

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# SENATE BILL 1621

## AN ACT

AMENDING SECTION 5-396, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-119.05; AMENDING SECTION 12-267, ARIZONA REVISED STATUTES; REPEALING SECTION 12-270, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-701, 22-117, 28-1383 AND 28-8288, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-133; AMENDING SECTIONS 31-201.01, 31-230 AND 41-191.09, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 4, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-797; AMENDING SECTIONS 41-1604, 41-1604.02 AND 41-1604.03, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 11, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1610.02; AMENDING SECTIONS 41-1624, 41-1723 AND 41-1724, ARIZONA REVISED STATUTES; AMENDING LAWS 2007, CHAPTER 261, SECTION 16, AS AMENDED BY LAWS 2009, THIRD SPECIAL SESSION, CHAPTER 6, SECTION 21 AND LAWS 2010, SEVENTH SPECIAL SESSION, CHAPTER 6, SECTION 24; MAKING APPROPRIATIONS; RELATING TO CRIMINAL JUSTICE BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 5-396, Arizona Revised Statutes, is amended to  
3 read:

4 5-396. Aggravated operating or actual physical control of  
5 motorized watercraft while under the influence of  
6 intoxicating liquor or drugs; classification

7 A. A person is guilty of aggravated operating or actual physical  
8 control of a motorized watercraft that is underway while under the influence  
9 of intoxicating liquor or drugs if the person does any of the following:

10 1. Within a period of eighty-four months commits a third or subsequent  
11 violation of section 5-395 or 5-397 or this section or is convicted of a  
12 violation of section 5-395 or 5-397 or this section and has previously been  
13 convicted of any combination of convictions of section 5-395 or 5-397 or this  
14 section or acts committed in another jurisdiction that if committed in this  
15 state would be a violation of section 5-395 or 5-397 or this section.

16 2. While a person under fifteen years of age is aboard the motorized  
17 watercraft, commits any of the following:

18 (a) A first violation of section 5-395, if the person recklessly  
19 endangers the person who is under fifteen years of age with a substantial  
20 risk of physical injury.

21 (b) A second violation of section 5-395 within a period of eighty-four  
22 months.

23 (c) A violation of section 5-397.

24 B. The dates of the commission of the offenses are the determining  
25 factor in applying the eighty-four month provision provided in subsection A,  
26 paragraph 1 or paragraph 2, subdivision (b) of this section regardless of the  
27 sequence in which the offenses were committed. For THE purposes of this  
28 section, a third or subsequent violation for which a conviction occurs does  
29 not include a conviction for an offense arising out of the same series of  
30 acts. The time that a probationer is found to be on absconder status or the  
31 time that a person is incarcerated in any state, federal, county or city jail  
32 or correctional facility is excluded when determining the eighty-four month  
33 period provided in subsection A, paragraph 1, subsection A, paragraph 2,  
34 subdivision (b) and subsection D of this section.

35 C. A person who is convicted under subsection A, paragraph 1 of this  
36 section and who within an eighty-four month period has been convicted of two  
37 prior violations of section 5-395 or 5-397 or this section, or acts committed  
38 in another jurisdiction that if committed in this state would be a violation  
39 of section 5-395 or 5-397 or this section, is not eligible for probation,  
40 pardon, commutation or suspension of sentence or release on any other basis  
41 until the person has served not less than four months in ~~prison~~ JAIL, UNLESS  
42 THE SHERIFF OF THE SENTENCING COUNTY HAS ENTERED INTO AN AGREEMENT TO  
43 REIMBURSE THE STATE DEPARTMENT OF CORRECTIONS FOR THE INCARCERATION COSTS  
44 PURSUANT TO SECTION 41-1610.02, IN WHICH CASE THE PERSON SHALL BE COMMITTED  
45 TO THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS.

1 D. A person who is convicted under subsection A, paragraph 1 of this  
2 section and who within an eighty-four month period has been convicted of  
3 three or more prior violations of section 5-395 or 5-397 or this section, or  
4 acts committed in another jurisdiction that if committed in this state would  
5 be a violation of section 5-395 or 5-397 or this section, is not eligible for  
6 probation, pardon, commutation or suspension of sentence or release on any  
7 other basis until the person has served not less than eight months in ~~prison~~  
8 **JAIL, UNLESS THE SHERIFF OF THE SENTENCING COUNTY HAS ENTERED INTO AN**  
9 **AGREEMENT TO REIMBURSE THE STATE DEPARTMENT OF CORRECTIONS FOR THE**  
10 **INCARCERATION COSTS PURSUANT TO SECTION 41-1610.02, IN WHICH CASE THE PERSON**  
11 **SHALL BE COMMITTED TO THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS.**

12 E. A person who is convicted under subsection A, paragraph 2,  
13 subdivision (a) or (b) of this section shall serve at least the minimum term  
14 of incarceration required pursuant to section 5-395.01.

15 F. A person who is convicted under subsection A, paragraph 2,  
16 subdivision (c) of this section shall serve at least the minimum term of  
17 incarceration required pursuant to section 5-397.

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

24 1. For a person sentenced pursuant to subsection C of this section,  
25 for an individual period of not more than four months and a total period of  
26 not more than one year.

27 2. For a person sentenced pursuant to subsection D of this section,  
28 for an individual period of not more than eight months and a total period of  
29 not more than two years.

30 H. The time that a person spends in custody pursuant to subsection G  
31 of this section shall not be counted toward the sentence imposed if the  
32 person's probation is revoked and the person is sentenced to prison following  
33 revocation of probation.

34 I. On conviction for a violation of this section, the court:

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

37 2. In addition to any other penalty prescribed by law, shall order the  
38 person to pay an additional assessment of two hundred fifty dollars. If the  
39 conviction occurred in the superior court or a justice court, the court shall  
40 transmit the assessed monies to the county treasurer. If the conviction  
41 occurred in a municipal court, the court shall transmit the assessed monies  
42 to the city treasurer. The city or county treasurer shall transmit the  
43 monies received to the state treasurer. The state treasurer shall deposit  
44 the monies received in the driving under the influence abatement fund  
45 established by section 28-1304. Any fine imposed for a violation of this

1 section and any assessments, restitution and incarceration costs shall be  
2 paid before the assessment prescribed in this paragraph.

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

12 4. In addition to any other penalty prescribed by law, shall order the  
13 person to pay an additional assessment of one thousand five hundred dollars  
14 to be deposited by the state treasurer in the public safety equipment fund  
15 established by section 41-1723. This assessment is not subject to any  
16 surcharge. If the conviction occurred in the superior court or a justice  
17 court, the court shall transmit the assessed monies to the county treasurer.  
18 If the conviction occurred in a municipal court, the court shall transmit the  
19 assessed monies to the city treasurer. The city or county treasurer shall  
20 transmit the monies received to the state treasurer.

21 J. Aggravated operating or actual physical control of a motorized  
22 watercraft that is underway while under the influence of an intoxicating  
23 liquor or drugs committed under:

24 1. Subsection A, paragraph 1 of this section is a class 4 felony.

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

26 Sec. 2. Title 12, chapter 1, article 1, Arizona Revised Statutes, is  
27 amended by adding section 12-119.05, to read:

28 12-119.05. Post of duty; supreme court justice

29 THE DESIGNATED POST OF DUTY OF A JUSTICE OF THE SUPREME COURT WHO  
30 RESIDES OUTSIDE OF MARICOPA COUNTY SHALL BE DEEMED TO BE THE JUSTICE'S PLACE  
31 OF PERMANENT PHYSICAL RESIDENCE AT THE TIME OF THE JUSTICE'S APPOINTMENT.

32 Sec. 3. Section 12-267, Arizona Revised Statutes, is amended to read:

33 12-267. Adult probation services fund; accounts; expenditure  
34 plan; use

35 A. The board of supervisors shall designate a chief fiscal officer who  
36 shall establish and administer an adult probation services fund consisting  
37 of:

38 1. County general fund appropriations for adult probation.

