

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2643

## AN ACT

AMENDING SECTIONS 4-213, 5-302, 5-321.01, 5-349, 5-391, 5-395, 5-395.01, 5-395.02, 5-395.03, 5-395.04, 5-396, 5-397, 8-343, 9-499.07, 11-459, 28-1303, 28-1304 AND 28-1321, ARIZONA REVISED STATUTES; AMENDING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 219, SECTION 2; REPEALING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 195, SECTION 3; AMENDING SECTIONS 28-1385, 28-1387, 28-1402, 28-1403 AND 28-1442, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-1445; AMENDING SECTIONS 28-1461, 28-3319 AND 41-1651, ARIZONA REVISED STATUTES; RELATING TO LIQUOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 4-213, Arizona Revised Statutes, is amended to  
3 read:

4 4-213. Restaurant audit

5 A. The director may require a restaurant to submit an audit of its  
6 records to demonstrate compliance with section 4-205.02. The director shall  
7 not require an establishment to submit to such an audit more than once a year  
8 after the initial twelve months of operation even if the establishment is  
9 allowed to continue operating as a restaurant pursuant to subsection E of  
10 this section.

11 B. Except as provided in subsection D of this section, the department  
12 shall audit accounts, records and operations of a licensee that cover a  
13 twelve month period. When conducting an audit, the department shall use  
14 generally accepted auditing standards. An establishment that averages at  
15 least forty per cent of its gross revenue from the sale of food during the  
16 twelve month audit period shall be deemed to comply with the gross revenue  
17 requirements of section 4-205.02. The twelve month audit period shall fall  
18 within the sixteen months immediately preceding the beginning of the audit.

19 C. If the audit or a consent agreement that may be offered at the  
20 discretion of the director and that is signed by the licensee and the  
21 director reveals that the licensee did not meet the definition of a  
22 restaurant as prescribed in section 4-205.02 and the percentage of food sales  
23 determined by the audit or consent agreement was:

24 1. Less than thirty per cent, notwithstanding section 4-209,  
25 subsection A, the director shall deem the license to have been surrendered or  
26 may revoke the license as provided in section 4-205.02, subsection D.

27 2. At least thirty per cent but less than thirty-seven per cent, the  
28 department shall allow the licensee a six month period to continue to operate  
29 under the restaurant license, during which the licensee shall either:

30 (a) Replace the license with a bar or beer and wine bar license,  
31 except that, at the end of that six month period, the department shall revoke  
32 the restaurant license or the licensee shall surrender the restaurant  
33 license.

34 (b) Obtain permission from the department to continue operating with a  
35 restaurant license pursuant to subsection E of this section.

36 3. At least thirty-seven per cent but less than forty per cent, the  
37 licensee shall be granted a period of one year to continue to operate under  
38 the restaurant license, during which the licensee shall attempt to increase  
39 the food percentage to at least forty per cent. If the licensee does not  
40 increase the percentage of food sales to at least forty per cent, the  
41 department shall allow the licensee a six month period to continue to operate  
42 under the restaurant license, during which the licensee shall either:

1 (a) Replace the license with a bar or beer and wine bar license,  
2 except that, at the end of the six month period, the department shall revoke  
3 the restaurant license or the licensee shall surrender the restaurant  
4 license.

5 (b) Obtain permission from the department to continue operating with a  
6 restaurant license pursuant to subsection E of this section.

7 D. The department may conduct an audit of a licensee described in  
8 section 4-209, subsection B, paragraph 12 after twelve months following the  
9 beginning of operations as a restaurant by the licensee to determine  
10 compliance by the licensee with section 4-205.02, except that the department  
11 may conduct an audit of a licensee within the first twelve months of  
12 operation if the licensee has made a substantial modification in the  
13 restaurant equipment, service or entertainment items or seating capacity  
14 during that twelve month period, in which event the department may conduct  
15 the audit for a period of less than twelve months.

16 E. A restaurant licensee may continue to operate with its restaurant  
17 license if its food sales are at least thirty per cent and less than forty  
18 per cent and the department approves the continuation of the restaurant  
19 license pursuant to this subsection and subsections C, F, G, H and I of this  
20 section. The department shall not approve more than fifteen restaurant  
21 licenses pursuant to this subsection and subsections C, F, G, H and I of this  
22 section in ~~each of the fiscal years 2006-2007 and 2007-2008~~ ANY FISCAL YEAR.  
23 The department shall not approve any additional licenses pursuant to this  
24 subsection and subsections C, F, G, H and I of this section from consent  
25 agreements entered into or audits conducted in any fiscal year after  
26 ~~2007-2008~~ 2012-2013. The department may approve a request submitted by the  
27 licensee to continue to operate with its restaurant license only if all of  
28 the following apply at the time the licensee files its request with the  
29 department:

30 1. The restaurant has a sufficient number of cooks, food preparation  
31 personnel and wait staff to prepare and provide the restaurant services that  
32 are necessary for the menu offered by the licensee.

33 2. The restaurant's equipment is of a sufficient grade and the size of  
34 the restaurant's kitchen is appropriate to the menu offered and the kitchen  
35 occupies not less than twenty per cent of the total floor space of the  
36 licensed premises.

37 3. The menu is of a type consistent with a restaurant operation. In  
38 making a determination pursuant to this paragraph, the department may  
39 consider the proportion of food sales to alcohol sales, the price of  
40 spirituous liquor beverages and food served by the licensee and whether the  
41 licensee provides reduced price or complimentary food and beverages.

42 4. Not more than thirty per cent of the public interior area floor  
43 space consists of pool tables, dart or arcade games, barstools, cocktail  
44 tables and similar types of seating and dance floors, and the aggregate area

1 of all dance floors on the premises is not greater than ten per cent of the  
2 total floor space of the public area of the premises.

3 5. The name of the restaurant does not include terms associated with  
4 alcohol consumption, such as "bar", "tavern", "pub", "spirits", "club",  
5 "lounge", "cabaret", "cantina" or "saloon".

6 6. Disposable dinnerware and smallware, including dining utensils, are  
7 not used except in outdoor areas.

8 F. If the department intends to approve a restaurant's continuation of  
9 operation pursuant to subsection E of this section:

10 1. The department shall advise the governing body of the city or town  
11 if the premises are within the incorporated limits of a city or town or the  
12 county of the department's intent.

13 2. The city or town or the county shall post a notice for at least  
14 twenty days on the licensed premises that the licensee has made a request for  
15 continuation to operate with a restaurant license and invite bona fide  
16 residents who own, lease or reside on property within a one mile radius of  
17 the licensed premises to file written comments with the department regarding  
18 the request within thirty days of the first posting of the notice.

19 G. If the local jurisdiction through its governing body or its  
20 authorized agent does not object within ninety days, the licensee may  
21 continue its operation as a restaurant.

22 H. If the department intends to disapprove a restaurant's continuation  
23 of operation pursuant to subsection E of this section, or if the local  
24 jurisdiction or its agent timely objects to its continuation, the department  
25 shall set a hearing before the board and the local jurisdiction shall post a  
26 notice of the hearing for a period of at least twenty days on the licensed  
27 premises. The city or town or the county may testify at the hearing and bona  
28 fide residents who own, lease or reside on property within a one mile radius  
29 of the licensed premises may testify before the board regarding the  
30 licensee's request. The board shall determine whether the restaurant may  
31 continue its operation based on consideration of the criteria listed in  
32 subsection E of this section.

33 I. A restaurant licensee may continue to operate with its restaurant  
34 license pursuant to subsection E of this section, ~~if~~ if the restaurant and the  
35 restaurant licensee continue to meet the requirements of this subsection,  
36 subsection E of this section and any other statute. As a condition of  
37 continuing operation as a restaurant under subsection E of this section, the  
38 department may require the licensee to specifically acknowledge the  
39 representations made by the licensee regarding its operations in support of  
40 the licensee's continuing operation as a restaurant. Notwithstanding  
41 subsection A of this section, if the licensee changes its operation in any  
42 way that materially and detrimentally affects the representations made by the  
43 licensee, the department may audit the licensee or terminate the license  
44 without an audit.

1 J. NOTWITHSTANDING SECTION 4-209, SUBSECTION D, PARAGRAPH 12, THE  
2 STATE TREASURER SHALL DEPOSIT FIVE PER CENT OF THE ANNUAL FEE FOR A  
3 RESTAURANT THAT IS PERMITTED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT  
4 TO SUBSECTION E OF THIS SECTION IN THE DRIVING UNDER THE INFLUENCE ABATEMENT  
5 FUND ESTABLISHED BY SECTION 28-1304.

6 Sec. 2. Section 5-302, Arizona Revised Statutes, is amended to read:  
7 5-302. Application of chapter

8 A. ~~The provisions of~~ This chapter ~~apply~~ APPLIES to all watercraft  
9 operating on all of the waterways of this state, including that part of  
10 waters THAT IS common to interstate boundaries ~~which~~ AND THAT is within the  
11 boundaries of this state, excluding vessels owned by agencies of the federal  
12 government in performance of their official duties.

13 B. ~~The provisions of~~ Section 5-391, subsections ~~F and~~ G AND H and  
14 sections ~~5-329~~ 5-392 and 5-393 apply to all watercraft in this state, whether  
15 or not operating on waterways of this state, and includes watercraft  
16 operating on waterways that are part of water THAT IS common to interstate  
17 boundaries ~~which are~~ AND THAT IS within the boundaries of this state.

18 Sec. 3. Section 5-321.01, Arizona Revised Statutes, is amended to  
19 read:

20 5-321.01. Staggered watercraft registration; rules

21 A. The commission shall establish a system of staggered registration  
22 on a monthly basis in order to distribute the work of registering watercraft  
23 as uniformly as practicable throughout the twelve months of the calendar  
24 year.

25 B. All watercraft registrations provided for in this article expire in  
26 accordance with the schedules established by the commission. The commission  
27 may set the number of renewal periods within a month from one each month to  
28 one each day depending on which system is most economical and best  
29 accommodates the public.

30 C. The commission, in order to initiate the staggered registration  
31 system, may register a watercraft for a period of greater or less than twelve  
32 months up to a period of ~~eighteen~~ THIRTY-SIX months. If a registration  
33 period is set for a period other than twelve months the commission may  
34 prorate the registration fee.

35 D. The commission shall adopt rules necessary to accomplish the  
36 purposes of this section.

37 Sec. 4. Section 5-349, Arizona Revised Statutes, is amended to read:  
38 5-349. Watercraft casualties; violation; classification

39 A. The operator of a watercraft involved in a collision, accident or  
40 other casualty ~~shall~~, to the extent the operator can do so without serious  
41 danger to the operator's own watercraft or persons aboard, SHALL:

42 1. IMMEDIATELY STOP THE WATERCRAFT AT THE SCENE OF THE COLLISION,  
43 ACCIDENT OR OTHER CASUALTY OR AS CLOSE TO THE SCENE OF THE COLLISION,  
44 ACCIDENT OR OTHER CASUALTY AS POSSIBLE BUT SHALL IMMEDIATELY RETURN TO THE  
45 SCENE.

1           2. Render all practical and necessary assistance to persons affected  
2 to save them from danger caused by the collision, accident or OTHER casualty.

3           3. REMAIN AT THE SCENE OF THE COLLISION, ACCIDENT OR OTHER CASUALTY  
4 UNTIL THE OPERATOR HAS COMPLIED WITH SUBSECTION B OF THIS SECTION.

5           B. The operator of a watercraft involved in a collision, accident or  
6 other casualty shall give the operator's name and address and the  
7 identification of the operator's watercraft to any person injured and to the  
8 owners of any property damaged.

9           C. Whenever death or injury results from any watercraft collision,  
10 accident or other casualty, a written report shall be submitted within  
11 forty-eight hours. For every other collision, accident or other casualty  
12 involving property damage exceeding five hundred dollars, a report shall be  
13 submitted within five days after the incident by the operator or owner of the  
14 watercraft involved. Written reports shall be submitted directly to the  
15 department for use in statistical studies for casualty prevention. Reports  
16 shall not be used as evidence in any trial, civil or criminal, arising from  
17 any collision, accident or other casualty. ~~Upon~~ ON request, a report shall  
18 be forwarded to the United States coast guard or other authorized federal  
19 agency to be used in statistical studies for casualty prevention.

20           D. To maintain uniformity, watercraft casualty reports shall be on a  
21 form approved by the commission.

22           E. Every peace officer who, in the regular course of duty,  
23 investigates any watercraft collision, accident or other casualty involving  
24 death or personal injury or involving property damage exceeding five hundred  
25 dollars shall prepare and transmit a report to the department pursuant to  
26 subsection C of this section.

27           F. If the operator of a watercraft is involved in a collision or  
28 accident that results in death or serious physical injury, as defined in  
29 section 13-105, and the operator fails to stop or comply with the  
30 requirements of subsection A of this section, the operator is guilty of a  
31 class 5 felony. If the operator of a watercraft is involved in a collision  
32 or accident that results in injury other than death or serious physical  
33 injury and the operator fails to stop and comply with the requirements of  
34 subsection A of this section, the operator is guilty of a class 6 felony. If  
35 the operator of a watercraft is involved in a collision or accident that  
36 results only in damage to another watercraft that is operated or attended by  
37 another person, and the operator fails to stop and comply with the  
38 requirements of subsection B of this section, the operator is guilty of a  
39 class 3 misdemeanor.

40           Sec. 5. Section 5-391, Arizona Revised Statutes, is amended to read:

41           5-391. Enforcement; violation; classification

42           A. Any person who violates any provision of this chapter, except  
43 section 5-341, subsection A, B, C or D, section 5-349, section 5-350,  
44 subsection C, section 5-393, 5-395, 5-396 or 5-397 and subsection C, ~~For D,~~  
45 G OR H of this section or any rule issued thereunder, is guilty of a petty

1 offense. Any person who violates section 5-350, subsection C ~~or subsection C~~  
2 ~~of this section~~ is guilty of a class 2 misdemeanor.

3 B. All peace officers of the state, counties and cities shall enforce  
4 the provisions of this chapter and all laws and rules relating to the  
5 operation of watercraft.

6 C. In the enforcement of this chapter, the operator of the watercraft  
7 ~~upon~~ ON being hailed by any peace officer shall stop immediately and lay to,  
8 or maneuver in such a way as to permit the peace officer to come aboard or  
9 alongside. The operator may be ordered ashore to correct any unlawful  
10 condition, issued a written warning or written repair order, ~~or~~ issued a  
11 citation for any violation of this chapter.

12 D. AN OPERATOR OF A WATERCRAFT WHO WILFULLY FLEES OR ATTEMPTS TO ELUDE  
13 A PURSUING LAW ENFORCEMENT OFFICER ISSUING AN ORDER PURSUANT TO SUBSECTION C  
14 OF THIS SECTION IS GUILTY OF A CLASS 5 FELONY. THE LAW ENFORCEMENT  
15 WATERCRAFT SHALL BE APPROPRIATELY MARKED TO SHOW THAT IT IS AN OFFICIAL LAW  
16 ENFORCEMENT WATERCRAFT.

17 ~~D.~~ E. In the enforcement of this chapter, ~~the provisions of~~ sections  
18 13-2506 and 13-3903 ~~shall~~ apply.

19 ~~E.~~ F. Each failure to obey an order or to comply with a warning order  
20 issued under ~~the provisions of~~ subsection C of this section shall constitute  
21 a separate offense punishable as a separate violation of this chapter.

22 ~~F.~~ G. A person is guilty of a class 6 felony who knowingly removes,  
23 defaces, obliterates, changes, alters or causes to be removed, defaced,  
24 obliterated, changed or altered a factory, engine, serial, outdrive, lower  
25 unit, power trim or hull identification number or mark on a watercraft.

