

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1027

AN ACT

AMENDING SECTIONS 5-395.01 AND 9-499.07; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.14; AMENDING SECTIONS 11-459, 28-1381, 28-3511 AND 31-233, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 5-395.01. Operating or in actual physical control of a
5 motorized watercraft while 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
35 pursuant to court order to obtain alcohol or other drug education or
36 treatment under the court's supervision from an approved facility. The judge
37 may review an education or treatment determination at the request of the
38 state or the defendant or on the judge's own initiative. The person shall
39 pay the costs of the screening, education or treatment unless the court
40 waives part or all of the costs. If a person is referred to a screening,
41 education or treatment facility, the facility shall report to the court
42 whether the person has successfully completed the screening, education or
43 treatment program.

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

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

8 2. Suspend all but twenty-four consecutive hours of the sentence if
9 the person completes a court ordered alcohol or other drug screening,
10 education or treatment program and if the court determines the person
11 recklessly endangered another person with a substantial risk of physical
12 injury. If the person fails to complete the court ordered alcohol or other
13 drug screening, education or treatment program and has not been placed on
14 probation, the court shall issue an order to show cause to the defendant as
15 to why the remaining jail sentence should not be served.

16 D. If within a period of eighty-four months a person is convicted of a
17 second violation of section 5-395 or is convicted of a violation of section
18 5-395 and has previously been convicted of an act in another jurisdiction
19 that if committed in this state would be a violation of section 5-395, the
20 person:

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

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

26 3. Shall be ordered by the court to perform at least thirty hours of
27 community restitution. If the person fails to complete the community
28 restitution ordered pursuant to this paragraph, the court may order
29 alternative sanctions if the court determines that alternative sanctions are
30 more appropriate.

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

40 5. Shall pay an additional assessment of one thousand two hundred
41 fifty dollars to be deposited by the state treasurer in the public safety
42 equipment fund established by section 41-1723. This assessment is not
43 subject to any surcharge. If the conviction occurred in the superior court
44 or a justice court, the court shall transmit the assessed monies to the
45 county treasurer. If the conviction occurred in a municipal court, the court

1 shall transmit the assessed monies to the city treasurer. The city or county
2 treasurer shall transmit the monies received to the state treasurer.

3 E. Notwithstanding subsection D, paragraph 1 of this section, at the
4 time of sentencing, except if the court determines the person recklessly
5 endangered another person with a substantial risk of physical injury, the
6 judge may suspend all but thirty days of the sentence if the person completes
7 a court ordered alcohol or other drug screening, education or treatment
8 program. If the person fails to complete the court ordered alcohol or other
9 drug screening, education or treatment program and has not been placed on
10 probation, the court shall issue an order to show cause as to why the
11 remaining jail sentence should not be served.

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

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

18 H. Any political subdivision processing or utilizing the services of a
19 person ordered to perform community restitution pursuant to this section does
20 not incur any civil liability to the person ordered to perform community
21 restitution as a result of these activities unless the political subdivision
22 or its agent or employee acts with gross negligence.

23 I. After a person who is sentenced pursuant to subsection A of this
24 section has served twenty-four consecutive hours in jail or after a person
25 who is sentenced pursuant to subsection D of this section has served
26 forty-eight consecutive hours in jail and after receiving confirmation that
27 the person is employed or is a student, the court, on pronouncement of any
28 jail sentence under this section, may provide in the sentence that the person
29 may be permitted, if the person is employed or is a student and can continue
30 the person's employment or studies, to continue such employment or studies
31 for not more than twelve hours per day nor more than five days per week, and
32 the remaining day, days or parts of days shall be spent in jail until the
33 sentence is served. The person shall be allowed out of jail only long enough
34 to complete the actual hours of employment or studies and no longer.

