

COMMITTEE ON TRANSPORTATION
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1200
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

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

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

7 A. A person who is convicted of a violation of section 5-395 is guilty
8 of a class 1 misdemeanor. The person:

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

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

13 3. May be ordered by a court to perform community restitution.

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

22 5. Shall pay an additional assessment of five hundred dollars to be
23 deposited by the state treasurer in the public safety equipment fund
24 established by section 41-1723. This assessment is not subject to any
25 surcharge. If the conviction occurred in the superior court or a justice
26 court, the court shall transmit the assessed monies to the county treasurer.
27 If the conviction occurred in a municipal court, the court shall transmit the
28 assessed monies to the city treasurer. The city or county treasurer shall
29 transmit the monies received to the state treasurer.

30 B. In addition to any other penalties under this section, the judge
31 shall order the person to complete alcohol or other drug screening that is
32 provided by a facility approved by the department of health services or a
33 probation department. If a judge determines that the person requires further
34 alcohol or other drug education or treatment, the person may be required

1 pursuant to court order to obtain alcohol or other drug education or
2 treatment under the court's supervision from an approved facility. The judge
3 may review an education or treatment determination at the request of the
4 state or the defendant or on the judge's own initiative. The person shall
5 pay the costs of the screening, education or treatment unless the court
6 waives part or all of the costs. If a person is referred to a screening,
7 education or treatment facility, the facility shall report to the court
8 whether the person has successfully completed the screening, education or
9 treatment program.

10 C. Notwithstanding subsection A, paragraph 1 of this section and
11 except as provided in section 5-398.01, the judge may either:

12 1. Suspend any imposed sentence for a first violation of section 5-395
13 if the person completes a court ordered alcohol or other drug screening,
14 education or treatment program. If the person fails to complete the court
15 ordered alcohol or other drug screening, education or treatment program and
16 has not been placed on probation, the court shall issue an order to show
17 cause to the defendant as to why the remaining jail sentence should not be
18 served.

19 2. Suspend all but twenty-four consecutive hours of the sentence if
20 the person completes a court ordered alcohol or other drug screening,
21 education or treatment program and if the court determines the person
22 recklessly endangered another person with a substantial risk of physical
23 injury. If the person fails to complete the court ordered alcohol or other
24 drug screening, education or treatment program and has not been placed on
25 probation, the court shall issue an order to show cause to the defendant as
26 to why the remaining jail sentence should not be served.

27 D. If within a period of eighty-four months a person is convicted of a
28 second violation of section 5-395 or is convicted of a violation of section
29 5-395 and has previously been convicted of an act in another jurisdiction
30 that if committed in this state would be a violation of section 5-395, the
31 person:

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

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

1 3. Shall be ordered by the court to perform at least thirty hours of
2 community restitution. If the person fails to complete the community
3 restitution ordered pursuant to this paragraph, the court may order
4 alternative sanctions if the court determines that alternative sanctions are
5 more appropriate.

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

15 5. Shall pay an additional assessment of one thousand two hundred
16 fifty dollars to be deposited by the state treasurer in the public safety
17 equipment fund established by section 41-1723. This assessment is not
18 subject to any surcharge. If the conviction occurred in the superior court
19 or a justice court, the court shall transmit the assessed monies to the
20 county treasurer. If the conviction occurred in a municipal court, the court
21 shall transmit the assessed monies to the city treasurer. The city or county
22 treasurer shall transmit the monies received to the state treasurer.

23 E. Notwithstanding subsection D, paragraph 1 of this section, at the
24 time of sentencing, except if the court determines the person recklessly
25 endangered another person with a substantial risk of physical injury, the
26 judge may suspend all but thirty days of the sentence if the person completes
27 a court ordered alcohol or other drug screening, education or treatment
28 program. If the person fails to complete the court ordered alcohol or other
29 drug screening, education or treatment program and has not been placed on
30 probation, the court shall issue an order to show cause as to why the
31 remaining jail sentence should not be served.

32 F. In applying the eighty-four month provision of subsection D of this
33 section, the dates of the commission of the offense shall be the determining
34 factor irrespective of the sequence in which the offenses were committed.

35 G. A second violation for which a conviction occurs as provided in
36 this section shall not include a conviction for an offense arising out of the
37 same series of acts.

1 H. Any political subdivision processing or utilizing the services of a
2 person ordered to perform community restitution pursuant to this section does
3 not incur any civil liability to the person ordered to perform community
4 restitution as a result of these activities unless the political subdivision
5 or its agent or employee acts with gross negligence.

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

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

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

31 L. If a person is placed on probation for violating section 5-395, the
32 probation shall be supervised unless the court finds that supervised
33 probation is not necessary or the court does not have supervisory probation
34 services.

1 Sec. 2. Section 9-499.07, Arizona Revised Statutes, is amended to
2 read:

3 9-499.07. Prisoner work, community restitution work and home
4 detention program; eligibility; monitoring;
5 procedures; continuous alcohol monitoring program;
6 home detention for persons sentenced for driving
7 under the influence of alcohol or drugs

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

12 B. A prisoner is not eligible for a prisoner work, community
13 restitution work and home detention program **OR A CONTINUOUS ALCOHOL**
14 **MONITORING PROGRAM** if any of the following applies:

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

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

18 3. The sentencing judge states at the time of the sentence that the
19 prisoner may not be eligible for a prisoner work, community restitution work
20 and home detention program **OR A CONTINUOUS ALCOHOL MONITORING PROGRAM**.

21 C. For prisoners who are selected for ~~the~~ **A** program **ESTABLISHED**
22 **PURSUANT TO SUBSECTION A OF THIS SECTION**, the city or town may require
23 electronic monitoring in the prisoner's home whenever the prisoner is not at
24 the prisoner's regular place of employment or while the prisoner is assigned
25 to a community work task. If electronic monitoring is required, the prisoner
26 shall remain under the control of a home detention device that constantly
27 monitors the prisoner's location in order to determine that the prisoner has
28 not left the prisoner's premises. In all other cases, the city or town shall
29 implement a system of monitoring using telephone contact or other appropriate
30 methods to assure compliance with the home detention requirements. The city
31 or town may place appropriate restrictions on prisoners in the program,
32 including testing prisoners for consumption of alcoholic beverages or drugs
33 or prohibiting association with individuals who are determined to be
34 detrimental to the prisoner's successful participation in the program.

35 D. If a prisoner is placed on electronic monitoring pursuant to
36 subsection C of this section, the prisoner shall pay ~~an~~ **THE** electronic
37 monitoring fee in an amount ranging from zero to full cost and thirty dollars

1 per month while on electronic monitoring, unless, after determining the
2 inability of the prisoner to pay these fees, the city or town assesses a
3 lesser fee. The city or town shall use the fees collected to offset
4 operational costs of the program.

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

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

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

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

24 I. A city or town implementing a program ~~under this section~~
25 ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION shall appoint a
26 community restitution work committee. The committee shall recommend to the
27 city or town appropriate community restitution work projects for home
28 detention prisoners. Members are not eligible to receive compensation.

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

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

1 L. If authorized by the court, a person who is sentenced pursuant to
2 section 28-1381 or 28-1382 shall not be placed under home detention in a
3 prisoner work, community restitution work and home detention program OR
4 CONTINUOUS ALCOHOL MONITORING PROGRAM except as provided in subsections M
5 through ~~R~~ S of this section.

6 M. By a majority vote of the full membership of the governing body of
7 the municipality after a public hearing and a finding of necessity, a city or
8 town may establish a home detention program for persons who are sentenced to
9 jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is
10 placed under the program established pursuant to this subsection shall bear
11 the cost of all testing, monitoring and enrollment in alcohol or substance
12 abuse programs unless, after determining the inability of the prisoner to pay
13 the cost, the court assesses a lesser amount. The city or town shall use the
14 collected monies to offset operational costs of the program.

15 N. A CITY OR TOWN MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING
16 PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION
17 28-1381 OR 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL.
18 A PRISONER WHO IS PLACED UNDER A CONTINUOUS ALCOHOL MONITORING PROGRAM
19 ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BEAR THE COST OF ALL TESTING,
20 MONITORING AND ENROLLMENT IN THE PROGRAM UNLESS, AFTER DETERMINING THE
21 INABILITY OF THE PRISONER TO PAY THE COST, THE COURT ASSESSES A LESSER
22 AMOUNT. THE CITY OR TOWN SHALL USE THE COLLECTED MONIES TO OFFSET
23 OPERATIONAL COSTS OF THE PROGRAM.

24 ~~N~~ O. If the city or town establishes a home detention OR CONTINUOUS
25 ALCOHOL MONITORING program under subsection M OR N of this section, a
26 prisoner must meet the following eligibility requirements for the program:

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

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

32 3. Notwithstanding section 28-1387, subsection C, if the prisoner is
33 sentenced under section 28-1381, subsection K or section 28-1382, subsection
34 D or E, the prisoner first serves a minimum of ~~fifteen consecutive days~~
35 TWENTY PER CENT OF THE INITIAL TERM OF INCARCERATION in jail before being
36 placed under home detention OR CONTINUOUS ALCOHOL MONITORING.

1 4. IF PLACED UNDER HOME DETENTION, the prisoner is required to comply
2 with all of the following provisions for the duration of the prisoner's
3 participation in the home detention program:

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

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

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

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

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

15 5. Any additional eligibility criteria that the city or town may
16 impose.

17 ~~P.~~ P. If a city or town establishes a home detention program under
18 subsection M of this section, the court, on placing the prisoner in the
19 program, shall require electronic monitoring in the prisoner's home and, if
20 consecutive hours of jail time are ordered, shall require the prisoner to
21 remain at home during the consecutive hours ordered. The detention device
22 shall constantly monitor the prisoner's location to ensure that the prisoner
23 does not leave the premises. Nothing in this subsection shall be deemed to
24 waive the minimum jail confinement requirements under subsection ~~N~~ O,
25 paragraph 2 of this section.

26 ~~P.~~ Q. The court shall terminate a prisoner's participation in the
27 home detention OR CONTINUOUS ALCOHOL MONITORING program and require the
28 prisoner to complete the remaining term of the jail sentence by jail
29 confinement if:

30 1. The prisoner fails to successfully complete a court ordered alcohol
31 or drug screening, counseling, education and treatment program pursuant to
32 subsection ~~N~~ O, paragraph 4, subdivision (c) of this section or section
33 28-1381, subsection J or L.

34 2. IF PLACED UNDER HOME DETENTION, the court finds that the prisoner
35 left the premises without permission of the court or supervising authority
36 during a time the prisoner is ordered to be on the premises.