26 ~~G.~~ H. A person is guilty of a class 2 misdemeanor who:

27 1. Knowingly displays or has in ~~his~~ THE PERSON'S possession a  
28 fictitious, stolen, revoked or altered certificate of number, department  
29 issued number or annual decal.

30 2. Lends to or knowingly permits the use of ~~his~~ THE PERSON'S  
31 certificate of number, department issued number or annual decal on a  
32 watercraft for which those items have not been issued.

33 ~~H.~~ I. ~~Upon~~ ON receipt of notice of conviction of a person under  
34 subsection ~~F or~~ G OR H of this section, the department may revoke the numbers  
35 and decals issued to the watercraft ~~which~~ THAT was involved in the violation  
36 and any other watercraft owned by the person convicted.

37 Sec. 6. Section 5-395, Arizona Revised Statutes, is amended to read:

38 5-395. Operating or in actual physical control of a motorized  
39 watercraft while under the influence; violation;  
40 classification; definition

41 A. It is unlawful for any person to operate or be in actual physical  
42 control of a motorized watercraft that is underway within this state under  
43 any of the following circumstances:

44 1. While under the influence of intoxicating liquor, any drug, a vapor  
45 releasing substance containing a toxic substance or any combination of

1 liquor, drugs or vapor releasing substances if the person is impaired to the  
2 slightest degree.

3 2. If the person has an alcohol concentration of 0.08 or more within  
4 two hours of operating or being in actual physical control of the motorized  
5 watercraft and the alcohol concentration results from alcohol consumed either  
6 before or while operating or being in actual physical control of the  
7 motorized watercraft.

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

10 4. If the motorized watercraft is a commercial motorized watercraft  
11 and the person has an alcohol concentration of 0.04 or more.

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

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

18 ~~C.~~ D. The state shall not dismiss a charge of violating this section  
19 for either of the following:

20 1. In return for a plea of guilty or no contest to any other offense  
21 by the person charged with the violation of this section.

22 2. For the purpose of pursuing any other misdemeanor or a petty  
23 offense, including those arising out of the same event or course of conduct,  
24 unless there is clearly an insufficient legal or factual basis to pursue the  
25 charge of violating this section.

26 ~~D.~~ E. In any prosecution for a violation of this section the state,  
27 for the purpose of classification and sentencing pursuant to section 5-395.01  
28 or 5-396, shall allege all prior convictions of violating this section  
29 occurring within the past ~~thirty-six~~ EIGHTY-FOUR months, unless there is  
30 clearly an insufficient legal or factual basis to do so.

31 ~~E.~~ F. In ~~any A~~ trial, action or proceeding for a violation of this  
32 section or section 5-396 other than a trial, action or proceeding involving  
33 operating or being in actual physical control of a commercial motorized  
34 watercraft, the defendant's alcohol concentration within two hours of the  
35 time of operating or being in actual physical control as shown by analysis of  
36 the defendant's blood, breath or other bodily substance gives rise to the  
37 following presumptions:

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

41 2. If there was at that time in excess of 0.05 but less than 0.08  
42 alcohol concentration in the defendant's blood, breath or other bodily  
43 substance, such fact shall not give rise to any presumption that the  
44 defendant was or was not under the influence of intoxicating liquor, but such

1 fact may be considered with other competent evidence in determining the guilt  
2 or innocence of the defendant.

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

6 ~~G. Paragraph 1, 2 or 3~~ SUBSECTION F of this ~~subsection~~ SECTION shall  
7 not be construed as limiting the introduction of any other competent evidence  
8 bearing on the question of whether or not the defendant was under the  
9 influence of intoxicating liquor.

10 ~~F.~~ H. If a blood test is administered, only a physician, a registered  
11 nurse or another qualified person may withdraw blood for the purpose of  
12 determining the alcohol concentration or drug content. The qualifications of  
13 the individual withdrawing the blood and the method used to withdraw the  
14 blood are not foundational prerequisites for the admissibility of any blood  
15 alcohol content determination made pursuant to this subsection.

16 ~~G.~~ I. If a law enforcement officer administers a duplicate breath  
17 test and the person tested is given a reasonable opportunity to arrange for  
18 an additional test pursuant to subsection ~~H.~~ J of this section, a sample of  
19 the person's breath does not have to be collected or preserved.

20 ~~H.~~ J. The person tested shall be given a reasonable opportunity to  
21 arrange for any physician, registered nurse or other qualified person of the  
22 tested person's own choosing to administer a test or tests in addition to any  
23 administered at the direction of a law enforcement officer. The failure or  
24 inability to obtain an additional test by a person does not preclude the  
25 admission of evidence relating to the test or tests taken at the direction of  
26 a law enforcement officer.

27 ~~I.~~ K. If a person under arrest refuses to submit to a test or tests  
28 under section 5-395.03, whether or not a sample was collected pursuant to  
29 subsection ~~J.~~ L of this section or a search warrant, evidence of refusal is  
30 admissible in any civil or criminal action or other proceeding. The issue of  
31 refusal shall be an issue of fact to be determined by the trier of fact in  
32 all cases.

33 ~~J.~~ L. Notwithstanding any other law, if a law enforcement officer has  
34 probable cause to believe that a person has violated this section and a  
35 sample of blood, urine or any other bodily substance is taken from that  
36 person for any reason a portion of that sample sufficient for analysis shall  
37 be provided to a law enforcement officer if requested for law enforcement  
38 purposes. A person who fails to comply with this subsection is guilty of a  
39 class 1 misdemeanor.

40 ~~K.~~ M. A person who collects blood, urine or any other bodily  
41 substance under this section or any hospital, laboratory or clinic employing  
42 or utilizing the services of the person does not incur any civil liability as  
43 a result of this activity if requested by a law enforcement officer to  
44 collect blood, urine or any other bodily substances unless the person, while  
45 performing the activity, acts with gross negligence.



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. IN ADDITION TO ANY OTHER PENALTIES UNDER THIS SECTION, THE JUDGE  
5 SHALL ORDER THE PERSON TO COMPLETE ALCOHOL OR OTHER DRUG SCREENING THAT IS  
6 PROVIDED BY A FACILITY APPROVED BY THE DEPARTMENT OF HEALTH SERVICES OR A  
7 PROBATION DEPARTMENT. IF A JUDGE DETERMINES THAT THE PERSON REQUIRES FURTHER  
8 ALCOHOL OR OTHER DRUG EDUCATION OR TREATMENT, THE PERSON MAY BE REQUIRED  
9 PURSUANT TO COURT ORDER TO OBTAIN ALCOHOL OR OTHER DRUG EDUCATION OR  
10 TREATMENT UNDER THE COURT'S SUPERVISION FROM AN APPROVED FACILITY. THE JUDGE  
11 MAY REVIEW AN EDUCATION OR TREATMENT DETERMINATION AT THE REQUEST OF THE  
12 STATE OR THE DEFENDANT OR ON THE JUDGE'S INITIATIVE. THE PERSON SHALL PAY  
13 THE COSTS OF THE SCREENING, EDUCATION OR TREATMENT UNLESS THE COURT WAIVES  
14 PART OR ALL OF THE COSTS. IF A PERSON IS REFERRED TO A SCREENING, EDUCATION  
15 OR TREATMENT FACILITY, THE FACILITY SHALL REPORT TO THE COURT WHETHER THE  
16 PERSON HAS SUCCESSFULLY COMPLETED THE SCREENING, EDUCATION OR TREATMENT  
17 PROGRAM.

18 ~~B.~~ C. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 1 OF THIS SECTION AND  
19 except as provided in section 5-398.01, the ~~court~~ JUDGE may EITHER:

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

27 2. SUSPEND ALL BUT TWENTY-FOUR CONSECUTIVE HOURS OF THE SENTENCE IF  
28 THE PERSON COMPLETES A COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING,  
29 EDUCATION OR TREATMENT PROGRAM AND IF THE COURT DETERMINES THE PERSON  
30 RECKLESSLY ENDANGERED ANOTHER PERSON WITH A SUBSTANTIAL RISK OF PHYSICAL  
31 INJURY. IF THE PERSON FAILS TO COMPLETE THE COURT ORDERED ALCOHOL OR OTHER  
32 DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM AND HAS NOT BEEN PLACED ON  
33 PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW CAUSE TO THE DEFENDANT AS  
34 TO WHY THE REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

35 ~~C. A court may order a person sentenced pursuant to this section to~~  
36 ~~perform community restitution.~~

37 D. ~~Notwithstanding subsection B of this section,~~ If within a period of  
38 ~~sixty~~ EIGHTY-FOUR months a person is convicted of a second violation of  
39 section 5-395 or is convicted of a violation of section 5-395 and has  
40 previously been convicted of an act in another ~~state~~ JURISDICTION that if  
41 committed in this state would be a violation of section 5-395, the person:

42 1. Shall be sentenced to serve not less than ninety days in jail,  
43 thirty days of which shall be served consecutively, and ~~the person~~ is not  
44 eligible for probation or suspension of execution of sentence unless the  
45 entire sentence has been served. ~~, except that the judge may suspend at the~~

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

7 2. Shall ~~order the person to~~ pay a fine of not less than five hundred  
8 dollars.

9 3. SHALL BE ORDERED BY THE COURT TO PERFORM AT LEAST THIRTY HOURS OF  
10 COMMUNITY RESTITUTION. IF THE PERSON FAILS TO COMPLETE THE COMMUNITY  
11 RESTITUTION ORDERED PURSUANT TO THIS PARAGRAPH, THE COURT MAY ORDER  
12 ALTERNATIVE SANCTIONS IF THE COURT DETERMINES THAT ALTERNATIVE SANCTIONS ARE  
13 MORE APPROPRIATE.

14 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
15 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON  
16 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS  
17 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN  
18 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED  
19 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL  
20 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.  
21 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE  
22 TREASURER.

23 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED  
24 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL  
25 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION  
26 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT  
27 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A  
28 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY  
29 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED  
30 TO THE STATE TREASURER.

31 E. NOTWITHSTANDING SUBSECTION D, PARAGRAPH 1 OF THIS SECTION, AT THE  
32 TIME OF SENTENCING, EXCEPT IF THE COURT DETERMINES THE PERSON RECKLESSLY  
33 ENDANGERED ANOTHER PERSON WITH A SUBSTANTIAL RISK OF PHYSICAL INJURY, THE  
34 JUDGE MAY SUSPEND ALL BUT THIRTY DAYS OF THE SENTENCE IF THE PERSON COMPLETES  
35 A COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT  
36 PROGRAM. IF THE PERSON FAILS TO COMPLETE THE COURT ORDERED ALCOHOL OR OTHER  
37 DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM AND HAS NOT BEEN PLACED ON  
38 PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW CAUSE AS TO WHY THE  
39 REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

40 ~~E. F. The dates of the commission of the offense are the determining~~  
41 ~~factor~~ In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection D of  
42 this section, THE DATES OF THE COMMISSION OF THE OFFENSE SHALL BE THE  
43 DETERMINING FACTOR irrespective of the sequence in which the offenses were  
44 committed.

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

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

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

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

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

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

41           ~~L. Persons who are convicted pursuant to section 5-395 shall pay an~~  
42 ~~additional assessment of five hundred dollars or, if the person is convicted~~  
43 ~~of a second violation pursuant to subsection D of this section, shall pay an~~  
44 ~~additional assessment of one thousand two hundred fifty dollars to be~~  
45 ~~deposited by the state treasurer in the prison construction and operations~~

1 ~~fund established by section 41-1651. These assessments are not subject to~~  
2 ~~any surcharge. If the conviction occurred in the superior court or a justice~~  
3 ~~court, the court shall transmit the assessed monies to the county treasurer.~~  
4 ~~If the conviction occurred in a municipal court, the court shall transmit the~~  
5 ~~assessed monies to the city treasurer. The city or county treasurer shall~~  
6 ~~transmit the monies received to the state treasurer.~~

7 ~~M. Persons convicted pursuant to section 5-395 shall pay an additional~~  
8 ~~assessment of five hundred dollars or for a second violation pursuant to~~  
9 ~~subsection D of this section shall pay an additional assessment of one~~  
10 ~~thousand two hundred fifty dollars to be deposited by the state treasurer in~~  
11 ~~the state general fund. These assessments are not subject to any surcharge.~~  
12 ~~If the conviction occurred in the superior court or a justice court, the~~  
13 ~~court shall transmit the assessed monies to the county treasurer. If the~~  
14 ~~conviction occurred in a municipal court, the court shall transmit the~~  
15 ~~assessed monies to the city treasurer. The city or county treasurer shall~~  
16 ~~transmit the monies received to the state treasurer.~~

17 Sec. 8. Section 5-395.02, Arizona Revised Statutes, is amended to  
18 read:

19 5-395.02. Admissibility of breath test or other records

20 A. The results of a breath test administered for the purpose of  
21 determining a person's alcohol concentration as defined in section 5-395 are  
22 admissible as evidence in any trial, action or proceeding on establishing the  
23 following foundational requirements:

24 1. The test was performed using a quantitative breath testing device  
25 approved by the ~~department of health services or the~~ department of public  
26 safety. A properly authenticated certification by the ~~department of health~~  
27 ~~services or the~~ department of public safety or judicial notice of ~~department~~  
28 ~~of health services or~~ department of public safety rules is sufficient to  
29 establish this requirement.

30 2. The operator who conducted the test possessed a valid permit issued  
31 by the department of health services or the department of public safety to  
32 operate the device used to conduct the test.

33 3. Duplicate tests were administered and the test results were within  
34 0.02 alcohol concentration of each other ~~or~~ AND an operator observed the  
35 person charged with the violation for ~~twenty~~ FIFTEEN minutes immediately  
36 preceding the administration of the test.

37 4. The operator who conducted the test followed an operational  
38 checklist approved by the ~~department of health services or the~~ department of  
39 public safety for the operation of the device used to conduct the test. The  
40 testimony of the operator is sufficient to establish this requirement.

41 5. The device used to conduct the test was in proper operating  
42 condition. Records of periodic maintenance that show that the device was in  
43 proper operating condition are admissible in any proceeding as prima facie  
44 evidence that the device was in proper operating condition at the time of the  
45 test. Calibration checks with a standard alcohol concentration solution

1 bracketing each person's duplicate breath test are one type of records of  
2 periodic maintenance that satisfies the requirements of this section. The  
3 records are public records.

4 B. Compliance with subsection A of this section is the only  
5 requirement for the admission in evidence of a breath test result.

6 C. The inability of any person to obtain manufacturer's schematics and  
7 software for a quantitative breath testing device that is approved as  
8 prescribed in subsection A of this section shall not affect the admissibility  
9 of the results of a breath test pursuant to this section.

10 D. Records that may be obtained or are otherwise maintained pursuant  
11 to section 28-1327 are admissible as evidence in any trial, action or  
12 proceeding.

13 Sec. 9. Section 5-395.03, Arizona Revised Statutes, is amended to  
14 read:

15 5-395.03. Test for alcohol concentration or drug content;  
16 refusal

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

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

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

1 ~~penalty to the city treasurer. The city or county treasurer shall transmit~~  
2 ~~the monies received pursuant to this subsection to the state treasurer.~~

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

7 Sec. 10. Section 5-395.04, Arizona Revised Statutes, is amended to  
8 read:

9 5-395.04. Preliminary breath tests; authority

10 A. A law enforcement officer who has reasonable suspicion to believe  
11 that a person has committed a violation of section 5-395 may request that the  
12 person submit to a preliminary breath test or tests before an arrest.

13 B. In addition to a breath test or tests the officer may require that  
14 the person submit to further testing pursuant to section 5-395.03.

