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REFERENCE TITLE: **DUI assessments; DPS equipment; bonuses**

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

## **SB 1160**

Introduced by  
Senators Waring, Bee; Bennett, Garcia, Harper, Jarrett, Verschoor;  
Representative Reagan

**AN ACT**

**AMENDING SECTIONS 5-395.01, 5-395.03, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1721; RELATING TO DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUSES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.01, Arizona Revised Statutes, is amended to  
3 read:

4 5-395.01. Operating or in actual physical control of a  
5 motorized watercraft while intoxicated:  
6 classification; penalties

7 A. A person who is convicted of a violation of section 5-395 is guilty  
8 of a class 1 misdemeanor. The person shall pay a fine of not less than two  
9 hundred fifty dollars. In addition to any other penalties under this  
10 section, the judge shall order the person to complete alcohol or other drug  
11 screening that is provided by a facility approved by the department of health  
12 services or a probation department. If a judge determines that the person  
13 requires further alcohol or other drug education or treatment, the person may  
14 be required pursuant to court order to obtain alcohol or other drug education  
15 or treatment under the court's supervision from an approved facility. The  
16 judge may review an education or treatment determination at the request of  
17 the state or the defendant or on the judge's initiative. The person shall  
18 pay the costs of the screening, education or treatment unless the court  
19 waives part or all of the costs.

20 B. Except as provided in section 5-398.01, the court may suspend any  
21 imposed sentence for a first violation of section 5-395 if the person  
22 completes a court ordered alcohol or other drug screening, education or  
23 treatment program. If the person fails to complete the court ordered alcohol  
24 or other drug screening, education or treatment program and has not been  
25 placed on probation, the court shall issue an order to show cause to the  
26 defendant as to why the remaining jail sentence should not be served.

27 C. A court may order a person sentenced pursuant to this section to  
28 perform community service.

29 D. Notwithstanding subsection B of this section, if within a period of  
30 sixty months a person is convicted of a second violation of section 5-395 or  
31 is convicted of a violation of section 5-395 and has previously been  
32 convicted of an act in another state that if committed in this state would be  
33 a violation of section 5-395, the person shall be sentenced to serve not less  
34 than ninety days in jail, thirty days of which shall be served consecutively,  
35 and the person is not eligible for probation or suspension of execution of  
36 sentence unless the entire sentence has been served, except that the judge  
37 may suspend at the time of sentencing all but thirty days of the sentence if  
38 the person completes a court ordered alcohol or other drug screening,  
39 education or treatment program. If the person fails to complete the court  
40 ordered alcohol or other drug screening, education or treatment program and  
41 has not been placed on probation, the court shall issue an order to show  
42 cause as to why the remaining jail sentence should not be served. The judge  
43 shall order the person to pay a fine of not less than five hundred dollars.

44 E. The dates of the commission of the offense are the determining  
45 factor in applying the sixty month provision of subsection D of this section,  
46 irrespective of the sequence in which the offenses were committed. A second

1 violation for which a conviction occurs as provided in this section shall not  
2 include a conviction for an offense arising out of the same series of acts.

3 F. If a person is referred to a screening or treatment facility, that  
4 facility shall report to the court whether the person has successfully  
5 completed the screening, education or treatment program.

6 G. Any political subdivision processing or utilizing the services of a  
7 person ordered to perform community service pursuant to this section does not  
8 incur any civil liability to the person ordered to perform community service  
9 as a result of these activities unless the political subdivision or its agent  
10 or employee acts with gross negligence.

11 H. After a person who is sentenced pursuant to subsection B of this  
12 section has served twenty-four consecutive hours in jail or after a person  
13 who is sentenced pursuant to subsection D of this section has served  
14 forty-eight consecutive hours in jail and after receiving confirmation that  
15 the person is employed or is a student, the court, on pronouncement of any  
16 jail sentence under this section, may provide in the sentence that the person  
17 may be permitted, if the person is employed or is a student and can continue  
18 the person's employment or studies, to continue such employment or studies  
19 for not more than twelve hours per day nor more than five days per week, and  
20 the remaining day, days or parts of days shall be spent in jail until the  
21 sentence is served. The person shall be allowed out of jail only long enough  
22 to complete the actual hours of employment or studies and no longer.

23 I. A person sentenced pursuant to this section is eligible for a home  
24 detention program pursuant to the provisions of section 9-499.07, subsections  
25 M through R or section 11-459, subsections L through Q.

26 J. The court shall allow the allegation of a prior conviction or other  
27 pending charge of a violation of section 5-395 filed twenty or more days  
28 before the date the case is actually tried and may allow the allegation of a  
29 prior conviction or other pending charge of a violation of section 5-395  
30 filed any time before the date the case is actually tried, provided that when  
31 the allegation is filed this state must make available to the defendant a  
32 copy of any information obtained concerning the prior conviction or other  
33 pending charge. Any conviction may be used to enhance another conviction  
34 irrespective of the dates on which the offenses occurred within the sixty  
35 month provision.

36 K. If a person is placed on probation for violating section 5-395, the  
37 probation shall be supervised unless the court finds that supervised  
38 probation is not necessary or the court does not have supervisory probation  
39 services.

40 L. Persons convicted pursuant to section 5-395 shall pay an additional  
41 assessment of five hundred dollars or for a second violation pursuant to  
42 subsection D of this section shall pay an additional assessment of one  
43 thousand two hundred fifty dollars to be deposited by the state treasurer in  
44 the prison construction and operations fund established by section  
45 41-1651. These assessments are not subject to any surcharge. If the  
46 conviction occurred in the superior court or a justice court, the court shall

1 transmit the assessed monies to the county treasurer. If the conviction  
2 occurred in a municipal court, the court shall transmit the assessed monies  
3 to the city treasurer. The city or county treasurer shall transmit the  
4 monies received to the state treasurer.

5 M. PERSONS CONVICTED PURSUANT TO SECTION 5-395 SHALL PAY AN ADDITIONAL  
6 ASSESSMENT OF FIVE HUNDRED DOLLARS OR FOR A SECOND VIOLATION PURSUANT TO  
7 SUBSECTION D OF THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE  
8 THOUSAND TWO HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN  
9 THE DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY  
10 SECTION 41-1721. THESE ASSESSMENTS ARE NOT SUBJECT TO ANY SURCHARGE. IF THE  
11 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL  
12 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION  
13 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES  
14 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE  
15 MONIES RECEIVED TO THE STATE TREASURER.