1 ~~R.~~ R. At any other time the court may terminate a prisoner's
2 participation in the home detention OR CONTINUOUS ALCOHOL MONITORING program
3 and require the prisoner to complete the remaining term of the jail sentence
4 by jail confinement.

5 ~~S.~~ S. The governing body of the city or town may terminate the
6 program established under subsection M of this section by a majority vote of
7 the full membership of the governing body.

8 Sec. 3. Title 11, chapter 2, article 4, Arizona Revised Statutes, is
9 amended by adding section 11-251.14, to read:

10 11-251.14. Prisoner home detention program; eligibility;
11 monitoring; procedures; continuous alcohol
12 monitoring program; home detention for persons
13 sentenced for driving under the influence of
14 alcohol or drugs

15 A. A COUNTY MAY ESTABLISH A HOME DETENTION PROGRAM FOR ELIGIBLE
16 SENTENCED PRISONERS, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL.
17 THE PRESIDING JUSTICE OF THE PEACE OF THE COUNTY JUSTICE COURT SHALL APPROVE
18 THE PROGRAM BEFORE ITS IMPLEMENTATION.

19 B. A PRISONER IS NOT ELIGIBLE FOR A HOME DETENTION PROGRAM OR A
20 CONTINUOUS ALCOHOL MONITORING PROGRAM IF ANY OF THE FOLLOWING APPLIES:

21 1. THE PRISONER IS FOUND BY THE COURT TO CONSTITUTE A RISK TO EITHER
22 HIMSELF OR OTHER MEMBERS OF THE COMMUNITY.

23 2. THE PRISONER HAS A PAST HISTORY OF VIOLENT BEHAVIOR.

24 3. THE SENTENCING JUDGE STATES AT THE TIME OF THE SENTENCE THAT THE
25 PRISONER MAY NOT BE ELIGIBLE FOR A HOME DETENTION PROGRAM OR A CONTINUOUS
26 ALCOHOL MONITORING PROGRAM.

27 C. FOR PRISONERS WHO ARE SELECTED FOR A PROGRAM ESTABLISHED PURSUANT
28 TO SUBSECTION A OF THIS SECTION, THE COURT MAY REQUIRE ELECTRONIC MONITORING
29 IN THE PRISONER'S HOME WHENEVER THE PRISONER IS NOT AT THE PRISONER'S REGULAR
30 PLACE OF EMPLOYMENT OR WHILE THE PRISONER IS ASSIGNED TO A COMMUNITY WORK
31 TASK. IF ELECTRONIC MONITORING IS REQUIRED, THE PRISONER SHALL REMAIN UNDER
32 THE CONTROL OF A HOME DETENTION DEVICE THAT CONSTANTLY MONITORS THE
33 PRISONER'S LOCATION IN ORDER TO DETERMINE THAT THE PRISONER HAS NOT LEFT THE
34 PRISONER'S PREMISES. IN ALL OTHER CASES, THE COURT SHALL IMPLEMENT A SYSTEM
35 OF MONITORING USING TELEPHONE CONTACT OR OTHER APPROPRIATE METHODS TO ASSURE
36 COMPLIANCE WITH THE HOME DETENTION REQUIREMENTS. THE COURT MAY PLACE
37 APPROPRIATE RESTRICTIONS ON PRISONERS IN THE PROGRAM, INCLUDING TESTING

1 PRISONERS FOR CONSUMPTION OF ALCOHOLIC BEVERAGES OR DRUGS OR PROHIBITING
2 ASSOCIATION WITH INDIVIDUALS WHO ARE DETERMINED TO BE DETRIMENTAL TO THE
3 PRISONER'S SUCCESSFUL PARTICIPATION IN THE PROGRAM.

4 D. IF A PRISONER IS PLACED ON ELECTRONIC MONITORING PURSUANT TO
5 SUBSECTION C OF THIS SECTION, THE PRISONER SHALL PAY THE ELECTRONIC
6 MONITORING FEE IN AN AMOUNT RANGING FROM ZERO TO FULL COST AND THIRTY DOLLARS
7 PER MONTH WHILE ON ELECTRONIC MONITORING, UNLESS, AFTER DETERMINING THE
8 INABILITY OF THE PRISONER TO PAY THESE FEES, THE COURT ASSESSES A LESSER FEE.
9 THE COUNTY SHALL USE THE FEES COLLECTED TO OFFSET OPERATIONAL COSTS OF THE
10 PROGRAM.

11 E. PRISONERS WHO ARE SELECTED FOR THE HOME DETENTION PROGRAM SHALL BE
12 EMPLOYED IN THE COUNTY IN WHICH THEY ARE INCARCERATED. THE COURT SHALL
13 REVIEW THE PLACE OF EMPLOYMENT TO DETERMINE WHETHER IT IS APPROPRIATE FOR A
14 HOME DETENTION PRISONER. IF THE PRISONER IS TERMINATED FROM EMPLOYMENT OR
15 DOES NOT COME TO WORK, THE EMPLOYER SHALL NOTIFY THE COURT.

16 F. THE COURT MAY ALLOW PRISONERS TO BE AWAY FROM HOME DETENTION FOR
17 SPECIAL PURPOSES, INCLUDING CHURCH ATTENDANCE, MEDICAL APPOINTMENTS OR
18 FUNERALS.

19 G. AT ANY TIME THE COURT MAY TERMINATE A PRISONER'S PARTICIPATION IN
20 THE HOME DETENTION PROGRAM OR CONTINUOUS ALCOHOL MONITORING PROGRAM AND
21 REQUIRE THAT THE PRISONER COMPLETE THE REMAINING TERM OF THE PRISONER'S
22 SENTENCE IN JAIL CONFINEMENT.

23 H. IF AUTHORIZED BY THE COURT, A PERSON WHO IS SENTENCED PURSUANT TO
24 SECTION 28-1381 OR 28-1382 SHALL NOT BE PLACED UNDER HOME DETENTION OR A
25 CONTINUOUS ALCOHOL MONITORING PROGRAM EXCEPT AS PROVIDED IN SUBSECTIONS I
26 THROUGH N OF THIS SECTION.

27 I. BY A MAJORITY VOTE OF THE FULL MEMBERSHIP OF THE BOARD OF
28 SUPERVISORS AFTER A PUBLIC HEARING AND A FINDING OF NECESSITY, A COUNTY MAY
29 ESTABLISH A HOME DETENTION PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL
30 CONFINEMENT PURSUANT TO SECTION 28-1381 OR 28-1382. A PRISONER WHO IS PLACED
31 UNDER THE PROGRAM ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BEAR THE COST
32 OF ALL TESTING, MONITORING AND ENROLLMENT IN ALCOHOL OR SUBSTANCE ABUSE
33 PROGRAMS UNLESS, AFTER DETERMINING THE INABILITY OF THE PRISONER TO PAY THE
34 COST, THE COURT ASSESSES A LESSER AMOUNT. THE COUNTY SHALL USE THE COLLECTED
35 MONIES TO OFFSET OPERATIONAL COSTS OF THE PROGRAM.

36 J. A COUNTY MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING PROGRAM FOR
37 PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION 28-1381 OR

1 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL. A PRISONER
2 WHO IS PLACED UNDER A CONTINUOUS ALCOHOL MONITORING PROGRAM ESTABLISHED
3 PURSUANT TO THIS SECTION SHALL BEAR THE COST OF ALL TESTING, MONITORING AND
4 ENROLLMENT IN THE PROGRAM UNLESS, AFTER DETERMINING THE INABILITY OF THE
5 PRISONER TO PAY THE COST, THE COURT ASSESSES A LESSER AMOUNT. THE COUNTY
6 SHALL USE THE COLLECTED MONIES TO OFFSET OPERATIONAL COSTS OF THE PROGRAM.

7 K. IF THE COUNTY ESTABLISHES A HOME DETENTION OR CONTINUOUS ALCOHOL
8 MONITORING PROGRAM UNDER SUBSECTION I OR J OF THIS SECTION, A PRISONER MUST
9 MEET THE FOLLOWING ELIGIBILITY REQUIREMENTS FOR THE PROGRAM:

10 1. SUBSECTION B OF THIS SECTION APPLIES IN DETERMINING ELIGIBILITY FOR
11 THE PROGRAM.

12 2. IF THE PRISONER IS SENTENCED UNDER SECTION 28-1381, SUBSECTION I,
13 THE PRISONER FIRST SERVES A MINIMUM OF ONE DAY IN JAIL.

14 3. NOTWITHSTANDING SECTION 28-1387, SUBSECTION C, IF THE PRISONER IS
15 SENTENCED UNDER SECTION 28-1381, SUBSECTION K OR SECTION 28-1382, SUBSECTION
16 D OR E, THE PRISONER FIRST SERVES A MINIMUM OF TWENTY PER CENT OF THE INITIAL
17 TERM OF INCARCERATION IN JAIL BEFORE BEING PLACED UNDER HOME DETENTION OR
18 CONTINUOUS ALCOHOL MONITORING.

19 4. IF PLACED UNDER HOME DETENTION, THE PRISONER IS REQUIRED TO COMPLY
20 WITH ALL OF THE FOLLOWING PROVISIONS FOR THE DURATION OF THE PRISONER'S
21 PARTICIPATION IN THE HOME DETENTION PROGRAM:

22 (a) ALL OF THE PROVISIONS OF SUBSECTIONS C THROUGH F OF THIS SECTION.

23 (b) TESTING AT LEAST ONCE A DAY FOR THE USE OF ALCOHOLIC BEVERAGES OR
24 DRUGS BY A SCIENTIFIC METHOD THAT IS NOT LIMITED TO URINALYSIS OR A BREATH OR
25 INTOXICATION TEST IN THE PRISONER'S HOME OR AT THE OFFICE OF A PERSON
26 DESIGNATED BY THE COURT TO CONDUCT THESE TESTS.

27 (c) PARTICIPATION IN AN ALCOHOL OR DRUG PROGRAM, OR BOTH. THESE
28 PROGRAMS SHALL BE ACCREDITED BY THE DEPARTMENT OF HEALTH SERVICES OR A COUNTY
29 PROBATION DEPARTMENT.

30 (d) PROHIBITION OF ASSOCIATION WITH ANY INDIVIDUAL DETERMINED TO BE
31 DETRIMENTAL TO THE PRISONER'S SUCCESSFUL PARTICIPATION IN THE PROGRAM.

32 (e) ALL OTHER PROVISIONS OF THE SENTENCE IMPOSED.

33 5. ANY ADDITIONAL ELIGIBILITY CRITERIA THAT THE COURT MAY IMPOSE.