15 C. The director of the ~~department of health services or the~~ department  
16 of public safety shall adopt rules prescribing the approval of quantitative  
17 preliminary breath testing devices.

18 Sec. 11. Section 5-396, Arizona Revised Statutes, is amended to read:

19 5-396. Aggravated operating or actual physical control of  
20 motorized watercraft while under the influence of  
21 intoxicating liquor or drugs; classification

22 A. A person is guilty of aggravated operating or actual physical  
23 control of a motorized watercraft that is underway while under the influence  
24 of intoxicating liquor or drugs if the person DOES ANY OF THE FOLLOWING:

25 1. WITHIN A PERIOD OF EIGHTY-FOUR MONTHS commits a third or subsequent  
26 violation of section 5-395 or 5-397 or this section or is convicted of a  
27 violation of section 5-395 or 5-397 or this section and has previously been  
28 convicted of any combination of convictions of section 5-395 or 5-397 or this  
29 section or acts committed in another state JURISDICTION that if committed in  
30 this state would be a violation of section 5-395 or 5-397 or this section  
31 ~~within a period of sixty months.~~

32 2. WHILE A PERSON UNDER FIFTEEN YEARS OF AGE IS ABOARD THE MOTORIZED  
33 WATERCRAFT, COMMITS ANY OF THE FOLLOWING:

34 (a) A FIRST VIOLATION OF SECTION 5-395, IF THE PERSON RECKLESSLY  
35 ENDANGERS THE PERSON WHO IS UNDER FIFTEEN YEARS OF AGE WITH A SUBSTANTIAL  
36 RISK OF PHYSICAL INJURY.

37 (b) A SECOND VIOLATION OF SECTION 5-395 WITHIN A PERIOD OF EIGHTY-FOUR  
38 MONTHS.

39 (c) A VIOLATION OF SECTION 5-397.

40 B. The dates of the commission of the offenses are the determining  
41 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision provided in  
42 subsection A, PARAGRAPH 1 OR PARAGRAPH 2, SUBDIVISION (b) of this section  
43 regardless of the sequence in which the offenses were committed. For  
44 purposes of this section, a third or subsequent violation for which a  
45 conviction occurs does not include a conviction for an offense arising out of

1 the same series of acts. THE TIME THAT A PROBATIONER IS FOUND TO BE ON  
2 ABSCONDER STATUS OR THE TIME THAT A PERSON IS INCARCERATED IN ANY STATE,  
3 FEDERAL, COUNTY OR CITY JAIL OR CORRECTIONAL FACILITY IS EXCLUDED WHEN  
4 DETERMINING THE EIGHTY-FOUR MONTH PERIOD PROVIDED IN SUBSECTION A, PARAGRAPH  
5 1, SUBSECTION A, PARAGRAPH 2, SUBDIVISION (b) AND SUBSECTION D OF THIS  
6 SECTION.

7 ~~C. Aggravated operating or actual physical control of a motorized~~  
8 ~~watercraft that is underway while under the influence of intoxicating liquor~~  
9 ~~or drugs is a class 4 felony.~~

10 ~~D. C. Notwithstanding section 41-1604.06,~~ A person who is convicted  
11 under subsection A, PARAGRAPH 1 of this section and who within ~~a sixty~~ AN  
12 EIGHTY-FOUR month period has been convicted of two prior violations of  
13 section 5-395 or 5-397 or this section, or acts committed in another ~~state~~  
14 JURISDICTION that if committed in this state would be a violation of section  
15 5-395 or 5-397 or this section, is not eligible for probation, pardon,  
16 commutation or suspension of sentence or release on any other basis until the  
17 person has served not less than four months in prison.

18 ~~E. D. Notwithstanding section 41-1604.06,~~ A person who is convicted  
19 under subsection A, PARAGRAPH 1 of this section and who within ~~a sixty~~ AN  
20 EIGHTY-FOUR month period has been convicted of three or more prior violations  
21 of section 5-395 or 5-397 or this section, or acts committed in another ~~state~~  
22 JURISDICTION that if committed in this state would be a violation of section  
23 5-395 or 5-397 or this section, is not eligible for probation, pardon,  
24 commutation or suspension of sentence or release on any other basis until the  
25 person has served not less than eight months in prison.

26 E. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,  
27 SUBDIVISION (a) OR (b) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM TERM  
28 OF INCARCERATION REQUIRED PURSUANT TO SECTION 5-395.01.

29 F. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,  
30 SUBDIVISION (c) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM TERM OF  
31 INCARCERATION REQUIRED PURSUANT TO SECTION 5-397.

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

38 1. For a person sentenced pursuant to subsection ~~D~~ C of this section,  
39 for an individual period of not more than four months and a total period of  
40 not more than one year.

41 2. For a person sentenced pursuant to subsection ~~E~~ D of this section,  
42 for an individual period of not more than eight months and a total period of  
43 not more than two years.

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

5           I. ON CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT:

6           ~~H.~~ 1. ~~A~~ SHALL ORDER THE person ~~convicted of a violation of this~~  
7 ~~section shall~~ TO pay a fine of not less than seven hundred fifty dollars.

8           2. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE  
9 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS. IF THE  
10 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL  
11 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION  
12 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES  
13 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE  
14 MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT  
15 THE MONIES RECEIVED IN THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND  
16 ESTABLISHED BY SECTION 28-1304. ANY FINE IMPOSED FOR A VIOLATION OF THIS  
17 SECTION AND ANY ASSESSMENTS, RESTITUTION AND INCARCERATION COSTS SHALL BE  
18 PAID BEFORE THE ASSESSMENT PRESCRIBED IN THIS PARAGRAPH.

19           ~~I.~~ 3. In addition to any other penalty prescribed by law, ~~persons~~  
20 ~~convicted pursuant to this section~~ shall ORDER THE PERSON TO pay an  
21 additional assessment of one thousand five hundred dollars to be deposited by  
22 the state treasurer in the prison construction and operations fund  
23 established by section 41-1651. This assessment is not subject to any  
24 surcharge. If the conviction occurred in the superior court or a justice  
25 court, the court shall transmit the assessed monies to the county treasurer.  
26 If the conviction occurred in a municipal court, the court shall transmit the  
27 assessed monies to the city treasurer. The city or county treasurer shall  
28 transmit the monies received to the state treasurer.

29           ~~J.~~ 4. In addition to any other penalty prescribed by law, ~~persons~~  
30 ~~convicted pursuant to this section~~ shall ORDER THE PERSON TO pay an  
31 additional assessment of one thousand five hundred dollars to be deposited by  
32 the state treasurer in the state general fund. This assessment is not  
33 subject to any surcharge. If the conviction occurred in the superior court  
34 or a justice court, the court shall transmit the assessed monies to the  
35 county treasurer. If the conviction occurred in a municipal court, the court  
36 shall transmit the assessed monies to the city treasurer. The city or county  
37 treasurer shall transmit the monies received to the state treasurer.

38           J. AGGRAVATED OPERATING OR ACTUAL PHYSICAL CONTROL OF A MOTORIZED  
39 WATERCRAFT THAT IS UNDERWAY WHILE UNDER THE INFLUENCE OF AN INTOXICATING  
40 LIQUOR OR DRUGS COMMITTED UNDER:

41           1. SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS A CLASS 4 FELONY.

42           2. SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS A CLASS 6 FELONY.

1 Sec. 12. Section 5-397, Arizona Revised Statutes, is amended to read:

2 5-397. Operating or in actual physical control of a motorized  
3 watercraft while under the extreme influence of  
4 intoxicating liquor; trial by jury; sentencing;  
5 classification; definition

6 A. It is unlawful for a person to operate or be in actual physical  
7 control of a motorized watercraft that is underway within this state if the  
8 person has an alcohol concentration ~~of 0.15 or more~~ AS FOLLOWS within two  
9 hours of operating or being in actual physical control of the motorized  
10 watercraft and the alcohol concentration results from alcohol consumed either  
11 before or while operating or being in actual physical control of the  
12 motorized watercraft:

13 1. 0.15 OR MORE BUT LESS THAN 0.20.

14 2. 0.20 OR MORE.

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

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

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

22 1. Shall be sentenced to serve not less than thirty consecutive days  
23 in jail and is not eligible for probation or suspension of execution of  
24 sentence unless the entire sentence is served IF THE PERSON IS CONVICTED OF A  
25 VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS SECTION. A PERSON WHO IS  
26 CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION SHALL  
27 BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECUTIVE DAYS IN JAIL AND  
28 IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE UNLESS  
29 THE ENTIRE SENTENCE IS SERVED.

30 2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT  
31 THAT A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2  
32 OF THIS SECTION SHALL PAY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. THE  
33 FINE PRESCRIBED IN THIS PARAGRAPH AND ANY ASSESSMENTS, RESTITUTION AND  
34 INCARCERATION COSTS SHALL BE PAID BEFORE THE ASSESSMENT PRESCRIBED IN  
35 PARAGRAPH 3 OF THIS SUBSECTION.

36 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS.  
37 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE  
38 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE  
39 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE  
40 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL  
41 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER  
42 SHALL DEPOSIT THE MONIES RECEIVED IN THE DRIVING UNDER THE INFLUENCE  
43 ABATEMENT FUND ESTABLISHED BY SECTION 28-1304.

44 ~~3-~~ 4. May be ordered by a court to perform community restitution.

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

9           ~~5.~~ 6. Shall pay an additional assessment of one thousand dollars to  
10 be deposited by the state treasurer in the state general fund. This  
11 assessment is not subject to any surcharge. If the conviction occurred in  
12 the superior court or a justice court, the court shall transmit the assessed  
13 monies to the county treasurer. If the conviction occurred in a municipal  
14 court, the court shall transmit the assessed monies to the city treasurer.  
15 The city or county treasurer shall transmit the monies received to the state  
16 treasurer.

17           E. Notwithstanding subsection D, paragraph 1 of this section, at the  
18 time of sentencing **IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,  
19 PARAGRAPH 1 OF THIS SECTION,** the judge may suspend all but ten days of the  
20 sentence if the person completes a court ordered alcohol or other drug  
21 screening, education or treatment program. If the person fails to complete  
22 the court ordered alcohol or other drug screening, education or treatment  
23 program and has not been placed on probation, the court shall issue an order  
24 to show cause to the defendant as to why the remaining jail sentence should  
25 not be served.

26           F. If within a period of ~~sixty~~ **EIGHTY-FOUR** months a person is  
27 convicted of a second violation of this section or is convicted of a  
28 violation of this section and has previously been convicted of a violation of  
29 section 5-395 or 5-396 or an act in another jurisdiction that if committed in  
30 this state would be a violation of this section or section 5-395 or 5-396,  
31 the person:

32           1. Shall be sentenced to serve not less than one hundred twenty days  
33 in jail, sixty days of which shall be served consecutively, and is not  
34 eligible for probation or suspension of execution of sentence unless the  
35 entire sentence has been served **IF THE PERSON IS CONVICTED OF A VIOLATION OF  
36 SUBSECTION A, PARAGRAPH 1 OF THIS SECTION. A PERSON WHO IS CONVICTED OF A  
37 VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION SHALL BE SENTENCED TO  
38 SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF WHICH SHALL BE  
39 SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF  
40 EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN SERVED.**

41           2. Shall pay a fine of not less than five hundred dollars, **EXCEPT THAT  
42 A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS  
43 SECTION SHALL PAY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS. THE FINE  
44 PRESCRIBED IN THIS PARAGRAPH AND ANY ASSESSMENTS, RESTITUTION AND**

1 INCARCERATION COSTS SHALL BE PAID BEFORE THE ASSESSMENT PRESCRIBED IN  
2 PARAGRAPH 3 OF THIS SUBSECTION.

3 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS.  
4 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE  
5 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE  
6 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE  
7 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL  
8 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER  
9 SHALL DEPOSIT THE MONIES RECEIVED IN THE DRIVING UNDER THE INFLUENCE  
10 ABATEMENT FUND ESTABLISHED BY SECTION 28-1304.

11 ~~3-~~ 4. ~~May~~ SHALL be ordered by a court to perform AT LEAST THIRTY  
12 HOURS OF community restitution. IF THE PERSON FAILS TO COMPLETE THE COMMUNITY  
13 RESTITUTION ORDERED PURSUANT TO THIS PARAGRAPH, THE COURT MAY ORDER  
14 ALTERNATIVE SANCTIONS IF THE COURT DETERMINES THAT ALTERNATIVE SANCTIONS ARE  
15 MORE APPROPRIATE.

16 ~~4-~~ 5. Shall pay an additional assessment of one thousand two hundred  
17 fifty dollars to be deposited by the state treasurer in the prison  
18 construction and operations fund established by section 41-1651. This  
19 assessment is not subject to any surcharge. If the conviction occurred in  
20 the superior court or a justice court, the court shall transmit the assessed  
21 monies to the county treasurer. If the conviction occurred in a municipal  
22 court, the court shall transmit the assessed monies to the city treasurer.  
23 The city or county treasurer shall transmit the monies received to the state  
24 treasurer.

25 ~~5-~~ 6. Shall pay an additional assessment of one thousand two hundred  
26 fifty dollars to be deposited by the state treasurer in the state general  
27 fund. This assessment is not subject to any surcharge. If the conviction  
28 occurred in the superior court or a justice court, the court shall transmit  
29 the assessed monies to the county treasurer. If the conviction occurred in a  
30 municipal court, the court shall transmit the assessed monies to the city  
31 treasurer. The city or county treasurer shall transmit the monies received  
32 to the state treasurer.

33 G. Notwithstanding subsection F, paragraph 1 of this section, at the  
34 time of sentencing, IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION  
35 A, PARAGRAPH 1 OF THIS SECTION, the judge may suspend all but sixty days of  
36 the sentence if the person completes a court ordered alcohol or other drug  
37 screening, education or treatment program. If the person fails to complete  
38 the court ordered alcohol or other drug screening, education or treatment  
39 program and has not been placed on probation, the court shall issue an order  
40 to show cause as to why the remaining jail sentence should not be served.

41 H. In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection F  
42 of this section, the dates of the commission of the offense shall be the  
43 determining factor, irrespective of the sequence in which the offenses were  
44 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. 13. Section 8-343, Arizona Revised Statutes, is amended to read:

10 8-343. Disposition of offenses involving driving or in actual  
11 physical control of a motor vehicle while under the  
12 influence of intoxicating liquor or drugs

13 A. A juvenile who is adjudicated delinquent for a violation of section  
14 28-1381 or 28-1382 shall be incarcerated for a period of twenty-four  
15 consecutive hours.

16 B. A juvenile who within a period of ~~sixty~~ EIGHTY-FOUR months is  
17 adjudicated delinquent for a violation of section 28-1381 or 28-1382 and who  
18 has previously been adjudicated for a violation of section 28-1381, 28-1382  
19 or 28-1383 or an act in another state, a court of the United States or a  
20 tribal court that if committed in this state would be a violation of section  
21 28-1381, 28-1382 or 28-1383 shall be incarcerated for a period of thirty  
22 consecutive days that shall be served in a juvenile detention center or in  
23 the department of juvenile corrections.

24 C. A juvenile who is adjudicated delinquent for a violation of section  
25 28-1383 shall be sentenced as provided in section 28-1383, except that ~~the~~  
26 ~~provisions of~~ section 13-801 ~~do~~ DOES not apply and any incarceration shall be  
27 served in a juvenile detention center or in the department of juvenile  
28 corrections.

29 D. If a juvenile is adjudicated delinquent for a violation of section  
30 28-1381, 28-1382 or 28-1383, the court shall order the juvenile to pay at  
31 least one hundred dollars but not more than five hundred dollars plus any  
32 applicable surcharges and assessments to the public agency processing the  
33 violation or the court may order the juvenile to perform at least eighty  
34 hours of community restitution under the supervision of the court.