16 Sec. 2. Section 5-395.03, Arizona Revised Statutes, is amended to  
17 read:

18 5-395.03. Test for alcohol concentration or drug content;  
19 refusal; civil penalties

20 A. Any person who operates a motorized watercraft that is underway  
21 within this state shall submit, subject to section 4-244, paragraph 34,  
22 section 5-395 or section 5-396, to a test or tests of the person's blood,  
23 breath, urine or other bodily substance for the purpose of determining  
24 alcohol concentration or drug content if the person is arrested for any  
25 offense arising out of acts alleged to have been committed in violation of  
26 this chapter or section 4-244, paragraph 34 while the person was operating or  
27 in actual physical control of a motorized watercraft that was underway while  
28 under the influence of intoxicating liquor or drugs. The test or tests  
29 chosen by the law enforcement agency shall be administered at the direction  
30 of a law enforcement officer having reasonable grounds to believe the person  
31 to have been operating or in actual physical control of a motorized  
32 watercraft that is underway within this state while under the influence of  
33 intoxicating liquor or drugs, or if the person is under twenty-one years of  
34 age, with spirituous liquor in the person's body.

35 B. Following an arrest a violator shall be requested to submit to and  
36 successfully complete any test or tests prescribed by subsection A of this  
37 section, and if the violator refuses the violator shall be informed that the  
38 violator is subject to a civil penalty.

39 C. A person who refuses any test or tests prescribed by subsection A  
40 of this section is subject to a civil penalty of seven hundred fifty dollars.  
41 ~~and~~ THE PERSON shall pay an additional civil penalty of five hundred dollars  
42 to be deposited by the state treasurer in the prison construction and  
43 operations fund established by section 41-1651. The additional civil penalty  
44 of five hundred dollars is not subject to any surcharge. If the additional  
45 civil penalty is imposed by the superior court or a justice court, the court  
46 shall transmit the amount collected for the additional civil penalty to the

1 county treasurer. If the additional civil penalty is imposed by a municipal  
2 court, the court shall transmit the amount collected for the additional civil  
3 penalty to the city treasurer. The city or county treasurer shall transmit  
4 the monies received pursuant to this subsection to the state treasurer.

5 D. A PERSON WHO REFUSES ANY TEST OR TESTS PRESCRIBED BY SUBSECTION A  
6 OF THIS SECTION SHALL PAY AN ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS  
7 TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF PUBLIC SAFETY  
8 EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THE ADDITIONAL  
9 CIVIL PENALTY OF FIVE HUNDRED DOLLARS IS NOT SUBJECT TO ANY SURCHARGE. IF  
10 THE ADDITIONAL CIVIL PENALTY IS IMPOSED BY THE SUPERIOR COURT OR A JUSTICE  
11 COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED FOR THE ADDITIONAL CIVIL  
12 PENALTY TO THE COUNTY TREASURER. IF THE ADDITIONAL CIVIL PENALTY IS IMPOSED  
13 BY A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED FOR THE  
14 ADDITIONAL CIVIL PENALTY TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER  
15 SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS SUBSECTION TO THE STATE  
16 TREASURER.

17 ~~D.~~ E. If a person under arrest refuses to submit to the test  
18 designated by the law enforcement agency as provided in subsection A of this  
19 section none shall be given, except as provided in section 5-395, subsection  
20 J or pursuant to a search warrant.

21 Sec. 3. Section 5-396, Arizona Revised Statutes, is amended to read:

22 5-396. Aggravated operating or actual physical control of  
23 motorized watercraft while under the influence of  
24 intoxicating liquor or drugs; classification

25 A. A person is guilty of aggravated operating or actual physical  
26 control of a motorized watercraft that is underway while under the influence  
27 of intoxicating liquor or drugs if the person commits a third or subsequent  
28 violation of section 5-395 or 5-397 or this section or is convicted of a  
29 violation of section 5-395 or 5-397 or this section and has previously been  
30 convicted of any combination of convictions of section 5-395 or 5-397 or this  
31 section or acts committed in another state that if committed in this state  
32 would be a violation of section 5-395 or 5-397 or this section within a  
33 period of sixty months.

34 B. The dates of the commission of the offenses are the determining  
35 factor in applying the sixty month provision provided in subsection A of this  
36 section regardless of the sequence in which the offenses were committed. For  
37 purposes of this section, a third or subsequent violation for which a  
38 conviction occurs does not include a conviction for an offense arising out of  
39 the same series of acts.

40 C. Aggravated operating or actual physical control of a motorized  
41 watercraft that is underway while under the influence of intoxicating liquor  
42 or drugs is a class 4 felony.

43 D. Notwithstanding section 41-1604.06, a person who is convicted under  
44 subsection A of this section and who within a sixty month period has been  
45 convicted of two prior violations of section 5-395 or 5-397 or this section,  
46 or acts committed in another state that if committed in this state would be a

1 violation of section 5-395 or 5-397 or this section, is not eligible for  
2 probation, pardon, commutation or suspension of sentence or release on any  
3 other basis until the person has served not less than four months in prison.

4 E. Notwithstanding section 41-1604.06, a person who is convicted under  
5 subsection A of this section and who within a sixty month period has been  
6 convicted of three or more prior violations of section 5-395 or 5-397 or this  
7 section, or acts committed in another state that if committed in this state  
8 would be a violation of section 5-395 or 5-397 or this section, is not  
9 eligible for probation, pardon, commutation or suspension of sentence or  
10 release on any other basis until the person has served not less than eight  
11 months in prison.

12 F. A person who is convicted of a violation of this section and who is  
13 placed on probation shall attend and complete alcohol or drug screening,  
14 counseling and education from an approved facility, ~~and,~~ if ordered by the  
15 court, treatment from an approved facility. If the person fails to comply  
16 with ~~the provisions of~~ this subsection, in addition to ~~the provisions of~~  
17 section 13-901 the court may order that the person be incarcerated as a term  
18 of probation as follows:

19 1. For a person sentenced pursuant to subsection D of this section,  
20 for an individual period of not more than four months and a total period of  
21 not more than one year.

22 2. For a person sentenced pursuant to subsection E of this section,  
23 for an individual period of not more than eight months and a total period of  
24 not more than two years.