39 2. State appropriations for adult probation including:

40 (a) Monies for adult probation officers authorized by article 6 of  
41 this chapter.

42 (b) Monies for state aid for adult probation services authorized by  
43 this article.

44 (c) Monies for adult community punishment programs established  
45 pursuant to article 11 of this chapter.

1 (d) Monies for adult intensive probation pursuant to title 13,  
2 chapter 9.

3 ~~(e) Monies received pursuant to section 12-270 that each county shall~~  
4 ~~use for the following:~~

5 ~~(i) Increasing the availability of substance abuse treatment programs~~  
6 ~~for probationers.~~

7 ~~(ii) Increasing the availability of risk reduction programs and~~  
8 ~~interventions for probationers.~~

9 ~~(iii) Grants to nonprofit victim services organizations to partner~~  
10 ~~with the probation department and the court to assist victims and increase~~  
11 ~~the amount of restitution collected from probationers.~~

12 3. Probation fees collected pursuant to section 13-901 and section  
13 13-902, subsection G.

14 4. Federal monies provided for adult probation.

15 5. Adult probation monies from any other source.

16 B. The chief fiscal officer shall establish and maintain separate  
17 accounts in the fund showing receipts and expenditures of monies from each  
18 source listed in subsection A of this section. The presiding judge of the  
19 superior court shall annually present to the board of supervisors for  
20 approval a detailed expenditure plan for the adult probation services fund  
21 accounts. Any modifications to the expenditure plan affecting state  
22 appropriations shall be made in accordance with the rules and procedures  
23 established by the supreme court. Any modifications to the expenditure plan  
24 affecting county appropriated funds shall be made in accordance with the  
25 policies established by the county. The chief fiscal officer shall disburse  
26 monies from the fund accounts only at the direction of the presiding judge of  
27 the superior court. The chief fiscal officer of each county, on or before  
28 August 31 of each year for the preceding fiscal year, shall submit an annual  
29 report to the supreme court showing the total amount of receipts and  
30 expenditures in each account of the adult probation services fund.

31 C. The state monies in the adult probation services fund, and  
32 probation fees collected pursuant to section 13-901 and section 13-902,  
33 subsection G, shall be used in accordance with guidelines established by the  
34 supreme court or the granting authority.

35 D. State monies expended from the adult probation services fund shall  
36 be used to supplement, not supplant, county appropriations for the superior  
37 court adult probation department.

38 E. Monies in the adult probation services fund shall be used to pay  
39 the annual assessment on member states of the interstate compact for the  
40 supervision of adult offenders established in section 31-467, article X,  
41 subsection B.

42 F. County monies in the adult probation services fund shall be used in  
43 accordance with the fiscal policies and procedures established by the board  
44 of supervisors.

1 G. The administrative office of the courts shall periodically charge  
2 each local probation fees account an amount established annually by the  
3 supreme court to cover a proportional share of the cost of monitoring devices  
4 required pursuant to section 13-902, subsection G consistent with guidelines  
5 established to implement section 13-902, subsection G.

6 H. The administrative office of the courts shall charge annually the  
7 local probation fees account of each county an amount that is established  
8 annually by the administrative office of the courts to reflect each county's  
9 portion of the superior court risk management premium that is allocated to  
10 the judiciary.

11 Sec. 4. Repeal

12 Section 12-270, Arizona Revised Statutes, is repealed.

13 Sec. 5. Section 13-701, Arizona Revised Statutes, is amended to read:

14 13-701. Sentence of imprisonment for felony; presentence  
15 report; aggravating and mitigating factors;  
16 consecutive terms of imprisonment; definition

17 A. A sentence of imprisonment for a felony shall be a definite term of  
18 years and the person sentenced, unless otherwise provided by law **OR**  
19 **SUBSECTION J OF THIS SECTION APPLIES**, shall be committed to the custody of  
20 the state department of corrections.

21 B. No prisoner may be transferred to the custody of the state  
22 department of corrections without a certified copy of the judgment and  
23 sentence, signed by the sentencing judge, and a copy of a recent presentence  
24 investigation report unless the court has waived preparation of the report.

25 C. The minimum or maximum term imposed pursuant to section 13-702,  
26 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be  
27 imposed only if one or more of the circumstances alleged to be in aggravation  
28 of the crime are found to be true by the trier of fact beyond a reasonable  
29 doubt or are admitted by the defendant, except that an alleged aggravating  
30 circumstance under subsection D, paragraph 11 of this section shall be found  
31 to be true by the court, or in mitigation of the crime are found to be true  
32 by the court, on any evidence or information introduced or submitted to the  
33 court or the trier of fact before sentencing or any evidence presented at  
34 trial, and factual findings and reasons in support of such findings are set  
35 forth on the record at the time of sentencing.

36 D. For the purpose of determining the sentence pursuant to subsection  
37 C of this section, the trier of fact shall determine and the court shall  
38 consider the following aggravating circumstances, except that the court shall  
39 determine an aggravating circumstance under paragraph 11 of this subsection:

40 1. Infliction or threatened infliction of serious physical injury,  
41 except if this circumstance is an essential element of the offense of  
42 conviction or has been utilized to enhance the range of punishment under  
43 section 13-704.

44 2. Use, threatened use or possession of a deadly weapon or dangerous  
45 instrument during the commission of the crime, except if this circumstance is

1 an essential element of the offense of conviction or has been utilized to  
2 enhance the range of punishment under section 13-704.

3 3. If the offense involves the taking of or damage to property, the  
4 value of the property taken or damaged.

5 4. Presence of an accomplice.

6 5. Especially heinous, cruel or depraved manner in which the offense  
7 was committed.

8 6. The defendant committed the offense as consideration for the  
9 receipt, or in the expectation of the receipt, of anything of pecuniary  
10 value.

11 7. The defendant procured the commission of the offense by payment, or  
12 promise of payment, of anything of pecuniary value.

13 8. At the time of the commission of the offense, the defendant was a  
14 public servant and the offense involved conduct directly related to the  
15 defendant's office or employment.

16 9. The victim or, if the victim has died as a result of the conduct of  
17 the defendant, the victim's immediate family suffered physical, emotional or  
18 financial harm.

19 10. During the course of the commission of the offense, the death of an  
20 unborn child at any stage of its development occurred.

21 11. The defendant was previously convicted of a felony within the ten  
22 years immediately preceding the date of the offense. A conviction outside  
23 the jurisdiction of this state for an offense that if committed in this state  
24 would be punishable as a felony is a felony conviction for the purposes of  
25 this paragraph.

26 12. The defendant was wearing body armor as defined in section 13-3116.

27 13. The victim of the offense is at least sixty-five years of age or is  
28 a disabled person as defined in section 38-492, subsection B.

29 14. The defendant was appointed pursuant to title 14 as a fiduciary and  
30 the offense involved conduct directly related to the defendant's duties to  
31 the victim as fiduciary.

32 15. Evidence that the defendant committed the crime out of malice  
33 toward a victim because of the victim's identity in a group listed in section  
34 41-1750, subsection A, paragraph 3 or because of the defendant's perception  
35 of the victim's identity in a group listed in section 41-1750, subsection A,  
36 paragraph 3.

37 16. The defendant was convicted of a violation of section 13-1102,  
38 section 13-1103, section 13-1104, subsection A, paragraph 3 or section  
39 13-1204, subsection A, paragraph 1 or 2 arising from an act that was  
40 committed while driving a motor vehicle and the defendant's alcohol  
41 concentration at the time of committing the offense was 0.15 or more. For  
42 the purposes of this paragraph, "alcohol concentration" has the same meaning  
43 prescribed in section 28-101.

44 17. Lying in wait for the victim or ambushing the victim during the  
45 commission of any felony.