35 E. The dates of the commission of the offense shall be the determining  
36 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection B of  
37 this section, irrespective of the sequence in which the offenses were  
38 committed. A second violation for which a conviction occurs as provided in  
39 this section shall not include a conviction for an offense arising out of the  
40 same series of acts.

41 F. In addition to any other penalties prescribed by law, if a juvenile  
42 is adjudicated delinquent for a violation of section 28-1381, 28-1382 or  
43 28-1383, the court shall order the juvenile to complete alcohol or other drug  
44 screening that is provided by a facility approved by the department of health  
45 services or a probation department. If the court determines that the

1 juvenile requires further alcohol or other drug education or treatment, the  
2 juvenile may be required pursuant to court order to obtain education or  
3 treatment under the court's supervision from an approved facility. The court  
4 may review an education or treatment determination at the request of the  
5 state or the defendant or on the court's initiative. The juvenile shall pay  
6 the costs of the screening, education or treatment unless the court waives  
7 part or all of the costs. The court may order the parent or guardian of the  
8 juvenile to pay part or all of the costs of the screening, education or  
9 treatment.

10 Sec. 14. Section 9-499.07, Arizona Revised Statutes, is amended to  
11 read:

12 9-499.07. Prisoner work, community restitution work and home  
13 detention program; eligibility; monitoring;  
14 procedures; home detention for persons sentenced  
15 for driving under the influence of alcohol or drugs

16 A. A city or town may establish a prisoner work, community restitution  
17 work and home detention program for eligible sentenced prisoners, which shall  
18 be treated the same as confinement in jail. The presiding judge of the city  
19 or town municipal court shall approve the program before its implementation.

20 B. A prisoner is not eligible for a prisoner work, community  
21 restitution work and home detention program if any of the following applies:

22 1. The prisoner is found by the city or town to constitute a risk to  
23 either himself or other members of the community.

24 2. The prisoner has a past history of violent behavior.

25 3. The sentencing judge states at the time of the sentence that the  
26 prisoner may not be eligible for a prisoner work, community restitution work  
27 and home detention program.

28 C. For prisoners who are selected for the program, the city or town  
29 may require electronic monitoring in the prisoner's home whenever the  
30 prisoner is not at the prisoner's regular place of employment or while the  
31 prisoner is assigned to a community work task. If electronic monitoring is  
32 required, the prisoner shall remain under the control of a home detention  
33 device that constantly monitors the prisoner's location in order to determine  
34 that the prisoner has not left the prisoner's premises. In all other cases,  
35 the city or town shall implement a system of monitoring using telephone  
36 contact or other appropriate methods to assure compliance with the home  
37 detention requirements. The city or town may place appropriate restrictions  
38 on prisoners in the program, including testing prisoners for consumption of  
39 alcoholic beverages or drugs or prohibiting association with individuals who  
40 are determined to be detrimental to the prisoner's successful participation  
41 in the program.

42 D. If a prisoner is placed on electronic monitoring pursuant to  
43 subsection C of this section, the prisoner shall pay an electronic monitoring  
44 fee in an amount ranging from zero to full cost and thirty dollars per month  
45 while on electronic monitoring, unless, after determining the inability of

1 the prisoner to pay these fees, the city or town assesses a lesser fee. The  
2 CITY OR TOWN SHALL USE THE fees collected ~~shall be used by the city or town~~  
3 to offset operational costs of the program.

4 E. Prisoners who are selected for the home detention program shall be  
5 employed within the county in which the city or town is located. The city or  
6 town shall review the place of employment to determine whether it is  
7 appropriate for a home detention prisoner. If the prisoner is terminated  
8 from employment or does not come to work, the employer shall notify the city  
9 or town. Alternatively, or in addition, a community restitution work  
10 assignment may be made by the city or town to a program recommended by the  
11 community restitution work committee. If a prisoner is incapable of  
12 performing community restitution or being employed, the city or town may  
13 exempt the prisoner from these programs.

14 F. The city or town may require that a prisoner who is employed during  
15 the week also participate in community restitution work programs on weekends.

16 G. The city or town may allow prisoners to be away from home detention  
17 for special purposes, including church attendance, medical appointments or  
18 funerals.

19 H. Community restitution work shall include public works projects  
20 operated and supervised by the city or town or other public agencies of this  
21 state or projects sponsored and supervised by public or private community  
22 oriented organizations and agencies.

23 I. A city or town implementing a program under this section shall  
24 appoint a community restitution work committee. The committee shall  
25 recommend to the city or town appropriate community restitution work projects  
26 for home detention prisoners. Members are not eligible to receive  
27 compensation.

28 J. At any time the city or town may terminate a prisoner's  
29 participation in the prisoner work, community restitution work and home  
30 detention program and require that the prisoner complete the remaining term  
31 of the prisoner's sentence in jail confinement.

32 K. Nothing in this section shall prohibit a city or town from entering  
33 into a joint exercise of powers agreement pursuant to section 11-952 for a  
34 prisoner work, community restitution work and home detention program.

35 L. If authorized by the court, a person who is sentenced pursuant to  
36 section 28-1381 or 28-1382 shall not be placed under home detention in a  
37 prisoner work, community restitution work and home detention program except  
38 as provided in subsections M through R of this section.

39 M. By a majority vote of the full membership of the governing body of  
40 the municipality after a public hearing and a finding of necessity, a city or  
41 town may establish a home detention program for persons who are sentenced to  
42 jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is  
43 placed under the program established pursuant to this subsection shall bear  
44 the cost of all testing, monitoring and enrollment in alcohol or substance  
45 abuse programs unless, after determining the inability of the prisoner to pay

1 the cost, the court assesses a lesser amount. The city or town shall use the  
2 collected monies to offset operational costs of the program.

3 N. If the city or town establishes a home detention program under  
4 subsection M of this section, a prisoner must meet the following eligibility  
5 requirements for the program:

6 1. Subsection B of this section applies in determining eligibility  
7 for the program.

8 2. If the prisoner is sentenced under section 28-1381, subsection I,  
9 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

10 3. Notwithstanding section 28-1387, subsection C, if the prisoner is  
11 sentenced under section 28-1381, subsection K or section 28-1382, subsection  
12 D or ~~F~~ E, the prisoner first serves a minimum of fifteen consecutive days in  
13 jail before being placed under home detention.

14 4. The prisoner is required to comply with all of the following  
15 provisions for the duration of the prisoner's participation in the home  
16 detention program:

17 (a) All of the provisions of subsections C through H of this section.

18 (b) Testing at least once a day for the use of alcoholic beverages or  
19 drugs by a scientific method that is not limited to urinalysis or a breath or  
20 intoxication test in the prisoner's home or at the office of a person  
21 designated by the court to conduct these tests.

22 (c) Participation in an alcohol or drug program, or both. These  
23 programs shall be accredited by the department of health services or a county  
24 probation department.

25 (d) Prohibition of association with any individual determined to be  
26 detrimental to the prisoner's successful participation in the program.

27 (e) All other provisions of the sentence imposed.

28 5. Any additional eligibility criteria that the city or town may  
29 impose.

30 0. If a city or town establishes a home detention program under  
31 subsection M of this section, the court, on placing the prisoner in the  
32 program, shall require electronic monitoring in the prisoner's home and, if  
33 consecutive hours of jail time are ordered, shall require the prisoner to  
34 remain at home during the consecutive hours ordered. The detention device  
35 shall constantly monitor the prisoner's location to ensure that the prisoner  
36 does not leave the premises. Nothing in this subsection shall be deemed to  
37 waive the minimum jail confinement requirements under subsection N, paragraph  
38 2 of this section.

39 P. The court shall terminate a prisoner's participation in the home  
40 detention program and require the prisoner to complete the remaining term of  
41 the jail sentence by jail confinement if:

42 1. The prisoner fails to successfully complete a court ordered alcohol  
43 or drug screening, counseling, education and treatment program pursuant to  
44 subsection N, paragraph 4, subdivision (c) of this section or section

1 28-1381, subsection J or L ~~or violates an order pursuant to section 28-1382,~~  
2 ~~subsection E or G.~~

3 2. The court finds that the prisoner left the premises without  
4 permission of the court or supervising authority during a time the prisoner  
5 is ordered to be on the premises.

6 Q. At any other time the court may terminate a prisoner's  
7 participation in the home detention program and require the prisoner to  
8 complete the remaining term of the jail sentence by jail confinement.

9 R. The governing body of the city or town may terminate the program  
10 established under subsection M of this section by a majority vote of the full  
11 membership of the governing body.

12 Sec. 15. Section 11-459, Arizona Revised Statutes, is amended to read:

13 11-459. Prisoner work, community restitution work and home  
14 detention program; eligibility; monitoring;  
15 procedures; home detention for persons sentenced for  
16 driving under the influence of alcohol or drugs;  
17 community restitution work committee; members; duties

18 A. The sheriff may establish a prisoner work, community restitution  
19 work and home detention program for eligible sentenced prisoners, which shall  
20 be treated the same as confinement in jail and shall fulfill the sheriff's  
21 duty to take charge of and keep the county jail and prisoners.

22 B. A prisoner is not eligible for a prisoner work, community  
23 restitution work and home detention program if any of the following applies:

24 1. After independent review and determination of the jail's  
25 classification program, the prisoner is found by the sheriff to constitute a  
26 risk to either himself or other members of the community.

27 2. The prisoner has a past history of violent behavior.

28 3. The prisoner has been convicted of a serious offense as defined in  
29 section 13-604 or has been determined to be a dangerous and repetitive  
30 offender.

31 4. Jail time is being served as a result of a felony conviction.

32 5. The sentencing judge states at the time of the sentence that the  
33 prisoner may not be eligible for a prisoner work, community restitution work  
34 and home detention program.

35 6. The prisoner is sentenced to a county jail and is being held for  
36 another jurisdiction.

37 C. For prisoners who are selected for the program, the sheriff may  
38 require electronic monitoring in the prisoner's home whenever the prisoner is  
39 not at the prisoner's regular place of employment or while the prisoner is  
40 assigned to a community work task. If electronic monitoring is required, the  
41 prisoner shall remain under the control of a home detention device that  
42 constantly monitors the prisoner's location in order to determine that the  
43 prisoner has not left the prisoner's premises. In all other cases, the  
44 sheriff shall implement a system of monitoring using visitation, telephone  
45 contact or other appropriate methods to assure compliance with the home

1 detention requirements. The sheriff may place appropriate restrictions on  
2 prisoners in the program, including testing prisoners for consumption of  
3 alcoholic beverages or drugs or prohibiting association with individuals who  
4 are determined to be detrimental to the prisoner's successful participation  
5 in the program.

6 D. If a prisoner is placed on electronic monitoring pursuant to  
7 subsection C of this section, the prisoner shall pay an electronic monitoring  
8 fee in an amount ranging from zero to full cost and thirty dollars per month  
9 while on electronic monitoring, unless, after determining the inability of  
10 the prisoner to pay these fees, the sheriff assesses a lesser fee. The  
11 SHERIFF SHALL USE THE fees collected ~~shall be used by the sheriff~~ to offset  
12 operational costs of the program.

13 E. Prisoners who are selected for the home detention program shall be  
14 employed in the county in which they are incarcerated. The sheriff shall  
15 review the place of employment to determine whether it is appropriate for a  
16 home detention prisoner. If the prisoner is terminated from employment or  
17 does not come to work, the employer shall notify the sheriff's office.  
18 Alternatively, or in addition, a community restitution work assignment may be  
19 made by the sheriff to a program recommended to the sheriff by the community  
20 restitution work committee. If a prisoner is incapable of performing  
21 community restitution or being employed, the sheriff may exempt the prisoner  
22 from these programs.

23 F. The sheriff may require that a prisoner who is employed during the  
24 week also participate in community restitution work programs on weekends.

25 G. The sheriff may allow prisoners to be away from home detention for  
26 special purposes, including church attendance, medical appointments or  
27 funerals. The standard for review and determination of such leave is the  
28 same as that implemented to decide transportation requests for similar  
29 purposes made by prisoners WHO ARE confined in the county jail.

30 H. Community restitution work shall include public works projects  
31 operated and supervised by public agencies of this state or counties, cities  
32 or towns on recommendation of the community restitution work committee and  
33 approval of the sheriff. The community restitution work committee may also  
34 recommend and the sheriff may approve other forms of community restitution  
35 work sponsored and supervised by public or private community oriented  
36 organizations and agencies.

37 I. The community restitution work committee is established in each  
38 county and is composed of two designees of the sheriff, a representative of  
39 the county attorney's office selected by the county attorney, a  
40 representative of a local police agency selected by the police chief of the  
41 largest city in the county and three persons selected by the county board of  
42 supervisors from the private sector. A sheriff's designee shall serve as  
43 committee chairman and schedule all meetings. The committee shall meet as  
44 often as necessary, but no less than once every three months, for the purpose  
45 of considering and recommending appropriate community restitution work

1 projects for home detention prisoners. The committee shall make its  
2 recommendations to the sheriff. Members are not eligible to receive  
3 compensation.

4 J. At any time the sheriff may terminate a prisoner's participation in  
5 the prisoner work, community restitution work and home detention program and  
6 require that the prisoner complete the remaining term of the prisoner's  
7 sentence in jail confinement.

8 K. If authorized by the court, a person who is sentenced pursuant to  
9 section 28-1381 or 28-1382 shall not be placed under home detention in a  
10 prisoner work, community restitution work and home detention program except  
11 as provided in subsections L through Q of this section.

12 L. By a majority vote of the full membership of the board of  
13 supervisors after a public hearing and a finding of necessity a county may  
14 authorize the sheriff to establish a home detention program for persons who  
15 are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If  
16 the board ~~authorized~~ AUTHORIZES the establishment of a home detention  
17 program, a county sheriff may establish the program. A prisoner who is  
18 placed under the program established pursuant to this subsection shall bear  
19 the cost of all testing, monitoring and enrollment in alcohol or substance  
20 abuse programs unless, after determining the inability of the prisoner to pay  
21 the cost, the court assesses a lesser amount. The county shall use the  
22 collected monies to offset operational costs of the program.

23 M. If a county sheriff establishes a home detention program under  
24 subsection L of this section, a prisoner must meet the following eligibility  
25 requirements for the program:

26 1. Subsection B of this section applies in determining eligibility  
27 for the program.

28 2. If the prisoner is sentenced under section 28-1381, subsection I,  
29 the prisoner first serves a minimum of twenty-four consecutive hours in jail.

30 3. Notwithstanding section 28-1387, subsection C, if the prisoner is  
31 sentenced under section 28-1381, subsection K or section 28-1382, subsection  
32 D or ~~F~~ E, the prisoner first serves a minimum of fifteen consecutive days in  
33 jail before being placed under home detention.

34 4. The prisoner is required to comply with all of the following  
35 requirements for the duration of the prisoner's participation in the home  
36 detention program:

37 (a) All of the provisions of subsections C through H of this section.

38 (b) Testing at least once a day for the use of alcoholic beverages or  
39 drugs by a scientific method that is not limited to urinalysis or a breath or  
40 intoxication test in the prisoner's home or at the office of a person  
41 designated by the court to conduct these tests.

42 (c) Participation in an alcohol or drug program, or both. These  
43 programs shall be accredited by the department of health services or a county  
44 probation department.

1 (d) Prohibition of association with any individual determined to be  
2 detrimental to the prisoner's successful participation in the program.

3 (e) All other provisions of the sentence imposed.

4 5. Any additional eligibility criteria that the county may impose.