25 G. The time that a person spends in custody pursuant to subsection D,  
26 E or F of this section shall not be counted toward the sentence imposed if  
27 the person's probation is revoked and the person is sentenced to prison  
28 following revocation of probation.

29 H. A person convicted of a violation of this section shall pay a fine  
30 of not less than seven hundred fifty dollars.

31 I. In addition to any other penalty prescribed by law, persons  
32 convicted pursuant to this section shall pay an additional assessment of one  
33 thousand five hundred dollars to be deposited by the state treasurer in the  
34 prison construction and operations fund established by section 41-1651. This  
35 assessment is not subject to any surcharge. If the conviction occurred in  
36 the superior court or a justice court, the court shall transmit the assessed  
37 monies to the county treasurer. If the conviction occurred in a municipal  
38 court, the court shall transmit the assessed monies to the city treasurer.  
39 The city or county treasurer shall transmit the monies received to the state  
40 treasurer.

41 J. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, PERSONS  
42 CONVICTED PURSUANT TO THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE  
43 THOUSAND FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE  
44 DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION  
45 41-1721. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION  
46 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT

1 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A  
2 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY  
3 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED  
4 TO THE STATE TREASURER.

5 Sec. 4. Section 5-397, Arizona Revised Statutes, is amended to read:  
6 5-397. Operating or in actual physical control of a motorized  
7 watercraft while under the extreme influence of  
8 intoxicating liquor; trial by jury; sentencing;  
9 classification; definition

10 A. It is unlawful for a person to operate or be in actual physical  
11 control of a motorized watercraft that is underway within this state if the  
12 person has an alcohol concentration of 0.15 or more within two hours of  
13 operating or being in actual physical control of the motorized watercraft and  
14 the alcohol concentration results from alcohol consumed either before or  
15 while operating or being in actual physical control of the motorized  
16 watercraft.

17 B. A person who is convicted of a violation of this section is guilty  
18 of operating or being in actual physical control of a motorized watercraft  
19 while under the extreme influence of alcohol.

20 C. At the arraignment, the court shall inform the defendant that the  
21 defendant may request a trial by jury and that the request, if made, shall be  
22 granted.

23 D. A person who is convicted of a violation of this section:

24 1. Shall be sentenced to serve not less than thirty consecutive days  
25 in jail and is not eligible for probation or suspension of execution of  
26 sentence unless the entire sentence is served.

27 2. Shall pay a fine of not less than two hundred fifty dollars.

28 3. May be ordered by a court to perform community service.

29 4. Shall pay an additional assessment of one thousand dollars to be  
30 deposited by the state treasurer in the prison construction and operations  
31 fund established by section 41-1651. This assessment is not subject to any  
32 surcharge. If the conviction occurred in the superior court or a justice  
33 court, the court shall transmit the assessed monies to the county  
34 treasurer. If the conviction occurred in a municipal court, the court shall  
35 transmit the assessed monies to the city treasurer. The city or county  
36 treasurer shall transmit the monies received to the state treasurer.

37 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE  
38 DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF PUBLIC SAFETY EQUIPMENT  
39 AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS ASSESSMENT IS NOT  
40 SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT  
41 OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE  
42 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT  
43 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY  
44 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

45 E. Notwithstanding subsection D, paragraph 1 of this section, at the  
46 time of sentencing the judge may suspend all but ten days of the sentence if

1 the person completes a court ordered alcohol or other drug screening,  
2 education or treatment program. If the person fails to complete the court  
3 ordered alcohol or other drug screening, education or treatment program and  
4 has not been placed on probation, the court shall issue an order to show  
5 cause to the defendant as to why the remaining jail sentence should not be  
6 served.

7 F. If within a period of sixty months a person is convicted of a  
8 second violation of this section or is convicted of a violation of this  
9 section and has previously been convicted of a violation of section 5-395 or  
10 5-396 or an act in another jurisdiction that if committed in this state would  
11 be a violation of this section or section 5-395 or 5-396, the person:

12 1. Shall be sentenced to serve not less than one hundred twenty days  
13 in jail, sixty days of which shall be served consecutively, and is not  
14 eligible for probation or suspension of execution of sentence unless the  
15 entire sentence has been served.

16 2. Shall pay a fine of not less than five hundred dollars.

17 3. May be ordered by a court to perform community service.

18 4. Shall pay an additional assessment of one thousand two hundred  
19 fifty dollars to be deposited by the state treasurer in the prison  
20 construction and operations fund established by section 41-1651. This  
21 assessment is not subject to any surcharge. If the conviction occurred in  
22 the superior court or a justice court, the court shall transmit the assessed  
23 monies to the county treasurer. If the conviction occurred in a municipal  
24 court, the court shall transmit the assessed monies to the city treasurer.  
25 The city or county treasurer shall transmit the monies received to the state  
26 treasurer.

27 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
28 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF  
29 PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS  
30 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
31 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
32 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
33 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.  
34 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE  
35 TREASURER.

36 G. Notwithstanding subsection F, paragraph 1 of this section, at the  
37 time of sentencing, the judge may suspend all but sixty days of the sentence  
38 if the person completes a court ordered alcohol or other drug screening,  
39 education or treatment program. If the person fails to complete the court  
40 ordered alcohol or other drug screening, education or treatment program and  
41 has not been placed on probation, the court shall issue an order to show  
42 cause as to why the remaining jail sentence should not be served.

43 H. In applying the sixty month provision of subsection F of this  
44 section, the dates of the commission of the offense shall be the determining  
45 factor, irrespective of the sequence in which the offenses were committed.

1 I. A second violation for which a conviction occurs as provided in  
2 this section shall not include a conviction for an offense arising out of the  
3 same series of acts.

4 J. A person who is convicted of a violation of this section is guilty  
5 of a class 1 misdemeanor.

6 K. For the purposes of this section, "alcohol concentration" means  
7 grams of alcohol per one hundred milliliters of blood or grams of alcohol per  
8 two hundred ten liters of breath.

9 Sec. 5. Section 28-1381, Arizona Revised Statutes, is amended to read:

10 28-1381. Driving or actual physical control while under the  
11 influence; trial by jury; presumptions; admissible  
12 evidence; sentencing; classification

13 A. It is unlawful for a person to drive or be in actual physical  
14 control of a vehicle in this state under any of the following circumstances:

15 1. While under the influence of intoxicating liquor, any drug, a vapor  
16 releasing substance containing a toxic substance or any combination of  
17 liquor, drugs or vapor releasing substances if the person is impaired to the  
18 slightest degree.

