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1-1-2013

## A New Day for Driving Under the Influence Prosecution: H.B. 1302—North Dakota's New DUI Law

Aaron Birst

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### Recommended Citation

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A NEW DAY FOR DRIVING UNDER THE INFLUENCE  
PROSECUTION: H.B. 1302 — NORTH DAKOTA’S NEW DUI  
LAW

AARON BIRST\*

ABSTRACT

The introduction of the automobile has dramatically transformed society in ways that could not have been imagined only a few generations ago. This technological advancement has benefited society tremendously, but it has also brought unimaginable consequences when misused. This article will focus on the efforts of the Sixty-Third North Dakota Legislative Assembly’s action to create public policy that protects society from alcohol impaired drivers.

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## I. INTRODUCTION

On July 6, 2012, Aaron and Allison Deutscher, along with their eighteen-month-old daughter, Brielle, and a child on the way, were heading to Bismarck, North Dakota to attend a family reunion. Unfortunately, they never got there. The young family was killed along with Wyatt Klein of Jamestown, who was headed the wrong way down the interstate.<sup>1</sup> At the time of the crash, Wyatt Klein's alcohol concentration was 0.25 percent, more than three times the legal limit of 0.08 percent for driving.<sup>2</sup> According to the highway patrol's report, Wyatt arrived at a local bar around earlier that afternoon and consumed two beers before continuing on to another bar.<sup>3</sup> At the second bar, Wyatt consumed five to six more beers and three shots of tequila—all within a two and a half hour time period.<sup>4</sup> Prior to leaving the second bar, Wyatt purchased two additional unopened beers that he took with him. The crash happened approximately forty-five minutes to an hour later.<sup>5</sup>

On July 7, 2012, Juan Ruiz took his five and nine year old sons Alaries and Cyris along with their friend to Lake Metigoshe.<sup>6</sup> The kids spent the day with their father and friend jet skiing and enjoying the water. After the kids played some electronic games in their tent, it was time for bed. That would be the last time Alaries and Cyris would be awake. At one o'clock on the morning of July 8, 2012, Juan Acosta lost control of his 2006 Ford F-250 pickup as he was driving through the campground, and as a result, ran over the tent where the Ruiz's and their friend were sleeping.<sup>7</sup> At the time Acosta was arrested, his blood alcohol content was twice the legal limit.<sup>8</sup>

In the span of two short days, seven lives had been extinguished forever. But the hurt was not limited to the seven lives. Families, friends, first responders and thousands more are left wondering how could this

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1. Megan Card, *West Fargo family of three, other driver killed in crash near Jamestown*, INFORUM, July 7, 2012, available at <http://www.inforum.com/event/article/id/366611/>.

2. Mike Nowatzki, *Report: Drivers tried to avoid each in final moments*, INFORUM, July 26, 2012, available at [https://secure\\_forumcomm.com/?publisher\\_ID=1&article\\_id=368801](https://secure_forumcomm.com/?publisher_ID=1&article_id=368801).

3. *Id.*

4. *Id.*

5. *Id.*

6. Chuck Haga, *Couple returns to North Dakota to urge stiffer DUI laws*, INFORUM, Jan. 14, 2013, available at [https://secure\\_forumcomm.com/?publisher\\_ID=1&article\\_id=386493&CFID=275069521&CFTOKEN=44763002](https://secure_forumcomm.com/?publisher_ID=1&article_id=386493&CFID=275069521&CFTOKEN=44763002); James MacPherson, *Truck Driven Over Tent: Juan Ruiz and 1 other injured, 2 children killed*, Asso. Press, July 9, 2012. <http://bigstory.ap.org/article/truck-drives-over-tent-north-dakota-2-kids-die>.