5 N. If a county sheriff establishes a home detention program under  
6 subsection L of this section, the court, on placing the prisoner in the  
7 program, shall require electronic monitoring in the prisoner's home and, if  
8 consecutive hours of jail time are ordered, shall require the prisoner to  
9 remain at home during the consecutive hours ordered. The detention device  
10 shall constantly monitor the prisoner's location to ensure that the prisoner  
11 does not leave the premises. Nothing in this subsection shall be deemed to  
12 waive the minimum jail confinement requirements under subsection M, paragraph  
13 2 of this section.

14 O. The court shall terminate a prisoner's participation in the home  
15 detention program and shall require the prisoner to complete the remaining  
16 term of the jail sentence by jail confinement if either:

17 1. The prisoner fails to successfully complete a court ordered alcohol  
18 or drug screening, counseling, education and treatment program pursuant to  
19 subsection M, paragraph 4, subdivision (c) of this section or section  
20 28-1381, subsection J or L ~~or violates an order pursuant to section 28-1382,~~  
21 ~~subsection E or G.~~

22 2. The prisoner leaves the premises during a time that the prisoner is  
23 ordered to be on the premises without permission of the court or supervising  
24 authority.

25 P. At any other time the court may terminate a prisoner's  
26 participation in the home detention program and require the prisoner to  
27 complete the remaining term of the jail sentence by jail confinement.

28 Q. The sheriff may terminate the program at any time.

29 R. A person who is sentenced pursuant to section 28-1383 shall not be  
30 placed under home detention in a prisoner work, community restitution work  
31 and home detention program.

32 Sec. 16. Section 28-1303, Arizona Revised Statutes, is amended to  
33 read:

34 28-1303. Oversight council on driving or operating under the  
35 influence abatement

36 A. The oversight council on driving or operating under the influence  
37 abatement is established consisting of the following ten members:

38 1. The director of the department of public safety or the director's  
39 designee.

40 2. The assistant director for the motor vehicle division of the  
41 department of transportation or the assistant director's designee.

42 3. The director of the governor's office of highway safety.

43 4. One member of the public who is appointed by the governor.

44 5. One member of the public who is appointed by the speaker of the  
45 house of representatives.

1           6. One member of the public who is appointed by the president of the  
2 senate.

3           7. One municipal law enforcement member who is appointed by the  
4 governor on the recommendation of an Arizona association of chiefs of police.

5           8. One county law enforcement member who is appointed by the governor  
6 on the recommendation of an Arizona county sheriff's association.

7           9. One city prosecutor who is appointed by the governor on the  
8 recommendation of the Arizona prosecuting attorney's advisory council.

9           10. One county attorney who is appointed by the governor on the  
10 recommendation of the Arizona prosecuting attorney's advisory council.

11          B. Members appointed pursuant to subsection A, paragraphs 4, 5, 6, 7,  
12 8, 9 and 10 of this section serve three year staggered terms.

13          C. Members appointed pursuant to subsection A, paragraphs 1, 2 and 3  
14 of this section shall serve as advisory nonvoting members of the council.

15          D. The voting members of the council shall annually elect a  
16 chairperson from among the members. ~~A member shall not serve consecutive~~  
17 ~~terms as chairperson.~~

18          E. Members of the council are not eligible to receive compensation,  
19 but members who are appointed pursuant to subsection A, paragraphs 4, 5, 6,  
20 7, 8, 9 and 10 of this section are eligible for reimbursement of expenses  
21 pursuant to title 38, chapter 4, article 2.

22          F. The oversight council on driving or operating under the influence  
23 abatement may use the facilities for meeting and the staff of the Arizona  
24 criminal justice commission.

25          G. The oversight council on driving or operating under the influence  
26 abatement may enter into interagency agreements with the Arizona criminal  
27 justice commission and other agencies for agency business.

28          H. The council shall:

29           1. Make grants from the driving under the influence abatement fund  
30 established by section 28-1304 to political subdivisions and tribal  
31 governments that apply for monies for enforcement purposes, prosecutorial and  
32 judicial activities and alcohol abuse treatment services related to  
33 preventing and abating driving or operating under the influence occurrences  
34 in a motor vehicle or a motorized watercraft as defined in section 5-301.

35           2. Make grants from the driving under the influence abatement fund  
36 established by section 28-1304 to innovative programs that use emerging  
37 technologies to educate, prevent or deter occurrences of driving or operating  
38 under the influence in a motor vehicle or a motorized watercraft.

39           3. Receive quarterly reports from the entities receiving grants and  
40 evaluate their effectiveness. The council may make additional grants to the  
41 recipients and oversee the progress of those programs.

42           4. On or before December 1 of each year, submit a written report on  
43 the effectiveness of the grants provided in reducing the incidence of driving  
44 or operating under the influence to the governor, the speaker of the house of  
45 representatives, ~~AND~~ AND the president of the senate and shall provide a copy of

1 this report to the secretary of state and the director of the Arizona state  
2 library, archives and public records.

3 Sec. 17. Section 28-1304, Arizona Revised Statutes, is amended to  
4 read:

5 28-1304. Driving under the influence abatement fund

6 A. The driving under the influence abatement fund is established  
7 consisting of monies deposited pursuant to section 4-213, SUBSECTION J,  
8 SECTION 5-396, SUBSECTION I, PARAGRAPH 2, SECTION 5-397, SUBSECTION D,  
9 PARAGRAPH 3 AND SUBSECTION F, PARAGRAPH 3, SECTION 28-1382, subsection D,  
10 paragraph 3 and subsection ~~F~~ E, paragraph 3 and section 28-1383, subsection  
11 J, paragraph 2.

12 B. The oversight council on driving or operating under the influence  
13 abatement established by section 28-1303 shall administer the fund.

14 C. Twenty-five per cent of the monies deposited in the fund shall be  
15 used for grants for innovative programs pursuant to section 28-1303,  
16 subsection H, paragraph 2 and seventy per cent of the monies deposited in the  
17 fund shall be used for grants to political subdivisions and tribal  
18 governments pursuant to section 28-1303, subsection H, paragraph 1.

19 D. Not more than five per cent of the monies deposited in the fund  
20 shall be used for both of the following:

21 1. Administrative purposes of the oversight council on driving or  
22 operating under the influence abatement.

23 2. Payment of the costs of notification prescribed by section 28-1467.

24 E. Monies in the fund are:

25 1. Continuously appropriated.

26 2. Exempt from the provisions of section 35-190 relating to lapsing of  
27 appropriations.

28 F. On notice from the oversight council on driving or operating under  
29 the influence abatement, the state treasurer shall invest and divest monies  
30 in the fund as provided in section 35-313, and monies earned from investments  
31 shall be credited to the fund.

32 Sec. 18. Section 28-1321, Arizona Revised Statutes, is amended to  
33 read:

34 28-1321. Implied consent; tests; refusal to submit to test;  
35 order of suspension; hearing; review; temporary  
36 permit; notification of suspension; special ignition  
37 interlock restricted driver license

38 A. A person who operates a motor vehicle in this state gives consent,  
39 subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or  
40 28-1383, to a test or tests of the person's blood, breath, urine or other  
41 bodily substance for the purpose of determining alcohol concentration or drug  
42 content if the person is arrested for any offense arising out of acts alleged  
43 to have been committed in violation of this chapter or section 4-244,  
44 paragraph 33 while the person was driving or in actual physical control of a  
45 motor vehicle while under the influence of intoxicating liquor or drugs. The

1 test or tests chosen by the law enforcement agency shall be administered at  
2 the direction of a law enforcement officer having reasonable grounds to  
3 believe that the person was driving or in actual physical control of a motor  
4 vehicle in this state either:

- 5 1. While under the influence of intoxicating liquor or drugs.
- 6 2. If the person is under twenty-one years of age, with spirituous  
7 liquor in the person's body.

8 B. After an arrest a violator shall be requested to submit to and  
9 successfully complete any test or tests prescribed by subsection A of this  
10 section, and if the violator refuses the violator shall be informed that the  
11 violator's license or permit to drive will be suspended or denied for twelve  
12 months, or for two years for a second or subsequent refusal within a period  
13 of eighty-four months, unless the violator expressly agrees to submit to and  
14 successfully completes the test or tests. A failure to expressly agree to  
15 the test or successfully complete the test is deemed a refusal. The violator  
16 shall also be informed that:

- 17 1. If the test results show a blood or breath alcohol concentration of  
18 0.08 or more, or if the results show a blood or breath alcohol concentration  
19 of 0.04 or more and the violator was driving or in actual physical control of  
20 a commercial motor vehicle, the violator's license or permit to drive will be  
21 suspended or denied for not less than ninety consecutive days.

22 2. THE VIOLATOR'S DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY  
23 FOR A LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE MAY BE ISSUED OR  
24 REINSTATED FOLLOWING THE PERIOD OF SUSPENSION ONLY IF THE VIOLATOR COMPLETES  
25 ALCOHOL OR OTHER DRUG SCREENING.

26 C. A person who is dead, unconscious or otherwise in a condition  
27 rendering the person incapable of refusal is deemed not to have withdrawn the  
28 consent provided by subsection A of this section and the test or tests may be  
29 administered, subject to section 4-244, paragraph 33 or section 28-1381,  
30 28-1382 or 28-1383.

31 D. If a person under arrest refuses to submit to the test designated  
32 by the law enforcement agency as provided in subsection A of this section:

- 33 1. The test shall not be given, except as provided in section 28-1388,  
34 subsection E or pursuant to a search warrant.

35 2. The law enforcement officer directing the administration of the  
36 test shall:

- 37 (a) File a certified report of the refusal with the department.
- 38 (b) On behalf of the department, serve an order of suspension on the  
39 person that is effective fifteen days after the date the order is served.
- 40 (c) Require the immediate surrender of any license or permit to drive  
41 that is issued by this state and that is in the possession or control of the  
42 person.
- 43 (d) If the license or permit is not surrendered, state the reason why  
44 it is not surrendered.

1 (e) If a valid license or permit is surrendered, issue a temporary  
2 driving permit that is valid for fifteen days.

3 (f) Forward the certified report of refusal, a copy of the completed  
4 notice of suspension, a copy of any completed temporary permit and any driver  
5 license or permit taken into possession under this section to the department  
6 within five days after the issuance of the notice of suspension.

7 E. The certified report is subject to the penalty for perjury as  
8 prescribed by section 28-1561 and shall state all of the following:

9 1. The officer's reasonable grounds to believe that the arrested  
10 person was driving or in actual physical control of a motor vehicle in this  
11 state either:

12 (a) While under the influence of intoxicating liquor or drugs.

13 (b) If the person is under twenty-one years of age, with spirituous  
14 liquor in the person's body.

15 2. The manner in which the person refused to submit to the test or  
16 tests.

17 3. That the person was advised of the consequences of refusal.

18 F. On receipt of the certified report of refusal and a copy of the  
19 order of suspension and on the effective date stated on the order, the  
20 department shall enter the order of suspension on its records unless a  
21 written request for a hearing as provided in this section has been filed by  
22 the accused person. If the department receives only the certified report of  
23 refusal, the department shall notify the person named in the report in  
24 writing sent by mail that:

25 1. Fifteen days after the date of issuance of the notice the  
26 department will suspend the person's license or permit, driving privilege or  
27 nonresident driving privilege.

28 2. The department will provide an opportunity for a hearing if the  
29 person requests a hearing in writing and the request is received by the  
30 department within fifteen days after the notice is sent.

31 G. The order of suspension issued by a law enforcement officer or the  
32 department under this section shall notify the person that:

33 1. The person may submit a written request for a hearing.

34 2. The request for a hearing must be received by the department within  
35 fifteen days after the date of the notice or the order of suspension will  
36 become final.

37 3. The affected person's license or permit to drive or right to apply  
38 for a license or permit or any nonresident operating privilege will be  
39 suspended for twelve months from that date or for two years from that date  
40 for a second or subsequent refusal within a period of eighty-four months.

41 4. THE PERSON'S DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR  
42 A LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE MAY BE ISSUED OR  
43 REINSTATED FOLLOWING THE PERIOD OF SUSPENSION ONLY IF THE PERSON COMPLETES  
44 ALCOHOL OR OTHER DRUG SCREENING.

1 H. The order for suspension shall:

2 1. Be accompanied by printed forms that are ready to mail to the  
3 department and that may be filled out and signed by the person to indicate  
4 the person's desire for a hearing.

5 2. Advise the person that unless the person has surrendered any driver  
6 license or permit issued by this state the person's hearing request will not  
7 be accepted, except that the person may certify pursuant to section 28-3170  
8 that the license or permit is lost or destroyed.

9 I. On the receipt of a request for a hearing, the department shall set  
10 the hearing within thirty days in the county in which the person named in the  
11 report resides unless the law enforcement agency filing the certified report  
12 of refusal pursuant to subsection D of this section requests at the time of  
13 its filing that the hearing be held in the county where the refusal occurred.

14 J. A timely request for a hearing stays the suspension until a hearing  
15 is held, except that the department shall not return any surrendered license  
16 or permit to the person but may issue temporary permits to drive that expire  
17 no later than when the department has made its final decision. If the person  
18 is a resident without a license or permit or has an expired license or  
19 permit, the department may allow the person to apply for a **RESTRICTED** license  
20 or permit. If the department determines the person is otherwise entitled to  
21 the license or permit, the department shall issue and retain a **RESTRICTED**  
22 license or permit subject to this section.

23 K. Hearings requested under this section shall be conducted in the  
24 same manner and under the same conditions as provided in section 28-3306.  
25 For the purposes of this section, the scope of the hearing shall include only  
26 the issues of whether:

27 1. A law enforcement officer had reasonable grounds to believe that  
28 the person was driving or was in actual physical control of a motor vehicle  
29 in this state either:

30 (a) While under the influence of intoxicating liquor or drugs.

31 (b) If the person is under twenty-one years of age, with spirituous  
32 liquor in the person's body.

33 2. The person was placed under arrest.

34 3. The person refused to submit to the test.

35 4. The person was informed of the consequences of refusal.

36 L. If the department determines at the hearing to suspend the affected  
37 person's privilege to operate a motor vehicle, the suspension provided in  
38 this section is effective fifteen days after giving written notice of the  
39 suspension, except that the department may issue or extend a temporary  
40 license that expires on the effective date of the suspension. If the person  
41 is a resident without a license or permit or has an expired license or permit  
42 to operate a motor vehicle in this state, the department shall deny to the  
43 person the issuance of a license or permit for a period of twelve months  
44 after the order of suspension becomes effective or for a period of two years  
45 after the order of suspension becomes effective for a second or subsequent

1 refusal within a period of eighty-four months, AND MAY REINSTATE THE PERSON'S  
2 DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR  
3 NONRESIDENT OPERATING PRIVILEGE FOLLOWING THE PERIOD OF SUSPENSION ONLY IF  
4 THE PERSON COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

5 M. If the suspension order is sustained after the hearing, a motion  
6 for rehearing is not required. Within thirty days after a suspension order  
7 is sustained, the affected person may file a petition in the superior court  
8 to review the final order of suspension or denial by the department in the  
9 same manner provided in section 28-3317. The court shall hear the review of  
10 the final order of suspension or denial on an expedited basis.

11 N. If the suspension or determination that there should be a denial of  
12 issuance is not sustained, the ruling is not admissible in and has no effect  
13 on any administrative, civil or criminal court proceeding.

14 O. If it has been determined under the procedures of this section that  
15 a nonresident's privilege to operate a motor vehicle in this state has been  
16 suspended, the department shall give information EITHER in writing OR BY  
17 ELECTRONIC MEANS of the action taken to the motor vehicle administrator of  
18 the state of the person's residence and of any state in which the person has  
19 a license.