1           18. The offense was committed in the presence of a child and any of the  
2 circumstances exists that are set forth in section 13-3601, subsection A.

3           19. The offense was committed in retaliation for a victim either  
4 reporting criminal activity or being involved in an organization, other than  
5 a law enforcement agency, that is established for the purpose of reporting or  
6 preventing criminal activity.

7           20. The defendant was impersonating a peace officer as defined in  
8 section 1-215.

9           21. The defendant was in violation of 8 United States Code section  
10 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

11           22. The defendant used a remote stun gun or an authorized remote stun  
12 gun in the commission of the offense. For the purposes of this paragraph:

13           (a) "Authorized remote stun gun" means a remote stun gun that has all  
14 of the following:

15           (i) An electrical discharge that is less than one hundred thousand  
16 volts and less than nine joules of energy per pulse.

17           (ii) A serial or identification number on all projectiles that are  
18 discharged from the remote stun gun.

19           (iii) An identification and tracking system that, on deployment of  
20 remote electrodes, disperses coded material that is traceable to the  
21 purchaser through records that are kept by the manufacturer on all remote  
22 stun guns and all individual cartridges sold.

23           (iv) A training program that is offered by the manufacturer.

24           (b) "Remote stun gun" means an electronic device that emits an  
25 electrical charge and that is designed and primarily employed to incapacitate  
26 a person or animal either through contact with electrodes on the device  
27 itself or remotely through wired probes that are attached to the device or  
28 through a spark, plasma, ionization or other conductive means emitting from  
29 the device.

30           23. During or immediately following the commission of the offense, the  
31 defendant committed a violation of section 28-661, 28-662 or 28-663.

32           24. Any other factor that the state alleges is relevant to the  
33 defendant's character or background or to the nature or circumstances of the  
34 crime.

35           E. For the purpose of determining the sentence pursuant to subsection  
36 C of this section, the court shall consider the following mitigating  
37 circumstances:

38           1. The age of the defendant.

39           2. The defendant's capacity to appreciate the wrongfulness of the  
40 defendant's conduct or to conform the defendant's conduct to the requirements  
41 of law was significantly impaired, but not so impaired as to constitute a  
42 defense to prosecution.

43           3. The defendant was under unusual or substantial duress, although not  
44 to a degree that would constitute a defense to prosecution.

1           4. The degree of the defendant's participation in the crime was minor,  
2 although not so minor as to constitute a defense to prosecution.

3           5. During or immediately following the commission of the offense, the  
4 defendant complied with all duties imposed under sections 28-661, 28-662 and  
5 28-663.

6           6. Any other factor that is relevant to the defendant's character or  
7 background or to the nature or circumstances of the crime and that the court  
8 finds to be mitigating.

9           F. If the trier of fact finds at least one aggravating circumstance,  
10 the trial court may find by a preponderance of the evidence additional  
11 aggravating circumstances. In determining what sentence to impose, the court  
12 shall take into account the amount of aggravating circumstances and whether  
13 the amount of mitigating circumstances is sufficiently substantial to justify  
14 the lesser term. If the trier of fact finds aggravating circumstances and  
15 the court does not find any mitigating circumstances, the court shall impose  
16 an aggravated sentence.

17           G. The court in imposing a sentence shall consider the evidence and  
18 opinions presented by the victim or the victim's immediate family at any  
19 aggravation or mitigation proceeding or in the presentence report.

20           H. This section does not affect any provision of law that imposes the  
21 death penalty, that expressly provides for imprisonment for life or that  
22 authorizes or restricts the granting of probation and suspending the  
23 execution of sentence.

24           I. The intentional failure by the court to impose the mandatory  
25 sentences or probation conditions provided in this title is malfeasance.

26           J. IF A PERSON IS SENTENCED TO SERVE ONE YEAR OR LESS IN THE STATE  
27 DEPARTMENT OF CORRECTIONS, THE PERSON SHALL BE COMMITTED TO THE CUSTODY OF  
28 THE COUNTY JAIL, UNLESS THE SHERIFF OF THE SENTENCING COUNTY HAS ENTERED INTO  
29 AN AGREEMENT TO REIMBURSE THE STATE DEPARTMENT OF CORRECTIONS FOR THE  
30 INCARCERATION COSTS PURSUANT TO SECTION 41-1610.02, IN WHICH CASE THE PERSON  
31 SHALL BE COMMITTED TO THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS. A  
32 PERSON WHO IS SENTENCED TO A CONCURRENT TERM OF INCARCERATION FOR MORE THAN  
33 ONE YEAR SHALL BE INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS.

34           ~~J.~~ K. For the purposes of this section, "trier of fact" means a jury,  
35 unless the defendant and the state waive a jury in which case the trier of  
36 fact means the court.

37           Sec. 6. Section 22-117, Arizona Revised Statutes, is amended to read:  
38 22-117. Payment of compensation and expenses

39           A. Justices of the peace shall be allowed by the board of supervisors,  
40 as a county charge, office rent, stationery, telephone and lights.

41           B. In a county with a population of less than one million five hundred  
42 thousand persons, the state shall pay ~~forty~~ 19.25 per cent of the  
43 compensation and employee related expenditures of a justice of the peace, and  
44 the county shall pay ~~sixty~~ 80.75 per cent of the compensation and employee  
45 related expenditures of a justice of the peace, except that the county shall

1 pay the full amount of the employer contribution of the state retirement  
2 system or plan or any county health plan.

3 C. If a county is subject to subsection B of this section, the state  
4 treasurer shall remit the compensation and employee related expenditures  
5 payable by the state to the county treasurer, and the county shall disburse  
6 the funds to the justice of the peace.

7 D. In a county with a population of one million five hundred thousand  
8 persons or more, the county shall pay one hundred per cent of the  
9 compensation and employee related expenditures of a justice of the peace.

10 E. If a county is subject to subsection D of this section, the  
11 following apply:

12 1. Beginning in fiscal year 2007-2008, the county's contribution to  
13 the hospitalization and medical care of the indigent sick and for the  
14 administrative costs of implementing sections 36-2901.01 and 36-2901.04 shall  
15 be reduced pursuant to section 11-292, subsection R, in an amount that is  
16 equal to the difference between the total costs that the county paid pursuant  
17 to subsection D of this section and the amount that the county would have  
18 paid if the county were subject to subsection B of this section.

19 2. Pursuant to section 41-563, subsection D and beginning in fiscal  
20 year 2007-2008, the economic estimates commission shall increase the county's  
21 base expenditure limit in an amount that is equal to the difference between  
22 the total costs that the county paid pursuant TO subsection D of this section  
23 and the amount that the county would have paid if the county were subject to  
24 subsection B of this section.

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

26 28-1383. Aggravated driving or actual physical control while  
27 under the influence; violation; classification;  
28 definition

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

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

37 2. Within a period of eighty-four months commits a third or subsequent  
38 violation of section 28-1381, section 28-1382 or this section or is convicted  
39 of a violation of section 28-1381, section 28-1382 or this section and has  
40 previously been convicted of any combination of convictions of section  
41 28-1381, section 28-1382 or this section or acts in another jurisdiction that  
42 if committed in this state would be a violation of section 28-1381, section  
43 28-1382 or this section.

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

1 (a) Section 28-1381.

2 (b) Section 28-1382.

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

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

9 (b) Commits a violation of section 28-1381, section 28-1382 or this  
10 section.