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

38 K. The court shall allow the allegation of a prior conviction or other
39 pending charge of a violation of section 5-395 filed twenty or more days
40 before the date the case is actually tried and may allow the allegation of a
41 prior conviction or other pending charge of a violation of section 5-395
42 filed any time before the date the case is actually tried, provided that when
43 the allegation is filed this state must make available to the defendant a
44 copy of any information obtained concerning the prior conviction or other
45 pending charge. Any conviction may be used to enhance another conviction

1 irrespective of the dates on which the offenses occurred within the
2 eighty-four month provision.

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

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

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

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

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

21 1. The prisoner is found by the city or town to constitute a risk to
22 either 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 prisoner work, community restitution work
26 and home detention program **OR A CONTINUOUS ALCOHOL MONITORING PROGRAM**.

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

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

1 lesser fee. The city or town shall use the fees collected to offset
2 operational costs of the program.

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

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

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

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

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

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

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

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

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

1 abuse programs unless, after determining the inability of the prisoner to pay
2 the cost, the court assesses a lesser amount. The city or town shall use the
3 collected monies to offset operational costs of the program.

4 N. A CITY OR TOWN MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING
5 PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION
6 28-1381 OR 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL.
7 A PRISONER WHO IS PLACED UNDER A CONTINUOUS ALCOHOL MONITORING PROGRAM
8 ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BE MONITORED BY GLOBAL
9 POSITIONING SYSTEM TRACKING AND BEAR THE COST OF ALL TESTING, MONITORING AND
10 ENROLLMENT IN THE PROGRAM UNLESS, AFTER DETERMINING THE INABILITY OF THE
11 PRISONER TO PAY THE COST, THE COURT ASSESSES A LESSER AMOUNT. THE CITY OR
12 TOWN SHALL USE THE COLLECTED MONIES TO OFFSET OPERATIONAL COSTS OF THE
13 PROGRAM.

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

17 1. Subsection B of this section applies in determining eligibility for
18 the program.

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

21 ~~3.~~ 2. Notwithstanding section 28-1387, subsection C, ~~if the prisoner~~
22 ~~is sentenced under section 28-1381, subsection K or section 28-1382,~~
23 ~~subsection D or E,~~ the prisoner first serves a minimum of ~~fifteen consecutive~~
24 ~~days~~ TWENTY PER CENT OF THE INITIAL TERM OF INCARCERATION in jail before
25 being placed under home detention OR CONTINUOUS ALCOHOL MONITORING.

26 ~~4.~~ 3. IF PLACED UNDER HOME DETENTION, the prisoner is required to
27 comply with all of the following provisions for the duration of the
28 prisoner's participation in the home detention program:

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

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

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

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

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

40 ~~5.~~ 4. Any additional eligibility criteria that the city or town may
41 impose.

42 ~~0.~~ P. If a city or town establishes a home detention program under
43 subsection M of this section, the court, on placing the prisoner in the
44 program, shall require electronic monitoring in the prisoner's home and, if
45 consecutive hours of jail time are ordered, shall require the prisoner to

1 remain at home during the consecutive hours ordered. The detention device
2 shall constantly monitor the prisoner's location to ensure that the prisoner
3 does not leave the premises. ~~Nothing in this subsection shall be deemed to~~
4 ~~waive the minimum jail confinement requirements under subsection N, paragraph~~
5 ~~2 of this section.~~

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

10 1. The prisoner fails to successfully complete a court ordered alcohol
11 or drug screening, counseling, education and treatment program pursuant to
12 subsection ~~N~~ 0, paragraph ~~4~~ 3, subdivision (c) of this section or section
13 28-1381, subsection J or L.

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

17 ~~Q.~~ R. At any other time the court may terminate a prisoner's
18 participation in the home detention OR CONTINUOUS ALCOHOL MONITORING program
19 and require the prisoner to complete the remaining term of the jail sentence
20 by jail confinement.

21 ~~R.~~ S. The governing body of the city or town may terminate the
22 program established under subsection M of this section by a majority vote of
23 the full membership of the governing body.

