

Sixty-third
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2240

Introduced by

Senators Mathern, Anderson

Representatives Gruchalla, Hunskor, N. Johnson

1 A BILL for an Act to create and enact a new subsection to section 39-06.1-10 and a new section
2 to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety
3 program; to amend and reenact subsection 7 of section 39-06.1-10, sections 39-06.1-11,
4 39-08-01, 39-08-01.2, 39-20-01, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsection 6
5 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to driving
6 while under the influence; to provide for a legislative management study; to provide a penalty;
7 and to provide an appropriation.

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

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

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

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

3 e. Two years if the operator's record shows the person has at least twice violated
4 section 39-08-01 or equivalent ordinance within the five~~seven~~ years preceding
5 the last violation.

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

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

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

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

17 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

18 1. Except as provided under subsection 2, if the director has suspended a license under
19 section 39-06.1-10 or has extended a suspension or revocation under section
20 39-06-43, upon receiving written application from the offender affected, the director
21 may for good cause issue a temporary restricted operator's license valid for the
22 remainder of the suspension period after seven days of the suspension period have
23 passed.

24 2. If the director has suspended a license under chapter 39-20, or after a violation of
25 section 39-08-01 or equivalent ordinance, upon written application of the offender the
26 director may issue ~~for good cause~~ a temporary restricted license that takes effect after
27 thirty days of the suspension have been served after a first offense under section
28 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven
29 sobriety program under chapter 54-12, the director may issue a temporary restricted
30 license that takes effect after fifteen days of the suspension have been served. The
31 director may not issue a temporary restricted license to any offender whose operator's

1 license has been revoked under section 39-20-04 or suspended upon a second or
2 subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary
3 restricted license may be issued in accordance with subsection 5 if the offender is
4 participating in the twenty-four seven sobriety program under chapter 54-12 or for
5 good cause if the offender has not committed an offense for a period of two years
6 before the date of the filing of a written application that must be accompanied by a
7 report from an appropriate licensed addiction treatment program or if the offender is
8 participating in the drug court program and has not committed an offense for a period
9 of three hundred sixty-five days before the date of the filing of a written application that
10 must be accompanied by a recommendation from the district court. The director may
11 conduct a hearing for the purposes of obtaining information, reports, and evaluations
12 from courts, law enforcement, and citizens to determine the offender's conduct and
13 driving behavior during the prerequisite period of time. The director may also require
14 that an ignition interlock device be installed in the offender's vehicle.

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

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

24 5. If an offender has been charged with, or convicted of, a second or subsequent
25 violation of section 39-08-01 or equivalent ordinance, or if the offender's license is
26 subject to suspension under chapter 39-20 and the offender's driver's license is not
27 subject to an unrelated suspension or revocation, the director shall issue a temporary
28 restricted driver's ~~permit~~license to the offender ~~only for the purpose of~~
29 ~~participation upon the restriction the offender participate~~ in the twenty-four seven
30 sobriety program ~~upon~~under chapter 54-12. The offender shall submit an application
31 to the director for a temporary restricted license along with submission of proof of

1 financial responsibility and proof of participation in the twenty-four seven sobriety
2 program by the offender to receive a temporary restricted license. If a court or the
3 parole board finds that an offender has violated a condition of the twenty four seven-
4 sobriety program, the court or parole board may order the temporary restricted driver's-
5 permit be revoked and take possession of the temporary restricted driver's permit. The
6 court or the parole board shall send a copy of the order to the director who shall record
7 the revocation of the temporary restricted driver's permit. Revocation of a temporary
8 restricted driver's permit for violation of a condition of the twenty four seven sobriety-
9 program does not preclude the offender's eligibility for a temporary restricted driver's
10 license under any other provisions of this section.

11 **SECTION 4. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or**
14 **substances not to operate vehicle - Penalty.**

- 15 1. A person may not drive or be in actual physical control of any vehicle upon a highway
16 or upon public or private areas to which the public has a right of access for vehicular
17 use in this state if any of the following apply:
- 18 a. That person has an alcohol concentration of at least eight one-hundredths of one
19 percent by weight at the time of the performance of a chemical test within two
20 hours after the driving or being in actual physical control of a vehicle.
 - 21 b. That person is under the influence of intoxicating liquor.
 - 22 c. That person is under the influence of any drug or substance or combination of
23 drugs or substances to a degree which renders that person incapable of safely
24 driving.
 - 25 d. That person is under the combined influence of alcohol and any other drugs or
26 substances to a degree which renders that person incapable of safely driving.

