the devices,
7 stating the date of certification and its expiration.
8 c. The operational checklist and forms prescribing the methods currently approved
9 by the director of the state crime laboratory or the director's designee in using the
10 devices during the administration of the tests.

11 d. The certificate of the director of the state crime laboratory designating the
12 director's designees.

13 e. The certified records electronically posted under this section may be
14 supplemented when the director of the state crime laboratory or the director's
15 designee determines it to be necessary, and any certified supplemental records
16 have the same force and effect as the records that are supplemented.

17 e.f. The state crime laboratory shall make the certified records required by this
18 section available for download in a printable format on the attorney general
19 website.

20 **SECTION 18. AMENDMENT.** Subsection 9 of section 39-20-07 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to
23 be indigent by the court in the criminal proceeding at issue may subpoena, without
24 cost to the defendant, the individual who conducted the chemical analysis referred to
25 in this section to testify at the trial on the issue of the amount of alcohol concentration
26 or presence of other drugs, or a combination thereof in the defendant's blood, breath,
27 or urine at the time of the alleged act. If the ~~state toxicologist, the~~ director of the state
28 crime laboratory, ~~or any employee of either,~~ or designee is subpoenaed to testify by a
29 defendant who is not indigent and the defendant does not call the witness to establish
30 relevant evidence, the court shall order the defendant to pay costs to the witness as

1 provided in section 31-01-16. ~~An indigent defendant may also subpoena the individual~~
2 ~~who withdrew the defendant's blood by following the same procedure.~~

3 **SECTION 19. AMENDMENT.** Subsection 10 of section 39-20-07 of the North Dakota
4 Century Code is amended and reenacted as follows:

- 5 10. ~~A signed statement from the individual medically qualified to draw the blood sample for~~
6 ~~testing as set forth in subsection 5 is prima facie evidence that the blood sample was~~
7 ~~properly drawn and no further foundation for the admission of this evidence may be~~
8 ~~required.~~ A law enforcement officer who has witnessed an individual who is medically
9 qualified to draw the blood sample for testing may sign a verified statement that the
10 law enforcement officer witnessed the individual draw the blood sample and the
11 individual followed the approved methods of the state toxicologist. Further foundation
12 is not required to establish that the blood sample was drawn according to the
13 approved method of the state toxicologist.

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

16 **39-20-14. Screening tests.**

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

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

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

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

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

24 **SECTION 21.** A new section to chapter 39-20 of the North Dakota Century Code is created
25 and enacted as follows:

26 **Restricted license upon twenty-four seven sobriety program participation.**

27 Any driver suspended under this chapter may elect to participate in the twenty-four seven
28 sobriety program under chapter 54-12. The director may issue a temporary restricted license
29 that takes effect after fifteen days of the suspension have been served provided that the driver
30 is not subject to any unrelated suspension. Notwithstanding any other provision of law, an
31 individual may not receive a temporary restricted operator's license until after fourteen days

1 after the administrative hearing on the offense under this chapter has been waived or held, or
2 after fourteen days of the final appeal, whichever is longer.

3 **SECTION 22. AMENDMENT.** Section 40-05-06 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **40-05-06. City fines and penalties limited.**

- 6 1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any
7 ordinance, resolution, or regulation of a city may not exceed one thousand five
8 hundred dollars, and the imprisonment may not exceed thirty days for one offense.
- 9 2. For every violation of a city ordinance regulating the operation or equipment of motor
10 vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a
11 fee may be established, by ordinance, which may not exceed the limits, for equivalent
12 categories of violations, set forth in section 39-06.1-06.
- 13 3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403
14 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism,
15 criminal mischief, or malicious mischief, the penalty may not exceed a fine of one
16 thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

17 This section does not prohibit the use of the sentencing alternatives, other than a fine or
18 imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this
19 section limit the use of deferred or suspended sentences under subsections 3 and 4 of section
20 12.1-32-02.

21 **SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE**

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

28 **SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING**

29 **PREVENTION PROGRAM.** The department of human services shall facilitate the continuation
30 of the parents listen, educate, ask, discuss program, a multiagency collaboration among the
31 department of human services, department of transportation, North Dakota state university

1 extension service, and North Dakota university system which has the goal of reducing the
2 consumption of alcohol by minors by providing developmentally appropriate strategies and
3 evidence-based underage drinking prevention services to parents and professionals throughout
4 the state. Through this program the department of human services shall collaborate with the
5 governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

6 **SECTION 25. APPROPRIATION.** There is appropriated out of any moneys in the general
7 fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the
8 sum as may be necessary, to the department of human services for the purpose of funding the
9 underage drinking prevention program provided for under section 24 of this Act, for the
10 biennium beginning July 1, 2013, and ending June 30, 2015.

11 **SECTION 26. APPROPRIATION.** There is appropriated out of any moneys in the general
12 fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the
13 sum as may be necessary, to the attorney general for the purpose of purchasing secure
14 continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program,
15 for the biennium beginning July 1, 2013, and ending June 30, 2015.