20 P. After completing not less than ninety consecutive days of the  
21 period of suspension required by this section AND ANY ALCOHOL OR OTHER DRUG  
22 SCREENING THAT IS ORDERED BY THE DEPARTMENT PURSUANT TO THIS CHAPTER, a  
23 person whose driving privilege is suspended pursuant to this section may  
24 apply to the department for a special ignition interlock restricted driver  
25 license pursuant to section 28-1401. Unless the certified ignition interlock  
26 period is extended by the department pursuant to section ~~28-1402~~ 28-1461, a  
27 person who is issued a special ignition interlock restricted driver license  
28 as provided in this subsection shall maintain a functioning certified  
29 ignition interlock device in compliance with this chapter during the  
30 remaining period of the suspension prescribed by this section. This  
31 subsection does not apply to a person whose driving privilege is suspended  
32 for a second or subsequent refusal within a period of eighty-four months or a  
33 person who within a period of eighty-four months has been convicted of a  
34 second or subsequent violation of article 3 of this chapter or section 4-244,  
35 paragraph 33 or an act in another jurisdiction that if committed in this  
36 state would be a violation of article 3 of this chapter or section 4-244,  
37 paragraph 33.

38 Sec. 19. Section 28-1382, Arizona Revised Statutes, as amended by Laws  
39 2007, chapter 219, section 2, is amended to read:

40 28-1382. Driving or actual physical control while under the  
41 extreme influence of intoxicating liquor; trial by  
42 jury; sentencing; classification

43 A. It is unlawful for a person to drive or be in actual physical  
44 control of a vehicle in this state if the person has an alcohol concentration  
45 ~~of 0.15 or more~~ AS FOLLOWS within two hours of driving or being in actual

1 physical control of the vehicle and the alcohol concentration results from  
2 alcohol consumed either before or while driving or being in actual physical  
3 control of the vehicle:

4 1. 0.15 OR MORE BUT LESS THAN 0.20.

5 2. 0.20 OR MORE.

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

9 C. At the arraignment, the court shall inform the defendant that the  
10 defendant may request a trial by jury and that the request, if made, shall be  
11 granted.

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

13 1. ~~Except as otherwise provided in this paragraph,~~ Shall be sentenced  
14 to serve not less than thirty consecutive days in jail and is not eligible  
15 for probation or suspension of execution of sentence unless the entire  
16 sentence is served IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,  
17 PARAGRAPH 1 OF THIS SECTION. A person who ~~has an alcohol concentration of~~  
18 ~~0.20 or more~~ IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS  
19 SECTION shall be sentenced to serve not less than forty-five consecutive days  
20 in jail and is not eligible for probation or suspension of execution of  
21 sentence unless the entire sentence is served.

22 2. Shall pay a fine of not less than two hundred fifty dollars, except  
23 that a person who ~~has an alcohol concentration of 0.20 or more~~ IS CONVICTED  
24 OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION shall pay a fine  
25 of not less than five hundred dollars. The fine prescribed in this paragraph  
26 and any assessments, restitution and incarceration costs shall be paid before  
27 the assessment prescribed in paragraph 3 of this subsection.

28 3. Shall pay an additional assessment of two hundred fifty dollars. If  
29 the conviction occurred in the superior court or a justice court, the court  
30 shall transmit the monies received pursuant to this paragraph to the county  
31 treasurer. If the conviction occurred in a municipal court, the court shall  
32 transmit the monies received pursuant to this paragraph to the city  
33 treasurer. The city or county treasurer shall transmit the monies received  
34 to the state treasurer. The state treasurer shall deposit the monies  
35 received in the driving under the influence abatement fund established by  
36 section 28-1304.

37 4. May be ordered by a court to perform community restitution.

38 5. Shall be required by the department, on receipt of the report of  
39 conviction, to equip any motor vehicle the person operates with a certified  
40 ignition interlock device pursuant to section 28-3319. In addition, the  
41 court may order the person to equip any motor vehicle the person operates  
42 with a certified ignition interlock device for more than twelve months  
43 beginning on the date of reinstatement of the person's driving privilege  
44 following a suspension or revocation or on the date of the department's  
45 receipt of the report of conviction, whichever occurs later. The person who

1 operates a motor vehicle with a certified ignition interlock device under  
2 this paragraph shall comply with article 5 of this chapter.

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

11 7. Shall pay an additional assessment of one thousand dollars to be  
12 deposited by the state treasurer in the state general fund. This assessment  
13 is not subject to any surcharge. If the conviction occurred in the superior  
14 court or a justice court, the court shall transmit the assessed monies to the  
15 county treasurer. If the conviction occurred in a municipal court, the court  
16 shall transmit the assessed monies to the city treasurer. The city or county  
17 treasurer shall transmit the monies received to the state treasurer.

18 ~~E. Notwithstanding subsection D, paragraph 1 of this section, at the~~  
19 ~~time of sentencing if the person has an alcohol concentration of less than~~  
20 ~~0.20, the judge may suspend all but ten days of the sentence if the person~~  
21 ~~completes a court ordered alcohol or other drug screening, education or~~  
22 ~~treatment program. If the person fails to complete the court ordered alcohol~~  
23 ~~or other drug screening, education or treatment program and has not been~~  
24 ~~placed on probation, the court shall issue an order to show cause to the~~  
25 ~~defendant as to why the remaining jail sentence should not be served.~~

26 F. E. If within a period of eighty-four months a person is convicted  
27 of a second violation of this section or is convicted of a violation of this  
28 section and has previously been convicted of a violation of section 28-1381  
29 or 28-1383 or an act in another jurisdiction that if committed in this state  
30 would be a violation of this section or section 28-1381 or 28-1383, the  
31 person:

32 1. ~~Except as otherwise provided in this paragraph,~~ Shall be sentenced  
33 to serve not less than one hundred twenty days in jail, sixty days of which  
34 shall be served consecutively, and is not eligible for probation or  
35 suspension of execution of sentence unless the entire sentence has been  
36 served **IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 1**  
37 **OF THIS SECTION.** A person who ~~has an alcohol concentration of 0.20 or more~~  
38 **IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION**  
39 shall be sentenced to serve not less than one hundred eighty days in jail,  
40 ninety of which shall be served consecutively, and is not eligible for  
41 probation or suspension of execution of sentence unless the entire sentence  
42 has been served.

43 2. Shall pay a fine of not less than five hundred dollars, except that  
44 a person who ~~has an alcohol concentration of 0.20 or more~~ **IS CONVICTED OF A**  
45 **VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION** shall pay a fine of

1 not less than one thousand dollars. The fine prescribed in this paragraph  
2 and any assessments, restitution and incarceration costs shall be paid before  
3 the assessment prescribed in paragraph 3 of this subsection.

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

13 4. Shall be ordered by a court to perform at least thirty hours of  
14 community restitution.

15 5. Shall have the person's driving privilege revoked for at least one  
16 year. The court shall report the conviction to the department. On receipt  
17 of the report, the department shall revoke the person's driving privilege and  
18 shall require the person to equip any motor vehicle the person operates with  
19 a 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 is later. The  
25 person who operates a motor vehicle with a certified ignition interlock  
26 device under this paragraph shall comply with article 5 of this chapter.

27 6. Shall pay an additional assessment of one thousand two hundred  
28 fifty dollars to be deposited by the state treasurer in the prison  
29 construction and operations fund established by section 41-1651. 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 7. Shall pay an additional assessment of one thousand two hundred  
37 fifty dollars to be deposited by the state treasurer in the state general  
38 fund. This assessment is not subject to any surcharge. If the conviction  
39 occurred in the superior court or a justice court, the court shall transmit  
40 the assessed monies to the county treasurer. If the conviction occurred in a  
41 municipal court, the court shall transmit the assessed monies to the city  
42 treasurer. The city or county treasurer shall transmit the monies received  
43 to the state treasurer.

1 ~~G. Notwithstanding subsection F, paragraph 1 of this section, at the~~  
2 ~~time of sentencing, if the person has an alcohol concentration of less than~~  
3 ~~0.20, the judge may suspend all but sixty days of the sentence if the person~~  
4 ~~completes a court ordered alcohol or other drug screening, education or~~  
5 ~~treatment program. If the person fails to complete the court ordered alcohol~~  
6 ~~or other drug screening, education or treatment program and has not been~~  
7 ~~placed on probation, the court shall issue an order to show cause as to why~~  
8 ~~the remaining jail sentence should not be served.~~

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

13 ~~I. G.~~ G. 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. H.~~ H. A person who is convicted of a violation of this section is  
17 guilty of a class 1 misdemeanor.

18 Sec. 20. Repeal

19 Section ~~28-1382~~, Arizona Revised Statutes, as amended by Laws 2007,  
20 chapter 195, section 3, is repealed.

21 Sec. 21. Section 28-1385, Arizona Revised Statutes, is amended to  
22 read:

23 ~~28-1385.~~ 28-1385. Administrative license suspension for driving under  
24 the influence or for homicide or assault involving a  
25 motor vehicle; report; hearing; summary review;  
26 ignition interlock device requirement

27 A. A law enforcement officer shall forward to the department a  
28 certified report as prescribed in subsection B of this section, subject to  
29 the penalty for perjury prescribed by section 28-1561, if both of the  
30 following occur:

31 1. The officer arrests a person for a violation of section 4-244,  
32 paragraph 33, section 28-1381, section 28-1382 or section 28-1383 ~~OR FOR A~~  
33 ~~VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201 OR 13-1204 INVOLVING A~~  
34 ~~MOTOR VEHICLE.~~

35 2. The person submits to a blood or breath alcohol test permitted by  
36 section 28-1321, ~~OR ANY OTHER LAW OR A SAMPLE OF BLOOD IS OBTAINED PURSUANT~~  
37 ~~TO SECTION 28-1388 AND THE RESULTS ARE EITHER NOT AVAILABLE OR~~ the results ~~of~~  
38 ~~which~~ indicate either ~~OF THE FOLLOWING:~~

39 (a) 0.08 or more alcohol concentration in the person's blood or  
40 breath.

41 (b) 0.04 or more alcohol concentration in the person's blood or breath  
42 if the person was driving or in actual physical control of a commercial motor  
43 vehicle.

1           B. The officer shall make the certified report required by subsection  
2 A of this section on forms supplied or approved by the department. The  
3 report shall state information that is relevant to the enforcement action,  
4 including:

5           1. Information that adequately identifies the arrested person.

6           2. A statement of the officer's grounds for belief that the person was  
7 driving or in actual physical control of a motor vehicle in violation of  
8 section 4-244, paragraph 33, section 28-1381, ~~or~~ section 28-1382 OR SECTION  
9 28-1383 OR COMMITTED A VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201  
10 OR 13-1204 INVOLVING A MOTOR VEHICLE.

11           3. A statement that the person was arrested for a violation of section  
12 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383 OR  
13 FOR A VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201 OR 13-1204  
14 INVOLVING A MOTOR VEHICLE.

15           4. A report of the results of the ~~chemical~~ BLOOD OR BREATH ALCOHOL  
16 test that was administered, IF THE RESULTS ARE AVAILABLE.

17           C. The officer shall also serve an order of suspension on the person  
18 on behalf of the department. The order of suspension:

19           1. Is effective fifteen days after the date it is served.

20           2. Shall require the immediate surrender of any license or permit to  
21 drive that is issued by this state and that is in the possession or control  
22 of the person.

23           3. Shall contain information concerning the right to a summary review  
24 and hearing, including information concerning the hearing as required by  
25 section 28-1321, subsections G and H.

26           4. Shall be accompanied by printed forms ready to mail to the  
27 department that the person may fill out and sign to indicate the person's  
28 desire for a hearing.

29           5. Shall be entered on the department's records on receipt of the  
30 report by the officer and a copy of the order of suspension.

31           6. SHALL INFORM THE PERSON THAT THE PERSON'S DRIVING PRIVILEGE,  
32 LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR NONRESIDENT  
33 OPERATING PRIVILEGE MAY BE ISSUED OR REINSTATED FOLLOWING THE PERIOD OF  
34 SUSPENSION ONLY IF THE PERSON COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

35           7. SHALL CONTAIN INFORMATION ON ALCOHOL OR OTHER DRUG EDUCATION AND  
36 TREATMENT PROGRAMS THAT ARE PROVIDED BY A FACILITY APPROVED BY THE DEPARTMENT  
37 OF HEALTH SERVICES.

38           D. IF THE BLOOD ALCOHOL CONCENTRATION TEST RESULT IS UNAVAILABLE AT  
39 THE TIME THE TEST IS ADMINISTERED, THE RESULT SHALL BE FORWARDED TO THE  
40 DEPARTMENT BEFORE THE HEARING HELD PURSUANT TO THIS SECTION IN A FORM  
41 PRESCRIBED BY THE DIRECTOR.

42           ~~D.~~ E. If the license or permit is not surrendered pursuant to  
43 subsection C of this section, the officer shall state the reason for the  
44 nonsurrender. If a valid license or permit is surrendered, the officer shall  
45 issue a temporary driving permit that is valid for fifteen days. The officer

1 shall forward a copy of the completed order of suspension, a copy of any  
2 completed temporary permit and any driver license or permit taken into  
3 possession under this section to the department within five days after the  
4 issuance of the order of suspension along with the report.

5 ~~E-~~ F. The department shall suspend the affected person's license or  
6 permit to drive or right to apply for a license or permit or any nonresident  
7 operating privilege for not less than ninety consecutive days from that date.  
8 IF THE PERSON IS OTHERWISE QUALIFIED, THE DEPARTMENT MAY REINSTATE THE  
9 PERSON'S DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR  
10 PERMIT OR NONRESIDENT OPERATING PRIVILEGE FOLLOWING THE PERIOD OF SUSPENSION  
11 ONLY IF THE VIOLATOR COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

12 ~~F-~~ G. Notwithstanding subsections A through ~~E- F~~ of this section, the  
13 department shall suspend the driving privileges of the person described in  
14 subsection A of this section for not less than thirty consecutive days and  
15 shall restrict the driving privileges of the person for not less than sixty  
16 consecutive additional days to travel between the person's place of  
17 employment and residence and during specified periods of time while at  
18 employment, to travel between the person's place of residence and the  
19 person's secondary or postsecondary school, according to the person's  
20 employment or educational schedule, to travel between the person's place of  
21 residence and the office of the person's probation officer for scheduled  
22 appointments or to travel between the person's place of residence and a  
23 screening, education or treatment facility for scheduled appointments if the  
24 person:

25 1. Did not cause A DEATH OR A serious physical injury as defined in  
26 section 13-105 to another person during the course of conduct out of which  
27 the current action arose.

28 2. Has not been convicted of a violation of section 4-244, PARAGRAPH  
29 33, SECTION 28-1381, SECTION 28-1382 or SECTION 28-1383 within eighty-four  
30 months of the date of commission of the acts out of which the current action  
31 arose. The dates of commission of the acts are the determining factor in  
32 applying the eighty-four month provision.

33 3. Has not had the person's privilege to drive suspended pursuant to  
34 this section or section 28-1321 within eighty-four months of the date of  
35 commission of the acts out of which the current action arose.

36 4. PROVIDES SATISFACTORY EVIDENCE TO THE DEPARTMENT OF THE PERSON'S  
37 COMPLETION OF ALCOHOL OR OTHER DRUG SCREENING THAT IS ORDERED BY THE  
38 DEPARTMENT. IF THE PERSON DOES NOT COMPLETE ALCOHOL OR OTHER DRUG SCREENING,  
39 THE DEPARTMENT MAY IMPOSE A NINETY DAY SUSPENSION PURSUANT TO THIS SECTION.