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

- 1 2. Unless as otherwise provided in section 39-08-01.2, an individual violating this section
2 or equivalent ordinance is guilty of a class B misdemeanor for the first ~~or second~~
3 offense ~~in a five-year period~~, of a class A misdemeanor for a second or third offense in
4 a ~~five-year~~seven-year period, of a class A misdemeanor for the ~~fourth~~ offense in a
5 ~~seven-year period~~, and of a class C felony for a ~~fifth or subsequent offense in a~~
6 ~~seven-year period~~C felony for any fourth or subsequent offense regardless of the
7 length of time since the previous offense. The minimum penalty for violating this
8 section is as provided in subsection 4. The court shall take judicial notice of the fact
9 that an offense would be a subsequent offense if indicated by the records of the
10 director or may make a subsequent offense finding based on other evidence.
- 11 3. Upon conviction of a second or subsequent offense within ~~five~~seven years under this
12 section or equivalent ordinance, the court ~~must~~may order the motor vehicle number
13 plates of all of the motor vehicles owned and operated by the offender at the time of
14 the offense to be impounded for the duration of the period of suspension or revocation
15 of the offender's driving privilege by the licensing authority. The impounded number
16 plates must be sent to the director who must retain them for the period of suspension
17 or revocation, subject to their disposition by the court. The court may make an
18 exception to this subsection, on an individual basis, to avoid undue hardship to an
19 individual who is completely dependent on the motor vehicle for the necessities of life,
20 including a family member of the convicted individual and a coowner of the motor
21 vehicle, ~~but not including~~or if the offender is participating in the twenty-four seven
22 sobriety program.
- 23 4. A person convicted of violating this section, or an equivalent ordinance, must be
24 sentenced in accordance with this subsection. For purposes of this subsection, unless
25 the context otherwise requires, "drug court program" means a district court-supervised
26 treatment program approved by the supreme court which combines judicial
27 supervision with alcohol and drug testing and chemical addiction treatment in a
28 licensed treatment program. The supreme court may adopt rules, including rules of
29 procedure, for drug courts and the drug court program.
- 30 a. For a first offense, the sentence must include both a fine of at least ~~two hundred~~
31 fifty five hundred dollars and an order for addiction evaluation by an appropriate

1 licensed addiction treatment program. If the convicted person has an alcohol
2 concentration of at least eighteen one-hundredths of one percent by weight at the
3 time of the performance of a chemical test within two hours after the driving or
4 being in actual physical control of a vehicle, the sentence must include at least
5 two days' imprisonment or twenty hours of community service.

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

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

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

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

30 f. If the offense is subject to subdivision a or b, a municipal court or district court
31 may not suspend a sentence. If the offense is subject to subdivision c, the district

1 court may suspend a sentence, except for one hundred twenty days'
2 imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the
3 defendant first undergo and complete an evaluation for alcohol and substance
4 abuse treatment and rehabilitation. If the offense is subject to subdivision d, the
5 district court may suspend a sentence, except for one year's imprisonment, under
6 subsection 3 of section 12.1-32-02 on the condition that the defendant first
7 undergo and complete an evaluation for alcohol and substance abuse treatment
8 and rehabilitation. If the offense is subject to subdivision c or d, the district court
9 may suspend a sentence, except for ten days' imprisonment, under subsection 3
10 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and
11 complete an evaluation for alcohol and substance abuse treatment and
12 rehabilitation. If the defendant is found to be in need of alcohol and substance
13 abuse treatment and rehabilitation, the district court may order the defendant
14 placed under the supervision and management of the department of corrections
15 and rehabilitation and is subject to the conditions of probation under section
16 12.1-32-07. The district court shall require the defendant to complete alcohol and
17 substance abuse treatment and rehabilitation under the direction of the drug
18 court program as a condition of probation in accordance with rules adopted by
19 the supreme court. If the district court finds that a defendant has failed to undergo
20 an evaluation or complete treatment or has violated any condition of probation,
21 the district court shall revoke the defendant's probation and shall sentence the
22 defendant in accordance with this subsection.