7. Haga, *supra* note 6.

8. Mike Manston, *Two dead kids = 15 years: Acosta sentenced for drunk driving deaths*, TURTLER MTN. STAR, Feb. 11, 2013, available at <http://tur.stparchive.com/Archive/TUR/TUR02112013P17.php>.

happen? Unfortunately, these two cases have become another in a long string of tragedies. On a national scale in 2012, 33,561 individuals were killed in traffic crashes.<sup>9</sup> Out of that number 10,322 were considered alcohol-impaired fatalities.<sup>10</sup> The National Highway Traffic Safety Administration (“NHTSA”) defines any fatal crash involving a driver with a blood alcohol concentration (“BAC”) of .08 or higher an alcohol-impaired-driving crash.<sup>11</sup> In 2012, in the State of North Dakota alone, 170 individuals died in traffic related crashes.<sup>12</sup> Out of that number, 87 (52%) were considered alcohol impaired related fatalities.<sup>13</sup> Alcohol related fatalities in North Dakota have fluctuated over the last 10 years going from a low of 40% in 2003 to a high of 56% in 2007.<sup>14</sup> It was this carnage that brought the 2013 legislative session to again focus on impaired driving in North Dakota.<sup>15</sup>

## II. NORTH DAKOTA DUI LAWS AND PENALTIES BEFORE H.B.

### 1302

North Dakota, like most States, has a two-track system for Driving Under the Influence (“DUI”) cases. Once arrested for DUI, both system begin. The filing of the Report and Notice Form with the Department of Transportation begins the administrative license suspension process, and the filing of the uniformed traffic citation with the clerk of Court’s (or State’s Attorney) office begins the criminal process. H.B. 1302 did not change the current structure of DUI enforcement.<sup>16</sup> Instead it focused primarily on increasing the criminal penalties on offenders. The administrative process was largely left the same.<sup>17</sup>

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9. NHTSA, TRAFFIC SAFETY FACTS: 2012 DATA, at 6 (Dec., 2013), <http://www-nrd.nhtsa.dot.gov/Pubs/811870.pdf>

10. *Id.*

11. *Id.* at 1.

12. N.D. DEPT. OF TRANSP., 2012 NORTH DAKOTA CRASH SUMMARY, at 12 (2013), <http://www.dot.nd.gov/divisions/safety/docs/crash-summary.pdf>

13. *Id.* at 47.

14. *Id.*

15. Like most states, North Dakota has collected a significant amount of data on impaired driving from the worst time of day for fatalities to the type of people and vehicles involved. Further data can be found in the above referenced material.

16. H.B. 1302, 63d Legis. Assemb., Reg. Sess. (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/documents/13-0399-08000.pdf?20131219144702>.

17. *Id.* The biggest change to the administrative hearing process was to increase the look back period to reflect a seven year time window for priors as opposed to five years. The time of revocation was also slightly lessened for refusal offenders but the law remains unchanged in that an offender can still “cure” their refusal under N.D. CENT. CODE § 39-20-04(2). Otherwise suspension times remain unchanged.

In order to understand the magnitude of the changes in H.B. 1302, it is important to understand the previous administrative suspension and criminal penalty structure. Prior to H.B. 1302, the Department of Transportation's administrative suspension periods were as follows:

- 91 days for a first offense within five years.
- 180 days for a first offense with an alcohol concentration of at least eighteen one-hundredths of one percent by weight (.018 BAC).
- 365 days for a second offense within five years.
- Two years for a second offense and the current violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight (.018 BAC).
- Two years for a third offense within five years.
- Three years for a third offense within five years and the current violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight (.018 BAC).<sup>18</sup>

Prior to H.B. 1302, the criminal offense level for a DUI were as follows:

- First and second offenses in a five-year period were class B misdemeanors.
- Third offense in a five-year period was a class A misdemeanor.
- Fourth offense in a seven-year period was a class A misdemeanor.
- Fifth or subsequent offenses in a seven year period were class C Felonies.<sup>19</sup>

Under section 12.1-32-01 of the North Dakota Century Code, B misdemeanors were punishable by a maximum up to thirty days imprisonment and a fine of \$1,000 or both.<sup>20</sup> A misdemeanors were punishable by a maximum up to one year's imprisonment and a fine up to \$2,000 or both. C felonies were punishable by a maximum up to five year

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18. N.D. CENT. CODE § 39-06.1-10(7) (2011).