19 2. If the person has an alcohol concentration of 0.08 or more within  
20 two hours of driving or being in actual physical control of the vehicle and  
21 the alcohol concentration results from alcohol consumed either before or  
22 while driving or being in actual physical control of the vehicle.

23 3. While there is any drug defined in section 13-3401 or its  
24 metabolite in the person's body.

25 4. If the vehicle is a commercial motor vehicle that requires a person  
26 to obtain a commercial driver license as defined in section 28-3001 and the  
27 person has an alcohol concentration of 0.04 or more.

28 B. It is not a defense to a charge of a violation of subsection A,  
29 paragraph 1 of this section that the person is or has been entitled to use  
30 the drug under the laws of this state.

31 C. A person who is convicted of a violation of this section is guilty  
32 of a class 1 misdemeanor.

33 D. A person using a drug prescribed by a medical practitioner licensed  
34 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating  
35 subsection A, paragraph 3 of this section.

36 E. In any prosecution for a violation of this section, the state shall  
37 allege, for the purpose of classification and sentencing pursuant to this  
38 section, all prior convictions of violating this section, section 28-1382 or  
39 section 28-1383 occurring within the past thirty-six months, unless there is  
40 an insufficient legal or factual basis to do so.

41 F. At the arraignment, the court shall inform the defendant that the  
42 defendant may request a trial by jury and that the request, if made, shall be  
43 granted.

44 G. In a trial, action or proceeding for a violation of this section or  
45 section 28-1383 other than a trial, action or proceeding involving driving or  
46 being in actual physical control of a commercial vehicle, the defendant's

1 alcohol concentration within two hours of the time of driving or being in  
2 actual physical control as shown by analysis of the defendant's blood, breath  
3 or other bodily substance gives rise to the following presumptions:

4 1. If there was at that time 0.05 or less alcohol concentration in the  
5 defendant's blood, breath or other bodily substance, it may be presumed that  
6 the defendant was not under the influence of intoxicating liquor.

7 2. If there was at that time in excess of 0.05 but less than 0.08  
8 alcohol concentration in the defendant's blood, breath or other bodily  
9 substance, that fact shall not give rise to a presumption that the defendant  
10 was or was not under the influence of intoxicating liquor, but that fact may  
11 be considered with other competent evidence in determining the guilt or  
12 innocence of the defendant.

13 3. If there was at that time 0.08 or more alcohol concentration in the  
14 defendant's blood, breath or other bodily substance, it may be presumed that  
15 the defendant was under the influence of intoxicating liquor.

16 H. Subsection G of this section does not limit the introduction of any  
17 other competent evidence bearing on the question of whether or not the  
18 defendant was under the influence of intoxicating liquor.

19 I. A person who is convicted of a violation of this section:

20 1. Shall be sentenced to serve not less than ten consecutive days in  
21 jail and is not eligible for probation or suspension of execution of sentence  
22 unless the entire sentence is served.

23 2. Shall pay a fine of not less than two hundred fifty dollars.

24 3. May be ordered by a court to perform community service.

25 4. Shall pay an additional assessment of five hundred dollars to be  
26 deposited by the state treasurer in the prison construction and operations  
27 fund established by section 41-1651. This assessment is not subject to any  
28 surcharge. If the conviction occurred in the superior court or a justice  
29 court, the court shall transmit the assessed monies to the county  
30 treasurer. If the conviction occurred in a municipal court, the court shall  
31 transmit the assessed monies to the city treasurer. The city or county  
32 treasurer shall transmit the monies received to the state treasurer.

33 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE  
34 DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF PUBLIC SAFETY EQUIPMENT  
35 AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS ASSESSMENT IS NOT  
36 SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT  
37 OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE  
38 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT  
39 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY  
40 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

41 J. Notwithstanding subsection I, paragraph 1 of this section, at the  
42 time of sentencing the judge may suspend all but twenty-four consecutive  
43 hours of the sentence if the person completes a court ordered alcohol or  
44 other drug screening, education or treatment program. If the person fails to  
45 complete the court ordered alcohol or other drug screening, education or  
46 treatment program and has not been placed on probation, the court shall issue

1 an order to show cause to the defendant as to why the remaining jail sentence  
2 should not be served.

3 K. If within a period of sixty months a person is convicted of a  
4 second violation of this section or is convicted of a violation of this  
5 section and has previously been convicted of a violation of section 28-1382  
6 or 28-1383 or an act in another jurisdiction that if committed in this state  
7 would be a violation of this section or section 28-1382 or 28-1383, the  
8 person:

9 1. Shall be sentenced to serve not less than ninety days in jail,  
10 thirty days of which shall be served consecutively, and is not eligible for  
11 probation or suspension of execution of sentence unless the entire sentence  
12 has been served.

13 2. Shall pay a fine of not less than five hundred dollars.

14 3. May be ordered by a court to perform community service.

15 4. Shall have the person's driving privilege revoked for one year. The  
16 court shall report the conviction to the department. On receipt of the  
17 report, the department shall revoke the person's driving privilege and shall  
18 require the person to equip any motor vehicle the person operates with a  
19 certified ignition interlock device pursuant to section 28-3319. In  
20 addition, the court may order the person to equip any motor vehicle the  
21 person operates with a certified ignition interlock device for more than  
22 twelve months beginning on the date of reinstatement of the person's driving  
23 privilege following a suspension or revocation or on the date of the  
24 department's receipt of the report of conviction, whichever occurs  
25 later. The person who operates a motor vehicle with a certified ignition  
26 interlock device under this paragraph shall comply with article 5 of this  
27 chapter.

28 5. Shall pay an additional assessment of one thousand two hundred  
29 fifty dollars to be deposited by the state treasurer in the prison  
30 construction and operations fund established by section 41-1651. This  
31 assessment is not subject to any surcharge. If the conviction occurred in  
32 the superior court or a justice court, the court shall transmit the assessed  
33 monies to the county treasurer. If the conviction occurred in a municipal  
34 court, the court shall transmit the assessed monies to the city  
35 treasurer. The city or county treasurer shall transmit the monies received  
36 to the state treasurer.