40 ~~G-~~ H. IF THE OFFICER DOES NOT SERVE AN ORDER OF SUSPENSION PURSUANT  
41 TO SUBSECTION C OF THIS SECTION AND if the department ~~receives-only~~ DOES NOT  
42 RECEIVE the report of the results of the blood or breath alcohol test  
43 PURSUANT TO SUBSECTION B, PARAGRAPH 4 OF THIS SECTION, BUT SUBSEQUENTLY  
44 RECEIVES THE RESULTS and the results indicate 0.08 or more alcohol  
45 concentration in the person's blood or breath, or ~~show~~ a blood or breath

1 alcohol concentration of 0.04 or more and the person was driving or in actual  
2 physical control of a commercial motor vehicle, the department shall notify  
3 the person named in the report in writing sent by mail that fifteen days  
4 after the date of issuance of the notice the department will suspend the  
5 person's license or permit, driving privilege or nonresident driving  
6 privilege. The notice shall also state that the department will provide an  
7 opportunity for a hearing and administrative review if the person requests a  
8 hearing or review in writing and the request is received by the department  
9 within fifteen days after the notice is sent.

10 ~~H.~~ I. A timely request for a hearing stays the suspension until a  
11 hearing is held, except that the department shall not return any surrendered  
12 license or permit to the person but may issue temporary permits to drive that  
13 expire no later than when the department has made its final decision. If the  
14 person is a resident without a license or permit or has an expired license or  
15 permit, the department may allow the person to apply for a RESTRICTED license  
16 or permit. If the department determines the person is otherwise entitled to  
17 the RESTRICTED license or permit, the department shall issue, but retain, the  
18 license or permit, subject to this section. All hearings requested under  
19 this section shall be conducted in the same manner and under the same  
20 conditions as provided in section 28-3306.

21 ~~I.~~ J. For the purposes of this section, the scope of the hearing  
22 shall include only the following issues:

23 1. Whether the officer had reasonable grounds to believe the person  
24 was driving or was in actual physical control of a motor vehicle while under  
25 the influence of intoxicating liquor.

26 2. Whether the person was placed under arrest for a violation of  
27 section 4-244, paragraph 33, section 28-1381, section 28-1382 or section  
28 28-1383 OR FOR A VIOLATION OF TITLE 13, CHAPTER 11 OR SECTION 13-1201 OR  
29 13-1204 INVOLVING A MOTOR VEHICLE.

30 3. Whether a test was taken, the results of which indicated the  
31 alcohol concentration in the person's blood or breath at the time the test  
32 was administered of either:

33 (a) 0.08 or more.

34 (b) 0.04 or more if the person was driving or in actual physical  
35 control of a commercial motor vehicle.

36 4. Whether the testing method used was valid and reliable.

37 5. Whether the test results were accurately evaluated.

38 ~~J.~~ K. The results of the blood or breath alcohol test shall be  
39 admitted on establishing the requirements in section 28-1323 or 28-1326.

40 ~~K.~~ L. If the department determines at the hearing to suspend the  
41 affected person's privilege to operate a motor vehicle, the suspension  
42 provided in this section is effective fifteen days after giving written  
43 notice of the suspension, except that the department may issue or extend a  
44 temporary license that expires on the effective date of the suspension. If  
45 the person is a resident without a license or permit or has an expired

1 license or permit to operate a motor vehicle in this state, the department  
2 shall deny the issuance of a license or permit to the person for not less  
3 than ninety consecutive days. THE DEPARTMENT MAY REINSTATE THE PERSON'S  
4 DRIVING PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR  
5 NONRESIDENT OPERATING PRIVILEGE FOLLOWING THE PERIOD OF SUSPENSION ONLY IF  
6 THE VIOLATOR COMPLETES ALCOHOL OR OTHER DRUG SCREENING.

7 ~~L.~~ M. A person may apply for a summary review of an order issued  
8 pursuant to this section instead of a hearing at any time before the  
9 effective date of the order. The person shall submit the application in  
10 writing to any department driver license examining office together with any  
11 written explanation as to why the department should not suspend the driving  
12 privilege. The agent of the department receiving the notice shall issue to  
13 the person an additional driving permit that expires twenty days from the  
14 date the request is received. The department shall review all reports  
15 submitted by the officer and any written explanation submitted by the person  
16 and shall determine if the order of suspension should be sustained or  
17 cancelled. The department shall not hold a hearing, and the review is not  
18 subject to title 41, chapter 6. The department shall notify the person of  
19 its decision before the temporary driving permit expires.

20 ~~M.~~ N. If the suspension or determination that there should be a  
21 denial of issuance is not sustained after a hearing or review, the ruling is  
22 not admissible in and does not have any effect on any civil or criminal court  
23 proceeding.

24 ~~N.~~ O. If it has been determined under the procedures of this section  
25 that a nonresident's privilege to operate a motor vehicle in this state has  
26 been suspended, the department shall give information EITHER in writing OR BY  
27 ELECTRONIC MEANS of the action taken to the motor vehicle administrator of  
28 the state of the person's residence and of any state in which the person has  
29 a license.

30 Sec. 22. Section 28-1387, Arizona Revised Statutes, is amended to  
31 read:

32 28-1387. Prior convictions; alcohol or other drug screening,  
33 education and treatment; license suspension;  
34 supervised probation; civil liability; procedures

35 A. The court shall allow the allegation of a prior conviction or any  
36 other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or  
37 an act in another jurisdiction that if committed in this state would be a  
38 violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days  
39 before the date the case is actually tried and may allow the allegation of a  
40 prior conviction or any other pending charge of a violation of section  
41 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if  
42 committed in this state would be a violation of section 28-1381, 28-1382 or  
43 28-1383 filed at any time before the date the case is actually tried if this  
44 state makes available to the defendant when the allegation is filed a copy of  
45 any information obtained concerning the prior conviction or other pending

1 charge. Any conviction may be used to enhance another conviction  
2 irrespective of the dates on which the offenses occurred within the  
3 eighty-four month provision. For the purposes of this article, an order of a  
4 juvenile court adjudicating a person delinquent is equivalent to a  
5 conviction.

6 B. In addition to any other penalties prescribed by law, the judge  
7 shall order a person who is convicted of a violation of section 28-1381, ~~or~~  
8 28-1382 OR 28-1383 to complete alcohol or other drug screening that is  
9 provided by a facility approved by the department of health services or a  
10 probation department. If a judge determines that the person requires further  
11 alcohol or other drug education or treatment, the person may be required  
12 pursuant to court order to obtain alcohol or other drug education or  
13 treatment under the court's supervision from an approved facility. The judge  
14 may review an education or treatment determination at the request of the  
15 state, the defendant or the probation officer or on the judge's initiative.  
16 The person shall pay the costs of the screening, education or treatment  
17 unless, after considering the person's ability to pay all or part of the  
18 costs, the court waives all or part of the costs. If a person is referred to  
19 a screening, education or treatment facility, the facility shall report to  
20 the court whether the person has successfully completed the screening,  
21 education or treatment program. THE COURT MAY ACCEPT EVIDENCE OF A PERSON'S  
22 COMPLETION OF AN ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT  
23 PROGRAM PURSUANT TO SECTION 28-1445 AS SUFFICIENT TO MEET THE REQUIREMENTS OF  
24 THIS SECTION OR SECTION 28-1381, 28-1382 OR 28-1383 OR MAY ORDER THE PERSON  
25 TO COMPLETE ADDITIONAL ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR  
26 TREATMENT PROGRAMS. IF A PERSON HAS PREVIOUSLY BEEN ORDERED TO COMPLETE AN  
27 ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM PURSUANT TO  
28 THIS SECTION, THE JUDGE SHALL ORDER THE PERSON TO COMPLETE AN ALCOHOL OR  
29 OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM UNLESS THE COURT  
30 DETERMINES THAT ALTERNATIVE SANCTIONS ARE MORE APPROPRIATE.

31 C. After a person who is sentenced pursuant to section 28-1381,  
32 subsection I has served twenty-four consecutive hours in jail or after a  
33 person who is sentenced pursuant to section 28-1381, subsection K or section  
34 28-1382, subsection D or ~~F~~ E has served forty-eight consecutive hours in  
35 jail and after the court receives confirmation that the person is employed or  
36 is a student, the court may provide in the sentence that the defendant, if  
37 the defendant is employed or is a student and can continue the defendant's  
38 employment or schooling, may continue the employment or schooling for not  
39 more than twelve hours a day nor more than five days a week. The person  
40 shall spend the remaining day, days or parts of days in jail until the  
41 sentence is served and shall be allowed out of jail only long enough to  
42 complete the actual hours of employment or schooling.

43 D. Unless the license of a person convicted under section 28-1381 or  
44 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the  
45 department on receipt of the abstract of conviction of a violation of section

1 28-1381 or 28-1382 shall suspend the license of the affected person for not  
2 less than ninety consecutive days.

3 E. When the department receives notification that the person meets the  
4 criteria provided in section 28-1385, subsection ~~F~~ G, the department shall  
5 suspend the driving privileges of the person for not less than thirty  
6 consecutive days and shall restrict the driving privileges of the person for  
7 not less than sixty consecutive additional days to travel between any of the  
8 following:

9 1. The person's place of employment and residence and during specified  
10 periods of time while at employment.

11 2. The person's place of residence and the person's secondary or  
12 postsecondary school, according to the person's employment or educational  
13 schedule.

14 3. The person's place of residence and a screening, education or  
15 treatment facility for scheduled appointments.

16 4. The person's place of residence and the office of the person's  
17 probation officer for scheduled appointments.

18 F. If a person is placed on probation for violating section 28-1381 or  
19 28-1382, the probation shall be supervised unless the court finds that  
20 supervised probation is not necessary or the court does not have supervisory  
21 probation services.

22 G. Any political subdivision processing or using the services of a  
23 person ordered to perform community restitution pursuant to section 28-1381  
24 or 28-1382 does not incur any civil liability to the person ordered to  
25 perform community restitution as a result of these activities unless the  
26 political subdivision or its agent or employee acts with gross negligence.

27 H. IF A PERSON FAILS TO COMPLETE THE COMMUNITY RESTITUTION ORDERED  
28 PURSUANT TO SECTION 28-1381, SUBSECTION K OR SECTION 28-1382, SUBSECTION E,  
29 THE COURT MAY ORDER ALTERNATIVE SANCTIONS IF THE COURT DETERMINES THAT  
30 ALTERNATIVE SANCTIONS ARE MORE APPROPRIATE.

31 ~~H~~ I. Except for another violation of this article, the state shall  
32 not dismiss a charge of violating any provision of this article unless there  
33 is an insufficient legal or factual basis to pursue that charge.

34 Sec. 23. Section 28-1402, Arizona Revised Statutes, is amended to  
35 read:

36 28-1402. Issuance of special ignition interlock restricted  
37 driver license; restrictions

38 A. On application pursuant to section 28-1401, subsection A the  
39 department may, and pursuant to section 28-1401, subsection C the department  
40 shall, issue a special ignition interlock restricted driver license that only  
41 allows a person whose class D or class G license has been suspended or  
42 revoked for a first offense of section 28-1321 or section 28-1383, subsection  
43 A, paragraph 3 to operate a motor vehicle that is equipped with a functioning  
44 certified ignition interlock device and only as follows:

- 1           1. Between the person's place of employment and residence during  
2 specified periods of time while at employment.
- 3           2. Between the person's place of residence, the person's place of  
4 employment and the person's secondary or postsecondary school according to  
5 the person's employment or educational schedule.
- 6           3. Between the person's place of residence and a screening, education  
7 or treatment facility for scheduled appointments.
- 8           4. Between the person's place of residence and the office of the  
9 person's probation officer for scheduled appointments.
- 10          5. Between the person's place of residence and the office of a  
11 physician or other health care professional.
- 12          6. Between the person's place of residence and a certified ignition  
13 interlock device service facility.
- 14          B. The department may only issue a special ignition interlock  
15 restricted driver license to an applicant who is otherwise qualified by law.
- 16          ~~C. For as long as the person maintains a functioning certified  
17 ignition interlock device in the vehicle pursuant to this chapter, each time  
18 an installer obtains information recorded by a certified ignition interlock  
19 device the installer shall electronically provide in a form prescribed by the  
20 department the following information:~~
- 21           ~~1. Any tampering or circumvention.~~
- 22           ~~2. Any failure to provide proof of compliance or inspection of the  
23 certified ignition interlock device as prescribed in section 28-1461.~~
- 24           ~~3. Any attempts to operate the vehicle with an alcohol concentration  
25 exceeding the presumptive limit as prescribed in section 28-1381, subsection  
26 G, paragraph 3, or if the person is under twenty one years of age, attempts  
27 to operate the vehicle with any spirituous liquor in the person's body.~~
- 28          ~~D. The department may extend the special ignition interlock restricted  
29 driver license and the certified ignition interlock device period if the  
30 department has reasonable grounds to believe that any of the following  
31 applies:~~
- 32           ~~1. The person tampered with the certified ignition interlock device.~~
- 33           ~~2. The person attempted to operate the vehicle with an alcohol  
34 concentration exceeding the presumptive limit as prescribed in section  
35 28-1381, subsection G, paragraph 3, or if the person is under twenty-one  
36 years of age, the person attempted to operate the vehicle with any spirituous  
37 liquor in the person's body, three or more times during the period of license  
38 restriction or limitation.~~
- 39           ~~3. The person failed to provide proof of compliance or inspection as  
40 prescribed in section 28-1461.~~
- 41          ~~E. If the special ignition interlock restricted license is extended  
42 pursuant to subsection D of this section, the limitations prescribed in  
43 sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the  
44 restrictive period of the license ends.~~

1 ~~F.~~ C. Except as provided in section 28-1463, if the department  
2 suspends, revokes, cancels or otherwise rescinds a person's special ignition  
3 interlock restricted license or privilege for any reason, the department  
4 shall not issue a new license or reinstate the special ignition interlock  
5 restricted driver license during the prescribed period of suspension or  
6 revocation or while the person is otherwise ineligible to receive a license.

7 Sec. 24. Section 28-1403, Arizona Revised Statutes, is amended to  
8 read:

9 28-1403. Extension of interlock restricted licenses; hearing;  
10 scope

11 A. A person whose driver license restriction is extended pursuant to  
12 section ~~28-1402~~ 28-1461 may submit to the department a written request for a  
13 hearing. The written request must be received by the department within  
14 fifteen days after the date of the order of extension of the restriction. On  
15 receipt of a request for a hearing, a hearing shall be held within thirty  
16 days.

17 B. Hearings requested pursuant to this section shall be conducted in  
18 the same manner and under the same conditions as provided in section 28-3306.  
19 For the purposes of this section, the scope of the hearing shall include only  
20 the following issues:

21 1. Whether the person was issued a special ignition interlock  
22 restricted driver license.

23 2. Whether the person tampered with the certified ignition interlock  
24 device.

25 3. Whether the person attempted to operate the vehicle with an alcohol  
26 concentration exceeding the presumptive limit as prescribed in section  
27 28-1381, subsection G, paragraph 3, three or more times during the period of  
28 license restriction or limitation. ~~or~~

29 4. If the person is under twenty-one years of age, whether the person  
30 attempted to operate the vehicle with any spirituous liquor in the person's  
31 body ~~three or more times~~ during the period of license restriction or  
32 limitation.

33 ~~4.~~ 5. Whether the person submitted proof of compliance or inspection  
34 as prescribed in section 28-1461.

35 Sec. 25. Section 28-1442, Arizona Revised Statutes, is amended to  
36 read:

37 28-1442. Driving under the influence; records; reporting

38 A. The administrative office of the courts shall report to the  
39 governor's office of highway safety by September 1 of each year for the  
40 previous fiscal year:

41 1. The number of complaints issued charging a violation that include  
42 both sections 28-1381 and 28-1382.

