

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1200

AN ACT

AMENDING SECTIONS 5-395.01 AND 9-499.07, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-251.14; AMENDING SECTIONS 11-445, 11-459, 22-131, 28-1304, 28-1321, 28-1381, 28-1382, 28-1383, 28-1385, 28-1401, 28-1402, 28-1461, 28-1464 AND 28-1465, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-1525; AMENDING SECTIONS 28-2163, 28-3315, 28-3319 AND 31-233, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

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

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

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

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

30 B. In addition to any other penalties under this section, the judge
31 shall order the person to complete alcohol or other drug screening that is
32 provided by a facility approved by the department of health services or a
33 probation department. If a judge determines that the person requires further
34 alcohol or other drug education or treatment, the person may be required
35 pursuant to court order to obtain alcohol or other drug education or
36 treatment under the court's supervision from an approved facility. The judge
37 may review an education or treatment determination at the request of the
38 state or the defendant or on the judge's own initiative. The person shall
39 pay the costs of the screening, education or treatment unless the court
40 waives part or all of the costs. If a person is referred to a screening,
41 education or treatment facility, the facility shall report to the court
42 whether the person has successfully completed the screening, education or
43 treatment program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 N. A CITY OR TOWN MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING
5 PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION
6 28-1381 OR 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL.
7 THE PRESIDING JUDGE OF THE CITY OR TOWN MUNICIPAL COURT SHALL APPROVE THE
8 PROGRAM BEFORE ITS IMPLEMENTATION. A PRISONER WHO IS PLACED UNDER A
9 CONTINUOUS ALCOHOL MONITORING PROGRAM ESTABLISHED PURSUANT TO THIS SUBSECTION
10 SHALL BEAR THE COST OF ALL TESTING, MONITORING AND ENROLLMENT IN THE PROGRAM
11 AND PAY THIRTY DOLLARS PER MONTH WHILE IN THE PROGRAM, UNLESS, AFTER
12 DETERMINING THE INABILITY OF THE PRISONER TO PAY THE COST, THE COURT ASSESSES
13 A LESSER AMOUNT. THE CITY OR TOWN SHALL USE THE COLLECTED MONIES TO OFFSET
14 OPERATIONAL COSTS OF THE PROGRAM.

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

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

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

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

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

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

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

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

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

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

42 5. Any additional eligibility criteria that the city or town may
43 impose.

1 ~~0-~~ P. If a city or town establishes a home detention program under
2 subsection M of this section, the court, on placing the prisoner in the
3 program, shall require electronic monitoring in the prisoner's home and, if
4 consecutive hours of jail time are ordered, shall require the prisoner to
5 remain at home during the consecutive hours ordered. The detention device
6 shall constantly monitor the prisoner's location to ensure that the prisoner
7 does not leave the premises. Nothing in this subsection shall be deemed to
8 waive the minimum jail confinement requirements under subsection ~~N- 0~~,
9 paragraph 2 of this section.

10 ~~P-~~ Q. The court shall terminate a prisoner's participation in the
11 home detention **OR CONTINUOUS ALCOHOL MONITORING** program and require the
12 prisoner to complete the remaining term of the jail sentence by jail
13 confinement if:

14 1. The prisoner fails to successfully complete a court ordered alcohol
15 or drug screening, counseling, education and treatment program pursuant to
16 subsection ~~N- 0~~, paragraph 4, subdivision (c) of this section or section
17 28-1381, subsection J or L.

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

21 ~~0-~~ R. At any other time the court may terminate a prisoner's
22 participation in the home detention **OR CONTINUOUS ALCOHOL MONITORING** program
23 and require the prisoner to complete the remaining term of the jail sentence
24 by jail confinement.

25 ~~R-~~ S. The governing body of the city or town may terminate the
26 program established under subsection M of this section by a majority vote of
27 the full membership of the governing body.