37 6. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
38 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF  
39 PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS  
40 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
41 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
42 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
43 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY  
44 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED  
45 TO THE STATE TREASURER.

1 L. Notwithstanding subsection K, paragraph 1 of this section, at the  
2 time of sentencing, the judge may suspend all but thirty days of the sentence  
3 if the person completes a court ordered alcohol or other drug screening,  
4 education or treatment program. If the person fails to complete the court  
5 ordered alcohol or other drug screening, education or treatment program and  
6 has not been placed on probation, the court shall issue an order to show  
7 cause as to why the remaining jail sentence should not be served.

8 M. In applying the sixty month provision of subsection K of this  
9 section, the dates of the commission of the offense shall be the determining  
10 factor, irrespective of the sequence in which the offenses were committed.

11 N. A second violation for which a conviction occurs as provided in  
12 this section shall not include a conviction for an offense arising out of the  
13 same series of acts.

14 Sec. 6. Section 28-1382, Arizona Revised Statutes, is amended to read:  
15 28-1382. Driving or actual physical control while under the  
16 extreme influence of intoxicating liquor; trial by  
17 jury; sentencing; classification

18 A. It is unlawful for a person to drive or be in actual physical  
19 control of a vehicle in this state if the person has an alcohol concentration  
20 of 0.15 or more within two hours of driving or being in actual physical  
21 control of the vehicle and the alcohol concentration results from alcohol  
22 consumed either before or while driving or being in actual physical control  
23 of the vehicle.

24 B. A person who is convicted of a violation of this section is guilty  
25 of driving or being in actual physical control of a vehicle while under the  
26 extreme influence of intoxicating liquor.

27 C. At the arraignment, the court shall inform the defendant that the  
28 defendant may request a trial by jury and that the request, if made, shall be  
29 granted.

30 D. A person who is convicted of a violation of this section:

31 1. Shall be sentenced to serve not less than thirty consecutive days  
32 in jail and is not eligible for probation or suspension of execution of  
33 sentence unless the entire sentence is served.

34 2. Shall pay a fine of not less than two hundred fifty dollars. The  
35 fine prescribed in this paragraph and any assessments, restitution and  
36 incarceration costs shall be paid before the assessment prescribed in  
37 paragraph 3 of this subsection.

38 3. Shall pay an additional assessment of two hundred fifty dollars. If  
39 the conviction occurred in the superior court or a justice court, the court  
40 shall transmit the monies received pursuant to this paragraph to the county  
41 treasurer. If the conviction occurred in a municipal court, the court shall  
42 transmit the monies received pursuant to this paragraph to the city  
43 treasurer. The city or county treasurer shall transmit the monies received to  
44 the state treasurer. The state treasurer shall deposit the monies received  
45 in the driving under the influence abatement fund established by section  
46 28-1304.

1           4. May be ordered by a court to perform community service.

2           5. Shall be required by the department, on receipt of the report of  
3 conviction, to equip any motor vehicle the person operates with a certified  
4 ignition interlock device pursuant to section 28-3319. In addition, the  
5 court may order the person to equip any motor vehicle the person operates  
6 with a certified ignition interlock device for more than twelve months  
7 beginning on the date of reinstatement of the person's driving privilege  
8 following a suspension or revocation or on the date of the department's  
9 receipt of the report of conviction, whichever occurs later. The person who  
10 operates a motor vehicle with a certified ignition interlock device under  
11 this paragraph shall comply with article 5 of this chapter.

12           6. Shall pay an additional assessment of one thousand dollars to be  
13 deposited by the state treasurer in the prison construction and operations  
14 fund established by section 41-1651. This assessment is not subject to any  
15 surcharge. If the conviction occurred in the superior court or a justice  
16 court, the court shall transmit the assessed monies to the county  
17 treasurer. If the conviction occurred in a municipal court, the court shall  
18 transmit the assessed monies to the city treasurer. The city or county  
19 treasurer shall transmit the monies received to the state treasurer.

20           7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE  
21 DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF PUBLIC SAFETY EQUIPMENT  
22 AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS ASSESSMENT IS NOT  
23 SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT  
24 OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE  
25 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT  
26 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY  
27 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

28           E. Notwithstanding subsection D, paragraph 1 of this section, at the  
29 time of sentencing the judge may suspend all but ten days of the sentence if  
30 the person completes a court ordered alcohol or other drug screening,  
31 education or treatment program. If the person fails to complete the court  
32 ordered alcohol or other drug screening, education or treatment program and  
33 has not been placed on probation, the court shall issue an order to show  
34 cause to the defendant as to why the remaining jail sentence should not be  
35 served.

36           F. If within a period of sixty months a person is convicted of a  
37 second violation of this section or is convicted of a violation of this  
38 section and has previously been convicted of a violation of section 28-1381  
39 or 28-1383 or an act in another jurisdiction that if committed in this state  
40 would be a violation of this section or section 28-1381 or 28-1383, the  
41 person:

1           1. Shall be sentenced to serve not less than one hundred twenty days  
2 in jail, sixty days of which shall be served consecutively, and is not  
3 eligible for probation or suspension of execution of sentence unless the  
4 entire sentence has been served.

5           2. Shall pay a fine of not less than five hundred dollars. The fine  
6 prescribed in this paragraph and any assessments, restitution and  
7 incarceration costs shall be paid before the assessment prescribed in  
8 paragraph 3 of this subsection.

9           3. Shall pay an additional assessment of two hundred fifty  
10 dollars. If the conviction occurred in the superior court or a justice  
11 court, the court shall transmit the monies received pursuant to this  
12 paragraph to the county treasurer. If the conviction occurred in a municipal  
13 court, the court shall transmit the monies received pursuant to this  
14 paragraph to the city treasurer. The city or county treasurer shall transmit  
15 the monies received to the state treasurer. The state treasurer shall  
16 deposit the monies received in the driving under the influence abatement fund  
17 established by section 28-1304.

18           4. May be ordered by a court to perform community service.