43 2. The number of complaints issued charging a violation that include  
44 either section 28-1381 or 28-1382.

1 B. By September 1 of each year the motor vehicle division shall report  
2 to the governor's office of highway safety the number of ignition interlock  
3 devices ordered to be installed pursuant to sections 28-1381, 28-1382 and  
4 28-1383 for the previous fiscal year.

5 C. BY SEPTEMBER 1 OF EACH YEAR THE MOTOR VEHICLE DIVISION SHALL REPORT  
6 TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY THE NUMBER OF IGNITION INTERLOCK  
7 DEVICES THAT ARE CURRENTLY IN USE IN THIS STATE PURSUANT TO AN ORDER TO BE  
8 INSTALLED PURSUANT TO SECTIONS 28-1381, 28-1382 AND 28-1383.

9 ~~E.~~ D. By September 1 of each year each county attorney and municipal  
10 prosecutor shall report to the governor's office of highway safety the number  
11 of cases dismissed pursuant to section 28-1387, subsection ~~H~~ I for the  
12 previous fiscal year.

13 ~~D.~~ E. By October 1 of each year the governor's office of highway  
14 safety shall report the information collected for the previous fiscal year  
15 pursuant to subsections A, B, ~~and~~ C AND D of this section to the president  
16 of the senate and the speaker of the house of representatives.

17 Sec. 26. Title 28, chapter 4, article 4, Arizona Revised Statutes, is  
18 amended by adding section 28-1445, to read:

19 28-1445. Alcohol or other drug screening; license suspension

20 A. THE DEPARTMENT OF TRANSPORTATION SHALL ORDER A PERSON WHOSE DRIVING  
21 PRIVILEGE, LICENSE, PERMIT, RIGHT TO APPLY FOR A LICENSE OR PERMIT OR  
22 NONRESIDENT OPERATING PRIVILEGE IS SUSPENDED PURSUANT TO SECTION 28-1385 TO  
23 COMPLETE ALCOHOL OR OTHER DRUG SCREENING PURSUANT TO THIS CHAPTER. THE  
24 ALCOHOL OR OTHER DRUG SCREENING SHALL BE PROVIDED BY A FACILITY APPROVED BY  
25 THE DEPARTMENT OF HEALTH SERVICES.

26 B. THE DEPARTMENT MAY ACCEPT EVIDENCE SATISFACTORY TO THE DEPARTMENT  
27 AND IN A MANNER PRESCRIBED BY THE DEPARTMENT, AFTER CONSULTING WITH THE  
28 ADMINISTRATIVE OFFICE OF THE COURTS, OF A PERSON'S COMPLETION OF ALCOHOL OR  
29 OTHER DRUG SCREENING ORDERED BY THE COURT PURSUANT TO SECTION 28-1381,  
30 28-1382, 28-1383 OR 28-1387 AS SUFFICIENT TO MEET THE ALCOHOL OR OTHER DRUG  
31 SCREENING REQUIREMENTS OF SECTION 28-1385 AND THIS SECTION OR THE DEPARTMENT  
32 MAY ORDER THE PERSON TO COMPLETE ADDITIONAL ALCOHOL OR OTHER DRUG SCREENING.

33 C. A PERSON WHO IS ORDERED TO COMPLETE ALCOHOL OR OTHER DRUG SCREENING  
34 IS RESPONSIBLE FOR PAYING THE COSTS OF THE SCREENING.

35 D. THE DEPARTMENT SHALL ISSUE A DRIVER LICENSE OR PERMIT OR REINSTATE  
36 A PERSON'S DRIVING PRIVILEGE ONLY IF THE PERSON PROVIDES SATISFACTORY  
37 EVIDENCE TO THE DEPARTMENT THAT THE PERSON HAS COMPLETED ALCOHOL OR OTHER  
38 DRUG SCREENING.

39 E. A PERSON WHO PROVIDES AN ALCOHOL OR OTHER DRUG SCREENING PROGRAM  
40 SHALL ELECTRONICALLY REPORT THE FOLLOWING TO THE DEPARTMENT IN A FORM  
41 PRESCRIBED BY THE DEPARTMENT:

42 1. THE COMPLETION OF SCREENING PURSUANT TO THIS SECTION.

43 2. THE FAILURE OF A PERSON TO COMPLETE SCREENING AS ORDERED BY THE  
44 DEPARTMENT PURSUANT TO THIS SECTION.

1           Sec. 27. Section 28-1461, Arizona Revised Statutes, is amended to  
2 read:

3           28-1461. Use of certified ignition interlock devices; reporting

4           A. If a person's driving privilege is limited pursuant to section  
5 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section  
6 28-1402:

7           1. The person shall:

8           (a) Pay the costs for installation and maintenance of the certified  
9 ignition interlock device.

10           (b) Provide proof to the department of installation of a functioning  
11 certified ignition interlock device in each motor vehicle operated by the  
12 person.

13           (c) Provide proof of compliance to the department at least once every  
14 ninety days during the period the person is ordered to use an ignition  
15 interlock device.

16           (d) Provide proof of inspection of the certified ignition interlock  
17 device for accurate operation and the results of the inspection to the  
18 department at least once every ninety days during the period the person is  
19 ordered to use an ignition interlock device.

20           2. The department shall not reinstate the person's driving privilege  
21 or issue a special ignition interlock restricted driver license until the  
22 person has installed a functioning certified ignition interlock device in  
23 each motor vehicle operated by the person and has provided proof of  
24 installation to the department.

25           B. WHILE A PERSON MAINTAINS A FUNCTIONING CERTIFIED IGNITION INTERLOCK  
26 DEVICE IN A VEHICLE PURSUANT TO THIS CHAPTER, EACH TIME AN INSTALLER OBTAINS  
27 INFORMATION RECORDED BY A CERTIFIED IGNITION INTERLOCK DEVICE THE INSTALLER  
28 SHALL ELECTRONICALLY PROVIDE TO THE DEPARTMENT IN A FORM PRESCRIBED BY THE  
29 DEPARTMENT THE FOLLOWING INFORMATION:

30           1. ANY TAMPERING OR CIRCUMVENTION.

31           2. ANY FAILURE TO PROVIDE PROOF OF COMPLIANCE OR INSPECTION OF THE  
32 CERTIFIED IGNITION INTERLOCK DEVICE AS PRESCRIBED IN THIS SECTION.

33           3. ANY ATTEMPT TO OPERATE THE VEHICLE WITH AN ALCOHOL CONCENTRATION  
34 EXCEEDING THE PRESUMPTIVE LIMIT AS PRESCRIBED IN SECTION 28-1381,  
35 SUBSECTION G, PARAGRAPH 3 OR, IF THE PERSON IS UNDER TWENTY-ONE YEARS OF AGE,  
36 ANY ATTEMPT TO OPERATE THE VEHICLE WITH ANY SPIRITUOUS LIQUOR IN THE PERSON'S  
37 BODY.

38           C. ON REQUEST, THE INSTALLER SHALL PROVIDE THE INFORMATION PRESCRIBED  
39 IN SUBSECTION B OF THIS SECTION TO:

40           1. THE DEPARTMENT OF HEALTH SERVICES AUTHORIZED PROVIDER.

41           2. THE PROBATION DEPARTMENT THAT IS PROVIDING ALCOHOL OR OTHER DRUG  
42 SCREENING, EDUCATION OR TREATMENT TO THE PERSON.

43           3. THE PHYSICIAN, PSYCHOLOGIST OR CERTIFIED SUBSTANCE ABUSE COUNSELOR  
44 WHO IS EVALUATING THE PERSON'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE

1 FOLLOWING A REVOCATION OF THE PERSON'S DRIVING PRIVILEGE AS PRESCRIBED IN  
2 SECTION 28-3315, SUBSECTION D.

3 4. THE COURT.

4 D. THE DEPARTMENT SHALL EXTEND AN IGNITION INTERLOCK RESTRICTED OR  
5 LIMITED DRIVER LICENSE AND THE CERTIFIED IGNITION INTERLOCK DEVICE PERIOD IF  
6 THE DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT ANY OF THE FOLLOWING  
7 APPLIES:

8 1. THE PERSON TAMPERED WITH OR CIRCUMVENTED THE CERTIFIED IGNITION  
9 INTERLOCK DEVICE.

10 2. THE PERSON ATTEMPTED TO OPERATE THE VEHICLE WITH AN ALCOHOL  
11 CONCENTRATION EXCEEDING THE PRESUMPTIVE LIMIT AS PRESCRIBED IN SECTION  
12 28-1381, SUBSECTION G, PARAGRAPH 3 THREE OR MORE TIMES DURING THE PERIOD OF  
13 LICENSE RESTRICTION OR LIMITATION.

14 3. IF THE PERSON IS UNDER TWENTY-ONE YEARS OF AGE, THE PERSON  
15 ATTEMPTED TO OPERATE THE VEHICLE WITH ANY SPIRITUOUS LIQUOR IN THE PERSON'S  
16 BODY DURING THE PERIOD OF LICENSE RESTRICTION OR LIMITATION.

17 4. THE PERSON FAILED TO PROVIDE PROOF OF COMPLIANCE OR INSPECTION AS  
18 PRESCRIBED IN THIS SECTION.

19 E. IF THE SPECIAL IGNITION INTERLOCK RESTRICTED LICENSE IS EXTENDED  
20 PURSUANT TO SUBSECTION D OF THIS SECTION, THE LIMITATIONS PRESCRIBED IN  
21 SECTIONS 28-1381, 28-1382, 28-1383 AND 28-3319 DO NOT BEGIN UNTIL THE  
22 RESTRICTIVE PERIOD OF THE LICENSE ENDS.

23 ~~B-~~ F. The department shall make a notation on the driving record of a  
24 person whose driving privilege is limited pursuant to section 28-1381,  
25 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section  
26 28-1402 that states that the person shall not operate a motor vehicle unless  
27 it is equipped with a certified ignition interlock device.

28 G. PROOF OF COMPLIANCE DOES NOT INCLUDE A SKIPPED OR MISSED RANDOM  
29 SAMPLE IF THE MOTOR VEHICLE'S IGNITION IS OFF AT THE TIME OF THE SKIPPED OR  
30 MISSED SAMPLE.

31 Sec. 28. Section 28-3319, Arizona Revised Statutes, is amended to  
32 read:

33 28-3319. Action after license suspension, revocation or denial  
34 for driving under the influence or refusal of test;  
35 ignition interlock device requirement; definition

36 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320  
37 or 28-3322, the license of a driver or the driving privilege of a nonresident  
38 is suspended or revoked, the department shall not terminate the suspension or  
39 revocation or issue a special ignition interlock restricted driver license,  
40 if applicable, pursuant to chapter 4, article 3.1 of this title until the  
41 person provides proof of financial responsibility pursuant to chapter 9,  
42 article 3 of this title.

43 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320  
44 or 28-3322, an unlicensed resident is denied a license or permit to operate a  
45 motor vehicle, the department shall not issue a license or permit until the

1 person provides proof of financial responsibility pursuant to chapter 9,  
2 article 3 of this title.

3 C. If a person whose license or driving privilege is suspended or  
4 revoked pursuant to section 28-1321, 28-1381, 28-1382, ~~or~~ 28-1383 OR 28-1385  
5 is ordered, pursuant to section 28-1381, 28-1382, ~~or~~ 28-1383 OR 28-1385, to  
6 attend alcohol or other drug screening, education or treatment, the  
7 department shall not either:

8 1. Terminate the suspension or issue a special ignition interlock  
9 restricted driver license, if applicable, pursuant to chapter 4, article 3.1  
10 of this title until the person provides proof from the treatment facility  
11 that the person has completed or is participating satisfactorily in alcohol  
12 or other drug screening, education or treatment.

13 2. Issue a new license or a special ignition interlock restricted  
14 driver license, if applicable, pursuant to chapter 4, article 3.1 of this  
15 title to operate a motor vehicle after the revocation until the person  
16 provides proof from the facility that the person has completed the court  
17 ordered program.

18 D. On receipt of a report of conviction from a court, the department  
19 shall require any motor vehicle the convicted person operates to be equipped  
20 with a functioning certified ignition interlock device and the convicted  
21 person to meet the requirements prescribed in section 28-1461 ~~for twelve~~  
22 ~~months if any of the following applies~~ AS FOLLOWS:

23 1. FOR TWELVE MONTHS IF:

24 (a) THE PERSON IS CONVICTED OF A VIOLATION OF SECTION 28-1381 OR  
25 SECTION 28-1382, SUBSECTION A, PARAGRAPH 1.

26 (b) The department determines that within a period of eighty-four  
27 months ~~a~~ THE person is convicted of a second or subsequent violation of  
28 section 28-1381 OR SECTION 28-1382, SUBSECTION A, PARAGRAPH 1 with a prior  
29 conviction of a violation of section 28-1381, ~~or~~ 28-1382 OR 28-1383 or an act  
30 in another jurisdiction that if committed in this state would be a violation  
31 of section 28-1381, ~~or~~ 28-1382 OR 28-1383.

32 ~~2. The person is sentenced pursuant to section 28-1381 or 28-1382,~~  
33 ~~subsection D, except that if the person's alcohol concentration is 0.20 or~~  
34 ~~more, the certified ignition interlock device is required for eighteen~~  
35 ~~months.~~

36 ~~3. The person is sentenced pursuant to section 28-1382, subsection F,~~  
37 ~~except that if the person's alcohol concentration is 0.20 or more, the~~  
38 ~~certified ignition interlock device is required for twenty-four months.~~

39 ~~4. The conviction is for a violation of section 28-1383, subsection A,~~  
40 ~~paragraph 1, 2 or 4 or paragraph 3, subdivision (b).~~

41 2. FOR EIGHTEEN MONTHS IF THE PERSON IS CONVICTED OF A VIOLATION OF  
42 SECTION 28-1382, SUBSECTION A, PARAGRAPH 2.

43 3. FOR TWENTY-FOUR MONTHS IF:

44 (a) THE PERSON IS CONVICTED OF A VIOLATION OF SECTION 28-1382,  
45 SUBSECTION A, PARAGRAPH 2 AND THE DEPARTMENT DETERMINES THAT WITHIN A PERIOD

1 OF EIGHTY-FOUR MONTHS THE PERSON HAS A PRIOR CONVICTION OF A VIOLATION OF  
2 SECTION 28-1381, 28-1382 OR 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF  
3 COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382 OR  
4 28-1383.

5 (b) THE PERSON IS CONVICTED OF A VIOLATION OF SECTION 28-1383.

6 E. The requirement prescribed in subsection D of this section begins  
7 on the date of reinstatement of the person's driving privilege following a  
8 suspension or revocation or on the date of the department's receipt of the  
9 report of conviction, whichever occurs later.

10 F. A person who is required to equip a motor vehicle with a certified  
11 ignition interlock device pursuant to ~~subsection D of~~ this section shall  
12 comply with chapter 4, article 5 of this title.

13 G. For the purposes of this section, "certified ignition interlock  
14 device" has the same meaning prescribed in section 28-1301.

15 Sec. 29. Section 41-1651, Arizona Revised Statutes, is amended to  
16 read:

17 41-1651. Prison construction and operations fund

18 The prison construction and operations fund is established consisting  
19 of monies received pursuant to sections 5-395.01, ~~5-395.03~~, 5-396, 5-397,  
20 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288. The state  
21 department of corrections shall administer the fund. Monies in the fund are  
22 subject to legislative appropriation and shall be used to pay for any costs  
23 related to prison overcrowding and department support and maintenance.

24 Sec. 30. Effective date

25 This act is effective from and after December 31, 2008.