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

30 11-251.14. Prisoner home detention program; eligibility;
31 monitoring; procedures; continuous alcohol
32 monitoring program; home detention for persons
33 sentenced for driving under the influence of
34 alcohol or drugs

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

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

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

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

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

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

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

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

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

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

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

41 I. BY A MAJORITY VOTE OF THE FULL MEMBERSHIP OF THE BOARD OF
42 SUPERVISORS AFTER A PUBLIC HEARING AND A FINDING OF NECESSITY, A COUNTY MAY
43 ESTABLISH A HOME DETENTION PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL
44 CONFINEMENT PURSUANT TO SECTION 28-1381 OR 28-1382. A PRISONER WHO IS PLACED
45 UNDER THE PROGRAM ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BEAR THE COST

1 OF ALL TESTING, MONITORING AND ENROLLMENT IN ALCOHOL OR SUBSTANCE ABUSE
2 PROGRAMS UNLESS, AFTER DETERMINING THE INABILITY OF THE PRISONER TO PAY THE
3 COST, THE COURT ASSESSES A LESSER AMOUNT. THE COUNTY SHALL USE THE COLLECTED
4 MONIES TO OFFSET OPERATIONAL COSTS OF THE PROGRAM.

5 J. A COUNTY MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING PROGRAM FOR
6 PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION 28-1381 OR
7 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL. THE
8 PRESIDING JUSTICE OF THE PEACE OF THE COUNTY JUSTICE COURT SHALL APPROVE THE
9 PROGRAM BEFORE ITS IMPLEMENTATION. A PRISONER WHO IS PLACED UNDER A
10 CONTINUOUS ALCOHOL MONITORING PROGRAM ESTABLISHED PURSUANT TO THIS SECTION
11 SHALL BEAR THE COST OF ALL TESTING, MONITORING AND ENROLLMENT IN THE PROGRAM
12 AND PAY THIRTY DOLLARS PER MONTH WHILE IN THE PROGRAM, UNLESS, AFTER
13 DETERMINING THE INABILITY OF THE PRISONER TO PAY THE COST, THE COURT ASSESSES
14 A LESSER AMOUNT. THE COUNTY SHALL USE THE COLLECTED MONIES TO OFFSET
15 OPERATIONAL COSTS OF THE PROGRAM.

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

19 1. SUBSECTION B OF THIS SECTION APPLIES IN DETERMINING ELIGIBILITY FOR
20 THE PROGRAM.

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

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

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

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

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

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

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

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

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

43 L. IF A COUNTY ESTABLISHES A HOME DETENTION PROGRAM UNDER SUBSECTION I
44 OF THIS SECTION, THE COURT, ON PLACING THE PRISONER IN THE PROGRAM, SHALL
45 REQUIRE ELECTRONIC MONITORING IN THE PRISONER'S HOME AND, IF CONSECUTIVE

1 HOURS OF JAIL TIME ARE ORDERED, SHALL REQUIRE THE PRISONER TO REMAIN AT HOME
2 DURING THE CONSECUTIVE HOURS ORDERED. THE DETENTION DEVICE SHALL CONSTANTLY
3 MONITOR THE PRISONER'S LOCATION TO ENSURE THAT THE PRISONER DOES NOT LEAVE
4 THE PREMISES.

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

8 1. THE PRISONER FAILS TO SUCCESSFULLY COMPLETE A COURT ORDERED ALCOHOL
9 OR DRUG SCREENING, COUNSELING, EDUCATION AND TREATMENT PROGRAM PURSUANT TO
10 SUBSECTION K, PARAGRAPH 4, SUBDIVISION (c) OF THIS SECTION OR SECTION
11 28-1381, SUBSECTION J OR L.

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

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

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

22 Sec. 4. Section 11-445, Arizona Revised Statutes, is amended to read:

23 11-445. Fees chargeable in civil actions by sheriffs,
24 constables and private process servers; authority of
25 private process servers; background investigation;
26 constables' logs

27 A. The sheriff shall receive the following fees in civil actions:

28 1. For serving each true copy of the original summons in a civil suit,
29 sixteen dollars, except that the sheriff shall not charge a fee for service
30 of any document pursuant to section 13-3602 or any injunction against
31 harassment pursuant to section 12-1809 if the court indicates the injunction
32 arises out of a dating relationship.

33 2. For summoning each witness, sixteen dollars.

34 3. For levying and returning each writ of attachment or claim and
35 delivery, forty-eight dollars.

36 4. For taking and approving each bond and returning it to the proper
37 court when necessary, twelve dollars.

38 5. For endorsing the forfeiture of any bond required to be endorsed by
39 him, twelve dollars.

40 6. For levying each execution, twenty-four dollars.

41 7. For returning each execution, sixteen dollars.