34 L. IF A COUNTY ESTABLISHES A HOME DETENTION PROGRAM UNDER SUBSECTION I
35 OF THIS SECTION, THE COURT, ON PLACING THE PRISONER IN THE PROGRAM, SHALL
36 REQUIRE ELECTRONIC MONITORING IN THE PRISONER'S HOME AND, IF CONSECUTIVE
37 HOURS OF JAIL TIME ARE ORDERED, SHALL REQUIRE THE PRISONER TO REMAIN AT HOME

1 DURING THE CONSECUTIVE HOURS ORDERED. THE DETENTION DEVICE SHALL CONSTANTLY
2 MONITOR THE PRISONER'S LOCATION TO ENSURE THAT THE PRISONER DOES NOT LEAVE
3 THE PREMISES.

4 M. THE COURT SHALL TERMINATE A PRISONER'S PARTICIPATION IN THE HOME
5 DETENTION OR CONTINUOUS ALCOHOL MONITORING PROGRAM AND REQUIRE THE PRISONER
6 TO COMPLETE THE REMAINING TERM OF THE JAIL SENTENCE BY JAIL CONFINEMENT IF:

7 1. THE PRISONER FAILS TO SUCCESSFULLY COMPLETE A COURT ORDERED ALCOHOL
8 OR DRUG SCREENING, COUNSELING, EDUCATION AND TREATMENT PROGRAM PURSUANT TO
9 SUBSECTION K, PARAGRAPH 4, SUBDIVISION (c) OF THIS SECTION OR SECTION
10 28-1381, SUBSECTION J OR L.

11 2. IF PLACED UNDER HOME DETENTION, THE COURT FINDS THAT THE PRISONER
12 LEFT THE PREMISES WITHOUT PERMISSION OF THE COURT OR SUPERVISING AUTHORITY
13 DURING A TIME THE PRISONER IS ORDERED TO BE ON THE PREMISES.

14 N. AT ANY OTHER TIME THE COURT MAY TERMINATE A PRISONER'S
15 PARTICIPATION IN THE HOME DETENTION OR CONTINUOUS ALCOHOL MONITORING PROGRAM
16 AND REQUIRE THE PRISONER TO COMPLETE THE REMAINING TERM OF THE JAIL SENTENCE
17 BY JAIL CONFINEMENT.

18 O. THE COUNTY BOARD OF SUPERVISORS MAY TERMINATE THE PROGRAM
19 ESTABLISHED UNDER SUBSECTION I OF THIS SECTION BY A MAJORITY VOTE OF THE FULL
20 MEMBERSHIP OF THE GOVERNING BODY.

21 Sec. 4. Section 11-459, Arizona Revised Statutes, is amended to read:

22 11-459. Prisoner work, community restitution work and home
23 detention program; eligibility; monitoring;
24 procedures; continuous alcohol monitoring program;
25 home detention for persons sentenced for driving under
26 the influence of alcohol or drugs; community
27 restitution work committee; members; duties

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

32 B. A prisoner is not eligible for a prisoner work, community
33 restitution work and home detention program OR A CONTINUOUS ALCOHOL
34 MONITORING PROGRAM if any of the following applies:

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

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

2 3. The prisoner has been convicted of a serious offense as defined in
3 section 13-706 or has been ~~determined to be~~ SENTENCED AS a dangerous ~~and~~
4 OFFENDER PURSUANT TO SECTION 13-704 OR repetitive offender PURSUANT TO
5 SECTION 13-703.

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

7 5. The sentencing judge states at the time of the sentence that the
8 prisoner may not be eligible for a prisoner work, community restitution work
9 and home detention program OR A CONTINUOUS ALCOHOL MONITORING PROGRAM.

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

12 C. If a prisoner is selected for ~~the~~ A program ESTABLISHED PURSUANT TO
13 SUBSECTION A OF THIS SECTION, the sheriff may require electronic monitoring
14 in the prisoner's home whenever the prisoner is not at the prisoner's regular
15 place of employment or while the prisoner is assigned to a community work
16 task. If electronic monitoring is required, the prisoner shall remain under
17 the control of a home detention device that constantly monitors the
18 prisoner's location in order to determine that the prisoner has not left the
19 prisoner's premises. In all other cases, the sheriff shall implement a
20 system of monitoring using visitation, telephone contact or other appropriate
21 methods to assure compliance with the home detention requirements. The
22 sheriff may place appropriate restrictions on prisoners in the program,
23 including testing prisoners for consumption of alcoholic beverages or drugs
24 or prohibiting association with individuals who are determined to be
25 detrimental to the prisoner's successful participation in the program.

26 D. If a prisoner is placed on electronic monitoring pursuant to
27 subsection C of this section, the prisoner shall pay ~~an~~ THE electronic
28 monitoring fee in an amount ranging from zero to full cost and thirty dollars
29 per month while on electronic monitoring, unless, after determining the
30 inability of the prisoner to pay these fees, the sheriff assesses a lesser
31 fee. The sheriff shall use the fees collected to offset operational costs of
32 the program.

33 E. Prisoners who are selected for the home detention program shall be
34 employed in the county in which they are incarcerated. The sheriff shall
35 review the place of employment to determine whether it is appropriate for a
36 home detention prisoner. If the prisoner is terminated from employment or
37 does not come to work, the employer shall notify the sheriff's office.

1 Alternatively, or in addition, a community restitution work assignment may be
2 made by the sheriff to a program recommended to the sheriff by the community
3 restitution work committee. If a prisoner is incapable of performing
4 community restitution or being employed, the sheriff may exempt the prisoner
5 from these programs.

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

8 G. The sheriff may allow prisoners to be away from home detention for
9 special purposes, including church attendance, medical appointments or
10 funerals. The standard for review and determination of such leave is the
11 same as that implemented to decide transportation requests for similar
12 purposes made by prisoners who are confined in the county jail.

13 H. Community restitution work shall include public works projects
14 operated and supervised by public agencies of this state or counties, cities
15 or towns on recommendation of the community restitution work committee and
16 approval of the sheriff. The community restitution work committee may also
17 recommend and the sheriff may approve other forms of community restitution
18 work sponsored and supervised by public or private community oriented
19 organizations and agencies.

20 I. The community restitution work committee is established in each
21 county and is composed of two designees of the sheriff, a representative of
22 the county attorney's office selected by the county attorney, a
23 representative of a local police agency selected by the police chief of the
24 largest city in the county and three persons selected by the county board of
25 supervisors from the private sector. A sheriff's designee shall serve as
26 committee chairman and schedule all meetings. The committee shall meet as
27 often as necessary, but no less than once every three months, for the purpose
28 of considering and recommending appropriate community restitution work
29 projects for home detention prisoners. The committee shall make its
30 recommendations to the sheriff. Members are not eligible to receive
31 compensation.

32 J. At any time the sheriff may terminate a prisoner's participation in
33 the prisoner work, community restitution work and home detention program **OR**
34 **CONTINUOUS ALCOHOL MONITORING PROGRAM** and require that the prisoner complete
35 the remaining term of the prisoner's sentence in jail confinement.

36 K. If authorized by the court, a person who is sentenced pursuant to
37 section 28-1381 or 28-1382 shall not be placed under home detention in a

1 prisoner work, community restitution work and home detention program OR A
2 CONTINUOUS ALCOHOL MONITORING PROGRAM except as provided in subsections L
3 through ~~R~~ R of this section.

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

15 M. A COUNTY SHERIFF MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING
16 PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION
17 28-1381 OR 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL
18 AND SHALL FULFILL THE SHERIFF'S DUTY TO TAKE CHARGE OF AND KEEP THE COUNTY
19 JAIL AND PRISONERS. A PRISONER WHO IS PLACED UNDER A CONTINUOUS ALCOHOL
20 MONITORING PROGRAM ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BEAR THE
21 COST OF ALL TESTING, MONITORING AND ENROLLMENT IN THE PROGRAM UNLESS, AFTER
22 DETERMINING THE INABILITY OF THE PRISONER TO PAY THE COST, THE COURT ASSESSES
23 A LESSER AMOUNT. THE COUNTY SHALL USE THE COLLECTED MONIES TO OFFSET
24 OPERATIONAL COSTS OF THE PROGRAM.

25 ~~M.~~ N. If a county sheriff establishes a home detention OR CONTINUOUS
26 ALCOHOL MONITORING program under subsection L OR M of this section, a
27 prisoner must meet the following eligibility requirements for the program:

28 1. Subsection B of this section applies in determining eligibility for
29 the program.

30 2. If the prisoner is sentenced under section 28-1381, subsection I,
31 the prisoner first serves a minimum of ~~twenty-four consecutive hours~~ ONE DAY
32 in jail.

33 3. Notwithstanding section 28-1387, subsection C, if the prisoner is
34 sentenced under section 28-1381, subsection K or section 28-1382, subsection
35 D or E, the prisoner first serves a minimum of ~~fifteen consecutive days~~
36 TWENTY PER CENT OF THE INITIAL TERM OF INCARCERATION in jail before being
37 placed under home detention OR CONTINUOUS ALCOHOL MONITORING.

1 4. IF PLACED UNDER HOME DETENTION, the prisoner is required to comply
2 with all of the following requirements for the duration of the prisoner's
3 participation in the home detention program:

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

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

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

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

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

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

16 ~~N~~. 0. If a county sheriff establishes a home detention program under
17 subsection L of this section, the court, on placing the prisoner in the
18 program, shall require electronic monitoring in the prisoner's home and, if
19 consecutive hours of jail time are ordered, shall require the prisoner to
20 remain at home during the consecutive hours ordered. The detention device
21 shall constantly monitor the prisoner's location to ensure that the prisoner
22 does not leave the premises. Nothing in this subsection shall be deemed to
23 waive the minimum jail confinement requirements under subsection ~~M~~ N,
24 paragraph 2 of this section.

25 ~~O~~. P. The court shall terminate a prisoner's participation in the
26 home detention OR CONTINUOUS ALCOHOL MONITORING program and shall require the
27 prisoner to complete the remaining term of the jail sentence by jail
28 confinement if either:

29 1. The prisoner fails to successfully complete a court ordered alcohol
30 or drug screening, counseling, education and treatment program pursuant to
31 subsection ~~M~~ N, paragraph 4, subdivision (c) of this section or section
32 28-1381, subsection J or L.

33 2. IF PLACED UNDER HOME DETENTION, the prisoner leaves the premises
34 during a time that the prisoner is ordered to be on the premises without
35 permission of the court or supervising authority.

36 ~~P~~. Q. At any other time the court may terminate a prisoner's
37 participation in the home detention OR CONTINUOUS ALCOHOL MONITORING program

1 and require the prisoner to complete the remaining term of the jail sentence
2 by jail confinement.

3 ~~Q.~~ R. The sheriff may terminate ~~the~~ A program ESTABLISHED PURSUANT TO
4 THIS SECTION at any time.