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

26 11-251.14. Prisoner home detention program: eligibility:
27 monitoring: procedures: continuous alcohol
28 monitoring program: home detention for persons
29 sentenced for driving under the influence of
30 alcohol or drugs

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

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

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

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

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

43 C. FOR PRISONERS WHO ARE SELECTED FOR A PROGRAM ESTABLISHED PURSUANT
44 TO SUBSECTION A OF THIS SECTION, THE COURT MAY REQUIRE ELECTRONIC MONITORING
45 IN THE PRISONER'S HOME WHENEVER THE PRISONER IS NOT AT THE PRISONER'S REGULAR

1 PLACE OF EMPLOYMENT OR WHILE THE PRISONER IS ASSIGNED TO A COMMUNITY WORK
2 TASK. IF ELECTRONIC MONITORING IS REQUIRED, THE PRISONER SHALL REMAIN UNDER
3 THE CONTROL OF A HOME DETENTION DEVICE THAT CONSTANTLY MONITORS THE
4 PRISONER'S LOCATION IN ORDER TO DETERMINE THAT THE PRISONER HAS NOT LEFT THE
5 PRISONER'S PREMISES. IN ALL OTHER CASES, THE COURT SHALL IMPLEMENT A SYSTEM
6 OF MONITORING USING TELEPHONE CONTACT OR OTHER APPROPRIATE METHODS TO ASSURE
7 COMPLIANCE WITH THE HOME DETENTION REQUIREMENTS. THE COURT MAY PLACE
8 APPROPRIATE RESTRICTIONS ON PRISONERS IN THE PROGRAM, INCLUDING TESTING
9 PRISONERS FOR CONSUMPTION OF ALCOHOLIC BEVERAGES OR DRUGS OR PROHIBITING
10 ASSOCIATION WITH INDIVIDUALS WHO ARE DETERMINED TO BE DETRIMENTAL TO THE
11 PRISONER'S SUCCESSFUL PARTICIPATION IN THE PROGRAM.

12 D. IF A PRISONER IS PLACED ON ELECTRONIC MONITORING PURSUANT TO
13 SUBSECTION C OF THIS SECTION, THE PRISONER SHALL PAY THE ELECTRONIC
14 MONITORING FEE IN AN AMOUNT RANGING FROM ZERO TO FULL COST AND THIRTY DOLLARS
15 PER MONTH WHILE ON ELECTRONIC MONITORING, UNLESS, AFTER DETERMINING THE
16 INABILITY OF THE PRISONER TO PAY THESE FEES, THE COURT ASSESSES A LESSER FEE.
17 THE COUNTY SHALL USE THE FEES COLLECTED TO OFFSET OPERATIONAL COSTS OF THE
18 PROGRAM.

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

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

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

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

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

1 J. A COUNTY MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING PROGRAM FOR
2 PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION 28-1381 OR
3 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL. A PRISONER
4 WHO IS PLACED UNDER A CONTINUOUS ALCOHOL MONITORING PROGRAM ESTABLISHED
5 PURSUANT TO THIS SECTION MAY BE MONITORED BY GLOBAL POSITIONING SYSTEM
6 TRACKING AND BEAR THE COST OF ALL TESTING, MONITORING AND ENROLLMENT IN THE
7 PROGRAM UNLESS, AFTER DETERMINING THE INABILITY OF THE PRISONER TO PAY THE
8 COST, THE COURT ASSESSES A LESSER AMOUNT. THE COUNTY SHALL USE THE COLLECTED
9 MONIES TO OFFSET OPERATIONAL COSTS OF THE PROGRAM.

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

13 1. SUBSECTION B OF THIS SECTION APPLIES IN DETERMINING ELIGIBILITY FOR
14 THE PROGRAM.