42 8. For executing and returning each writ of possession or restitution,
43 forty-eight dollars plus a rate of forty dollars per hour per deputy or
44 constable for the actual time spent in excess of three hours.

1 9. For posting the advertisement for sale under execution, or any
2 order of sale, twelve dollars.

3 10. For posting or serving any notice, process, writ, order, pleading
4 or paper required or permitted by law, not otherwise provided for, sixteen
5 dollars except that posting for a writ of restitution shall not exceed ten
6 dollars.

7 11. For executing a deed to each purchaser of real property under
8 execution or order of sale, twenty-four dollars.

9 12. For executing a bill of sale to each purchaser of real and personal
10 property under an execution or order of sale, when demanded by the purchaser,
11 sixteen dollars.

12 13. For services in designating a homestead or other exempt property,
13 twelve dollars.

14 14. For receiving and paying money on redemption and issuing a
15 certificate of redemption, twenty-four dollars.

16 15. For serving and returning each writ of garnishment and related
17 papers, forty dollars.

18 16. For the preparation, including notarization, of each affidavit of
19 service or other document pertaining to service, eight dollars.

20 17. For every writ served on behalf of a justice of the peace, a fee
21 established by the board of supervisors not to exceed five dollars per writ.
22 Monies collected from the writ fees shall be deposited in the constable
23 ethics standards and training fund established by section 22-138.

24 B. The sheriff shall also collect the appropriate recording fees if
25 applicable and other appropriate disbursements.

26 C. The sheriff may charge:

27 1. Fifty-six dollars plus disbursements for any skip tracing services
28 performed.

29 2. A reasonable fee for executing a civil arrest warrant ordered
30 pursuant to court rule by a judge or justice of the peace. The fee shall
31 only be charged to the party requesting the issuance of the civil arrest
32 warrant.

33 3. A reasonable fee for storing personal property levied on pursuant
34 to title 12, chapter 9.

35 D. For traveling to serve or on each attempt to serve civil process,
36 writs, orders, pleadings or papers, the sheriff shall receive two dollars
37 forty cents for each mile actually and necessarily traveled but, in any
38 event, not to exceed two hundred miles, nor to be less than sixteen dollars.
39 Mileage shall be charged one way only. For service made or attempted at the
40 same time and place, regardless of the number of parties or the number of
41 papers so served or attempted, only one charge for travel fees shall be made
42 for such service or attempted service.

43 E. For collecting money on an execution when it is made by sale, the
44 sheriff and the constable shall receive eight dollars for each one hundred
45 dollars or major portion thereof not to exceed a total of two thousand

1 dollars, but when money is collected by the sheriff without a sale, only
2 one-half of such fee shall be allowed. When satisfaction or partial
3 satisfaction of a judgment is received by the judgment creditor after the
4 sheriff or constable has received an execution on the judgment, the
5 commission is due the sheriff or constable and is established by an affidavit
6 of the judgment creditor filed with the officer. If the affidavit is not
7 lodged with the officer within thirty days of the request, the commission
8 shall be based on the total amount of judgment due as billed by the officer
9 and may be collected as any other debt by that officer.

10 F. The sheriff shall be allowed for all process issued from the
11 supreme court and served by the sheriff the same fees as are allowed the
12 sheriff for similar services on process issued from the superior court.

13 G. The constable shall receive the same fees as the sheriff for
14 performing the same services in civil actions, except that mileage shall be
15 computed from the office of the justice of the peace originating the civil
16 action to the place of service.

17 H. Notwithstanding subsection G of this section, in a county with a
18 population of more than three million persons, if an office of a justice of
19 the peace is located outside of the precinct boundaries, the mileage for a
20 constable shall be calculated pursuant to subsection D of this section,
21 except that the distance between the precinct boundaries and the office of
22 the justice of the peace, as determined by the county and certified by the
23 board of supervisors of that county, shall be subtracted from the mileage
24 calculation. This certified mileage calculation shall be transmitted to the
25 justice courts and the clerks of those courts shall calculate the mileage
26 between the office of the justice of the peace and the location where the
27 civil process, writ, order, pleading or paper was served and reduce the
28 mileage used to calculate the mileage fee according to the certified mileage
29 calculation for that respective jurisdiction.