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

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

24 D. A person is not eligible for probation, pardon, commutation or  
25 suspension of sentence or release on any other basis until the person has  
26 served not less than four months in ~~prison~~ JAIL, UNLESS THE SHERIFF OF THE  
27 SENTENCING COUNTY HAS ENTERED INTO AN AGREEMENT TO REIMBURSE THE STATE  
28 DEPARTMENT OF CORRECTIONS FOR THE INCARCERATION COSTS PURSUANT TO SECTION  
29 41-1610.02, IN WHICH CASE THE PERSON SHALL BE COMMITTED TO THE CUSTODY OF THE  
30 STATE DEPARTMENT OF CORRECTIONS, if the person is convicted under either of  
31 the following:

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

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

38 E. A person who is convicted under subsection A, paragraph 2 of this  
39 section and who within an eighty-four month period has been convicted of  
40 three or more prior violations of section 28-1381, section 28-1382 or this  
41 section, or any combination of those sections, or acts in another  
42 jurisdiction that if committed in this state would be a violation of section  
43 28-1381, section 28-1382 or this section is not eligible for probation,  
44 pardon, commutation or suspension of sentence or release on any other basis  
45 until the person has served not less than eight months in ~~prison~~ JAIL, UNLESS

1 THE SHERIFF OF THE SENTENCING COUNTY HAS ENTERED INTO AN AGREEMENT TO  
2 REIMBURSE THE STATE DEPARTMENT OF CORRECTIONS FOR THE INCARCERATION COSTS  
3 PURSUANT TO SECTION 41-1610.02, IN WHICH CASE THE PERSON SHALL BE COMMITTED  
4 TO THE CUSTODY OF THE STATE DEPARTMENT OF CORRECTIONS.

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

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

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

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

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

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

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

28 1. Shall report the conviction to the department. On receipt of the  
29 report, the department shall revoke the driving privilege of the person. The  
30 department shall not issue the person a new driver license within three years  
31 of the date of the conviction and, for a conviction of a violation of  
32 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b) of this  
33 section, shall require the person to equip any motor vehicle the person  
34 operates with a certified ignition interlock device pursuant to section  
35 28-3319. In addition, the court may order the person to equip any motor  
36 vehicle the person operates with a certified ignition interlock device for  
37 more than twelve months beginning on the date of reinstatement of the  
38 person's driving privilege following a suspension or revocation or on the  
39 date of the department's receipt of the report of conviction, whichever  
40 occurs later. The person who operates a motor vehicle with a certified  
41 ignition interlock device under this paragraph shall comply with article 5 of  
42 this chapter.

43 2. In addition to any other penalty prescribed by law, shall order the  
44 person to pay an additional assessment of two hundred fifty dollars. If the  
45 conviction occurred in the superior court or a justice court, the court shall

1 transmit the monies received pursuant to this paragraph to the county  
2 treasurer. If the conviction occurred in a municipal court, the court shall  
3 transmit the monies received pursuant to this paragraph to the city  
4 treasurer. The city or county treasurer shall transmit the monies received  
5 to the state treasurer. The state treasurer shall deposit the monies  
6 received in the driving under the influence abatement fund established by  
7 section 28-1304. Any fine imposed for a violation of this section and any  
8 assessments, restitution and incarceration costs shall be paid before the  
9 assessment prescribed in this paragraph.

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

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

21 5. In addition to any other penalty prescribed by law, shall order the  
22 person to pay an additional assessment of one thousand five hundred dollars  
23 to be 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 K. After completing the period of suspension required by section  
31 28-1385, a person whose driving privilege is revoked for a violation of  
32 subsection A, paragraph 3 of this section may apply to the department for a  
33 special ignition interlock restricted driver license pursuant to section  
34 28-1401.

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

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

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

41 M. For the purposes of this section, "suspension, cancellation,  
42 revocation or refusal" means any suspension, cancellation, revocation or  
43 refusal.

1           Sec. 8. Section 28-8288, Arizona Revised Statutes, is amended to read:  
2           28-8288. Third or subsequent offense

3           A. If a person is convicted of a third or subsequent violation of  
4 section 28-8282 or is convicted of a violation of section 28-8282 and has  
5 previously been convicted of any combination of convictions of section  
6 28-8282 or acts committed in another state that if committed in this state  
7 would be a violation of section 28-8282 within a period of sixty months:

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

9           2. The person is not eligible for probation, pardon, suspension of  
10 sentence or release on any basis except as specifically authorized by section  
11 31-233, subsection A or B until the person has served not less than six  
12 months in ~~prison~~ JAIL, UNLESS THE SHERIFF OF THE SENTENCING COUNTY HAS  
13 ENTERED INTO AN AGREEMENT TO REIMBURSE THE STATE DEPARTMENT OF CORRECTIONS  
14 FOR THE INCARCERATION COSTS PURSUANT TO SECTION 41-1610.02, IN WHICH CASE THE  
15 PERSON SHALL BE COMMITTED TO THE CUSTODY OF THE STATE DEPARTMENT OF  
16 CORRECTIONS.

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

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

21           5. In addition to any other penalty prescribed by law, the person  
22 shall pay an additional assessment of one thousand five hundred dollars to be  
23 deposited by the state treasurer in the prison construction and operations  
24 fund established by section 41-1651. 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           6. In addition to any other penalty prescribed by law, the person  
31 shall pay an additional assessment of one thousand five hundred dollars to be  
32 deposited by the state treasurer in the public safety equipment fund  
33 established by section 41-1723. This assessment is not subject to any  
34 surcharge. If the conviction occurred in the superior court or a justice  
35 court, the court shall transmit the assessed monies to the county treasurer.  
36 If the conviction occurred in a municipal court, the court shall transmit the  
37 assessed monies to the city treasurer. The city or county treasurer shall  
38 transmit the monies received to the state treasurer.

39           B. The dates of the commission of the offense are the determining  
40 factor in applying this section.

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

1           Sec. 9. Title 31, chapter 1, article 2, Arizona Revised Statutes, is  
2 amended by adding section 31-133, to read:

3           31-133. Receiving and keeping state prisoners

4           THE SHERIFF SHALL RECEIVE AND KEEP IN THE COUNTY JAIL ANY PRISONER WHO  
5 IS SENTENCED ON OR AFTER JULY 1, 2012 TO SERVE A TERM OF IMPRISONMENT IN THE  
6 STATE DEPARTMENT OF CORRECTIONS FOR ONE YEAR OR LESS, UNLESS THE SHERIFF HAS  
7 ENTERED INTO AN AGREEMENT TO REIMBURSE THE STATE DEPARTMENT OF CORRECTIONS  
8 FOR THE INCARCERATION COSTS PURSUANT TO SECTION 41-1610.02, IN WHICH CASE THE  
9 PERSON SHALL BE COMMITTED TO THE CUSTODY OF THE STATE DEPARTMENT OF  
10 CORRECTIONS.

11          Sec. 10. Section 31-201.01, Arizona Revised Statutes, is amended to  
12 read:

13          31-201.01. Duties of the director; tort actions; medical  
14                 treatment costs; state immunity; definitions

15          A. The director shall hold in custody all persons sentenced to the  
16 department under the law and shall hold such persons for the term directed by  
17 the court, subject to law, EXCEPT THAT BEGINNING JULY 1, 2012, IF THE PERSON  
18 IS SENTENCED TO ONE YEAR OR LESS IN THE STATE DEPARTMENT OF CORRECTIONS, THE  
19 PERSON SHALL BE PLACED IN THE CUSTODY OF A COUNTY JAIL, UNLESS THE SHERIFF OF  
20 THE SENTENCING COUNTY HAS ENTERED INTO AN AGREEMENT TO REIMBURSE THE STATE  
21 DEPARTMENT OF CORRECTIONS FOR THE INCARCERATION COSTS PURSUANT TO SECTION  
22 41-1610.02, IN WHICH CASE THE PERSON SHALL BE COMMITTED TO THE CUSTODY OF THE  
23 STATE DEPARTMENT OF CORRECTIONS.

24          B. In addition to the medical and health services to be provided  
25 pursuant to subsection D of this section, the director ~~may~~, in cooperation  
26 with the department of health services, ~~MAY~~ provide to prisoners WHO ARE  
27 INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS psychiatric care and  
28 treatment pursuant to sections 31-226 and 31-226.01.

29          C. The director may institute and pursue programs ~~which~~ THAT promote  
30 the rehabilitation of the prisoners in the director's charge.