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

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

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

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

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

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

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

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

35 L. IF A COUNTY ESTABLISHES A HOME DETENTION PROGRAM UNDER SUBSECTION I
36 OF THIS SECTION, THE COURT, ON PLACING THE PRISONER IN THE PROGRAM, SHALL
37 REQUIRE ELECTRONIC MONITORING IN THE PRISONER'S HOME AND, IF CONSECUTIVE
38 HOURS OF JAIL TIME ARE ORDERED, SHALL REQUIRE THE PRISONER TO REMAIN AT HOME
39 DURING THE CONSECUTIVE HOURS ORDERED. THE DETENTION DEVICE SHALL CONSTANTLY
40 MONITOR THE PRISONER'S LOCATION TO ENSURE THAT THE PRISONER DOES NOT LEAVE
41 THE PREMISES.

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

1 1. THE PRISONER FAILS TO SUCCESSFULLY COMPLETE A COURT ORDERED ALCOHOL
2 OR DRUG SCREENING, COUNSELING, EDUCATION AND TREATMENT PROGRAM PURSUANT TO
3 SUBSECTION K, PARAGRAPH 3, SUBDIVISION (c) OF THIS SECTION OR SECTION
4 28-1381, SUBSECTION J OR L.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 C. If a prisoner is selected for ~~the~~ **A program ESTABLISHED PURSUANT TO**
44 **SUBSECTION A OF THIS SECTION**, the sheriff may require electronic monitoring
45 in the prisoner's home whenever the prisoner is not at the prisoner's regular

1 place of employment or while the prisoner is assigned to a community work
2 task. If electronic monitoring is required, the prisoner shall remain under
3 the control of a home detention device that constantly monitors the
4 prisoner's location in order to determine that the prisoner has not left the
5 prisoner's premises. In all other cases, the sheriff shall implement a
6 system of monitoring using visitation, telephone contact or other appropriate
7 methods to assure compliance with the home detention requirements. The
8 sheriff may place appropriate restrictions on prisoners in the program,
9 including testing prisoners for consumption of alcoholic beverages or drugs
10 or prohibiting association with individuals who are determined to be
11 detrimental to the prisoner's successful participation in the program.

12 D. If a prisoner is placed on electronic monitoring pursuant to
13 subsection C of this section, the prisoner shall pay ~~an~~ THE electronic
14 monitoring fee in an amount ranging from zero to full cost and thirty dollars
15 per month while on electronic monitoring, unless, after determining the
16 inability of the prisoner to pay these fees, the sheriff assesses a lesser
17 fee. The sheriff shall use the fees collected to offset operational costs of
18 the program.

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

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

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

36 H. Community restitution work shall include public works projects
37 operated and supervised by public agencies of this state or counties, cities
38 or towns on recommendation of the community restitution work committee and
39 approval of the sheriff. The community restitution work committee may also
40 recommend and the sheriff may approve other forms of community restitution
41 work sponsored and supervised by public or private community oriented
42 organizations and agencies.

43 I. The community restitution work committee is established in each
44 county and is composed of two designees of the sheriff, a representative of
45 the county attorney's office selected by the county attorney, a

1 representative of a local police agency selected by the police chief of the
2 largest city in the county and three persons selected by the county board of
3 supervisors from the private sector. A sheriff's designee shall serve as
4 committee chairman and schedule all meetings. The committee shall meet as
5 often as necessary, but no less than once every three months, for the purpose
6 of considering and recommending appropriate community restitution work
7 projects for home detention prisoners. The committee shall make its
8 recommendations to the sheriff. Members are not eligible to receive
9 compensation.

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

14 K. If authorized by the court, a person who is sentenced pursuant to
15 section 28-1381 or 28-1382 shall not be placed under home detention in a
16 prisoner work, community restitution work and home detention program **OR A**
17 **CONTINUOUS ALCOHOL MONITORING PROGRAM** except as provided in subsections L
18 through ~~Q~~ R of this section.