19           5. Shall have the person's driving privilege revoked for at least one  
20 year. The court shall report the conviction to the department. On receipt  
21 of the report, the department shall revoke the person's driving privilege and  
22 shall require the person to equip any motor vehicle the person operates with  
23 a certified ignition interlock device pursuant to section 28-3319. In  
24 addition, the court may order the person to equip any motor vehicle the  
25 person operates with a certified ignition interlock device for more than  
26 twelve months beginning on the date of reinstatement of the person's driving  
27 privilege following a suspension or revocation or on the date of the  
28 department's receipt of the report of conviction, whichever is later. The  
29 person who operates a motor vehicle with a certified ignition interlock  
30 device under this paragraph shall comply with article 5 of this chapter.

31           6. Shall pay an additional assessment of one thousand two hundred  
32 fifty dollars to be deposited by the state treasurer in the prison  
33 construction and operations fund established by section 41-1651. This  
34 assessment is not subject to any surcharge. If the conviction occurred in  
35 the superior court or a justice court, the court shall transmit the assessed  
36 monies to the county treasurer. If the conviction occurred in a municipal  
37 court, the court shall transmit the assessed monies to the city treasurer.  
38 The city or county treasurer shall transmit the monies received to the state  
39 treasurer.

40           7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
41 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF  
42 PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS  
43 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
44 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
45 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
46 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.

1 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE  
2 TREASURER.

3 G. Notwithstanding subsection F, paragraph 1 of this section, at the  
4 time of sentencing, the judge may suspend all but sixty days of the sentence  
5 if the person completes a court ordered alcohol or other drug screening,  
6 education or treatment program. If the person fails to complete the court  
7 ordered alcohol or other drug screening, education or treatment program and  
8 has not been placed on probation, the court shall issue an order to show  
9 cause as to why the remaining jail sentence should not be served.

10 H. In applying the sixty month provision of subsection F of this  
11 section, the dates of the commission of the offense shall be the determining  
12 factor, irrespective of the sequence in which the offenses were committed.

13 I. A second violation for which a conviction occurs as provided in  
14 this section shall not include a conviction for an offense arising out of the  
15 same series of acts.

16 J. A person who is convicted of a violation of this section is guilty  
17 of a class 1 misdemeanor.

18 Sec. 7. Section 28-1383, Arizona Revised Statutes, is amended to read:

19 28-1383. Aggravated driving or actual physical control while  
20 under the influence; violation; classification;  
21 definition

22 A. A person is guilty of aggravated driving or actual physical control  
23 while under the influence of intoxicating liquor or drugs if the person does  
24 any of the following:

25 1. Commits a violation of section 28-1381, section 28-1382 or this  
26 section while the person's driver license or privilege to drive is suspended,  
27 canceled, revoked or refused or while a restriction is placed on the person's  
28 driver license or privilege to drive as a result of violating section 28-1381  
29 or 28-1382 or under section 28-1385.

30 2. Within a period of sixty months commits a third or subsequent  
31 violation of section 28-1381, section 28-1382 or this section or is convicted  
32 of a violation of section 28-1381, section 28-1382 or this section and has  
33 previously been convicted of any combination of convictions of section  
34 28-1381, section 28-1382 or this section or acts in another jurisdiction that  
35 if committed in this state would be a violation of section 28-1381, section  
36 28-1382 or this section.

37 3. While a person under fifteen years of age is in the vehicle,  
38 commits a violation of either:

39 (a) Section 28-1381.

40 (b) Section 28-1382.

41 B. The dates of the commission of the offenses are the determining  
42 factor in applying the sixty month provision provided in subsection A,  
43 paragraph 2 of this section regardless of the sequence in which the offenses  
44 were committed. For the purposes of this section, a third or subsequent  
45 violation for which a conviction occurs does not include a conviction for an  
46 offense arising out of the same series of acts.

1 C. The notice to a person of the suspension, cancellation, revocation  
2 or refusal of a driver license or privilege to drive is effective as provided  
3 in section 28-3318 or pursuant to the laws of the state issuing the license.

4 D. A person is not eligible for probation, pardon, commutation or  
5 suspension of sentence or release on any other basis until the person has  
6 served not less than four months in prison if the person is convicted under  
7 either of the following:

8 1. Subsection A, paragraph 1 of this section.

9 2. Subsection A, paragraph 2 of this section and within a sixty month  
10 period has been convicted of two prior violations of section 28-1381, section  
11 28-1382 or this section, or any combination of those sections, or acts in  
12 another jurisdiction that if committed in this state would be a violation of  
13 section 28-1381, section 28-1382 or this section.

14 E. A person who is convicted under subsection A, paragraph 2 of this  
15 section and who within a sixty month period has been convicted of three or  
16 more prior violations of section 28-1381, section 28-1382 or this section, or  
17 any combination of those sections, or acts in another jurisdiction that if  
18 committed in this state would be a violation of section 28-1381, section  
19 28-1382 or this section is not eligible for probation, pardon, commutation or  
20 suspension of sentence or release on any other basis until the person has  
21 served not less than eight months in prison.

22 F. In addition to any other penalty provided by law, a person who is  
23 convicted under subsection A, paragraph 3, subdivision (a) of this section  
24 shall be sentenced to at least the minimum sentence required pursuant to  
25 section 28-1381, except that if a person has been convicted of at least two  
26 prior violations of section 28-1381, section 28-1382 or this section, or any  
27 combination of those sections, or convicted of at least two prior acts in  
28 another jurisdiction that if committed in this state would be violations of  
29 section 28-1381, section 28-1382 or this section, or any combination of those  
30 sections, within a sixty month period, the person shall be sentenced to serve  
31 at least the minimum sentence required pursuant to this section.

32 G. In addition to any other penalty provided by law, a person who is  
33 convicted under subsection A, paragraph 3, subdivision (b) of this section  
34 shall be sentenced to at least the minimum sentence required pursuant to  
35 section 28-1382, except that if a person has been convicted of at least two  
36 prior violations of section 28-1381, section 28-1382 or this section, or any  
37 combination of those sections, or convicted of at least two prior acts in  
38 another jurisdiction that if committed in this state would be a violation of  
39 section 28-1381, section 28-1382 or this section, or any combination of those  
40 sections, within a sixty month period, the person shall be sentenced to serve  
41 at least the minimum sentence required pursuant to this section.

42 H. A person who is convicted of a violation of this section shall  
43 attend and complete alcohol or other drug screening, education or treatment  
44 from an approved facility. If the person fails to comply with this  
45 subsection and is placed on probation, in addition to the provisions of

1 section 13-901 the court may order that the person be incarcerated as a term  
2 of probation as follows:

3 1. For a person sentenced pursuant to subsection D of this section,  
4 for an individual period of not more than four months and a total period of  
5 not more than one year.