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

8 Sec. 5. Section 28-1304, Arizona Revised Statutes, is amended to read:
9 28-1304. Driving under the influence abatement fund

10 A. The driving under the influence abatement fund is established
11 consisting of monies deposited pursuant to section 4-213, subsection J,
12 section 5-396, subsection I, paragraph 2, section 5-397, subsection D,
13 paragraph 3 and subsection F, paragraph 3, section 28-1382, subsection D,
14 paragraph 3 and subsection E, paragraph 3, ~~and~~ section 28-1383, subsection J,
15 paragraph 2 AND SECTION 28-1465.

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

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

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

25 1. Administrative purposes of the oversight council on driving or
26 operating under the influence abatement.

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

28 E. Monies in the fund are:

29 1. Continuously appropriated.

30 2. Exempt from the provisions of section 35-190 relating to lapsing of
31 appropriations.

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

1 Sec. 6. Section 28-1321, Arizona Revised Statutes, is amended to read:
2 28-1321. Implied consent; tests; refusal to submit to test;
3 order of suspension; hearing; review; temporary
4 permit; notification of suspension; special ignition
5 interlock restricted driver license

6 A. A person who operates a motor vehicle in this state gives consent,
7 subject to section 4-244, paragraph 34 or section 28-1381, 28-1382 or
8 28-1383, to a test or tests of the person's blood, breath, urine or other
9 bodily substance for the purpose of determining alcohol concentration or drug
10 content if the person is arrested for any offense arising out of acts alleged
11 to have been committed in violation of this chapter or section 4-244,
12 paragraph 34 while the person was driving or in actual physical control of a
13 motor vehicle while under the influence of intoxicating liquor or drugs. The
14 test or tests chosen by the law enforcement agency shall be administered at
15 the direction of a law enforcement officer having reasonable grounds to
16 believe that the person was driving or in actual physical control of a motor
17 vehicle in this state either:

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

21 B. After an arrest a violator shall be requested to submit to and
22 successfully complete any test or tests prescribed by subsection A of this
23 section, and if the violator refuses the violator shall be informed that the
24 violator's license or permit to drive will be suspended or denied for twelve
25 months, or for two years for a second or subsequent refusal within a period
26 of eighty-four months, unless the violator expressly agrees to submit to and
27 successfully completes the test or tests. A failure to expressly agree to
28 the test or successfully complete the test is deemed a refusal. The violator
29 shall also be informed that:

- 30 1. If the test results show a blood or breath alcohol concentration of
31 0.08 or more, ~~or~~ if the results show a blood or breath alcohol concentration
32 of 0.04 or more and the violator was driving or in actual physical control of
33 a commercial motor vehicle **OR IF THE RESULTS SHOW THERE IS ANY DRUG DEFINED**
34 **IN SECTION 13-3401 OR ITS METABOLITE IN THE PERSON'S BODY AND THE PERSON DOES**
35 **NOT POSSESS A VALID PRESCRIPTION FOR THE DRUG**, the violator's license or
36 permit to drive will be suspended or denied for not less than ninety
37 consecutive days.

1 2. The violator's driving privilege, license, permit, right to apply
2 for a license or permit or nonresident operating privilege may be issued or
3 reinstated following the period of suspension only if the violator completes
4 alcohol or other drug screening.

5 C. A person who is dead, unconscious or otherwise in a condition
6 rendering the person incapable of refusal is deemed not to have withdrawn the
7 consent provided by subsection A of this section and the test or tests may be
8 administered, subject to section 4-244, paragraph 34 or section 28-1381,
9 28-1382 or 28-1383.

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

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

14 2. The law enforcement officer directing the administration of the
15 test shall:

16 (a) File a certified report of the refusal with the department.

17 (b) On behalf of the department, serve an order of suspension on the
18 person that is effective fifteen days after the date the order is served.

19 (c) Require the immediate surrender of any license or permit to drive
20 that is issued by this state and that is in the possession or control of the
21 person.

22 (d) If the license or permit is not surrendered, state the reason why
23 it is not surrendered.

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

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

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

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

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

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

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

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

4 F. On receipt of the certified report of refusal and a copy of the
5 order of suspension and on the effective date stated on the order, the
6 department shall enter the order of suspension on its records unless a
7 written **OR ONLINE** request for a hearing as provided in this section has been
8 filed by the accused person. If the department receives only the certified
9 report of refusal, the department shall notify the person named in the report
10 in writing sent by mail that:

11 1. Fifteen days after the date of issuance of the notice the
12 department will suspend the person's license or permit, driving privilege or
13 nonresident driving privilege.

14 2. The department will provide an opportunity for a hearing if the
15 person requests a hearing in writing **OR ONLINE** and the request is received by
16 the department within fifteen days after the notice is sent.

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

19 1. The person may submit a written **OR ONLINE** request for a hearing.

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

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

27 4. The person's driving privilege, license, permit, right to apply for
28 a license or permit or nonresident operating privilege may be issued or
29 reinstated following the period of suspension only if the person completes
30 alcohol or other drug screening.

31 H. The order for suspension shall:

32 1. Be accompanied by printed forms that are ready to mail to the
33 department, ~~and~~ that may be filled out and signed by the person to indicate
34 the person's desire for a hearing **AND THAT ADVISE THE PERSON THAT THE PERSON**
35 **MAY ALTERNATIVELY SUBMIT AN ONLINE REQUEST FOR A HEARING.**

36 2. Advise the person that unless the person has surrendered any driver
37 license or permit issued by this state the person's hearing request will not

1 be accepted, except that the person may certify pursuant to section 28-3170
2 that the license or permit is lost or destroyed.

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

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

17 K. Hearings requested under this section shall be conducted in the
18 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 issues of whether:

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

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

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

27 2. The person was placed under arrest.

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

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

30 L. If the department determines at the hearing to suspend the affected
31 person's privilege to operate a motor vehicle, the suspension provided in
32 this section is effective fifteen days after giving written notice of the
33 suspension, except that the department may issue or extend a temporary
34 license that expires on the effective date of the suspension. If the person
35 is a resident without a license or permit or has an expired license or permit
36 to operate a motor vehicle in this state, the department shall deny to the
37 person the issuance of a license or permit for a period of twelve months

1 after the order of suspension becomes effective or for a period of two years
2 after the order of suspension becomes effective for a second or subsequent
3 refusal within a period of eighty-four months, and 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 person completes alcohol or other drug screening.

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

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

16 O. If it has been determined under the procedures of this section that
17 a nonresident's privilege to operate a motor vehicle in this state has been
18 suspended, the department shall give information either in writing or by
19 electronic means of the action taken to the motor vehicle administrator of
20 the state of the person's residence and of any state in which the person has
21 a license.

22 P. After completing not less than ninety consecutive days of the period
23 of suspension required by this section and any alcohol or other drug screening
24 that is ordered by the department pursuant to this chapter, a person whose
25 driving privilege is suspended pursuant to this section may apply to the
26 department for a special ignition interlock restricted driver license pursuant
27 to section 28-1401. Unless the certified ignition interlock period is
28 extended by the department pursuant to section 28-1461, a person who is issued
29 a special ignition interlock restricted driver license as provided in this
30 subsection shall maintain a functioning certified ignition interlock device in
31 compliance with this chapter during the remaining period of the suspension
32 prescribed by this section. This subsection does not apply to a person whose
33 driving privilege is suspended for a second or subsequent refusal within a
34 period of eighty-four months ~~or a person who within a period of eighty-four~~
35 ~~months has been convicted of a second or subsequent violation of article 3 of~~
36 ~~this chapter or section 4-244, paragraph 34 or an act in another jurisdiction~~

1 ~~that if committed in this state would be a violation of article 3 of this~~
2 ~~chapter or section 4-244, paragraph 34.~~

3 Sec. 7. Section 28-1381, Arizona Revised Statutes, is amended to read:

4 28-1381. Driving or actual physical control while under the
5 influence; trial by jury; presumptions; admissible
6 evidence; sentencing; classification

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

9 1. While under the influence of intoxicating liquor, any drug, a vapor
10 releasing substance containing a toxic substance or any combination of
11 liquor, drugs or vapor releasing substances if the person is impaired to the
12 slightest degree.

13 2. If the person has an alcohol concentration of 0.08 or more within
14 two hours of driving or being in actual physical control of the vehicle and
15 the alcohol concentration results from alcohol consumed either before or
16 while driving or being in actual physical control of the vehicle.

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

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

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

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

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

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

35 F. At the arraignment, the court shall inform the defendant that the
36 defendant may request a trial by jury and that the request, if made, shall be
37 granted.

1 G. In a trial, action or proceeding for a violation of this section or
2 section 28-1383 other than a trial, action or proceeding involving driving or
3 being in actual physical control of a commercial vehicle, the defendant's
4 alcohol concentration within two hours of the time of driving or being in
5 actual physical control as shown by analysis of the defendant's blood, breath
6 or other bodily substance gives rise to the following presumptions:

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

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

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

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

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

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

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

27 3. May be ordered by a court to perform community restitution.

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

36 5. Shall pay an additional assessment of five hundred dollars to be
37 deposited by the state treasurer in the public safety equipment fund

1 established by section 41-1723. This assessment is not subject to any
2 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 6. Shall be required by the department, on report of the conviction,
8 to equip any motor vehicle the person operates with a certified ignition
9 interlock device pursuant to section 28-3319. In addition, the court may
10 order the person to equip any motor vehicle the person operates with a
11 certified ignition interlock device for more than twelve months beginning on
12 the date of reinstatement of the person's driving privilege following a
13 suspension or revocation or on the date of the department's receipt of the
14 report of conviction, whichever occurs later. The person who operates a
15 motor vehicle with a certified ignition interlock device under this paragraph
16 shall comply with article 5 of this chapter.

17 J. Notwithstanding subsection I, paragraph 1 of this section, at the
18 time of sentencing the judge may suspend all but ~~twenty-four consecutive~~
19 ~~hours~~ ONE DAY of the sentence if the person completes a court ordered alcohol
20 or other drug screening, education or treatment program. If the person fails
21 to complete the court ordered alcohol or other drug screening, education or
22 treatment program and has not been placed on probation, the court shall issue
23 an order to show cause to the defendant as to why the remaining jail sentence
24 should not be served.

25 K. If within a period of eighty-four months a person is convicted of a
26 second violation of this section or is convicted of a violation of this
27 section and has previously been convicted of a violation of section 28-1382
28 or 28-1383 or an act in another jurisdiction that if committed in this state
29 would be a violation of this section or section 28-1382 or 28-1383, the
30 person:

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

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

36 3. Shall be ordered by a court to perform at least thirty hours of
37 community restitution.