31          D. The director shall provide medical and health services for the  
32 prisoners WHO ARE INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS. The  
33 director may contract for professional services to assist the director in  
34 carrying out this responsibility on behalf of the state, ~~provided~~ EXCEPT that  
35 all records made and retained in connection with the services provided by  
36 this subsection shall be made and retained only by duly authorized or  
37 qualified medical and professional personnel and not by any prisoner. Such  
38 records when not in use shall be retained in a safe and secure place.

39          E. If a victim of a person for whom a cost of incarceration has been  
40 calculated notifies the state that full restitution has not been made by the  
41 person for whom a cost of incarceration has been calculated, the state shall  
42 interplead with the superior court the disputed amount and set off the  
43 amounts owed the state from the remaining obligation.

1 F. Any and all causes of action ~~which~~ THAT may arise out of tort  
2 caused by the director, prison officers or employees of the department,  
3 within the scope of their legal duty, shall run only against the state.

4 G. The director shall establish by rule reasonable medical and health  
5 ~~service~~ SERVICES fees for the medical and health services that are provided  
6 pursuant to subsection D of this section. Except as provided in subsection I  
7 of this section, every inmate shall be charged a reasonable medical and  
8 health services fee for each medical visit an inmate makes pursuant to a  
9 health needs request form or for emergency treatment.

10 H. Except as provided in subsection I of this section, the director  
11 may charge each inmate a reasonable fee for prescriptions, ~~medication~~  
12 MEDICATIONS or prosthetic devices.

13 I. The director shall exempt the following inmates or medical visits  
14 by inmates from payment of medical and health services fees and fees for  
15 prescriptions, ~~medication~~ MEDICATIONS or prosthetic devices:

16 1. Medical visits initiated by the medical or mental health staff of  
17 the department.

18 2. Medical visits to a physician by inmates who are referred by a  
19 physician assistant or nurse practitioner.

20 3. Inmates at reception centers.

21 4. Juvenile inmates.

22 5. Pregnant inmates.

23 6. Seriously mentally ill inmates. For the purposes of this  
24 paragraph, "seriously mentally ill inmates" means inmates who as a result of  
25 a mental disorder as defined in section 36-501 exhibit emotional or  
26 behavioral functioning ~~which~~ THAT is so impaired as to interfere  
27 substantially with their capacity to remain in the general prison population  
28 without supportive treatment or services of a long-term or indefinite  
29 duration and whose mental disability is severe and persistent, resulting in a  
30 long-term limitation of their functional capacities for primary activities of  
31 daily living, including interpersonal relationships, self-care, employment  
32 and recreation.

33 7. Developmentally disabled inmates who are housed in a special  
34 programs unit.

35 8. Inmates who are housed in unit 8 at the Florence prison facility.

36 9. Inmates who are inpatients at the Alhambra prison facility special  
37 programs psychiatric hospital.

38 10. Inmates who are inpatients at the Flamenco prison facility mental  
39 health treatment unit.

40 11. Inmates who are undergoing administrative physical examinations for  
41 statewide driver status and fire fighting crews.

42 12. Inmates who are undergoing follow-up medical treatment for chronic  
43 diseases.

44 J. An inmate shall not be refused medical treatment for financial  
45 reasons.

1 K. All monies received by the department for medical and health  
2 ~~service~~ SERVICES fees shall be deposited in the STATE general fund.

3 L. A person who is convicted of a felony offense and who is  
4 incarcerated while awaiting sentence or while serving a sentence imposed by a  
5 court of law may not bring a cause of action seeking damages or equitable  
6 relief from the state or its political subdivisions, agencies, officers or  
7 employees for injuries suffered while in the custody of the state or its  
8 political subdivisions or agencies unless the complaint alleges specific  
9 facts from which the court may conclude that the plaintiff suffered serious  
10 physical injury or the claim is authorized by a federal statute.

11 M. The director shall establish criteria for reasonable deductions  
12 from monies credited to the prisoner's spendable account to repay the cost  
13 of:

14 1. State property that the inmate wilfully damages or destroys during  
15 the inmate's incarceration.

16 2. Medical treatment for injuries that the inmate inflicts on himself  
17 or others.

18 3. Searching for and apprehending an inmate who escapes or attempts to  
19 escape.

20 4. Quelling a riot or other disturbance in which the inmate is  
21 unlawfully involved.

22 N. For THE purposes of this section:

23 1. "Reasonable fee" means an amount not to exceed five dollars.

24 2. "Serious physical injury" means an impairment of physical condition  
25 that creates a substantial risk of death or that causes serious  
26 disfigurement, prolonged impairment of health or prolonged loss or impairment  
27 of the function of any bodily organ.

28 Sec. 11. Section 31-230, Arizona Revised Statutes, is amended to read:

29 31-230. Prisoner spendable accounts: fees

30 A. The director shall establish a prisoner spendable account for each  
31 prisoner. All monies that are received by a prisoner and that are not  
32 required to be deposited in another account shall be deposited in the  
33 prisoner's spendable account.

34 B. The director shall adopt rules for the disbursement of monies from  
35 prisoner spendable accounts.

36 C. If the court has ordered the prisoner to pay restitution pursuant  
37 to section 13-603, the director shall withdraw a minimum of twenty per cent,  
38 or the balance owing on the restitution amount, up to a maximum of fifty per  
39 cent of the monies available in the prisoner's spendable account each month  
40 to pay the court ordered restitution.

41 D. THE DIRECTOR MAY ESTABLISH BY RULE A FEE FOR ANY DEPOSITS MADE TO A  
42 PRISONER SPENDABLE ACCOUNT. THE DIRECTOR SHALL DEPOSIT, PURSUANT TO SECTIONS  
43 35-146 AND 35-147, ANY MONIES COLLECTED PURSUANT TO THIS SUBSECTION IN THE  
44 DEPARTMENT OF CORRECTIONS BUILDING RENEWAL FUND ESTABLISHED BY SECTION  
45 41-797.

1           Sec. 12. Section 41-191.09, Arizona Revised Statutes, is amended to  
2 read:

3           41-191.09. Attorney general legal services cost allocation  
4           fund; contributions; exemptions

5           A. The attorney general legal services cost allocation fund is  
6 established for the purpose of reimbursing the department of law for general  
7 agency counsel. Monies in the fund are subject to legislative appropriation.  
8 The attorney general shall administer the fund.

9           B. ~~Beginning July 1, 2006,~~ All state agency appropriated and  
10 nonappropriated funds shall contribute a pro rata share of general agency  
11 counsel services provided by the department of law. The pro rata share is  
12 payable by payroll fund source, and the resultant amount shall be deposited  
13 in the attorney general legal services cost allocation fund. ~~Beginning~~  
14 ~~July 1, 2007,~~ The pro rata share for each fund shall be 0.675 per cent of the  
15 total payroll. For the purposes of this subsection, "total payroll" includes  
16 federal monies, state general fund monies, special revenue funds,  
17 intergovernmental revenue monies, trust funds and other payroll fund sources.

18           C. A claim for the pro rata share percentage payment shall be  
19 submitted according to the fund source, with the accompanying payroll, to the  
20 department of administration for deposit in the attorney general legal  
21 services cost allocation fund.

22           D. The following agencies are exempt from this section:

- 23           1. The department of water resources.
- 24           2. The residential utility consumer office.
- 25           3. The industrial commission.
- 26           4. The universities and the Arizona board of regents.
- 27           5. The auditor general.
- 28           6. The corporation commission.
- 29           7. The office of the governor.
- 30           8. The department of law.
- 31           9. The house of representatives.
- 32           10. The senate.
- 33           11. The joint legislative budget committee.
- 34           12. The Arizona state library, archives and public records.
- 35           13. The legislative council.
- 36           14. The department of administration risk management fund.
- 37           15. The department of transportation.
- 38           16. The Arizona game and fish department.
- 39           17. The department of economic security.
- 40           18. The Arizona health care cost containment system.
- 41           19. The superior court.
- 42           20. The court of appeals.
- 43           21. The supreme court.