6 2. For a person sentenced pursuant to subsection E of this section,  
7 for an individual period of not more than eight months and a total period of  
8 not more than two years.

9 I. The time that a person spends in custody pursuant to subsection H  
10 of this section shall not be counted towards the sentence imposed if the  
11 person's probation is revoked and the person is sentenced to prison after  
12 revocation of probation.

13 J. The court:

14 1. Shall report the conviction to the department. On receipt of the  
15 report, the department shall revoke the driving privilege of the person. The  
16 department shall not issue the person a new driver license within three years  
17 of the date of the conviction and, for a conviction of a violation of  
18 subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this  
19 section, shall require the person to equip any motor vehicle the person  
20 operates with a certified ignition interlock device pursuant to section  
21 28-3319. In addition, the court may order the person to equip any motor  
22 vehicle the person operates with a certified ignition interlock device for  
23 more than twelve months beginning on the date of reinstatement of the  
24 person's driving privilege following a suspension or revocation or on the  
25 date of the department's receipt of the report of conviction, whichever  
26 occurs later. The person who operates a motor vehicle with a certified  
27 ignition interlock device under this paragraph shall comply with article 5 of  
28 this chapter.

29 2. In addition to any other penalty prescribed by law, shall order the  
30 person to pay an additional assessment of two hundred fifty dollars. If the  
31 conviction occurred in the superior court or a justice court, the court shall  
32 transmit the monies received pursuant to this paragraph to the county  
33 treasurer. If the conviction occurred in a municipal court, the court shall  
34 transmit the monies received pursuant to this paragraph to the city  
35 treasurer. The city or county treasurer shall transmit the monies received  
36 to the state treasurer. The state treasurer shall deposit the monies  
37 received in the driving under the influence abatement fund established by  
38 section 28-1304. Any fine imposed for a violation of this section and any  
39 assessments, restitution and incarceration costs shall be paid before the  
40 assessment prescribed in this paragraph.

41 3. Shall order the person to pay a fine of not less than seven hundred  
42 fifty dollars.

43 4. In addition to any other penalty prescribed by law, shall order the  
44 person to pay an additional assessment of one thousand five hundred dollars  
45 to be deposited by the state treasurer in the prison construction and  
46 operations fund established by section 41-1651. This assessment is not

1 subject to any surcharge. If the conviction occurred in the superior court  
2 or a justice court, the court shall transmit the assessed monies to the  
3 county treasurer. If the conviction occurred in a municipal court, the court  
4 shall transmit the assessed monies to the city treasurer. The city or county  
5 treasurer shall transmit the monies received to the state treasurer.

6 5. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE  
7 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS  
8 TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF PUBLIC SAFETY  
9 EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS ASSESSMENT IS  
10 NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR  
11 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE  
12 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT  
13 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY  
14 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

15 K. Aggravated driving or actual physical control while under the  
16 influence of intoxicating liquor or drugs committed under:

17 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

18 2. Subsection A, paragraph 3 of this section is a class 6 felony.

19 L. For the purposes of this section, "suspension, cancellation,  
20 revocation or refusal" means any suspension, cancellation, revocation or  
21 refusal.

22 Sec. 8. Section 28-8284, Arizona Revised Statutes, is amended to read:

23 28-8284. Violation; classification

24 A. A person who is convicted of a violation of section 28-8282 is  
25 guilty of a class 1 misdemeanor and shall be sentenced to serve not less than  
26 twenty-four consecutive hours in jail.

27 B. The court shall order the person to pay a fine of not less than two  
28 hundred fifty dollars and may order the person to perform not less than eight  
29 or more than twenty-four hours of community service.

30 C. A court shall not grant probation to or suspend any part or all of  
31 the imposition or execution of a sentence required by this section, except on  
32 the condition that the person serve not less than twenty-four consecutive  
33 hours in jail and pay a fine of not less than two hundred fifty dollars.

34 D. The court:

35 1. Shall not excuse an offender from spending twenty-four consecutive  
36 hours in jail.

37 2. May require the offender to attend traffic safety or alcohol abuse  
38 classes at the offender's expense.

39 3. If in the court's opinion the offender has the problem of habitual  
40 abuse of alcohol or drugs, shall require the offender to obtain treatment  
41 under its supervision.

42 4. Shall order the offender to pay an additional assessment of five  
43 hundred dollars to be deposited by the state treasurer in the prison  
44 construction and operations fund established by section 41-1651. This  
45 assessment is not subject to any surcharge. If the conviction occurred in  
46 the superior court or a justice court, the court shall transmit the assessed

1 monies to the county treasurer. If the conviction occurred in a municipal  
2 court, the court shall transmit the assessed monies to the city treasurer.  
3 The city or county treasurer shall transmit the monies received to the state  
4 treasurer.

5 5. SHALL ORDER THE OFFENDER TO PAY AN ADDITIONAL ASSESSMENT OF FIVE  
6 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF  
7 PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS  
8 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
9 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
10 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
11 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.  
12 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE  
13 TREASURER.

14 E. Notwithstanding subsection A of this section, the judge may  
15 sentence a person pursuant to section 28-8286 instead of pursuant to  
16 subsection A of this section, if all of the following conditions are met:

17 1. The person is convicted of a violation of section 28-8282.

18 2. The prosecutor alleges the provisions of this subsection.

19 3. The court finds that alternative sentencing will serve the best  
20 interests of this state and that the person:

21 (a) Has not been convicted of one or more violations of section  
22 28-8282 within sixty months of the date of commission of the acts out of  
23 which the charges arose. The dates of commission of the offense are the  
24 determining factor in applying this paragraph.

25 (b) Was not flying with 0.08 per cent or more by weight of alcohol in  
26 the person's blood.

27 (c) Did not cause serious physical injury as defined in section 13-105  
28 to another person during the same event or course of conduct that resulted in  
29 the conviction for which the person is to be sentenced.

30 Sec. 9. Section 28-8286, Arizona Revised Statutes, is amended to read:

31 28-8286. Alternative sentencing

32 If pursuant to section 28-8284, subsection E a court orders a person  
33 convicted of a violation of section 28-8282 to be sentenced pursuant to this  
34 section, the court:

35 1. Shall order the person to pay a fine of not less than two hundred  
36 fifty dollars.