19. N.D. CENT. CODE § 39-08-01(2) (2011).

20. N.D. CENT. CODE § 12.1-32-01 (2011).

imprisonment and a fine up to \$5,000 — or both.<sup>21</sup> Under both the new and old law, DUI offense levels are driven by prior offenses.

Finally, the minimum mandatory criminal sentences before H.B. 1302 were as follows:

- First offense — \$250 fine and an order for addiction evaluation.<sup>22</sup>
- Second offense within five years — five days' imprisonment (or placement in a minimum security facility) of which forty-eight hours must be served consecutively or thirty days' community service; a fine of \$500 and an order for addiction evaluation.
- Third offense within five years – sixty days' imprisonment (or placement in a minimum security facility) of which forty-eight hours must be served consecutively or thirty days' community service; a fine of \$1,000 and an order for addiction evaluation.
- Fourth or subsequent offense within seven years – 180' days imprisonment (or placement in a minimum security facility) of which forty-eight hours must be served consecutively or thirty days' community service; a fine of \$1,000 and an order for addiction evaluation.<sup>23</sup>

### III. NORTH DAKOTA'S SIXTY-THIRD LEGISLATIVE SESSION'S DUI EFFORTS

Even before the 2013 legislative session began, a number of proposals were announced as a way to combat the DUI problem in North Dakota.<sup>24</sup> On December 18, 2012, it was announced that Governor Jack Dalrymple and Attorney General Wayne Stenehjem were supporting draft legislation

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21. *Id.* These were the maximum penalties prior to July 1, 2013. The 2013 North Dakota legislative session changed the maximum penalties through both H.B. 1302 and S.B. 2251.

22. The minimum mandatory court fees imposed under N.D. CENT. CODE § 29-26-22 for both the previous and current DUI law were excluded from this article as they were not imposed as a result of H.B. 1302.

23. N.D. CENT. CODE §§ 39-08-01(4)(a)-(d) (2011). Under N.D. CENT. CODE § 39-08-01(4)(e) a court was able to suspend all but ten days' imprisonment for third and fourth-time offenders if they undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. The court also had the option of putting third and fourth-time offenders on supervised probation with the Department of Corrections.

24. See Jenny Michael, *Tougher DUI legislation proposed*, BISMARCK TRIB., Dec. 18, 2012, available at [http://bismarcktribune.com/news/state-and-regional/tougher-dui-legislation-proposed/article\\_4606652c-495e-11e2-94cd-0019bb2963f4.html](http://bismarcktribune.com/news/state-and-regional/tougher-dui-legislation-proposed/article_4606652c-495e-11e2-94cd-0019bb2963f4.html).

sponsored by District 13<sup>25</sup> Representative, Kim Koppelman, to strengthen North Dakota's laws against drunk driving.<sup>26</sup> As the 2013 legislative session began, two bills quickly emerged as possible vehicles for comprehensive DUI legislation. The first bill was H.B. 1302, which was sponsored by Representative Koppelman, and the second bill was S.B. 2240, which was sponsored by Senator Tim Mathern.<sup>27</sup> The Senate and the House bills both made it through their respective houses after significant amendments, but, ultimately, S.B. 2240 was killed by the House, and H.B. 1302 became the vehicle for the DUI law changes.<sup>28</sup> Ultimately, the changes discussed in this article come from H.B. 1302, which was passed by both houses.<sup>29</sup> On April 30<sup>th</sup>, 2013, in the Great Hall of the Capitol surrounded by the Deutscher, Mickelson, Ruiz, and Hernandez families, Governor Jack Dalrymple proudly stated that the “new law is enforceable; it is a stronger deterrent; and it will help save lives” and proceeded to sign H.B. 1302 into law.<sup>30</sup>

On July 1, 2013, North Dakota's new DUI law went into effect.<sup>31</sup> In my analysis, H.B. 1302 created four major changes from the previous law. The four major changes are: 1) increased penalties; 2) criminalization of refusal; 3) creation of a vehicular homicide crime; and 4) elimination of hard license suspensions.