1           22. The Arizona department of agriculture and councils that receive  
2 administrative and budgetary services from the Arizona department of  
3 agriculture.

4           23. All self-supporting regulatory agencies as determined pursuant to  
5 section 35-143.01.

6           24. THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER OFFICE.

7           E. Monies in the attorney general legal services cost allocation fund  
8 are exempt from lapsing to the state general fund at the end of each fiscal  
9 year.

10          Sec. 13. Title 41, chapter 4, article 7, Arizona Revised Statutes, is  
11 amended by adding section 41-797, to read:

12          41-797. Department of corrections building renewal fund

13          A. THE DEPARTMENT OF CORRECTIONS BUILDING RENEWAL FUND IS ESTABLISHED  
14 CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 31-230, SECTION 41-1604,  
15 SUBSECTION B, PARAGRAPH 3 AND SECTIONS 41-1604.02, 41-1604.03 AND 41-1624.  
16 THE DIRECTOR SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO  
17 LEGISLATIVE APPROPRIATION AND ARE EXEMPT FROM THE PROVISIONS OF SECTION  
18 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

19          B. THE DIRECTOR SHALL USE THE MONIES IN THE FUND FOR BUILDING RENEWAL  
20 PROJECTS THAT REPAIR OR REWORK BUILDINGS AND SUPPORTING INFRASTRUCTURE THAT  
21 ARE UNDER THE CONTROL OF THE STATE DEPARTMENT OF CORRECTIONS AND THAT RESULT  
22 IN MAINTAINING A BUILDING'S EXPECTED USEFUL LIFE. MONIES IN THE FUND MAY NOT  
23 BE USED FOR NEW BUILDING ADDITIONS, NEW INFRASTRUCTURE ADDITIONS, LANDSCAPING  
24 AND AREA BEAUTIFICATION, DEMOLITION AND REMOVAL OF A BUILDING AND, EXCEPT AS  
25 PROVIDED IN SUBSECTION C OF THIS SECTION, ROUTINE PREVENTIVE MAINTENANCE.

26          C. THE DIRECTOR MAY USE UP TO EIGHT PER CENT OF THE ANNUAL  
27 EXPENDITURES FROM THE FUND FOR ROUTINE PREVENTIVE MAINTENANCE.

28          Sec. 14. Section 41-1604, Arizona Revised Statutes, is amended to  
29 read:

30          41-1604. Duties and powers of director

31          A. The director shall:

32           1. Be responsible for the overall operations and policies of the  
33 department.

34           2. Maintain and administer all institutions and programs within the  
35 department, including prisons, reception and diagnostic centers, conservation  
36 camps, community correctional centers and such other facilities and programs  
37 as may be required and established for the custody, control, correction,  
38 treatment and rehabilitation of all adult offenders who are committed to the  
39 department.

40           3. Be responsible for the administration and execution of all  
41 community supervision services, including those for adult offenders who are  
42 released in accordance with law.

43           4. Develop a program to provide uniform statewide community  
44 supervision field services in this state and employ parole or community  
45 supervision officers based on qualifications prescribed by the director,

1 including physical, psychological and educational qualifications and  
2 practical experience.

3 5. Be responsible for the development of policies and programs that  
4 shall be recommended to the governor and the legislature for the purpose of  
5 improving the various adult correctional programs of this state.

6 6. Develop and establish a uniform statewide method of reporting  
7 statistics as related to this chapter.

8 7. Employ deputy directors and other key personnel based on  
9 qualifications prescribed by the director that require education and  
10 practical experience.

11 8. Adopt rules pursuant to chapter 6 of this title for the development  
12 of incentives to encourage good behavior and the faithful performance of work  
13 by prisoners.

14 9. Adopt rules pursuant to chapter 6 of this title to limit inmate  
15 access to the internet through the use of a computer, computer system,  
16 network, computer service provider or remote computing service.

17 10. Cooperate with the Arizona-Mexico commission in the governor's  
18 office and with researchers at universities in this state to collect data and  
19 conduct projects in the United States and Mexico on issues that are within  
20 the scope of the department's duties and that relate to quality of life,  
21 trade and economic development in this state in a manner that will help the  
22 Arizona-Mexico commission to assess and enhance the economic competitiveness  
23 of this state and of the Arizona-Mexico region.

24 B. The director may:

25 1. Adopt rules to implement the purposes of the department and the  
26 duties and powers of the director.

27 2. Take any administrative action to improve the efficiency of the  
28 department, including the following:

29 (a) Create new divisions or units or consolidate divisions or units.

30 (b) Transfer employees between the various divisions and units of the  
31 department.

32 (c) Shift duties between divisions or units.

33 (d) Delegate to appropriate personnel the administrative functions,  
34 powers or duties that the director believes can be competently, efficiently  
35 and properly performed. The director shall not delegate the responsibilities  
36 in subsection A, paragraphs 1 and 5 of this section.

37 (e) Transfer adult inmates between adult institutions or adult  
38 facilities.

39 (f) Authorize work crews to perform acceptable tasks in any part of  
40 the state.

41 (g) Accept unconvicted persons pursuant to a court order for purposes  
42 of examination and treatment regarding competency to understand any stage of  
43 a criminal proceeding after indictment or information or their ability to  
44 assist in their own defense.

1 (h) Accept convicted yet unsentenced persons pursuant to a court order  
2 for purposes of conducting a mental health examination or a diagnostic  
3 evaluation.

4 (i) Appoint certain employees of the department to peace officer  
5 status for purposes of guarding, transporting or pursuing persons who are  
6 under the jurisdiction of the department and appoint certain employees of the  
7 department to peace officer status for purposes of investigating or arresting  
8 persons who commit or attempt to commit offenses directly relating to the  
9 operations of the department. Peace officers of the department shall not  
10 preempt the authority and jurisdiction of established agencies of this state  
11 and political subdivisions of this state. Such officers shall notify  
12 agencies of this state and political subdivisions of this state before  
13 conducting an investigation within the jurisdiction of the agency and before  
14 making an arrest within the jurisdiction of the agency and shall ask, except  
15 in an emergency, if the agency wishes to participate, perform the  
16 investigation or arrest the person to be arrested before proceeding.  
17 Personnel who are appointed as peace officers by the director shall have the  
18 minimum qualifications established for peace officers pursuant to section  
19 41-1822. Personnel who are appointed by the director pursuant to this  
20 subdivision are not eligible to participate in the public safety personnel  
21 retirement system except as otherwise provided in title 38, chapter 5,  
22 article 4.

23 (j) Operate travel reduction programs that are subsidized by the  
24 department for employees who commute between work and home by vanpools,  
25 carpools and buses or in vehicles that are purchased or leased by the  
26 department.

27 3. ESTABLISH BY RULE A ONE-TIME FEE FOR CONDUCTING BACKGROUND CHECKS  
28 ON ANY PERSON WHO ENTERS A DEPARTMENT FACILITY TO VISIT A PRISONER. A FEE  
29 SHALL NOT BE CHARGED FOR A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE. THE  
30 DIRECTOR MAY ADOPT RULES THAT WAIVE ALL OR PART OF THE FEE. THE DIRECTOR  
31 SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ANY MONIES COLLECTED  
32 PURSUANT TO THIS PARAGRAPH IN THE DEPARTMENT OF CORRECTIONS BUILDING RENEWAL  
33 FUND ESTABLISHED BY SECTION 41-797.