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

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

22 6. Shall pay an additional assessment of one thousand two hundred
23 fifty dollars to be deposited by the state treasurer in the public safety
24 equipment fund established by section 41-1723. This assessment is not
25 subject to any surcharge. If the conviction occurred in the superior court
26 or a justice court, the court shall transmit the assessed monies to the
27 county treasurer. If the conviction occurred in a municipal court, the court
28 shall transmit the assessed monies to the city treasurer. The city or county
29 treasurer shall transmit the monies received to the state treasurer.

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

1 M. In applying the eighty-four month provision of subsection K of this
2 section, the dates of the commission of the offense shall be the determining
3 factor, irrespective of the sequence in which the offenses were committed.

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

7 O. AFTER COMPLETING FORTY-FIVE DAYS OF THE REVOCATION PERIOD
8 PRESCRIBED BY SUBSECTION K OF THIS SECTION, A PERSON WHOSE DRIVING PRIVILEGE
9 IS REVOKED FOR A VIOLATION OF THIS SECTION AND WHO IS SENTENCED PURSUANT TO
10 SUBSECTION K OF THIS SECTION IS ELIGIBLE FOR A SPECIAL IGNITION INTERLOCK
11 RESTRICTED DRIVER LICENSE PURSUANT TO SECTION 28-1401.

12 Sec. 8. Section 28-1382, Arizona Revised Statutes, is amended to read:

13 28-1382. Driving or actual physical control while under the
14 extreme influence of intoxicating liquor; trial by
15 jury; sentencing; classification

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

- 22 1. 0.15 or more but less than 0.20.
- 23 2. 0.20 or more.

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

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

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

31 1. Shall be sentenced to serve not less than thirty consecutive days
32 in jail and is not eligible for probation or suspension of execution of
33 sentence unless the entire sentence is served if the person is convicted of a
34 violation of subsection A, paragraph 1 of this section. A person who is
35 convicted of a violation of subsection A, paragraph 2 of this section shall
36 be sentenced to serve not less than forty-five consecutive days in jail and

1 is not eligible for probation or suspension of execution of sentence unless
2 the entire sentence is served.

3 2. Shall pay a fine of not less than two hundred fifty dollars, except
4 that a person who is convicted of a violation of subsection A, paragraph 2 of
5 this section shall pay a fine of not less than five hundred dollars. The
6 fine prescribed in this paragraph and any assessments, restitution and
7 incarceration costs shall be paid before the assessment prescribed in
8 paragraph 3 of this subsection.

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

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

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

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

1 7. Shall pay an additional assessment of one thousand dollars to be
2 deposited by the state treasurer in the public safety equipment fund
3 established by section 41-1723. 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 E. If within a period of eighty-four months a person is convicted of a
10 second violation of this section or is convicted of a violation of this
11 section and has previously been convicted of a violation of section 28-1381
12 or 28-1383 or an act in another jurisdiction that if committed in this state
13 would be a violation of this section or section 28-1381 or 28-1383, the
14 person:

15 1. Shall be sentenced to serve not less than one hundred twenty days
16 in jail, sixty days of which shall be served consecutively, and is not
17 eligible for probation or suspension of execution of sentence unless the
18 entire sentence has been served if the person is convicted of a violation of
19 subsection A, paragraph 1 of this section. A person who is convicted of a
20 violation of subsection A, paragraph 2 of this section shall be sentenced to
21 serve not less than one hundred eighty days in jail, ninety of which shall be
22 served consecutively, and is not eligible for probation or suspension of
23 execution of sentence unless the entire sentence has been served.

24 2. Shall pay a fine of not less than five hundred dollars, except that
25 a person who is convicted of a violation of subsection A, paragraph 2 of this
26 section shall pay a fine of not less than one thousand dollars. The fine
27 prescribed in this paragraph and any assessments, restitution and
28 incarceration costs shall be paid before the assessment prescribed in
29 paragraph 3 of this subsection.

30 3. Shall pay an additional assessment of two hundred fifty dollars.
31 If the conviction occurred in the superior court or a justice court, the
32 court shall transmit the monies received pursuant to this paragraph to the
33 county treasurer. If the conviction occurred in a municipal court, the court
34 shall transmit the monies received pursuant to this paragraph to the city
35 treasurer. The city or county treasurer shall transmit the monies received
36 to the state treasurer. The state treasurer shall deposit the monies

1 received in the driving under the influence abatement fund established by
2 section 28-1304.

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

5 5. Shall have the person's driving privilege revoked for at least one
6 year. The court shall report the conviction to the department. On receipt
7 of the report, the department shall revoke the person's driving privilege and
8 shall require the person to equip any motor vehicle the person operates with
9 a certified ignition interlock device pursuant to section 28-3319. In
10 addition, the court may order the person to equip any motor vehicle the
11 person operates with a certified ignition interlock device for more than
12 twelve months beginning on the date of reinstatement of the person's driving
13 privilege following a suspension or revocation or on the date of the
14 department's receipt of the report of conviction, whichever is later. The
15 person who operates a motor vehicle with a certified ignition interlock
16 device under this paragraph shall comply with article 5 of this chapter.

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

26 7. Shall pay an additional assessment of one thousand two hundred
27 fifty dollars to be deposited by the state treasurer in the public safety
28 equipment fund established by section 41-1723. This assessment is not
29 subject to any surcharge. If the conviction occurred in the superior court
30 or a justice court, the court shall transmit the assessed monies to the
31 county treasurer. If the conviction occurred in a municipal court, the court
32 shall transmit the assessed monies to the city treasurer. The city or county
33 treasurer shall transmit the monies received to the state treasurer.

34 F. In applying the eighty-four month provision of subsection E of this
35 section, the dates of the commission of the offense shall be the determining
36 factor, irrespective of the sequence in which the offenses were 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 H. AFTER COMPLETING FORTY-FIVE DAYS OF THE REVOCATION PERIOD
5 PRESCRIBED BY SUBSECTION E OF THIS SECTION, A PERSON WHOSE DRIVING PRIVILEGE
6 IS REVOKED FOR A VIOLATION OF THIS SECTION AND WHO IS SENTENCED PURSUANT TO
7 SUBSECTION E OF THIS SECTION IS ELIGIBLE FOR A SPECIAL IGNITION INTERLOCK
8 RESTRICTED DRIVER LICENSE PURSUANT TO SECTION 28-1401.

9 ~~H.~~ I. A person who is convicted of a violation of this section is
10 guilty of a class 1 misdemeanor.

11 Sec. 9. Section 28-1383, Arizona Revised Statutes, is amended to read:

12 28-1383. Aggravated driving or actual physical control while
13 under the influence; violation; classification;
14 definition

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

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

23 2. Within a period of eighty-four months commits a third or subsequent
24 violation of section 28-1381, section 28-1382 or this section or is convicted
25 of a violation of section 28-1381, section 28-1382 or this section and has
26 previously been convicted of any combination of convictions of section
27 28-1381, section 28-1382 or this section or acts in another jurisdiction that
28 if committed in this state would be a violation of section 28-1381, section
29 28-1382 or this section.

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

32 (a) Section 28-1381.

33 (b) Section 28-1382.

34 4. While the person is ordered by the court or required pursuant to
35 section 28-3319 by the department to equip any motor vehicle the person
36 operates with a certified ignition interlock device, ~~does either of the~~
37 ~~following:~~

1 ~~(a) While under arrest refuses to submit to any test chosen by a law~~
2 ~~enforcement officer pursuant to section 28-1321, subsection A.~~

3 ~~(b)~~ commits a violation of section 28-1381, section 28-1382 or this
4 section.

5 B. The dates of the commission of the offenses are the determining
6 factor in applying the eighty-four month provision provided in subsection A,
7 paragraph 2 of this section regardless of the sequence in which the offenses
8 were committed. For the purposes of this section, a third or subsequent
9 violation for which a conviction occurs does not include a conviction for an
10 offense arising out of the same series of acts. The time that a probationer
11 is found to be on absconder status or the time that a person is incarcerated
12 in any state, federal, county or city jail or correctional facility is
13 excluded when determining the eighty-four month period provided in subsection
14 A, paragraph 2 and subsection E of this section.

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

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

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

23 2. Subsection A, paragraph 2 of this section and within an eighty-four
24 month period has been convicted of two prior violations of section 28-1381,
25 section 28-1382 or this section, or any combination of those sections, or
26 acts in another jurisdiction that if committed in this state would be a
27 violation of section 28-1381, section 28-1382 or this section.

28 E. A person who is convicted under subsection A, paragraph 2 of this
29 section and who within an eighty-four month period has been convicted of
30 three or more prior violations of section 28-1381, section 28-1382 or this
31 section, or any combination of those sections, or acts in another
32 jurisdiction that if committed in this state would be a violation of section
33 28-1381, section 28-1382 or this section is not eligible for probation,
34 pardon, commutation or suspension of sentence or release on any other basis
35 until the person has served not less than eight months in prison.

1 F. A person who is convicted under subsection A, paragraph 3,
2 subdivision (a) of this section shall serve at least the minimum term of
3 incarceration required pursuant to section 28-1381.

4 G. A person who is convicted under subsection A, paragraph 3,
5 subdivision (b) of this section shall serve at least the minimum term of
6 incarceration required pursuant to section 28-1382.

7 H. A person who is convicted of a violation of this section shall
8 attend and complete alcohol or other drug screening, education or treatment
9 from an approved facility. If the person fails to comply with this
10 subsection and is placed on probation, in addition to the provisions of
11 section 13-901 the court may order that the person be incarcerated as a term
12 of probation as follows:

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

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

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

23 J. On a conviction for a violation of this section, the court:

24 1. Shall report the conviction to the department. On receipt of the
25 report, the department shall revoke the driving privilege of the person. The
26 department shall not issue the person a new driver license within three years
27 of the date of the conviction and, ~~for a conviction of a violation of~~
28 ~~subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b) of this~~
29 ~~section,~~ shall require the person to equip any motor vehicle the person
30 operates with a certified ignition interlock device pursuant to section
31 28-3319. In addition, the court may order the person to equip any motor
32 vehicle the person operates with a certified ignition interlock device for
33 more than twelve months beginning on the date of reinstatement of the
34 person's driving privilege following a suspension or revocation or on the
35 date of the department's receipt of the report of conviction, whichever
36 occurs later. The person who operates a motor vehicle with a certified

1 ignition interlock device under this paragraph shall comply with article 5 of
2 this chapter.

3 2. In addition to any other penalty prescribed by law, shall order the
4 person to pay an additional assessment of two hundred fifty dollars. If the
5 conviction occurred in the superior court or a justice court, the court shall
6 transmit the monies received pursuant to this paragraph to the county
7 treasurer. If the conviction occurred in a municipal court, the court shall
8 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. Any fine imposed for a violation of this section and any
13 assessments, restitution and incarceration costs shall be paid before the
14 assessment prescribed in this paragraph.

