

REFERENCE TITLE: courts; approved screening, treatment facilities.

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2294

Introduced by
Representative Farnsworth E

AN ACT

AMENDING SECTIONS 5-395.01, 13-3601.01, 28-1387 AND 28-1445, ARIZONA REVISED STATUTES; RELATING TO COURT ORDERED SCREENING AND TREATMENT.

(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 law enforcement and boating safety
24 fund established by section 5-383. 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, **THE**
33 **UNITED STATES DEPARTMENT OF VETERANS AFFAIRS** or a probation department. If a
34 judge determines that the person requires further alcohol or other drug
35 education or treatment, the person may be required pursuant to court order to
36 obtain alcohol or other drug education or treatment under the court's
37 supervision from an approved facility. The judge may review an education or
38 treatment determination at the request of the state or the defendant or on
39 the judge's own initiative. The person shall pay the costs of the screening,
40 education or treatment unless the court waives part or all of the costs. If
41 a person is referred to a screening, education or treatment facility, the
42 facility shall report to the court whether the person has successfully
43 completed the screening, education or 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 law enforcement
42 and boating safety fund established by section 5-383. 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 section 9-499.07, subsections L through
37 R or section 11-459, subsections K through Q.

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 13-3601.01, Arizona Revised Statutes, is amended to
8 read:

9 13-3601.01. Domestic violence; treatment; definition

10 A. The judge shall order a person who is convicted of a misdemeanor
11 domestic violence offense to complete a domestic violence offender
12 treatment program that is provided by a facility approved by the
13 department of health services, **THE UNITED STATES DEPARTMENT OF VETERANS**
14 **AFFAIRS** or a probation department. If a person has previously been
15 ordered to complete a domestic violence offender treatment program
16 pursuant to this section, the judge shall order the person to complete a
17 domestic violence offender treatment program unless the judge deems that
18 alternative sanctions are more appropriate. The department of health
19 services shall adopt and enforce guidelines that establish standards for
20 domestic violence offender treatment program approval.

21 B. On conviction of a misdemeanor domestic violence offense, if a
22 person within a period of sixty months has previously been convicted of a
23 violation of a domestic violence offense or is convicted of a misdemeanor
24 domestic violence offense and has previously been convicted of an act in
25 another state, a court of the United States or a tribal court that if
26 committed in this state would be a domestic violence offense, the judge
27 may order the person to be placed on supervised probation and the person
28 may be incarcerated as a condition of probation. If the court orders
29 supervised probation, the court may conduct an intake assessment when the
30 person begins the term of probation and may conduct a discharge summary
31 when the person is released from probation. If the person is incarcerated
32 and the court receives confirmation that the person is employed or is a
33 student, the court, on pronouncement of any jail sentence, may provide in
34 the sentence that the person, if the person is employed or is a student
35 and can continue the person's employment or studies, may continue the
36 employment or studies for not more than twelve hours a day nor more than
37 five days a week. The person shall spend the remaining day, days or parts
38 of days in jail until the sentence is served and shall be allowed out of
39 jail only long enough to complete the actual hours of employment or
40 studies.

41 C. A person who is ordered to complete a domestic violence offender
42 treatment program shall pay the cost of the program.

43 D. If a person is ordered to attend a domestic violence offender
44 treatment program pursuant to this section, the program shall report to

1 the court whether the person has attended the program and has successfully
2 completed the program.

3 E. For the purposes of this section, prior convictions for
4 misdemeanor domestic violence offenses apply to convictions for offenses
5 that were committed on or after January 1, 1999.

6 F. For the purposes of this section, "domestic violence offense"
7 means an offense involving domestic violence as defined in section
8 13-3601.

9 Sec. 3. Section 28-1387, Arizona Revised Statutes, is amended to read:

10 28-1387. Prior convictions; alcohol or other drug screening,
11 education and treatment; license suspension;
12 supervised probation; civil liability; procedures

13 A. The court shall allow the allegation of a prior conviction or any
14 other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or
15 an act in another jurisdiction that if committed in this state would be a
16 violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days
17 before the date the case is actually tried and may allow the allegation of a
18 prior conviction or any other pending charge of a violation of section
19 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if
20 committed in this state would be a violation of section 28-1381, 28-1382 or
21 28-1383 filed at any time before the date the case is actually tried if this
22 state makes available to the defendant when the allegation is filed a copy of
23 any information obtained concerning the prior conviction or other pending
24 charge. Any conviction may be used to enhance another conviction
25 irrespective of the dates on which the offenses occurred within the
26 eighty-four month provision. For the purposes of this article, an order of a
27 juvenile court adjudicating a person delinquent is equivalent to a
28 conviction.