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

30 **M. A COUNTY SHERIFF MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING**
31 **PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION**
32 **28-1381 OR 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL**
33 **AND SHALL FULFILL THE SHERIFF'S DUTY TO TAKE CHARGE OF AND KEEP THE COUNTY**
34 **JAIL AND PRISONERS. A PRISONER WHO IS PLACED UNDER A CONTINUOUS ALCOHOL**
35 **MONITORING PROGRAM ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BE MONITORED**
36 **BY GLOBAL POSITIONING SYSTEM TRACKING AND BEAR THE COST OF ALL TESTING,**
37 **MONITORING AND ENROLLMENT IN THE PROGRAM UNLESS, AFTER DETERMINING THE**
38 **INABILITY OF THE PRISONER TO PAY THE COST, THE COURT ASSESSES A LESSER**
39 **AMOUNT. THE COUNTY SHALL USE THE COLLECTED MONIES TO OFFSET OPERATIONAL**
40 **COSTS OF THE PROGRAM.**

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

44 1. Subsection B of this section applies in determining eligibility for
45 the program.

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

3 ~~3.~~ 2. Notwithstanding section 28-1387, subsection C, ~~if the prisoner~~
4 ~~is sentenced under section 28-1381, subsection K or section 28-1382,~~
5 ~~subsection D or E,~~ the prisoner first serves a minimum of ~~fifteen consecutive~~
6 ~~days~~ TWENTY PER CENT OF THE INITIAL TERM OF INCARCERATION in jail before
7 being placed under home detention OR CONTINUOUS ALCOHOL MONITORING.

8 ~~4.~~ 3. IF PLACED UNDER HOME DETENTION, the prisoner is required to
9 comply with all of the following requirements for the duration of the
10 prisoner's participation in the home detention program:

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

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

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

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

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

22 ~~5.~~ 4. Any additional eligibility criteria that the county may impose.

23 ~~N.~~ 0. If a county sheriff establishes a home detention program under
24 subsection L of this section, the court, on placing the prisoner in the
25 program, shall require electronic monitoring in the prisoner's home and, if
26 consecutive hours of jail time are ordered, shall require the prisoner to
27 remain at home during the consecutive hours ordered. The detention device
28 shall constantly monitor the prisoner's location to ensure that the prisoner
29 does not leave the premises. ~~Nothing in this subsection shall be deemed to~~
30 ~~waive the minimum jail confinement requirements under subsection M, paragraph~~
31 ~~2 of this section.~~

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

36 1. The prisoner fails to successfully complete a court ordered alcohol
37 or drug screening, counseling, education and treatment program pursuant to
38 subsection ~~M~~ N, paragraph ~~4~~ 3, subdivision (c) of this section or section
39 28-1381, subsection J or L.

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

1 ~~P.~~ Q. 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 ~~Q.~~ R. The sheriff may terminate ~~the~~ A program ESTABLISHED PURSUANT TO
6 THIS SECTION at any time.

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

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

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

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

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

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

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

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

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

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

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

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

42 F. At the arraignment, the court shall inform the defendant that the
43 defendant may request a trial by jury and that the request, if made, shall be
44 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
38 established by section 41-1723. This assessment is not subject to any
39 surcharge. If the conviction occurred in the superior court or a justice
40 court, the court shall transmit the assessed monies to the county treasurer.
41 If the conviction occurred in a municipal court, the court shall transmit the
42 assessed monies to the city treasurer. The city or county treasurer shall
43 transmit the monies received to the state treasurer.

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

11 J. Notwithstanding subsection I, paragraph 1 of this section, at the
12 time of sentencing the judge may suspend all ~~but twenty-four consecutive~~
13 ~~hours of~~ the sentence **IMPOSED PURSUANT TO SUBSECTION I, PARAGRAPH 1 OF THIS**
14 **SECTION** if the person completes a court ordered alcohol or other drug
15 screening, education or treatment program. If the person fails to complete
16 the court ordered alcohol or other drug screening, education or treatment
17 program and has not been placed on probation, the court shall issue an order
18 to show cause to the defendant as to why the remaining jail sentence should
19 not be served.