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

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

26 5. In addition to any other penalty prescribed by law, shall order the
27 person to pay an additional assessment of one thousand five hundred dollars
28 to be deposited by the state treasurer in the public safety equipment fund
29 established by section 41-1723. This assessment is not subject to any
30 surcharge. If the conviction occurred in the superior court or a justice
31 court, the court shall transmit the assessed monies to the county treasurer.
32 If the conviction occurred in a municipal court, the court shall transmit the
33 assessed monies to the city treasurer. The city or county treasurer shall
34 transmit the monies received to the state treasurer.

35 K. After completing the period of suspension required by section
36 28-1385, a person whose driving privilege is revoked for a violation of
37 subsection A, paragraph 3 of this section may apply to the department for a

1 special ignition interlock restricted driver license pursuant to section
2 28-1401.

3 L. Aggravated driving or actual physical control while under the
4 influence of intoxicating liquor or drugs committed under:

5 1. Subsection A, paragraph 1, ~~or 2 or paragraph 4, subdivision (b)~~ of
6 this section is a class 4 felony.

7 2. Subsection A, paragraph 3 ~~or paragraph 4, subdivision (a)~~ of this
8 section is a class 6 felony.

9 M. For the purposes of this section, "suspension, cancellation,
10 revocation or refusal" means any suspension, cancellation, revocation or
11 refusal.

12 Sec. 10. Section 28-1385, Arizona Revised Statutes, is amended to
13 read:

14 28-1385. Administrative license suspension for driving under
15 the influence or for homicide or assault involving a
16 motor vehicle; report; hearing; summary review;
17 ignition interlock device requirement

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

22 1. The officer arrests a person for a violation of section 4-244,
23 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a
24 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a
25 motor vehicle.

26 2. The person submits to a blood or breath alcohol test permitted by
27 section 28-1321 or any other law or a sample of blood is obtained pursuant to
28 section 28-1388 and the results are either not available or the results
29 indicate ~~either~~ ANY of the following:

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

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

35 (c) ANY DRUG DEFINED IN SECTION 13-3401 OR ITS METABOLITE IS IN THE
36 PERSON'S BODY EXCEPT IF THE PERSON POSSESSES A VALID PRESCRIPTION FOR THE
37 DRUG.

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 34, section 28-1381, 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 34, 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 blood or breath alcohol test that
16 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 **THAT ARE** 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 **AND THAT ADVISE THE PERSON THAT THE PERSON MAY**
29 **ALTERNATIVELY SUBMIT AN ONLINE REQUEST FOR A HEARING.**

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

32 6. Shall inform the person that the person's driving privilege,
33 license, permit, right to apply for a license or permit or nonresident
34 operating privilege may be issued or reinstated following the period of
35 suspension only if the person completes alcohol or other drug screening.

1 7. Shall contain information on alcohol or other drug education and
2 treatment programs that are provided by a facility approved by the department
3 of health services.

4 D. If the blood ~~alcohol concentration~~ test result is unavailable at
5 the time the test is administered, the result shall be forwarded to the
6 department before the hearing held pursuant to this section in a form
7 prescribed by the director.

8 E. If the license or permit is not surrendered pursuant to subsection
9 C of this section, the officer shall state the reason for the nonsurrender.
10 If a valid license or permit is surrendered, the officer shall issue a
11 temporary driving permit that is valid for fifteen days. The officer shall
12 forward a copy of the completed order of suspension, a copy of any completed
13 temporary permit and any driver license or permit taken into possession under
14 this section to the department within five days after the issuance of the
15 order of suspension along with the report.

16 F. The department shall suspend the affected person's license or
17 permit to drive or right to apply for a license or permit or any nonresident
18 operating privilege for not less than ninety consecutive days from that date.
19 If the person is otherwise qualified, the department may reinstate the
20 person's driving privilege, license, permit, right to apply for a license or
21 permit or nonresident operating privilege following the period of suspension
22 only if the violator completes alcohol or other drug screening.

23 G. Notwithstanding subsections A through F of this section, the
24 department shall suspend the driving privileges of the person described in
25 subsection A of this section for not less than thirty consecutive days and
26 shall restrict the driving privileges of the person for not less than sixty
27 consecutive additional days to travel between the person's place of
28 employment and residence and during specified periods of time while at
29 employment, to travel between the person's place of residence and the
30 person's secondary or postsecondary school, according to the person's
31 employment or educational schedule, to travel between the person's place of
32 residence and the office of the person's probation officer for scheduled
33 appointments or to travel between the person's place of residence and a
34 screening, education or treatment facility for scheduled appointments if the
35 person:

1 1. Did not cause death or serious physical injury as defined in
2 section 13-105 to another person during the course of conduct out of which
3 the current action arose.

4 2. Has not been convicted of a violation of section 4-244, paragraph
5 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four
6 months of the date of commission of the acts out of which the current action
7 arose. The dates of commission of the acts are the determining factor in
8 applying the eighty-four month provision.

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

12 4. Provides satisfactory evidence to the department of the person's
13 completion of alcohol or other drug screening that is ordered by the
14 department. If the person does not complete alcohol or other drug screening,
15 the department may impose a ninety day suspension pursuant to this section.

16 H. If the officer does not serve an order of suspension pursuant to
17 subsection C of this section and if the department does not receive the
18 report of the results of the blood or breath alcohol test pursuant to
19 subsection B, paragraph 4 of this section, but subsequently receives the
20 results and the results indicate 0.08 or more alcohol concentration in the
21 person's blood or breath, ~~or~~ a blood or breath alcohol concentration of 0.04
22 or more and the person was driving or in actual physical control of a
23 commercial motor vehicle **OR ANY DRUG DEFINED IN SECTION 13-3401 OR ITS**
24 **METABOLITE IN THE PERSON'S BODY AND THE PERSON DOES NOT POSSESS A VALID**
25 **PRESCRIPTION FOR THE DRUG**, the department shall notify the person named in
26 the report in writing sent by mail that fifteen days after the date of
27 issuance of the notice the department will suspend the person's license or
28 permit, driving privilege or nonresident driving privilege. The notice shall
29 also state that the department will provide an opportunity for a hearing and
30 administrative review if the person requests a hearing or review in writing
31 and the request is received by the department within fifteen days after the
32 notice is sent.

33 I. A timely request for a hearing stays the suspension until a hearing
34 is held, except that the department shall not return any surrendered license
35 or permit to the person but may issue temporary permits to drive that expire
36 no later than when the department has made its final decision. If the person
37 is a resident without a license or permit or has an expired license or

1 permit, the department may allow the person to apply for a restricted license
2 or permit. If the department determines the person is otherwise entitled to
3 the restricted license or permit, the department shall issue, but retain, the
4 license or permit, subject to this section. All hearings requested under
5 this section shall be conducted in the same manner and under the same
6 conditions as provided in section 28-3306.

7 J. For the purposes of this section, the scope of the hearing shall
8 include only the following issues:

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

12 2. Whether the person was placed under arrest for a violation of
13 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
14 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
15 13-1204 involving a motor vehicle.

16 3. Whether a test was taken, the results of which indicated ANY OF the
17 FOLLOWING:

18 (a) AN alcohol concentration in the person's blood or breath at the
19 time the test was administered of either:

20 ~~(a)~~ (i) 0.08 or more.

21 ~~(b)~~ (ii) 0.04 or more if the person was driving or in actual physical
22 control of a commercial motor vehicle.

23 (b) ANY DRUG DEFINED IN SECTION 13-3401 OR ITS METABOLITE IN THE
24 PERSON'S BODY EXCEPT IF THE PERSON POSSESSES A VALID PRESCRIPTION FOR THE
25 DRUG.

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

27 5. Whether the test results were accurately evaluated.

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

30 L. If the department determines at the hearing to suspend the affected
31 person's privilege to operate a motor vehicle, the suspension provided in
32 this section is effective fifteen days after giving written notice of the
33 suspension, except that the department may issue or extend a temporary
34 license that expires on the effective date of the suspension. If the person
35 is a resident without a license or permit or has an expired license or permit
36 to operate a motor vehicle in this state, the department shall deny the
37 issuance of a license or permit to the person for not less than ninety

1 consecutive days. The department may reinstate the person's driving
2 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 violator completes alcohol or other drug screening.

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

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

22 O. If it has been determined under the procedures of this section that
23 a nonresident's privilege to operate a motor vehicle in this state has been
24 suspended, the department shall give information either in writing or by
25 electronic means of the action taken to the motor vehicle administrator of
26 the state of the person's residence and of any state in which the person has
27 a license.

28 Sec. 11. Section 28-1401, Arizona Revised Statutes, is amended to
29 read:

30 28-1401. Special ignition interlock restricted driver licenses;
31 application fee

32 A. A person whose class D or class G license has been suspended or
33 revoked for a first ~~offense of~~ REFUSAL PURSUANT TO section 28-1321, A SECOND
34 VIOLATION OF SECTION 28-1381 OR 28-1382 or A FIRST VIOLATION OF section
35 28-1383, subsection A, paragraph 3, ~~—~~ may apply to the department for a
36 special ignition interlock restricted driver license that allows a person to
37 operate a motor vehicle during the period of suspension or revocation subject

1 to the restrictions prescribed in section 28-1402 and the certified ignition
2 interlock device requirements prescribed in article 5 of this chapter if the
3 person's privilege to operate a motor vehicle has been suspended or revoked
4 due to an alcohol related offense pursuant to ~~either~~ ANY of the following:

5 1. Section 28-1321, if the person meets the criteria of section
6 28-1321, subsection P.

7 2. SECTION 28-1381, IF THE PERSON MEETS THE CRITERIA OF SECTION
8 28-1381, SUBSECTION O AND THE PERSON PRESENTS EVIDENCE THAT IS SATISFACTORY
9 TO THE DIRECTOR AND THAT SHOWS THAT THE PERSON HAS COMPLETED THE REQUIREMENTS
10 PRESCRIBED IN SECTION 28-1387, SUBSECTION B.

11 3. SECTION 28-1382, IF THE PERSON MEETS THE CRITERIA OF SECTION
12 28-1382, SUBSECTION H AND THE PERSON PRESENTS EVIDENCE THAT IS SATISFACTORY
13 TO THE DIRECTOR AND THAT SHOWS THAT THE PERSON HAS COMPLETED THE REQUIREMENTS
14 PRESCRIBED IN SECTION 28-1387, SUBSECTION B.