30 I. Private process servers duly appointed or registered pursuant to
31 rules established by the supreme court may serve all process, writs, orders,
32 pleadings or papers required or permitted by law to be served before, during
33 or independently of a court action, including all such as are required or
34 permitted to be served by a sheriff or constable, except writs or orders
35 requiring the service officer to sell, deliver or take into the officer's
36 custody persons or property, or as may otherwise be limited by rule
37 established by the supreme court. A private process server is an officer of
38 the court. As a condition of registration, the supreme court shall require
39 each private process server applicant to furnish a full set of fingerprints
40 to enable a criminal background investigation to be conducted to determine
41 the suitability of the applicant. The completed applicant fingerprint card
42 shall be submitted with the fee prescribed in section 41-1750 to the
43 department of public safety. The applicant shall bear the cost of obtaining
44 the applicant's criminal history record information. The cost shall not
45 exceed the actual cost of obtaining the applicant's criminal history record

1 information. Applicant criminal history records checks shall be conducted
2 pursuant to section 41-1750 and Public Law 92-544. The department of public
3 safety is authorized to exchange the submitted applicant fingerprint card
4 information with the federal bureau of investigation for a federal criminal
5 records check. A private process server may charge such fees for services as
6 may be agreed on between the process server and the party engaging the
7 process server.

8 J. Constables shall maintain a log of work related activities
9 including a listing of all processes served and the number of processes
10 attempted to be served by case number, the names of the plaintiffs and
11 defendants, the names and addresses of the persons to be served except as
12 otherwise precluded by law, the date of process and the daily mileage.

13 K. The log maintained in subsection J of this section is a public
14 record and shall be made available by the constable at the constable's office
15 during regular office hours. Copies of the log shall be filed monthly with
16 the clerk of the justice court and with the clerk of the board of
17 supervisors.

18 ~~L. If the sheriff or constable serves a warrant issued by a justice or
19 superior court judge for failure to pay a fine, the court shall collect a ten
20 per cent surcharge on the amount of the fine owed by the defendant and shall
21 transmit the monies collected to the county treasurer for deposit in the
22 county general fund.~~

23 Sec. 5. Section 11-459, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 H. Community restitution work shall include public works projects
45 operated and supervised by public agencies of this state or counties, cities

1 or towns on recommendation of the community restitution work committee and
2 approval of the sheriff. The community restitution work committee may also
3 recommend and the sheriff may approve other forms of community restitution
4 work sponsored and supervised by public or private community oriented
5 organizations and agencies.

6 I. The community restitution work committee is established in each
7 county and is composed of two designees of the sheriff, a representative of
8 the county attorney's office selected by the county attorney, a
9 representative of a local police agency selected by the police chief of the
10 largest city in the county and three persons selected by the county board of
11 supervisors from the private sector. A sheriff's designee shall serve as
12 committee chairman and schedule all meetings. The committee shall meet as
13 often as necessary, but no less than once every three months, for the purpose
14 of considering and recommending appropriate community restitution work
15 projects for home detention prisoners. The committee shall make its
16 recommendations to the sheriff. Members are not eligible to receive
17 compensation.

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

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

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

38 **M. A COUNTY SHERIFF MAY ESTABLISH A CONTINUOUS ALCOHOL MONITORING**
39 **PROGRAM FOR PERSONS WHO ARE SENTENCED TO JAIL CONFINEMENT PURSUANT TO SECTION**
40 **28-1381 OR 28-1382, WHICH SHALL BE TREATED THE SAME AS CONFINEMENT IN JAIL**
41 **AND SHALL FULFILL THE SHERIFF'S DUTY TO TAKE CHARGE OF AND KEEP THE COUNTY**
42 **JAIL AND PRISONERS. A PRISONER WHO IS PLACED UNDER A CONTINUOUS ALCOHOL**
43 **MONITORING PROGRAM ESTABLISHED PURSUANT TO THIS SUBSECTION SHALL BEAR THE**
44 **COST OF ALL TESTING, MONITORING AND ENROLLMENT IN THE PROGRAM AND PAY THIRTY**
45 **DOLLARS PER MONTH WHILE IN THE PROGRAM, UNLESS, AFTER DETERMINING THE**

1 INABILITY OF THE PRISONER TO PAY THE COST, THE COURT ASSESSES A LESSER
2 AMOUNT. THE COUNTY SHALL USE THE COLLECTED MONIES TO OFFSET OPERATIONAL
3 COSTS OF THE PROGRAM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~P~~ Q. At any other time the court may terminate a prisoner's
9 participation in the home detention **OR CONTINUOUS ALCOHOL MONITORING** program
10 and require the prisoner to complete the remaining term of the jail sentence
11 by jail confinement.