37 2. May order the person to perform not less than eight or more than  
38 twenty-four hours of community service.

39 3. May require the person to attend traffic safety or alcohol abuse  
40 classes at the person's expense.

41 4. If in the court's opinion the person has the problem of habitual  
42 abuse of alcohol or drugs, shall require the person to obtain treatment under  
43 its supervision.

44 5. Shall not suspend any part or all of the imposition or execution of  
45 any sentence required by this section.

1           6. Shall order the person to pay an additional assessment of five  
2 hundred dollars to be deposited by the state treasurer in the prison  
3 construction and operations fund established by section 41-1651. This  
4 assessment is not subject to any surcharge. If the conviction occurred in  
5 the superior court or a justice court, the court shall transmit the assessed  
6 monies to the county treasurer. If the conviction occurred in a municipal  
7 court, the court shall transmit the assessed monies to the city treasurer.  
8 The city or county treasurer shall transmit the monies received to the state  
9 treasurer.

10           7. SHALL ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF FIVE  
11 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF  
12 PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS  
13 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
14 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
15 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
16 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.  
17 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE  
18 TREASURER.

19           Sec. 10. Section 28-8287, Arizona Revised Statutes, is amended to  
20 read:

21           28-8287. Second offense

22           A. If a person is convicted of a second violation of section 28-8282  
23 or is convicted of a violation of section 28-8282 and has previously been  
24 convicted of an act in another state that if committed in this state would be  
25 a violation of section 28-8282 within a period of sixty months:

26           1. The person is guilty of a class 1 misdemeanor.

27           2. The person shall be sentenced to serve not less than sixty days in  
28 jail.

29           3. The court shall order the person to pay a fine of not less than  
30 five hundred dollars.

31           4. The court shall not grant probation to or suspend any part or all  
32 of the imposition or execution of any sentence required by this subsection,  
33 except on the condition that the person serve not less than sixty days in  
34 jail and pay a fine of not less than five hundred dollars.

35           5. If in the court's opinion the offender has the problem of habitual  
36 abuse of alcohol or drugs, the court shall require the person to obtain  
37 treatment under its supervision.

38           6. The person shall pay an additional assessment of one thousand two  
39 hundred fifty dollars to be deposited by the state treasurer in the prison  
40 construction and operations fund established by section 41-1651. This  
41 assessment is not subject to any surcharge. If the conviction occurred in  
42 the superior court or a justice court, the court shall transmit the assessed  
43 monies to the county treasurer. If the conviction occurred in a municipal  
44 court, the court shall transmit the assessed monies to the city  
45 treasurer. The city or county treasurer shall transmit the monies received  
46 to the state treasurer.

1           7. THE PERSON SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO  
2 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE  
3 DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUS FUND ESTABLISHED BY SECTION  
4 41-1721. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION  
5 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT  
6 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A  
7 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY  
8 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED  
9 TO THE STATE TREASURER.

10           B. The dates of the commission of the offense are the determining  
11 factor in applying this section.

12           C. A second violation for which a conviction occurs as provided in  
13 this section shall not include a conviction for an offense arising out of the  
14 same series of acts.

15           Sec. 11. Section 28-8288, Arizona Revised Statutes, is amended to  
16 read:

17           28-8288. Third or subsequent offense

18           A. If a person is convicted of a third or subsequent violation of  
19 section 28-8282 or is convicted of a violation of section 28-8282 and has  
20 previously been convicted of any combination of convictions of section  
21 28-8282 or acts committed in another state that if committed in this state  
22 would be a violation of section 28-8282 within a period of sixty months:

23           1. The person is guilty of a class 5 felony.

24           2. The person is not eligible for probation, pardon, suspension of  
25 sentence or release on any basis except as specifically authorized by section  
26 31-233, subsection A or B until the person has served not less than six  
27 months in prison.

28           3. The court shall not suspend the imposition of a prison sentence.

29           4. If in the court's opinion the person has the problem of habitual  
30 abuse of alcohol or drugs, the court shall require the person to obtain  
31 treatment under its supervision.

32           5. In addition to any other penalty prescribed by law, the person  
33 shall pay an additional assessment of one thousand five hundred dollars to be  
34 deposited by the state treasurer in the prison construction and operations  
35 fund established by section 41-1651. This assessment is not subject to any  
36 surcharge. If the conviction occurred in the superior court or a justice  
37 court, the court shall transmit the assessed monies to the county  
38 treasurer. If the conviction occurred in a municipal court, the court shall  
39 transmit the assessed monies to the city treasurer. The city or county  
40 treasurer shall transmit the monies received to the state treasurer.

41           6. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE PERSON  
42 SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS TO BE  
43 DEPOSITED BY THE STATE TREASURER IN THE DEPARTMENT OF PUBLIC SAFETY EQUIPMENT  
44 AND BONUS FUND ESTABLISHED BY SECTION 41-1721. THIS ASSESSMENT IS NOT  
45 SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT  
46 OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE

1 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT  
2 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY  
3 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

4 B. The dates of the commission of the offense are the determining  
5 factor in applying this section.

6 C. A third or subsequent violation for which a conviction occurs as  
7 provided in this section shall not include a conviction for an offense  
8 arising out of the same series of acts.

9 Sec. 12. Title 41, chapter 12, article 2, Arizona Revised Statutes, is  
10 amended by adding section 41-1721, to read:

11 41-1721. Department of public safety equipment and bonus fund;  
12 exemption

13 A. THE DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUS FUND IS  
14 ESTABLISHED CONSISTING OF ASSESSMENTS RECEIVED PURSUANT TO SECTIONS 5-395.01,  
15 5-395.03, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287  
16 AND 28-8288. THE DIRECTOR SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE  
17 CONTINUOUSLY APPROPRIATED.

18 B. THE FUND SHALL BE USED FOR THE FOLLOWING DEPARTMENT NEEDS, IN THE  
19 FOLLOWING ORDER:

- 20 1. FLAK JACKETS FOR SWORN OFFICERS.
- 21 2. STUN GUNS FOR SWORN OFFICERS.
- 22 3. NOTWITHSTANDING ANY OTHER LAW, BONUSES FOR EMPLOYEES.

23 C. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190  
24 RELATING TO LAPSING OF APPROPRIATIONS.