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

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

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

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

33 4. Shall have the person's driving privilege revoked for one year.
34 The court shall report the conviction to the department. On receipt of the
35 report, the department shall revoke the person's driving privilege and shall
36 require the person to equip any motor vehicle the person operates with a
37 certified ignition interlock device pursuant to section 28-3319. In
38 addition, the court may order the person to equip any motor vehicle the
39 person operates with a certified ignition interlock device for more than
40 twelve months beginning on the date of reinstatement of the person's driving
41 privilege following a suspension or revocation or on the date of the
42 department's receipt of the report of conviction, whichever occurs later.
43 The person who operates a motor vehicle with a certified ignition interlock
44 device under this paragraph shall comply with article 5 of this chapter.

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

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

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

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

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

31 Sec. 6. Section 28-3511, Arizona Revised Statutes, is amended to read:
32 28-3511. Removal and immobilization or impoundment of vehicle

33 A. A peace officer shall cause the removal and either immobilization
34 or impoundment of a vehicle if the peace officer determines that a person is
35 driving the vehicle while any of the following applies:

36 1. The person's driving privilege is suspended or revoked for any
37 reason.

38 2. The person has not ever been issued a valid driver license or
39 permit by this state and the person does not produce evidence of ever having
40 a valid driver license or permit issued by another jurisdiction. This
41 paragraph does not apply to the operation of an implement of husbandry.

42 3. The person is subject to an ignition interlock device requirement
43 pursuant to chapter 4 of this title and the person is operating a vehicle
44 without a functioning certified ignition interlock device. This paragraph

1 does not apply to a person operating an employer's vehicle or the operation
2 of a vehicle due to a substantial emergency as defined in section 28-1464.

3 4. In furtherance of the illegal presence of an alien in the United
4 States and in violation of a criminal offense, the person is transporting or
5 moving or attempting to transport or move an alien in this state in a vehicle
6 if the person knows or recklessly disregards the fact that the alien has come
7 to, has entered or remains in the United States in violation of law.

8 5. The person is concealing, harboring or shielding or attempting to
9 conceal, harbor or shield from detection an alien in this state in a vehicle
10 if the person knows or recklessly disregards the fact that the alien has come
11 to, entered or remains in the United States in violation of law.

12 B. A peace officer shall cause the removal and impoundment of a
13 vehicle if the peace officer determines that a person is driving the vehicle
14 and if all of the following apply:

15 1. The person's driving privilege is canceled, suspended or revoked
16 for any reason or the person has not ever been issued a driver license or
17 permit by this state and the person does not produce evidence of ever having
18 a driver license or permit issued by another jurisdiction.

19 2. The person is not in compliance with the financial responsibility
20 requirements of chapter 9, article 4 of this title.

21 3. The person is driving a vehicle that is involved in an accident
22 that results in either property damage or injury to or death of another
23 person.

24 C. Except as provided in subsection D of this section, while a peace
25 officer has control of the vehicle the peace officer shall cause the removal
26 and either immobilization or impoundment of the vehicle if the peace officer
27 has probable cause to arrest the driver of the vehicle for a violation of
28 section 4-244, paragraph 34 or section [28-1381](#), 28-1382 or 28-1383.

29 D. A peace officer shall not cause the removal and either the
30 immobilization or impoundment of a vehicle pursuant to subsection C of this
31 section if all of the following apply:

32 1. The peace officer determines that the vehicle is currently
33 registered and that the driver or the vehicle is in compliance with the
34 financial responsibility requirements of chapter 9, article 4 of this title.

35 2. The spouse of the driver is with the driver at the time of the
36 arrest.

37 3. The peace officer has reasonable grounds to believe that the spouse
38 of the driver:

39 (a) Has a valid driver license.

40 (b) Is not impaired by intoxicating liquor, any drug, a vapor
41 releasing substance containing a toxic substance or any combination of
42 liquor, drugs or vapor releasing substances.