12 ~~Q~~ R. The sheriff may terminate ~~the A~~ program **ESTABLISHED PURSUANT TO**
13 **THIS SECTION** at any time.

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

17 Sec. 6. Section 22-131, Arizona Revised Statutes, is amended to read:

18 **22-131. Constables; powers and duties**

19 A. Constables shall attend the courts of justices of the peace within
20 their precincts when required, and within their counties execute, serve and
21 return all processes, **WARRANTS** and notices directed or delivered to them by a
22 justice of the peace of the county or by competent authority. In addition to
23 any other provision of law these duties may be enforced by the presiding
24 judge of the superior court in the county, including the use of the power of
25 contempt.

26 B. Constables shall attend the training prescribed in section 22-137.

27 C. Constables, with the consent of and at salaries fixed by the board
28 of supervisors, may appoint deputies who are certified pursuant to section
29 41-1822, subsection A, paragraph 3, stenographers, clerks and assistants
30 necessary to conduct the affairs of their offices. The appointments shall be
31 in writing and filed in the office of the county recorder.

32 D. The provisions of law relating to sheriffs, as far as applicable,
33 shall govern the powers, duties and liabilities of constables.

34 E. A constable who is duly elected or who is appointed by the board of
35 supervisors has the authority of a peace officer only in the performance of
36 the constable's official duties.

37 F. A constable may execute, serve and return processes and notices as
38 prescribed in subsection A of this section within any precinct in another
39 county if that precinct adjoins the precinct in which the constable was
40 elected or appointed.

41 Sec. 7. Section 28-1304, Arizona Revised Statutes, is amended to read:

42 **28-1304. Driving under the influence abatement fund**

43 A. The driving under the influence abatement fund is established
44 consisting of monies deposited pursuant to section 4-213, subsection J,
45 section 5-396, subsection I, paragraph 2, section 5-397, subsection D,

1 paragraph 3 and subsection F, paragraph 3, section 28-1382, subsection D,
2 paragraph 3 and subsection E, paragraph 3, ~~and~~ section 28-1383, subsection J,
3 paragraph 2 **AND SECTION 28-1465.**

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

6 C. Twenty-five per cent of the monies deposited in the fund shall be
7 used for grants for innovative programs pursuant to section 28-1303,
8 subsection H, paragraph 2 and seventy per cent of the monies deposited in the
9 fund shall be used for grants to political subdivisions and tribal
10 governments pursuant to section 28-1303, subsection H, paragraph 1.

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

13 1. Administrative purposes of the oversight council on driving or
14 operating under the influence abatement.

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

16 E. Monies in the fund are:

17 1. Continuously appropriated.

18 2. Exempt from the provisions of section 35-190 relating to lapsing of
19 appropriations.

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

24 Sec. 8. Section 28-1321, Arizona Revised Statutes, is amended to read:

25 28-1321. Implied consent; tests; refusal to submit to test;
26 order of suspension; hearing; review; temporary
27 permit; notification of suspension; special ignition
28 interlock restricted driver license

29 A. A person who operates a motor vehicle in this state gives consent,
30 subject to section 4-244, paragraph 34 or section 28-1381, 28-1382 or
31 28-1383, to a test or tests of the person's blood, breath, urine or other
32 bodily substance for the purpose of determining alcohol concentration or drug
33 content if the person is arrested for any offense arising out of acts alleged
34 to have been committed in violation of this chapter or section 4-244,
35 paragraph 34 while the person was driving or in actual physical control of a
36 motor vehicle while under the influence of intoxicating liquor or drugs. The
37 test or tests chosen by the law enforcement agency shall be administered at
38 the direction of a law enforcement officer having reasonable grounds to
39 believe that the person was driving or in actual physical control of a motor
40 vehicle in this state either:

41 1. While under the influence of intoxicating liquor or drugs.

42 2. If the person is under twenty-one years of age, with spirituous
43 liquor in the person's body.