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25. North Dakota District 13 is also the home of the Deutscher family.

26. Michael, *supra* note 24.

27. See H.B. 1302, 63d Legis. Assemb., Reg. Sess. (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/documents/13-0399-08000.pdf>; S.B. 2240, 63d Legis. Assemb., Reg. Sess. (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/documents/13-0517-04000.pdf>.

28. See H. JOURNAL, 63d Legis. Assemb., Reg. Sess. 1125, 1127-28 (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/journals/hr-dailyjnl-56.pdf>. This multiple bill track is important to understand since a full review of the legislative history would require researching both bills. Senator Kelly Armstrong, himself a DUI defense attorney, was the prime architect blending the bills together with assistance from Ken Sorenson, an Assistant Attorney General, and Tim Dawson with N.D. Legislative Council.

29. The Senate passed H.B. 1302 by a 44-0 vote, and the House passed it 69-23. See S. JOURNAL, 63d Legis. Assemb., Reg. Sess. 1785, 1831-32 (N.D. 2013); H. JOURNAL, 63d Legis. Assemb., Reg. Sess. 1873, 1900 (N.D. 2013).

30. See Nick Smith, *Governor: DUI law will save lives*, BISMARCK TRIB., Apr. 30, 2013, available at [http://bismarcktribune.com/news/local/govt-and-politics/governor-dui-law-will-save-lives/article\\_bd0bb0aa-b150-11e2-8275-0019bb2963f4.html](http://bismarcktribune.com/news/local/govt-and-politics/governor-dui-law-will-save-lives/article_bd0bb0aa-b150-11e2-8275-0019bb2963f4.html).

31. There was some initial confusion on the effective date amongst law enforcement and prosecutors as policy bills generally become effective August 1, but since H.B. 1302 contained a relatively small appropriation for the Attorney General's office, it became a fiscal bill — which are effective on July 1. See N.D. Atty. Gen. Wayne Steneham, *Letter Opinion: 2013-L-03* (June 13, 2013), <http://www.ag.nd.gov/Opinions/2013/Letter/2013-L-03.pdf>.

## A. INCREASED PENALTIES FOR DUI OFFENSES

Much of the controversy and debate over the DUI changes were centered on the increased penalties for DUI offenders.<sup>32</sup> In particular, minimum mandatory sentences, from both the fiscal impact to county and state correction's budgets and from a policy perspective of judicial discretion, were highly debated.<sup>33</sup> Nevertheless, the legislature changed the offense levels and penalties as follows:

- First and second offenses in a seven-year period are class B misdemeanors.<sup>34</sup>
- Third offenses in a seven-year period are class A misdemeanors.
- Fourth or any subsequent offenses regardless of time are all class C Felonies.<sup>35</sup>

The new minimum mandatory criminal sentences are as follows:

- First offense — \$500 fine and an order for addiction evaluation.<sup>36</sup>
- Aggravated first offense (alcohol concentration .16 or greater) — \$750 fine and at least 2 days imprisonment.<sup>37</sup>
- Second offense within 7 years — 10 days imprisonment of which forty-eight hours must be served consecutively; 12 months of 24/7 monitoring<sup>38</sup> as a condition of probation; a fine of \$1,500 and an order for addiction evaluation.<sup>39</sup>

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32. Several Representatives expressed concern about the mandatory minimum sentencing. See Nick Smith, *N.D. House vote hikes DUI penalties*, Bismarck Trib., Feb. 27, 2013, available at [http://bismarcktribune.com/news/state-and-regional/n-d-house-vote-hikes-dui-penalties/article\\_0dc9ab48-812f-11e2-822c-0019bb2963f4.html](http://bismarcktribune.com/news/state-and-regional/n-d-house-vote-hikes-dui-penalties/article_0dc9ab48-812f-11e2-822c-0019bb2963f4.html). See also H.B. 1302, 63d Legis. Assemb., Reg. Sess. (N.D. 2013) (statements made during initial House floor debate), <http://www.legis.nd.gov/assembly/63-2013/bill-video/bv1302.html>N.D.