29 B. In addition to any other penalties prescribed by law, the judge
30 shall order a person who is convicted of a violation of section 28-1381,
31 28-1382 or 28-1383 to complete alcohol or other drug screening that is
32 provided by a facility approved by the department of health services, **THE**
33 **UNITED STATES DEPARTMENT OF VETERANS AFFAIRS** or a probation department. If a
34 judge determines that the person requires further alcohol or other drug
35 education or treatment, the person may be required pursuant to court order to
36 obtain alcohol or other drug education or treatment under the court's
37 supervision from an approved facility. The judge may review an education or
38 treatment determination at the request of the state, the defendant or the
39 probation officer or on the judge's initiative. The person shall pay the
40 costs of the screening, education or treatment unless, after considering the
41 person's ability to pay all or part of the costs, the court waives all or
42 part of the costs. If a person is referred to a screening, education or
43 treatment facility, the facility shall report to the court whether the person
44 has successfully completed the screening, education or treatment program.
45 The court may accept evidence of a person's completion of alcohol or other

1 drug screening pursuant to section 28-1445 as sufficient to meet the
 2 requirements of this section or section 28-1381, 28-1382 or 28-1383 or may
 3 order the person to complete additional alcohol or other drug screening,
 4 education or treatment programs. If a person has previously been ordered to
 5 complete an alcohol or other drug screening, education or treatment program
 6 pursuant to this section, the judge shall order the person to complete an
 7 alcohol or other drug screening, education or treatment program unless the
 8 court determines that alternative sanctions are more appropriate.

9 C. After a person who is sentenced pursuant to section 28-1381,
 10 subsection I has served twenty-four consecutive hours in jail or after a
 11 person who is sentenced pursuant to section 28-1381, subsection K or section
 12 28-1382, subsection D or E has served forty-eight consecutive hours in jail
 13 and after the court receives confirmation that the person is employed or is a
 14 student, the court shall provide in the sentence that the defendant, if the
 15 defendant is employed or is a student and can continue the defendant's
 16 employment or schooling, may continue the employment or schooling for not
 17 more than twelve hours a day nor more than six days a week, unless the court
 18 finds good cause to not allow the release and places those findings on the
 19 record. The person shall spend the remaining day, days or parts of days in
 20 jail until the sentence is served and shall be allowed out of jail only long
 21 enough to complete the actual hours of employment or schooling.

22 D. Unless the license of a person convicted under section 28-1381 or
 23 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the
 24 department on receipt of the abstract of conviction of a violation of section
 25 28-1381 or 28-1382 shall suspend the license of the affected person for not
 26 less than ninety consecutive days.

27 E. When the department receives notification that the person meets the
 28 criteria provided in section 28-1385, subsection G, the department shall
 29 suspend the driving privileges of the person for not less than thirty
 30 consecutive days and shall restrict the driving privileges of the person for
 31 not less than sixty consecutive additional days to travel between any of the
 32 following:

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

35 2. The person's place of residence and the person's secondary or
 36 postsecondary school, according to the person's employment or educational
 37 schedule.

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

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

42 F. If a person is placed on probation for violating section 28-1381 or
 43 28-1382, the probation shall be supervised unless the court finds that
 44 supervised probation is not necessary or the court does not have supervisory
 45 probation services.

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

6 H. If a person fails to complete the community restitution ordered
7 pursuant to section 28-1381, subsection K or section 28-1382, subsection E,
8 the court may order alternative sanctions if the court determines that
9 alternative sanctions are more appropriate.

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

13 Sec. 4. Section 28-1445, Arizona Revised Statutes, is amended to read:

14 28-1445. Alcohol or other drug screening; license suspension

15 A. The department of transportation shall order a person whose driving
16 privilege, license, permit, right to apply for a license or permit or
17 nonresident operating privilege is suspended pursuant to section 28-1385 to
18 complete alcohol or other drug screening pursuant to this chapter. The
19 alcohol or other drug screening shall be provided by a facility approved by
20 the department of health services, **THE UNITED STATES DEPARTMENT OF VETERANS**
21 **AFFAIRS OR A PROBATION DEPARTMENT.**

22 B. The department may accept evidence satisfactory to the department
23 and in a manner prescribed by the department, after consulting with the
24 administrative office of the courts, of a person's completion of alcohol or
25 other drug screening ordered by the court pursuant to section 28-1381,
26 28-1382, 28-1383 or 28-1387 as sufficient to meet the alcohol or other drug
27 screening requirements of section 28-1385 and this section or the department
28 may order the person to complete additional alcohol or other drug screening.

29 C. A person who is ordered to complete alcohol or other drug screening
30 is responsible for paying the costs of the screening.

31 D. The department shall issue a driver license or permit or reinstate
32 a person's driving privilege only if the person provides satisfactory
33 evidence to the department that the person has completed alcohol or other
34 drug screening.

35 E. A person who provides an alcohol or other drug screening program
36 shall electronically report the following to the department in a form
37 prescribed by the department:

38 1. The completion of screening pursuant to this section.

39 2. The failure of a person to complete screening as ordered by the
40 department pursuant to this section.