44 B. After an arrest a violator shall be requested to submit to and
45 successfully complete any test or tests prescribed by subsection A of this

1 section, and if the violator refuses the violator shall be informed that the
2 violator's license or permit to drive will be suspended or denied for twelve
3 months, or for two years for a second or subsequent refusal within a period
4 of eighty-four months, unless the violator expressly agrees to submit to and
5 successfully completes the test or tests. A failure to expressly agree to
6 the test or successfully complete the test is deemed a refusal. The violator
7 shall also be informed that:

8 1. If the test results show a blood or breath alcohol concentration of
9 0.08 or more, ~~or~~ if the results show a blood or breath alcohol concentration
10 of 0.04 or more and the violator was driving or in actual physical control of
11 a commercial motor vehicle **OR IF THE RESULTS SHOW THERE IS ANY DRUG DEFINED**
12 **IN SECTION 13-3401 OR ITS METABOLITE IN THE PERSON'S BODY AND THE PERSON DOES**
13 **NOT POSSESS A VALID PRESCRIPTION FOR THE DRUG**, the violator's license or
14 permit to drive will be suspended or denied for not less than ninety
15 consecutive days.

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

20 C. A person who is dead, unconscious or otherwise in a condition
21 rendering the person incapable of refusal is deemed not to have withdrawn the
22 consent provided by subsection A of this section and the test or tests may be
23 administered, subject to section 4-244, paragraph 34 or section 28-1381,
24 28-1382 or 28-1383.

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

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

29 2. The law enforcement officer directing the administration of the
30 test shall:

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

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

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

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

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

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

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

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

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

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

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

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

12 F. On receipt of the certified report of refusal and a copy of the
13 order of suspension and on the effective date stated on the order, the
14 department shall enter the order of suspension on its records unless a
15 written **OR ONLINE** request for a hearing as provided in this section has been
16 filed by the accused person. If the department receives only the certified
17 report of refusal, the department shall notify the person named in the report
18 in writing sent by mail that:

19 1. Fifteen days after the date of issuance of the notice the
20 department will suspend the person's license or permit, driving privilege or
21 nonresident driving privilege.

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

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

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

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

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

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

39 H. The order for suspension shall:

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

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

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

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

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

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

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

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

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

27 2. The person was placed under arrest.

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

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

30 L. If the department determines at the hearing to suspend the affected
31 person's privilege to operate a motor vehicle, the suspension provided in
32 this section is effective fifteen days after giving written notice of the
33 suspension, except that the department may issue or extend a temporary
34 license that expires on the effective date of the suspension. If the person
35 is a resident without a license or permit or has an expired license or permit
36 to operate a motor vehicle in this state, the department shall deny to the
37 person the issuance of a license or permit for a period of twelve months
38 after the order of suspension becomes effective or for a period of two years
39 after the order of suspension becomes effective for a second or subsequent
40 refusal within a period of eighty-four months, and may reinstate the person's
41 driving privilege, license, permit, right to apply for a license or permit or
42 nonresident operating privilege following the period of suspension only if
43 the person completes alcohol or other drug screening.

44 M. If the suspension order is sustained after the hearing, a motion
45 for rehearing is not required. Within thirty days after a suspension order

1 is sustained, the affected person may file a petition in the superior court
2 to review the final order of suspension or denial by the department in the
3 same manner provided in section 28-3317. The court shall hear the review of
4 the final order of suspension or denial on an expedited basis.

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

8 O. If it has been determined under the procedures of this section that
9 a nonresident's privilege to operate a motor vehicle in this state has been
10 suspended, the department shall give information either in writing or by
11 electronic means of the action taken to the motor vehicle administrator of
12 the state of the person's residence and of any state in which the person has
13 a license.

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

31 Sec. 9. Section 28-1381, Arizona Revised Statutes, is amended to read:

32 28-1381. Driving or actual physical control while under the
33 influence; trial by jury; presumptions; admissible
34 evidence; sentencing; classification

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

37 1. While under the influence of intoxicating liquor, any drug, a vapor
38 releasing substance containing a toxic substance or any combination of
39 liquor, drugs or vapor releasing substances if the person is impaired to the
40 slightest degree.

41 2. If the person has an alcohol concentration of 0.08 or more within
42 two hours of driving or being in actual physical control of the vehicle and
43 the alcohol concentration results from alcohol consumed either before or
44 while driving or being in actual physical control of the vehicle.