33. Smith, *supra* note 32.

34. *Id.* The initial proposal was to increase offense levels at each subsequent offense, however, because that would have shifted hundreds of DUI cases out of municipal courts to district courts, the legislature settled for the current structure.

35. N.D. CENT. CODE § 39-08-01(3) (2013).

36. N.D. CENT. CODE § 39-08-01(5)(a)(1) (2013).

37. N.D. CENT. CODE § 39-08-01(5)(a)(2) (2013). However, for an aggravated first offense only, the court may convert each day of imprisonment to ten hours of community service.

38. For a detailed explanation of the "24/7 Monitoring Program," see generally NORTH DAKOTA ATTY. GEN. OFFICE, 24/7 PROGRAM (May, 2013), <https://www.ag.nd.gov/TwentyFourSeven/ND247Program.pdf>.

39. N.D. CENT. CODE § 39-08-01(5)(b) (2013). Initially, there was confusion concerning the mandatory fine for class B misdemeanors in lieu of S.B. 2251 (which raised the maximum fines for class B misdemeanors). See S.B. 2251, 63d Legis. Assemb., Reg. Sess. (N.D. 2013), <http://www.legis.nd.gov/assembly/63-2013/documents/13-8230-03000.pdf?20130626104542>. Although there have been some interesting legal discussions concerning the application of the



- Third offense within seven years — 120 days imprisonment; one year supervised probation with 24/7 monitoring as a condition of probation; a fine of \$2,000 and an order for addiction evaluation.<sup>40</sup>
- Fourth or subsequent offense — 1 year and 1 day imprisonment; 2 years supervised probation with 24/7 monitoring as a condition of probation; a fine of \$2000 and an order for addiction evaluation.<sup>41</sup>

Roughly translated, when it comes to criminal penalties, H.B. 1302 doubled the mandatory jail time and fines, and incorporated the 24/7 monitoring program as a mandatory condition of probation for multiple DUI offenders.<sup>42</sup>

## B. CRIMINALIZATION OF REFUSAL

North Dakota, along with many other states, have provided DUI suspects the “right” to refuse chemical testing when requested by a law enforcement officer.<sup>43</sup> The North Dakota Supreme Court has referred to this right as “a matter of legislative grace.”<sup>44</sup> Although the act of refusal was deemed admissible in court, the legislature sought to provide another avenue for prosecution of those offenders who refuse to test.<sup>45</sup> A number of different models have been adopted by other states to deter offenders from refusing chemical testing. For example, South Dakota requires mandatory

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higher fines since H.B. 1302 and S.B. 2251 became effective, these discussions did not warrant an Attorney General’s opinion or Supreme Court appeal as the legal conflict resolved when S.B. 2251 became effective.

40. N.D. CENT. CODE § 39-08-01(5)(c) (2013). The court may suspend 60 of the 120 days if the defendant successfully completes a substance abuse evaluation and the 24/7 program requirement.

41. N.D. CENT. CODE § 39-08-01(5)(f) (2013) provides that a court may suspend one day of jail time if the defendant successfully completes a substance abuse evaluation. Additionally, for offenders sent to the Department of Corrections (“DOC”) the DOC can release the offender upon successful completion of a treatment program. The remainder of the offender’s sentence would be served under supervised probation.

42. The doubling of the jail time has had an unintended consequence for the State’s drug courts because the current law provides no incentive for DUI offenders to enter drug court. Instead, these offenders are subject to mandatory jail sentences. See *Driving Under the Influence Laws Review: Hearing on H.B. 1302 Before the S. Judiciary Comm.*, 63d Legis. Assemb., Interim Sess. (N.D. 2013) (testimony of Hon. Gail Hagerty), <http://www.legis.nd.gov/assembly/63-2013/interim/15-5052-03000-meeting-minutes.pdf>.