34 Sec. 15. Section 41-1604.02, Arizona Revised Statutes, is amended to  
35 read:

36 41-1604.02. Inmate stores; establishment; privatization;  
37 prices; goods; inmate store proceeds fund

38 The department may establish and maintain an inmate store at any  
39 prison, institution or facility. The department shall enter into a contract  
40 or contracts with a private entity or entities to establish and maintain  
41 inmate stores. The department or Arizona correctional industries may also be  
42 considered as an entity eligible for award. Such inmate stores shall offer  
43 for sale, at prices THAT ARE fixed by the contractor with direction from the  
44 director AND that are no higher than prices of similar retail products,  
45 toilet articles, candy, tobacco products, notions and other sundries to the

1 persons confined. The department may provide the facilities necessary to  
2 operate such inmate stores. All profit derived from the state's portion of  
3 privatization of such inmate stores shall be deposited in an inmate store  
4 proceeds fund. THE DIRECTOR SHALL TRANSFER FIVE HUNDRED THOUSAND DOLLARS  
5 FROM THE INMATE STORE PROCEEDS FUND ANNUALLY TO THE DEPARTMENT OF CORRECTIONS  
6 BUILDING RENEWAL FUND ESTABLISHED BY SECTION 41-797. ANY REMAINING monies in  
7 the fund may be used at the director's discretion for inmate activities,  
8 incentive pay increases for corrections officers, equipment to enhance safety  
9 for both department personnel and inmates or other official needs as  
10 required.

11 Sec. 16. Section 41-1604.03, Arizona Revised Statutes, is amended to  
12 read:

13 41-1604.03. Special services fund; uses; report

14 A. A special services fund is established in the state department of  
15 corrections. The department shall administer the fund.

16 B. THE DIRECTOR SHALL TRANSFER FIVE HUNDRED THOUSAND DOLLARS FROM THE  
17 SPECIAL SERVICES FUND ANNUALLY TO THE DEPARTMENT OF CORRECTIONS BUILDING  
18 RENEWAL FUND ESTABLISHED BY SECTION 41-797. ANY REMAINING MONIES IN the  
19 special services fund, including the inmate recreation fund, may be used for  
20 the following purposes:

21 1. The benefit, education and welfare of committed offenders,  
22 including the establishment, maintenance, purchase of items for resale and  
23 other necessary expenses of operation of canteens and hobby shops.

24 2. To pay the costs of a telephonic victim notification system.  
25 Revenues that are generated by the inmate telephone system and the automated  
26 public access program shall be deposited in the special services fund.

27 C. On or before August 1 of each year, the department shall submit to  
28 the president of the senate and the speaker of the house of representatives a  
29 report that contains a full and complete account of special services fund  
30 transactions relating to the inmate telephone system and the telephonic  
31 victim notification system for the preceding fiscal year.

32 Sec. 17. Title 41, chapter 11, article 1, Arizona Revised Statutes, is  
33 amended by adding section 41-1610.02, to read:

34 41-1610.02. Correctional reimbursement; counties

35 A. THE STATE TREASURER SHALL DEPOSIT MONIES RECEIVED FROM A COUNTY FOR  
36 THE COSTS OF INCARCERATING A PERSON IN THE STATE DEPARTMENT OF CORRECTIONS  
37 WHO OTHERWISE WOULD BE INCARCERATED IN JAIL PURSUANT TO SECTION 5-396,  
38 SUBSECTION C OR D, SECTION 13-701, SUBSECTION J, SECTION 28-1383, SUBSECTION  
39 D OR E OR SECTION 28-8288 IN THE STATE GENERAL FUND.

40 B. THE SHERIFF OF A SENTENCING COUNTY SHALL ENTER INTO A REIMBURSEMENT  
41 AGREEMENT WITH THE DEPARTMENT AT LEAST ONE MONTH BEFORE A PERSON IS  
42 TRANSFERRED INTO THE CUSTODY OF THE DEPARTMENT TO SERVE THE PERSON'S  
43 INCARCERATION. THE SHERIFF OF A SENTENCING COUNTY SHALL NOT CANCEL AN  
44 AGREEMENT MADE PURSUANT TO THIS SUBSECTION BEFORE PROVIDING THE STATE  
45 DEPARTMENT OF CORRECTIONS AT LEAST ONE MONTH'S NOTICE.

1 C. EACH COUNTY SHALL MAKE REIMBURSEMENTS PERMITTED BY THIS SECTION  
2 WITHIN THIRTY DAYS AFTER A REQUEST BY THE STATE DEPARTMENT OF CORRECTIONS.  
3 IF THE COUNTY DOES NOT MAKE THE REIMBURSEMENT, THE DIRECTOR OF THE STATE  
4 DEPARTMENT OF CORRECTIONS SHALL NOTIFY THE STATE TREASURER OF THE AMOUNT OWED  
5 AND THE STATE TREASURER SHALL WITHHOLD THE AMOUNT, INCLUDING ANY ADDITIONAL  
6 INTEREST AS PROVIDED IN SECTION 42-1123, FROM ANY TRANSACTION PRIVILEGE TAX  
7 DISTRIBUTIONS TO THE COUNTY. THE STATE TREASURER SHALL DEPOSIT THE  
8 WITHHOLDINGS, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL  
9 FUND.

10 Sec. 18. Section 41-1624, Arizona Revised Statutes, is amended to  
11 read:

12 41-1624. Arizona correctional industries revolving fund;  
13 definitions

14 A. The director may establish a revolving fund to be used to pay the  
15 expenses required:

16 1. For the purchase of raw materials, components and supplies to be  
17 used for the production of food and other items to be sold by the  
18 department's Arizona correctional industries.

19 2. For the compensation of prisoners and Arizona correctional  
20 industries professional and outside services.

21 3. For the purchase or rental of equipment to be used by the  
22 department's Arizona correctional industries.

23 4. For the construction or reconstruction of facilities.

24 5. For other operating expenses and in-state travel.

25 6. For the purchase of workers' compensation insurance for inmates who  
26 are employed in a federally certified prison industry enhancement program  
27 pursuant to section 41-1674.

28 7. For prisoner instruction related to vocational education, job  
29 training, parenting and alcohol and other drug use treatment classes.

30 B. Monies received for or derived from the operation of Arizona  
31 correctional industries, including monies from the sale of obsolete or  
32 unneeded material, supplies, equipment or property, shall be deposited,  
33 pursuant to sections 35-146 and 35-147, in a specially designated revolving  
34 fund and expended without need of previous encumbrance upon warrants drawn  
35 upon order of the director or the director's designee. The fund is a  
36 continuing fund and is exempt from the provisions of section 35-190. **THE  
37 DIRECTOR SHALL TRANSFER ONE MILLION DOLLARS FROM THE REVOLVING FUND ANNUALLY  
38 TO THE DEPARTMENT OF CORRECTIONS BUILDING RENEWAL FUND ESTABLISHED BY SECTION  
39 41-797.**

40 C. On notice from the director, the state treasurer shall invest and  
41 divest monies in the fund as provided by section 35-313, and monies earned  
42 from investment shall be credited to the fund.

43 D. For the purposes of this section:

44 1. "Components" means the parts, subassemblies and packaging materials  
45 that will become part of a final product or service.



1 OF THE COST OF THE SERVICES AND THE DEPARTMENT SHALL PROVIDE NOT MORE THAN  
2 SEVENTY-FIVE PER CENT OF PERSONAL SERVICES AND EMPLOYEE RELATED EXPENDITURES  
3 FOR EACH AGREEMENT OR CONTRACT BUT MAY FUND ALL CAPITAL RELATED EQUIPMENT.  
4 THIS SUBSECTION DOES NOT APPLY TO A COUNTY WITH A POPULATION OF MORE THAN  
5 THREE MILLION PERSONS OR A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED  
6 THOUSAND PERSONS BUT MORE THAN THREE HUNDRED THOUSAND PERSONS.

7 E. A COUNTY OFFICIAL IN A COUNTY WITH A POPULATION OF MORE THAN FIVE  
8 HUNDRED THOUSAND PERSONS BUT LESS THAN TWO MILLION PERSONS SHALL NOT RECEIVE  
9 ANY MONIES FROM THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT  
10 MISSION FUND.