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

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

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

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

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

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

19 F. At the arraignment, the court shall inform the defendant that **IF**
20 **THE STATE ALLEGES A PRIOR CONVICTION** the defendant may request a trial by
21 jury and that the request, if made, shall be granted.

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

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

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

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

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

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

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

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

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

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

14 5. Shall pay an additional assessment of five hundred dollars to be
15 deposited by the state treasurer in the public safety equipment fund
16 established by section 41-1723. 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 6. Shall be required by the department, on report of the conviction,
23 to equip any motor vehicle the person operates with a certified ignition
24 interlock device pursuant to section 28-3319. In addition, the court may
25 order the person to equip any motor vehicle the person operates with a
26 certified ignition interlock device for more than twelve months beginning on
27 the date of reinstatement of the person's driving privilege following a
28 suspension or revocation or on the date of the department's receipt of the
29 report of conviction, whichever occurs later. The person who operates a
30 motor vehicle with a certified ignition interlock device under this paragraph
31 shall comply with article 5 of this chapter.

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

40 K. If within a period of eighty-four months a person is convicted of a
41 second violation of this section or is convicted of a violation of this
42 section and has previously been convicted of a violation of section 28-1382
43 or 28-1383 or an act in another jurisdiction that if committed in this state
44 would be a violation of this section or section 28-1382 or 28-1383, the
45 person:

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

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

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

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

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

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

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

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

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

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

12 Sec. 10. Section 28-1382, Arizona Revised Statutes, is amended to
13 read:

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

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

- 23 1. 0.15 or more but less than 0.20.
- 24 2. 0.20 or more.

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

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

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

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

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

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

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

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

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

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

37 E. If within a period of eighty-four months a person is convicted of a
38 second violation of this section or is convicted of a violation of this
39 section and has previously been convicted of a violation of section 28-1381
40 or 28-1383 or an act in another jurisdiction that if committed in this state
41 would be a violation of this section or section 28-1381 or 28-1383, the
42 person:

43 1. Shall be sentenced to serve not less than one hundred twenty days
44 in jail, sixty days of which shall be served consecutively, and is not
45 eligible for probation or suspension of execution of sentence unless the

1 entire sentence has been served if the person is convicted of a violation of
2 subsection A, paragraph 1 of this section. A person who is convicted of a
3 violation of subsection A, paragraph 2 of this section shall be sentenced to
4 serve not less than one hundred eighty days in jail, ninety of which shall be
5 served consecutively, and is not eligible for probation or suspension of
6 execution of sentence unless the entire sentence has been served.

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

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

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

24 5. Shall have the person's driving privilege revoked for at least one
25 year. The court shall report the conviction to the department. On receipt
26 of the report, the department shall revoke the person's driving privilege and
27 shall require the person to equip any motor vehicle the person operates with
28 a certified ignition interlock device pursuant to section 28-3319. In
29 addition, the court may order the person to equip any motor vehicle the
30 person operates with a certified ignition interlock device for more than
31 twelve months beginning on the date of reinstatement of the person's driving
32 privilege following a suspension or revocation or on the date of the
33 department's receipt of the report of conviction, whichever is later. The
34 person who operates a motor vehicle with a certified ignition interlock
35 device under this paragraph shall comply with article 5 of this chapter.

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

1 7. Shall pay an additional assessment of one thousand two hundred
2 fifty dollars to be deposited by the state treasurer in the public safety
3 equipment fund established by section 41-1723. This assessment is not
4 subject to any surcharge. If the conviction occurred in the superior court
5 or a justice court, the court shall transmit the assessed monies to the
6 county treasurer. If the conviction occurred in a municipal court, the court
7 shall transmit the assessed monies to the city treasurer. The city or county
8 treasurer shall transmit the monies received to the state treasurer.

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

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

15 H. AFTER COMPLETING FORTY-FIVE DAYS OF THE REVOCATION PERIOD
16 PRESCRIBED BY SUBSECTION E OF THIS SECTION, A PERSON WHOSE DRIVING PRIVILEGE
17 IS REVOKED FOR A VIOLATION OF THIS SECTION AND WHO IS SENTENCED PURSUANT TO
18 SUBSECTION E OF THIS SECTION IS ELIGIBLE FOR A SPECIAL IGNITION INTERLOCK
19 RESTRICTED DRIVER LICENSE PURSUANT TO SECTION 28-1401.