43. N.D. CENT. CODE § 39-20-04(1) (2013). “If a person refuses to submit to testing under sections 39-20-01 or 39-20-14, *none may be given*” (emphasis added).

44. See *State v. Murphy*, 516 N.W.2d 285, 287 (N.D. 1994).

45. See H.B. 1302, 63d Legis. Assemb., Reg. Sess. (N.D. 2013) (providing criminal penalty for refusing to submit to sobriety testing).

chemical testing, and affords no rights of refusal to offenders.<sup>46</sup> On the other hand, Minnesota has employed a different model; a model that criminalizes an offender's refusal of chemical testing.<sup>47</sup> Under the criminalization of refusal model, an offender may refuse to submit to chemical testing, but doing so will result in a "refusal" charge, which is treated identical to a traditional DUI charge.<sup>48</sup> Under H.B. 1302, North Dakota specifically adopted the criminal refusal model used by Minnesota for both the screening device and the evidentiary-based test.<sup>49</sup>

North Dakota's choice to adopt the criminal refusal model has already been subjected to litigation and further review by the legislature. On the litigation side, the defense bar has generally sought to suppress any evidence of an offender's refusal to submit to chemical testing based on the theory that the criminalization of refusal makes any consent to testing involuntary, and therefore, subject to the warrant requirement.<sup>50</sup> Almost universally, the suppression motions have cited *Missouri v. McNeely*, for the proposition that warrants are required before taking a test from a suspect in the absence of an exception to the warrant requirement.<sup>51</sup> Although *McNeely* was a significant case for the development of Fourth Amendment jurisprudence, it had little impact on H.B. 1302 as defendant's still have the ability to refuse testing.<sup>52</sup> So far, the North Dakota Supreme Court has yet to rule on North Dakota's criminal refusal statute. The Minnesota Supreme Court, however, recently ruled on its criminal refusal statute and held "a test is not coerced simply because Minnesota has attached the penalty of making it a crime to refuse the test."<sup>53</sup>

On the legislative side, the interim judiciary is reviewing a number of issues that have since arisen as a result of the application of the new law. For example, one of the primary discussion topics is how the criminal refusal section should be charged. Another topic, which has drawn similar

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46. S.D. CODIFIED LAWS § 32-23-1.2 (2006). Also known as compelled testing.

47. MINN. STAT. § 169A.20 (2009). See also NEB. REV. STAT. ANN. § 60-6,197 (2011).

48. N.D. CENT. CODE § 39-08-01(1)(e) (2013).

49. N.D. CENT. CODE § 39-08-01(2) (2013). H.B. 1302 expands the implied consent advisory to include language that refusal is a crime punishable in the same manner as DUI.

50. Although not from reported cases, a number of jurisdictions have provided me with defense motions to suppress.

51. 133 S.Ct. 1552 (2013) (holding the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant).

52. See N.D. CENT. CODE § 39-20-04(1) (2013). *McNeely* did cause one amendment to H.B. 1302 which is codified under N.D. CENT. CODE § 39-20-01.1. Previously, suspects had no right to refuse testing in crashes that resulted in serious bodily injury or death. The new language now requires the officer to first request the test, but if the suspect refuses, then the officer shall attempt to secure a warrant unless exigent circumstances are present.

53. *State v. Brooks*, 838 N.W.2d 563, 570 (Minn. 2013).

criticism, is whether the legislature intended criminal refusal to be a separate crime in addition to the crime of driving under the influence — or whether it intended to provide an alternative charge.<sup>54</sup> Despite this apparent disagreement, prosecutors appear to have adopted a general approach which views a refusal crime as a charge in the alternative—making the issue arguably moot.<sup>55</sup>