43 (c) Does not have any spirituous liquor in the spouse's body if the
44 spouse is under twenty-one years of age.

1 4. The spouse notifies the peace officer that the spouse will drive
2 the vehicle from the place of arrest to the driver's home or other place of
3 safety.

4 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
5 subsection.

6 E. Except as otherwise provided in this article, a vehicle that is
7 removed and either immobilized or impounded pursuant to subsection A, B or C
8 of this section shall be immobilized or impounded for thirty days. An
9 insurance company does not have a duty to pay any benefits for charges or
10 fees for immobilization or impoundment.

11 F. The owner of a vehicle that is removed and either immobilized or
12 impounded pursuant to subsection A, B or C of this section, the spouse of the
13 owner and each person identified on the department's record with an interest
14 in the vehicle shall be provided with an opportunity for an immobilization or
15 poststorage hearing pursuant to section 28-3514.

16 Sec. 7. Section 31-233, Arizona Revised Statutes, is amended to read:

17 31-233. Order for removal; purposes; duration; continuous
18 alcohol monitoring program; failure to return;
19 classification

20 A. The director may authorize the temporary removal under custody from
21 prison or any other institution for the detention of adults under the
22 jurisdiction of the department of any inmate for the purpose of employing the
23 inmate in any work directly connected with the administration, management or
24 maintenance of the prison or institution in which the inmate is confined, for
25 purposes of cooperating voluntarily in medical research that cannot be
26 performed at the prison or institution, or for participating in community
27 action activities directed toward delinquency prevention and community
28 betterment programs. The removal shall not be for a period longer than one
29 day.

30 B. Under specific rules established by the director for the selection
31 of inmates, the director may also authorize furlough, temporary removal or
32 temporary release of any inmate for compassionate leave, for the purpose of
33 furnishing to the inmate medical treatment not available at the prison or
34 institution, for purposes preparatory to a return to the community within
35 ninety days of the inmate's release date or for disaster aid, including local
36 mutual aid and state emergencies. When an inmate is temporarily removed or
37 temporarily released for a purpose preparatory to return to the community or
38 for compassionate leave, the director may require the inmate to reimburse the
39 state, in whole or part, for expenses incurred by the state in connection
40 with the inmate's temporary removal or release.

41 C. UNDER SPECIFIC RULES ESTABLISHED BY THE DIRECTOR FOR THE SELECTION
42 OF INMATES, THE DIRECTOR ALSO MAY AUTHORIZE RELEASE UNDER A CONTINUOUS
43 ALCOHOL MONITORING PROGRAM FOR ANY INMATE WHO IS SENTENCED PURSUANT TO
44 SECTION 28-1383, SUBSECTION D OR E AND WHO IS PLACED ON PROBATION. THE
45 DIRECTOR MAY REQUIRE AN INMATE WHO IS RELEASED UNDER A CONTINUOUS ALCOHOL

1 MONITORING PROGRAM TO REIMBURSE THE STATE, IN WHOLE OR PART, FOR EXPENSES
2 INCURRED BY THE STATE IN CONNECTION WITH THE INMATE'S RELEASE.

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

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

7 2. MAINTAIN COMPLIANCE DURING THE PERIOD OF MONITORING WITH ALL OF THE
8 FOLLOWING REQUIREMENTS:

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

11 (b) GLOBAL POSITIONING SYSTEM TRACKING.

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

15 (d) PROHIBITION OF ASSOCIATION WITH ANY PERSON WHO IS DETERMINED TO BE
16 DETRIMENTAL TO THE INMATE'S SUCCESSFUL PARTICIPATION IN THE PROGRAM.

17 (e) ALL OTHER PROVISIONS OF THE INMATE'S SENTENCE.

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

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

26 ~~D.~~ E. Any inmate who knowingly fails to return from furlough,
27 temporary removal or temporary release granted under this section is guilty
28 of a class 5 felony.