

Introduced by

Senators Armstrong, Casper, Hogue

Representatives Klemin, Maragos, Schatz

1 A BILL for an Act to amend and reenact subsection 5 of section 39-08-01 and section
2 39-08-01.4 of the North Dakota Century Code, relating to sentencing for driving while under the
3 influence of alcohol or drugs.

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

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

7 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 five
15 hundred dollars and an order for addiction evaluation by an appropriate
16 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 seven years, the sentence must include at least ten
23 days' imprisonment, of which forty-eight hours must be served consecutively; a
24 fine of one thousand five hundred dollars; an order for addiction evaluation by an

1 appropriate licensed addiction treatment program; and at least twelve months'
2 participation in the twenty-four seven sobriety program under chapter 54-12 as a
3 mandatory condition of probation.

4 c. For a third offense within seven years, the sentence must include at least one
5 hundred twenty days' imprisonment; a fine of at least two thousand dollars; an
6 order for addiction evaluation by an appropriate licensed addiction treatment
7 program; at least one year's supervised probation; and participation in the twenty-
8 four seven sobriety program under chapter 54-12 as a mandatory condition of
9 probation.

10 d. For a fourth or subsequent offense, the sentence must include at least one year
11 and one day's imprisonment; a fine of at least two thousand dollars; an order for
12 addiction evaluation by an appropriate licensed treatment program; at least two
13 years' supervised probation; and participation in the twenty-four seven sobriety
14 program under chapter 54-12 as a mandatory condition of probation.

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

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

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

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

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

22 i. If the court sentences an individual to the legal and physical custody of the
23 department of corrections and rehabilitation, the department may place the
24 individual in an alcohol treatment program designated by the department. Upon
25 the individual's successful completion of the alcohol treatment program, the
26 department shall release the individual from imprisonment to begin the
27 court-ordered period of probation. If there is not any court-ordered period of
28 probation, the court shall order the individual to serve the remainder of the
29 sentence of imprisonment on supervised probation, which and the terms and
30 conditions must include participation in the twenty-four seven sobriety program
31 and any terms and conditions of probation previously imposed by the court.

1 Probation under this subsection may include placement in another facility or
2 treatment program. If an individual is placed in another facility or treatment
3 program after release from imprisonment, the remainder of the individual's
4 sentence of imprisonment must be considered time spent in custody. Individuals
5 incarcerated under this section subsequent to a second probation revocation are
6 not eligible for release from imprisonment upon the successful completion of
7 treatment.

8 **SECTION 2. AMENDMENT.** Section 39-08-01.4 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **39-08-01.4. Driving while under the influence of alcohol while being accompanied by**
11 **a minor - Penalty.**

12 It is a class A misdemeanor for an individual who is at least twenty-one years of age to
13 violate section 39-08-01 if the violation occurred while a minor was accompanying the individual
14 in a motor vehicle. If an individual has a previous conviction for a violation of section
15 39-08-01.4, a violation of this section is a class C felony. An individual convicted under this
16 section must be sentenced in accordance with subsection 5 of section 39-08-01.