### C. VEHICULAR HOMICIDE CRIME

Prior to H.B. 1302, North Dakota already had a section of law that imposed harsh consequences on DUI offenders who murdered or caused serious bodily injury to someone while under the influence of alcohol or drugs.<sup>56</sup> However, the enhancement provision in section 39-08-01.2 of the North Dakota Century Code did not address the general problem with prosecution of DUI offenders, whom have differing culpability levels, under multiple homicide statutes.<sup>57</sup> Today, H.B. 1302 has replaced the sentencing enhancement section with a new singular crime for DUI offenders that cause death, serious, or substantial bodily injury to other individuals.<sup>58</sup>

This enhancement section contained in the legislation imposes stricter penalties than those associated with the previous law in an effort to help mitigate drunk driving and its horrific societal effects. For example, a class A felony will be imposed for any DUI crash resulting in death, and a class C felony will be imposed for DUI crashes resulting in serious or substantial bodily harm.<sup>59</sup> The new legislation also provides for minimum mandatory

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54. See generally *Driving*, *supra* note 42; *City of Minot v. Bjelland*, 452 N.W.2d 384 (N.D. 1988) (holding a citation adequately informed defendant he was being charged alternatively with violations of N.D. CENT. CODE §§ 39-08-01(a), (b)).

55. *Driving*, *supra* note 42 (testimony of Chad McCabe).

56. N.D. CENT. CODE § 39-08-01.2 (2011) (creating minimum mandatory sentences for those convicted of homicide while operating a motor vehicle under the influence or DUI with serious bodily injury to others).

57. *Id.* See also N.D. CENT. CODE § 39-08-01.2 (2013) (allowing enhanced sentences for any offense under section 12.1-16 which could include murder (N.D. CENT. CODE § 12.1-16-01), manslaughter (N.D. CENT. CODE § 12.1-16-02) and negligent homicide (N.D. CENT. CODE § 12.1-16-01)).

58. H.B. 1302, 63d Legis. Assemb., Reg. Sess., § 8 (N.D. 2013) (codified at N.D. CENT. CODE § 39-08-01.2 (2013)). Under the vehicular homicide statute, the prosecution need only prove the underlying DUI offense and that it resulted in death or injury without regard to the defendant's intent to do so.

59. *Id.* Class A felonies are punishable by up to twenty years imprisonment, and up to a fine of twenty thousand dollars. As a reference, Juan Acosta, who ran over the boys in the campground, was convicted of manslaughter and received the maximum penalty under N.D. CENT. CODE § 12.1-16-02 of ten years imprisonment. Acosta was also sentenced to an additional five years for reckless endangerment and unauthorized use of a vehicle, for a total of fifteen years imprisonment. See *Manston*, *supra* note 8.

sentences of three years for any crash resulting in death, and one year for any crash resulting in injury, unless the offender has a prior DUI, in which the minimum becomes two years.<sup>60</sup> By imposing these strict punitive measures, the North Dakota Legislature sent the message to the public and the justice system that the increased presence of drunken driving on the state's roadways is an unacceptable risk.

#### D. ELIMINATION OF HARD LICENSE SUSPENSIONS

Significant research has indicated "hard" license suspensions are ineffective for deterring repeat DUI incidents, and the growing trend is to allow the driver to drive with other technological measures in place.<sup>61</sup> A hard license suspension is one in which the offender is prohibited for a certain amount of time from driving. Under previous North Dakota law, first-time offenders for DUI had a hard license suspension for a minimum of thirty days before the director of the Department of Transportation could issue a temporary restricted license.<sup>62</sup> Although section 39-06.1-11(2) of the North Dakota Century Code allowed the director to issue temporary restricted licenses to multiple DUI offenders, these offenders were required to wait two years before applying. As a result, the offender was essentially relegated to hard license suspensions.<sup>63</sup> H.B. 1302 revamped section 39-06.1-11(2) of the North Dakota Century Code to allow for first time offenders to receive a restricted license within fourteen days of their suspension provided they are participating in the 24/7 program.<sup>64</sup> Multiple offenders also became eligible for a restrictive license if they are participating in the 24/7 program.<sup>65</sup> In the case of multiple offenders, the director of the Department of Transportation may conduct a hearing before

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60. H.B. 1302, 63d Legis. Assemb., Reg. Sess. § 8 (N.D. 2013) (codified at N.D. CENT. CODE § 39-08-01.2 (2013)). Death of unborn children is included in the vehicular homicide code with the peculiar exception in the case that the death was caused by the mother's conduct. Additionally, courts can suspend the minimum mandatories if they first find a manifest injustice.