15 ~~2.~~ 4. Section 28-1383, if the person meets the criteria of section
16 28-1383, subsection K and the person presents evidence that is satisfactory
17 to the director AND that shows that the person has completed ~~screening and~~
18 ~~treatment~~ THE REQUIREMENTS PRESCRIBED IN SECTION 28-1387, SUBSECTION B.

19 B. An applicant for a special ignition interlock restricted driver
20 license shall pay an application fee in an amount to be determined by the
21 director.

22 C. The department shall issue a special ignition interlock restricted
23 driver license during the period of a court ordered restriction pursuant to
24 sections 28-3320 and 28-3322 subject to the restrictions prescribed in
25 section 28-1402 and the certified ignition interlock requirements prescribed
26 in article 5 of this chapter.

27 D. If the department issues a special ignition interlock restricted
28 driver license, the department shall not delete a suspension or revocation
29 from its records.

30 E. The granting of a special ignition interlock restricted driver
31 license does not reduce or eliminate the required use of an ignition
32 interlock device pursuant to section 28-3319.

33 F. THE DEPARTMENT SHALL MAKE A NOTATION ON A SPECIAL IGNITION
34 INTERLOCK RESTRICTED DRIVER LICENSE THAT IS ISSUED TO A PERSON WHO IS PLACED
35 IN A CONTINUOUS ALCOHOL MONITORING PROGRAM PURSUANT TO SECTION 28-3319,
36 SUBSECTION I.

1 Sec. 12. Section 28-1402, Arizona Revised Statutes, is amended to
2 read:

3 28-1402. Issuance of special ignition interlock restricted
4 driver license; restrictions

5 A. On application pursuant to section 28-1401, subsection A the
6 department may, and pursuant to section 28-1401, subsection C the department
7 shall, issue a special ignition interlock restricted driver license that only
8 allows a person whose class D or class G license has been suspended or
9 revoked for a first ~~offense of~~ REFUSAL PURSUANT TO section 28-1321, A SECOND
10 VIOLATION OF SECTION 28-1381 OR 28-1382 or A FIRST VIOLATION OF section
11 28-1383, subsection A, paragraph 3 to operate a motor vehicle that is
12 equipped with a functioning certified ignition interlock device and only as
13 follows:

14 1. Between the person's place of employment and residence during
15 specified periods of time while at employment.

16 2. Between the person's place of residence, the person's place of
17 employment and the person's secondary or postsecondary school according to
18 the person's employment or educational schedule.

19 3. Between the person's place of residence and a screening, education
20 or treatment facility for scheduled appointments.

21 4. Between the person's place of residence and the office of the
22 person's probation officer for scheduled appointments.

23 5. Between the person's place of residence and the office of a
24 physician or other health care professional.

25 6. Between the person's place of residence and a certified ignition
26 interlock device service facility.

27 B. The department may only issue a special ignition interlock
28 restricted driver license to an applicant who is otherwise qualified by law.

29 C. Except as provided in section 28-1463, if the department suspends,
30 revokes, cancels or otherwise rescinds a person's special ignition interlock
31 restricted license or privilege for any reason, the department shall not
32 issue a new license or reinstate the special ignition interlock restricted
33 driver license during the prescribed period of suspension or revocation or
34 while the person is otherwise ineligible to receive a license.

1 Sec. 13. 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.

1 C. If the person is under eighteen years of age, the installer shall
2 also provide to the person's parent or legal guardian the information
3 prescribed in subsection B of this section.

4 D. On request, the installer shall provide the information prescribed
5 in subsection B of this section to:

6 1. The department of health services authorized provider.

7 2. The probation department that is providing alcohol or other drug
8 screening, education or treatment to the person.

9 3. The physician, psychologist or substance abuse counselor who is
10 evaluating the person's ability to safely operate a motor vehicle following a
11 revocation of the person's driving privilege as prescribed in section
12 28-3315, subsection D.

13 4. The court.

14 E. The department shall extend an ignition interlock restricted or
15 limited driver license and the certified ignition interlock device period **FOR**
16 **SIX MONTHS** if the department has reasonable grounds to believe that any of
17 the following applies:

18 1. The person tampered with or circumvented the certified ignition
19 interlock device.

20 2. The person attempted to operate the vehicle with an alcohol
21 concentration exceeding the presumptive limit as prescribed in section
22 28-1381, subsection G, paragraph 3 three or more times during the period of
23 license restriction or limitation.

24 3. If the person is under twenty-one years of age, the person
25 attempted to operate the vehicle with any spirituous liquor in the person's
26 body during the period of license restriction or limitation.

27 4. The person failed to provide proof of compliance or inspection as
28 prescribed in this section.

29 5. **THE PERSON ATTEMPTS TO OPERATE THE VEHICLE WITH AN ALCOHOL**
30 **CONCENTRATION EXCEEDING THE PRESUMPTIVE LIMIT PRESCRIBED IN SECTION 28-1381,**
31 **SUBSECTION G, PARAGRAPH 3 DURING A SIX MONTH EXTENSION PURSUANT TO THIS**
32 **SUBSECTION. THE EXTENSION PURSUANT TO THIS PARAGRAPH IS AN ADDITIONAL SIX**
33 **MONTHS.**

34 F. If the special ignition interlock restricted license is extended
35 pursuant to subsection E of this section, the limitations prescribed in
36 sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the
37 restrictive period of the license ends.

1 G. The department shall make a notation on the driving record of a
2 person whose driving privilege is limited pursuant to section 28-1381,
3 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section
4 28-1402 that states that the person shall not operate a motor vehicle unless
5 it is equipped with a certified ignition interlock device.

6 H. Proof of compliance does not include a skipped or missed random
7 sample if the motor vehicle's ignition is off at the time of the skipped or
8 missed sample.

9 Sec. 14. Section 28-1464, Arizona Revised Statutes, is amended to
10 read:

11 28-1464. Ignition interlock devices; violations;
12 classification; definition

13 A. A person whose driving privilege is limited pursuant to section
14 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
15 28-1402 and who is required to operate a motor vehicle owned by the person's
16 employer in the course and scope of the person's employment may operate that
17 motor vehicle without the installation of a certified ignition interlock
18 device if the person notifies the person's employer that the person, in
19 conjunction with the person's sentence or if the person has been issued a
20 special ignition interlock restricted driver license pursuant to section
21 28-1402, has specific requirements in order to operate a motor vehicle and
22 the nature of the requirements and the person has proof of the employer's
23 notification in the person's possession while operating the employer's motor
24 vehicle for normal business. For the purposes of this subsection, a motor
25 vehicle that is partly or entirely owned or controlled by the person whose
26 driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or
27 28-3319 or restricted pursuant to section 28-1402 is not a motor vehicle that
28 is owned by an employer.

29 B. Except in cases of a substantial emergency, a person shall not
30 knowingly rent, lease or lend a motor vehicle to a person whose driving
31 privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319
32 or restricted pursuant to section 28-1402 unless the motor vehicle is
33 equipped with a functioning certified ignition interlock device.

34 C. A person whose driving privilege is limited pursuant to section
35 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
36 28-1402 and who rents, leases or borrows a motor vehicle from another person
37 shall notify the person who rents, leases or lends the motor vehicle to the

1 person that the person has specific requirements for the operation of the
2 motor vehicle and the nature of the requirements.

3 D. During any period when a person whose driving privilege is limited
4 pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted
5 pursuant to section 28-1402 is required to operate only a motor vehicle that
6 is equipped with a certified ignition interlock device, the person shall not
7 request or permit any other person to breathe into the ignition interlock
8 device or start a motor vehicle equipped with an ignition interlock device
9 for the purpose of providing the person with an operable motor vehicle.

10 E. A person shall not breathe into an ignition interlock device or
11 start a motor vehicle equipped with an ignition interlock device for the
12 purpose of providing an operable motor vehicle to a person whose driving
13 privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319
14 or restricted pursuant to section 28-1402.

15 F. A person whose driving privilege is limited pursuant to section
16 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
17 28-1402 shall not tamper with or circumvent the operation of an ignition
18 interlock device.

19 G. A person who is not a manufacturer's authorized installer or an
20 agent of a manufacturer's authorized installer and who is not a person whose
21 driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or
22 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or
23 circumvent the operation of an ignition interlock device.

24 H. Except as provided in subsection A of this section or in cases of
25 substantial emergency, a person whose driving privilege is limited pursuant
26 to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to
27 section 28-1402 shall not operate a motor vehicle without a functioning
28 certified ignition interlock device during the applicable time period.

29 I. If the ignition interlock device is removed from a vehicle by an
30 installer, the installer shall electronically notify the department in a form
31 prescribed by the department that the ignition interlock device has been
32 removed from the vehicle.

33 J. If the person does not provide evidence to the department within
34 seventy-two hours that the person has installed a functioning certified
35 ignition interlock device in each vehicle operated by the person and has
36 provided proof of installation to the department, the department shall

1 suspend the special ignition interlock restricted driver license or privilege
2 as prescribed in section 28-1463.

3 K. A PERSON WHO IS ORDERED BY THE COURT OR REQUIRED BY THE DEPARTMENT
4 PURSUANT TO SECTION 28-3319 TO EQUIP ANY MOTOR VEHICLE THE PERSON OPERATES
5 WITH A CERTIFIED IGNITION INTERLOCK DEVICE SHALL WHILE UNDER ARREST SUBMIT TO
6 ANY TEST CHOSEN BY A LAW ENFORCEMENT OFFICER PURSUANT TO SECTION 28-1321,
7 SUBSECTION A.

8 L. A PERSON SHALL COMPLY WITH THE REQUIREMENTS OF A CONTINUOUS ALCOHOL
9 MONITORING PROGRAM ORDERED PURSUANT TO SECTION 28-3319, SUBSECTION I.

10 ~~K.~~ M. A person who violates this section is guilty of a class 1
11 misdemeanor. Additionally, if a person is convicted of violating subsection
12 A, C, D, F or H of this section, the department shall extend the duration of
13 the certified ignition interlock device requirement for not more than one
14 year.

15 ~~L.~~ N. For the purposes of this section, "substantial emergency" means
16 that a person other than the person whose driving privilege is limited
17 pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted
18 pursuant to section 28-1402 is not reasonably available to drive in response
19 to an emergency.