23 f.g. For purposes of this section, conviction of an offense under a law or ordinance of
24 another state which is equivalent to this section must be considered a prior
25 offense if such offense was committed within the time limitations specified in this
26 subsectionsection.

27 g.h. If the penalty mandated by this section includes imprisonment or placement upon
28 conviction of a violation of this section or equivalent ordinance, and if an
29 addiction evaluation has indicated that the defendant needs treatment, the court
30 may order the defendant to undergo treatment at an appropriate licensed
31 addiction treatment program and the time spent by the defendant in the treatment

- 1 2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in
2 part on the evidence of the individual's operation of a motor vehicle while under the
3 influence of alcohol or drugs, and the violation caused serious bodily injury, as defined
4 in section 12.1-01-04, to another individual, that individual is guilty of a class A
5 misdemeanor and the sentence must include at least ninety days' imprisonment if the
6 individual was an adult at the time of the offense.
- 7 3. If an individual is convicted of a second or subsequent offense within seven years of
8 violating section 39-08-01, or section 39-08-03 based in part on the evidence of the
9 individual's operation of a motor vehicle while under the influence of alcohol or drugs
10 and the violation caused serious bodily injury, as defined in section 12.1-01-04, to
11 another individual, that individual is guilty of a class C felony and the sentence must
12 include at least one year and one day's imprisonment if the individual was at least
13 eighteen years of age at the time of the offense.
- 14 4. The imposition of sentence may not be deferred under subsection 4 of section
15 12.1-32-02 for an offense subject to this section.
- 16 5. ~~The sentence under this section may not be suspended unless the court finds that~~
17 ~~manifest injustice would result from imposition of the sentence. The court shall impose~~
18 not less than one year of supervised probation and shall require participation in the
19 twenty-four seven sobriety program for at least twelve months as a mandatory
20 condition of probation. Before a sentence under this section applies, a defendant must
21 be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict,
22 the verdict form must indicate that the jury found the elements that create the
23 minimum sentence.

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

26 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

- 27 1. Any individual who operates a motor vehicle on a highway or on public or private
28 areas to which the public has a right of access for vehicular use in this state is deemed
29 to have given consent, ~~and shall consent~~, subject to the provisions of this chapter, to a
30 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the
31 alcohol concentration or presence of other drugs, or combination thereof, in the

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

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

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

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

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

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

8 **39-20-03.1. Action following test result for a resident operator.**

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

- 15 1. The law enforcement officer shall immediately issue to that person a temporary
16 operator's permit if the person then has valid operating privileges, extending driving
17 privileges for the next twenty-five days, or until earlier terminated by the decision of a
18 hearing officer under section 39-20-05. The law enforcement officer shall sign and
19 note the date on the temporary operator's permit. The temporary operator's permit
20 serves as the director's official notification to the person of the director's intent to
21 revoke, suspend, or deny driving privileges in this state.
- 22 2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by
23 drawing blood as provided in section 39-20-02 and the individual tested is not a
24 resident of an area in which the law enforcement officer has jurisdiction, the law
25 enforcement officer shall, on receiving the analysis of the urine or blood from the
26 director of the state crime laboratory or the director's designee and if the analysis
27 shows that individual had an alcohol concentration of at least eight one-hundredths of
28 one percent by weight or, with respect to an individual under twenty-one years of age,
29 an alcohol concentration of at least two one-hundredths of one percent by weight,
30 either proceed in accordance with subsection 1 during that individual's reappearance
31 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law

1 enforcement agency having jurisdiction where the individual lives. On that notification,
2 that law enforcement agency shall, within twenty-four hours, forward a copy of the
3 temporary operator's permit to the law enforcement agency making the arrest or to the
4 director. The law enforcement agency shall issue to that individual a temporary
5 operator's permit as provided in this section, and shall sign and date the permit as
6 provided in subsection 1.