61. Richard Roth, Executive Director of Impact DWI, Inc., *Ignition Interlocks: How To Use Them Effectively to Reduce Drunk Driving*, LIFESAVERS CONF., April 14, 2013, available at [http://www.rothinterlock.org/roth %202013 lifesavers %20w %20extra%20 slides.ppt](http://www.rothinterlock.org/roth%202013%20lifesavers%20w%20extra%20slides.ppt). See also *Moving Ahead for Progress in the 21st Century Act of 2012*, Pub. L. No. 112-141 (codified at 23 U.S.C. § 164). MAP-21 repealed the hard license suspension in favor of State's implementing other technological solutions.

62. See N.D. CENT. CODE § 39-06.1-11(2) (2011).

63. *Id.* Offenders enrolled in drug court needed to wait one year before applying.

64. N.D. CENT. CODE § 39-06.1-11(2) (2013).

65. *Id.* The law is not clear if a similar waiting period is required as it is for the 14-day requirement for first offenders. Presumably, some time would have to expire for the paperwork to be completed.

issuing the temporary license, and may include other requirements such as an interlock and proof of attendance in a driver-training course.<sup>66</sup>

#### E. MISCELLANEOUS ITEMS

H.B. 1302 did contain some miscellaneous provisions aimed at updating terminology for the state crime lab and the allowance of electronically posted state crime documents in administrative hearings.<sup>67</sup> Another potentially more significant change comes in H.B. 1302 amending North Dakota Century Code section 39-20-07(10) by removing the requirement for a medically qualified individual to sign a statement that the blood was properly obtained.<sup>68</sup> In its place, the new law allows the law enforcement officer who witnesses the blood draw to submit a statement verifying a medically qualified individual drew the blood in accordance with the approved methods.<sup>69</sup> This change was a direct response to *State, ex rel. Roseland v. Herauf*,<sup>70</sup> which required the blood draw nurse to testify because the “signed statement contemplated under [North Dakota Century Code section] 39-20-07(10) is a testimonial statement.”<sup>71</sup> Whether such a statutory change will affect the North Dakota Supreme Court’s underlying rationale in future cases is uncertain.

#### IV. CONCLUSION

H.B. 1302 is a significant rewrite of North Dakota’s approach to mitigating the presence of, and dangers associated with, impaired driving, which will take time to fully understand the policy and legal ramifications. Although there are many uncertainties as to how the new law’s application will impact the legal arena, it is clear that the public’s view is traffic safety is paramount and the freedoms provided by the automobile shall not be infringed by those choosing to drive while impaired.<sup>72</sup>

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66. *Id.*

67. See H.B. 1302, 63d Legis. Assemb., Reg. Sess. §§ 16-18 (N.D. 2013).

68. *Id.* Typically, the qualified individual used in DUI blood draws is a nurse, which results in this section being called the nurse statement, however, there are numerous individuals medically qualified to draw blood. See Charles Eder, *List of Approved Designations of Individuals Medically Qualified to Draw Blood (Sept. 29, 2011)*, N.D. OFFICE OF ATTY. GEN., available at <http://www.ag.nd.gov/CrimeLab/BloodAlcoholProgram/MeciallyQualIndividuals/09-29-11.pdf>.

69. H.B. 1302, 63d Legis. Assemb., Reg. Sess. (N.D. 2013).

70. 2012 ND 151, 819 N.W.2d 546 (holding “the individual who signs such a statement is a witness for confrontation purposes.”)

71. *Id.* ¶ 15.

72. I would like to thank the staff at the North Dakota Law review for all their technical assistance with this article and for their continued efforts in making the North Dakota Law Review a relevant and academically significant publication.