20 Sec. 15. Section 28-1465, Arizona Revised Statutes, is amended to
21 read:

22 28-1465. Rule making; manufacturers and installers; civil
23 penalty

24 The director shall adopt rules pursuant to title 41, chapter 6 as the
25 director deems necessary for the administration and enforcement of this
26 article and certification and decertification of ignition interlock device
27 manufacturers and installers, INCLUDING A RULE THAT PERMITS THE DIRECTOR TO
28 IMPOSE A CIVIL PENALTY AGAINST AN IGNITION INTERLOCK MANUFACTURER OR
29 INSTALLER WHO FAILS TO PROPERLY REPORT IGNITION INTERLOCK DATA TO THE
30 DIRECTOR IN THE MANNER PRESCRIBED BY THE DIRECTOR. ANY MONIES COLLECTED FROM
31 CIVIL PENALTIES IMPOSED FOR A FAILURE TO REPORT IGNITION INTERLOCK DATA SHALL
32 BE DEPOSITED IN THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND ESTABLISHED BY
33 SECTION 28-1304.

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

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

11 D. **EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION**, on receipt of a
12 report of conviction from a court, the department shall require any motor
13 vehicle the convicted person operates to be equipped with a functioning
14 certified ignition interlock device and the convicted person to meet the
15 requirements prescribed in section 28-1461 as follows:

16 1. For twelve months if:

17 (a) **EXCEPT AS PROVIDED IN SUBSECTION H OF THIS SECTION**, the person is
18 convicted of a violation of section 28-1381, ~~or~~ section 28-1382,
19 subsection A, paragraph 1 **OR SECTION 28-1383, SUBSECTION A, PARAGRAPH 3,**
20 **SUBDIVISION (a)**.

21 (b) The department determines that within a period of eighty-four
22 months the person is convicted of a second or subsequent violation of section
23 28-1381 or section 28-1382, subsection A, paragraph 1 with a prior conviction
24 of a violation of section 28-1381, 28-1382 or 28-1383 or an act in another
25 jurisdiction that if committed in this state would be a violation of section
26 28-1381, 28-1382 or 28-1383.

27 2. For eighteen months if the person is convicted of a violation of
28 section 28-1382, subsection A, paragraph 2.

29 3. For twenty-four months if:

30 (a) The person is convicted of a violation of section 28-1382,
31 subsection A, paragraph 2 and the department determines that within a period
32 of eighty-four months the person has a prior conviction of a violation of
33 section 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if
34 committed in this state would be a violation of section 28-1381, 28-1382 or
35 28-1383.

36 (b) The person is convicted of a violation of section 28-1383,
37 **SUBSECTION A, PARAGRAPH 1, 2 OR 4 OR PARAGRAPH 3, SUBDIVISION (b)**.

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

5 F. A person who is required to equip a motor vehicle with a certified
6 ignition interlock device pursuant to this section shall comply with chapter
7 4, article 5 of this title.

8 G. THE DEPARTMENT SHALL REMOVE THE REQUIREMENT THAT THE PERSON
9 MAINTAIN A FUNCTIONING CERTIFIED IGNITION INTERLOCK DEVICE IF THE PERSON IS
10 ONLY CONVICTED OF A VIOLATION OF SECTION 28-1381, SUBSECTION A, PARAGRAPH 3
11 AND COMPLETES ALCOHOL OR OTHER DRUG SCREENING REQUIRED PURSUANT TO SECTION
12 28-1387 AND THE COURT DETERMINES THAT NO ALCOHOL EDUCATION OR TREATMENT IS
13 REQUIRED.

14 H. THE DEPARTMENT SHALL REDUCE THE TIME PERIOD PRESCRIBED IN
15 SUBSECTION D, PARAGRAPH 1, SUBDIVISION (a) OF THIS SECTION TO THE LATER OF
16 SIX MONTHS FROM THE DATE THE INTERLOCK WAS INSTALLED OR THE COMPLETION OF THE
17 REQUIREMENTS OF THIS SUBSECTION IF ALL OF THE FOLLOWING APPLY:

18 1. THE PERSON IS SENTENCED PURSUANT TO SECTION 28-1381, SUBSECTION I.

19 2. THE PERSON SUCCESSFULLY COMPLETES AN ALCOHOL EDUCATION PROGRAM
20 CONSISTING OF AT LEAST SIXTEEN HOURS PURSUANT TO SECTION 28-1381.

21 3. THE PERSON HAS MAINTAINED A FUNCTIONING IGNITION INTERLOCK DEVICE
22 ON ALL MOTOR VEHICLES THE PERSON OPERATES AND HAS MET THE REQUIREMENTS OF
23 SECTION 28-1461 FOR AT LEAST SIX CONSECUTIVE MONTHS.

24 4. THE PERSON HAS NOT ATTEMPTED TO OPERATE A VEHICLE WITH AN ALCOHOL
25 CONCENTRATION OF 0.05 OR MORE TWO OR MORE TIMES DURING THE PERIOD OF LICENSE
26 RESTRICTION OR LIMITATION.

27 5. AT THE TIME OF THE OFFENSE, THE PERSON WAS NOT INVOLVED IN A MOTOR
28 VEHICLE ACCIDENT THAT RESULTED IN PHYSICAL INJURY OR PROPERTY DAMAGE.

29 6. ALL NECESSARY COMPLIANCE INFORMATION HAS BEEN PROVIDED TO THE
30 DEPARTMENT BY THE IGNITION INTERLOCK DEVICE PROVIDER, THE ALCOHOL SCREENING
31 PROGRAM AND THE ALCOHOL EDUCATION PROGRAM.

32 I. ON A SHOWING OF SUFFICIENT MEDICAL EVIDENCE, THE DEPARTMENT MAY
33 ALLOW A PERSON WHO IS UNABLE TO OPERATE AN IGNITION INTERLOCK DEVICE TO BE
34 PLACED IN A CONTINUOUS ALCOHOL MONITORING PROGRAM INSTEAD OF EQUIPPING ANY
35 MOTOR VEHICLE THE PERSON OPERATES WITH AN IGNITION INTERLOCK DEVICE. THE
36 PERSON SHALL BEAR THE COST OF ALL TESTING, MONITORING AND ENROLLMENT IN THE
37 CONTINUOUS ALCOHOL MONITORING PROGRAM. A PERSON WHO IS PLACED IN A

1 CONTINUOUS ALCOHOL MONITORING PROGRAM PURSUANT TO THIS SUBSECTION SHALL
2 REMAIN IN THE PROGRAM FOR THE SAME AMOUNT OF TIME THE PERSON IS REQUIRED TO
3 MAINTAIN AN IGNITION INTERLOCK DEVICE.

4 ~~G.~~ J. For the purposes of this section, "certified ignition interlock
5 device" has the same meaning prescribed in section 28-1301.

6 Sec. 18. Section 31-233, Arizona Revised Statutes, is amended to read:

7 31-233. Order for removal; purposes; duration; continuous
8 alcohol monitoring program; failure to return;
9 classification

10 A. The director may authorize the temporary removal under custody from
11 prison or any other institution for the detention of adults under the
12 jurisdiction of the department of any inmate for the purpose of employing the
13 inmate in any work directly connected with the administration, management or
14 maintenance of the prison or institution in which the inmate is confined, for
15 purposes of cooperating voluntarily in medical research that cannot be
16 performed at the prison or institution, or for participating in community
17 action activities directed toward delinquency prevention and community
18 betterment programs. The removal shall not be for a period longer than one
19 day.

20 B. Under specific rules established by the director for the selection
21 of inmates, the director may also authorize furlough, temporary removal or
22 temporary release of any inmate for compassionate leave, for the purpose of
23 furnishing to the inmate medical treatment not available at the prison or
24 institution, for purposes preparatory to a return to the community within
25 ninety days of the inmate's release date or for disaster aid, including local
26 mutual aid and state emergencies. When an inmate is temporarily removed or
27 temporarily released for a purpose preparatory to return to the community or
28 for compassionate leave, the director may require the inmate to reimburse the
29 state, in whole or part, for expenses incurred by the state in connection
30 with the inmate's temporary removal or release.

31 C. UNDER SPECIFIC RULES ESTABLISHED BY THE DIRECTOR FOR THE SELECTION
32 OF INMATES, THE DIRECTOR ALSO MAY AUTHORIZE RELEASE UNDER A CONTINUOUS
33 ALCOHOL MONITORING PROGRAM FOR ANY INMATE WHO IS SENTENCED PURSUANT TO
34 SECTION 28-1383, SUBSECTION D OR E AND WHO IS PLACED ON PROBATION. THE
35 DIRECTOR MAY REQUIRE AN INMATE WHO IS RELEASED UNDER A CONTINUOUS ALCOHOL
36 MONITORING PROGRAM TO REIMBURSE THE STATE, IN WHOLE OR PART, FOR EXPENSES
37 INCURRED BY THE STATE IN CONNECTION WITH THE INMATE'S RELEASE.

1 D. AN INMATE WHO IS RELEASED UNDER A CONTINUOUS ALCOHOL MONITORING
2 PROGRAM SHALL MEET THE FOLLOWING PROGRAM ELIGIBILITY REQUIREMENTS:

3 1. SERVE AN INITIAL MINIMUM TERM OF TWENTY PER CENT OF THE INMATE'S
4 TERM OF INCARCERATION.

5 2. MAINTAIN COMPLIANCE DURING THE PERIOD OF MONITORING WITH ALL OF THE
6 FOLLOWING REQUIREMENTS:

7 (a) AT A MINIMUM, ONCE A DAY TESTING FOR THE USE OF ALCOHOLIC
8 BEVERAGES OR DRUGS BY A SCIENTIFIC METHOD THAT IS CHOSEN BY THE DIRECTOR.

9 (b) PARTICIPATION IN AN ALCOHOL OR DRUG PROGRAM, OR BOTH. THESE
10 PROGRAMS SHALL BE ACCREDITED BY THE DEPARTMENT OF HEALTH SERVICES.

11 (c) PROHIBITION OF ASSOCIATION WITH ANY PERSON WHO IS DETERMINED TO BE
12 DETRIMENTAL TO THE INMATE'S SUCCESSFUL PARTICIPATION IN THE PROGRAM.

13 (d) ALL OTHER PROVISIONS OF THE INMATE'S SENTENCE.

14 3. ANY ADDITIONAL ELIGIBILITY CRITERIA THAT THE DIRECTOR MAY IMPOSE.

15 ~~G.~~ E. Except if community supervision is waived pursuant to section
16 13-603, subsection K, the department shall add the amount of time the
17 director approves for the inmate's temporary release to the inmate's term of
18 community supervision imposed by the court pursuant to section 13-603. While
19 the person is on temporary release the person is not on inmate status and is
20 under the jurisdiction of the department until the terms of community
21 supervision are met.

22 ~~D.~~ F. Any inmate who knowingly fails to return from furlough,
23 temporary removal or temporary release granted under this section is guilty
24 of a class 5 felony.

25 Sec. 19. Effective date

26 This act is effective from and after September 30, 2011."

27 Amend title to conform

and, as so amended, it do pass

VIC WILLIAMS
Chairman

1200-se-trans
03/24/2011
H:jmb