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

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

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

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

11 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
12 **testing.**

13 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may
14 be given, but the law enforcement officer shall immediately take possession of the
15 person's operator's license if it is then available and shall immediately issue to that
16 person a temporary operator's permit, if the person then has valid operating privileges,
17 extending driving privileges for the next twenty-five days or until earlier terminated by a
18 decision of a hearing officer under section 39-20-05. The law enforcement officer shall
19 sign and note the date on the temporary operator's permit. The temporary operator's
20 permit serves as the director's official notification to the person of the director's intent
21 to revoke driving privileges in this state and of the hearing procedures under this
22 chapter. The director, upon the receipt of that person's operator's license and a
23 certified written report of the law enforcement officer in the form required by the
24 director, forwarded by the officer within five days after issuing the temporary operator's
25 permit, showing that the officer had reasonable grounds to believe the person had
26 been driving or was in actual physical control of a motor vehicle while in violation of
27 section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had
28 reason to believe that the person committed a moving traffic violation or was involved
29 in a traffic accident as a driver, and in conjunction with the violation or accident the
30 officer has, through the officer's observations, formulated an opinion that the person's
31 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 9. 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

1 chapter with the last violation or suspension for an alcohol concentration under
2 eighteen one-hundredths of one percent by weight.

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

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

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

26 **SECTION 10. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **39-20-05. Administrative hearing on request - Election to participate in the**
29 **twenty-four seven sobriety program.**

30 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
31 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
3 ~~from~~electronically posted by the director of the state crime laboratory or the director's
4 designee on the crime laboratory information management system and certified by a
5 law enforcement officer or individual who has authorized access to the crime
6 laboratory management system through the criminal justice data information sharing
7 system or a certified copy of the checklist and test records from a certified breath test
8 operator and a copy of a certified copy of a certificate of the director of the state crime
9 laboratory designating the director's designee, establish prima facie the alcohol
10 concentration or the presence of drugs, or a combination thereof, shown therein.

11 Whether the individual was informed that the privilege to drive might be suspended
12 based on the results of the test is not an issue.

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

- 1 4. At a hearing under this section, the regularly kept records of the director and state
2 crime laboratory may be introduced. Those records establish prima facie their contents
3 without further foundation. For purposes of this chapter, the following are deemed
4 regularly kept records of the director and state crime laboratory:
- 5 a. Any copy of a certified copy of an analytical report of a blood or urine sample
6 electronically posted by the director of the state crime laboratory or the director's
7 designee on the crime laboratory information management system which is
8 received by the director from ~~the director of the state crime laboratory or the~~
9 ~~director's designee~~ or a law enforcement officer or an individual who has
10 authorized access to the crime laboratory management system through the
11 criminal justice data information sharing system or a certified copy of the
12 checklist and test records received by the director from a certified breath test
13 operator; ~~and~~
- 14 b. Any copy of a certified copy of a certificate of the director of the state crime
15 laboratory or the director's designee relating to approved methods, devices,
16 operators, materials, and checklists used for testing for alcohol concentration or
17 the presence of drugs received by the director from the director of the state crime
18 laboratory or the director's designee, or that have been electronically posted with
19 the state crime laboratory division of the attorney general at the attorney general
20 website; and
- 21 c. Any copy of a certified copy of a certificate of the director of the state crime
22 laboratory designating the director's designees.
- 23 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
24 officer's findings of fact, conclusions of law, and decision based on the findings and
25 conclusions and shall immediately deliver to the person a copy of the decision. If the
26 hearing officer does not find in favor of the person, the copy of the decision serves as
27 the director's official notification to the person of the revocation, suspension, or denial
28 of driving privileges in this state. If the hearing officer finds, based on a preponderance
29 of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or
30 that the person had an alcohol concentration of at least eight one-hundredths of one
31 percent by weight or, with respect to a person under twenty-one years of age, an

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

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

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

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

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

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

21 **39-20-14. Screening tests.**

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

1 individual's case is not first notified of the proposal to make the requirement, or objects
2 to the test or tests on the ground that such would be prejudicial to the proper care or
3 treatment of the patient.

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

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

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

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

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

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

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

6 **SECTION 14. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE**
7 **FOR DRIVING UNDER THE INFLUENCE.** During the 2013-14 interim, the legislative

8 management shall consider studying the administrative procedure for driving under the
9 influence of alcohol and drugs. The study must include a review of the use of ignition interlock
10 devices and of the effect of an individual refusing to submit to chemical testing. The legislative
11 management shall report its findings and recommendations, together with any legislation
12 required to implement the recommendations, to the sixty-fourth legislative assembly.

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