11 F. A LAW ENFORCEMENT AGENCY SHALL NOT RECEIVE ANY MONIES FROM THE FUND  
12 UNLESS THE LAW ENFORCEMENT AGENCY CERTIFIES EACH FISCAL YEAR IN WRITING TO  
13 THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY THAT THE LAW ENFORCEMENT  
14 AGENCY IS COMPLYING WITH SECTION 11-1051 TO THE FULLEST EXTENT ALLOWED BY  
15 LAW.

16 G. THE DEPARTMENT SHALL SUBMIT AN EXPENDITURE PLAN TO THE JOINT  
17 LEGISLATIVE BUDGET COMMITTEE FOR REVIEW BEFORE EXPENDING ANY MONIES NOT  
18 IDENTIFIED IN THE DEPARTMENT'S PREVIOUS EXPENDITURE PLANS. WITHIN THIRTY  
19 DAYS AFTER THE LAST DAY OF EACH CALENDAR QUARTER, THE DEPARTMENT SHALL  
20 PROVIDE A SUMMARY OF QUARTERLY AND YEAR-TO-DATE EXPENDITURES AND PROGRESS TO  
21 THE JOINT LEGISLATIVE BUDGET COMMITTEE, INCLUDING ANY PRIOR YEAR  
22 APPROPRIATIONS THAT WERE NONLAPSING.

23 Sec. 21. Laws 2007, chapter 261, section 16, as amended by Laws 2009,  
24 third special session, chapter 6, section 21 and Laws 2010, seventh special  
25 session, chapter 6, section 24, is amended to read:

26 Sec. 16. Appropriations: deoxyribonucleic acid identification  
27 system fund: exemption

28 A. The sums of \$1,980,000 in fiscal year 2007-2008, \$2,980,000 in  
29 fiscal year 2008-2009, \$980,000 in fiscal year 2009-2010, \$980,000 in fiscal  
30 year 2010-2011 and ~~\$3,520,000~~ \$980,000 in fiscal year 2011-2012 are  
31 appropriated from the monies that are collected pursuant to section  
32 12-116.01, subsection C, Arizona Revised Statutes, and that are distributed  
33 pursuant to section 12-116.01, subsection J, Arizona Revised Statutes, for  
34 deposit in the Arizona deoxyribonucleic acid identification system fund  
35 established by section 41-2419, Arizona Revised Statutes, to the department  
36 of public safety for equipment purchases, personal services, employee-related  
37 expenses, training, other operating expenses and capital improvements in  
38 order to implement, conduct and maintain deoxyribonucleic acid testing.

39 B. The appropriations made in subsection A of this section shall come  
40 from the additional four per cent penalty assessment that is collected and  
41 distributed pursuant to the penalty assessment increase from three per cent  
42 to seven per cent in section 12-116.01, subsections C and J, Arizona Revised  
43 Statutes, as amended by Laws 2007, chapter 261, section 1.

1 C. The appropriation made in subsection A of this section in fiscal  
2 year 2007-2008 is exempt from the provisions of section 35-190, Arizona  
3 Revised Statutes, relating to lapsing of appropriations.

4 Sec. 22. State department of corrections; budget structure

5 Notwithstanding any other law, the state department of corrections  
6 shall report actual fiscal year 2010-2011, estimated fiscal year 2011-2012  
7 and requested fiscal year 2012-2013 expenditures in the same structure and  
8 detail as the prior fiscal year when the department submits the fiscal year  
9 2012-2013 budget request pursuant to section 35-113, Arizona Revised  
10 Statutes. The information submitted for each line item shall contain as much  
11 detail as submitted in previous years for prior line items.

12 Sec. 23. Department of public safety; highway funds; limitation

13 Notwithstanding sections 28-6537 and 28-6993, Arizona Revised Statutes,  
14 the statutory caps and transfers of highway user revenue fund monies and  
15 state highway fund monies available to fund department of public safety  
16 highway patrol costs are suspended for fiscal year 2011-2012.

17 Sec. 24. Suspension of reporting requirements

18 Notwithstanding any other law, the reporting requirements contained in  
19 the following sections are suspended for fiscal year 2011-2012:

20 1. Section 8-358, subsection B, Arizona Revised Statutes, relating to  
21 the annual juvenile intensive probation report.

22 2. Section 12-299.03, subsection A, paragraph 8, Arizona Revised  
23 Statutes, relating to the evaluation of the community punishment program.

24 3. Section 12-2456, Arizona Revised Statutes, relating to a report of  
25 information regarding the emancipation of minors.

26 4. Section 13-901.02, subsection D, Arizona Revised Statutes, relating  
27 to the annual drug treatment and education fund report card.

28 5. Section 21-222, subsection F, Arizona Revised Statutes, relating to  
29 the annual lengthy trial fund report.

30 6. Section 25-323.01, subsection B, Arizona Revised Statutes, relating  
31 to the annual child support committee report.

32 7. Section 25-323.02, subsection C, Arizona Revised Statutes, relating  
33 to the annual domestic relations committee report.

34 Sec. 25. Nonsupplanting; suspension

35 Notwithstanding any other law, in fiscal year 2011-2012 the provisions  
36 relating to supplanting of state monies contained in section 12-102.02,  
37 subsection E, section 12-102.03, subsection D, section 12-135, subsection D,  
38 section 12-135.01, subsection D, section 12-267, subsection D, section  
39 12-268, subsection D and section 12-299.01, subsection C, Arizona Revised  
40 Statutes, are suspended. The supreme court shall submit a report to the  
41 joint legislative budget committee identifying any decrease in county funding  
42 related to these suspended provisions, including the reasons for the  
43 decrease.



1 C. The state department of corrections shall present its plan on  
2 state-operated prison beds to the joint legislative budget committee for its  
3 review on or before March 1, 2012. If there is a sufficient number of  
4 persons convicted as outlined in subsection A of this section who are  
5 incarcerated in jails, the state department of corrections shall begin  
6 closing state-operated prison beds by no later than July 1, 2012. The plan  
7 shall be based on how many persons convicted as outlined in subsection A of  
8 this section will be incarcerated in jails. The plan also shall include an  
9 estimate of bed closure savings in fiscal year 2012-2013 along with an  
10 estimate of marginal cost savings to the department associated with counties  
11 incarcerating persons convicted as outlined in subsection A of this section  
12 in fiscal year 2012-2013.

13 Sec. 30. State department of corrections; use of funds;  
14 permission

15 Notwithstanding any other law, the state department of corrections is  
16 permitted to use monies from any of the following funds for department  
17 operating expenses in fiscal year 2011-2012:

18 1. The transition program fund established by section 31-284, Arizona  
19 Revised Statutes.

20 2. The transition services fund established by section 31-286, Arizona  
21 Revised Statutes.

22 3. The state department of corrections interagency service agreement  
23 fund.

24 Sec. 31. Collection enforcement revolving fund; disposition of  
25 monies

26 Notwithstanding section 41-191.03, subsection E, Arizona Revised  
27 Statutes, any monies remaining in the collection enforcement revolving fund  
28 at the end of fiscal year 2011-2012 in excess of five hundred thousand  
29 dollars shall be distributed on a pro rata basis to the funds receiving  
30 monies pursuant to section 41-191.03, subsection D, Arizona Revised Statutes.  
31 Such distribution shall be based on the percentage that the collections  
32 deposited in each fund bear to the total amount deposited into the funds  
33 during fiscal year 2011-2012.

34 Sec. 32. Effective date

35 Sections 5-396, 13-701, 28-1383, 28-8288 and 31-201.01, Arizona Revised  
36 Statutes, as amended by this act, and sections 31-133 and 41-1610.02, Arizona  
37 Revised Statutes, as added by this act, are effective from and after June 30,  
38 2012.