20 I. NOTWITHSTANDING SUBSECTION D, PARAGRAPH 1 OF THIS SECTION, AT THE
21 TIME OF SENTENCING IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,
22 PARAGRAPH 1 OF THIS SECTION, THE JUDGE MAY SUSPEND ALL BUT NINE DAYS OF THE
23 SENTENCE IF THE PERSON EQUIPS ANY MOTOR VEHICLE THE PERSON OPERATES WITH A
24 CERTIFIED IGNITION INTERLOCK DEVICE FOR A PERIOD OF TWELVE MONTHS. IF THE
25 PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS
26 SECTION, THE JUDGE MAY SUSPEND ALL BUT FOURTEEN DAYS OF THE SENTENCE IF THE
27 PERSON EQUIPS ANY MOTOR VEHICLE THE PERSON OPERATES WITH A CERTIFIED IGNITION
28 INTERLOCK DEVICE FOR A PERIOD OF TWELVE MONTHS. IF THE PERSON FAILS TO
29 COMPLY WITH ARTICLE 5 OF THIS CHAPTER AND HAS NOT BEEN PLACED ON PROBATION,
30 THE COURT SHALL ISSUE AN ORDER TO SHOW CAUSE AS TO WHY THE REMAINING JAIL
31 SENTENCE SHOULD NOT BE SERVED.

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

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

36 28-1383. Aggravated driving or actual physical control while
37 under the influence; violation; classification;
38 definition

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

42 1. Commits a violation of section 28-1381, section 28-1382 or this
43 section while the person's driver license or privilege to drive is suspended,
44 canceled, revoked or refused or while a restriction is placed on the person's

1 driver license or privilege to drive as a result of violating section 28-1381
2 or 28-1382 or under section 28-1385.

3 2. Within a period of eighty-four months commits a third or subsequent
4 violation of section 28-1381, section 28-1382 or this section or is convicted
5 of a violation of section 28-1381, section 28-1382 or this section and has
6 previously been convicted of any combination of convictions of section
7 28-1381, section 28-1382 or this section or acts in another jurisdiction that
8 if committed in this state would be a violation of section 28-1381, section
9 28-1382 or this section.

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

12 (a) Section 28-1381.

13 (b) Section 28-1382.

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

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

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

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

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

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

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

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

1 E. A person who is convicted under subsection A, paragraph 2 of this
2 section and who within an eighty-four month period has been convicted of
3 three or more prior violations of section 28-1381, section 28-1382 or this
4 section, or any combination of those sections, or acts in another
5 jurisdiction that if committed in this state would be a violation of section
6 28-1381, section 28-1382 or this section is not eligible for probation,
7 pardon, commutation or suspension of sentence or release on any other basis
8 until the person has served not less than eight months in prison.

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

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

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

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

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

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

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

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

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

3 2. In addition to any other penalty prescribed by law, shall order the
4 person to pay an additional assessment of two hundred fifty dollars. If the
5 conviction occurred in the superior court or a justice court, the court shall
6 transmit the monies received pursuant to this paragraph to the county
7 treasurer. If the conviction occurred in a municipal court, the court shall
8 transmit the monies received pursuant to this paragraph to the city
9 treasurer. The city or county treasurer shall transmit the monies received
10 to the state treasurer. The state treasurer shall deposit the monies
11 received in the driving under the influence abatement fund established by
12 section 28-1304. Any fine imposed for a violation of this section and any
13 assessments, restitution and incarceration costs shall be paid before the
14 assessment prescribed in this paragraph.

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

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

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

35 K. After completing the period of suspension required by section
36 28-1385, a person whose driving privilege is revoked for a violation of
37 subsection A, paragraph 3 of this section may apply to the department for a
38 special ignition interlock restricted driver license pursuant to section
39 28-1401.

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

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

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

1 M. For the purposes of this section, "suspension, cancellation,
2 revocation or refusal" means any suspension, cancellation, revocation or
3 refusal.

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

6 28-1385. Administrative license suspension for driving under
7 the influence or for homicide or assault involving a
8 motor vehicle; report; hearing; summary review;
9 ignition interlock device requirement

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

14 1. The officer arrests a person for a violation of section 4-244,
15 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a
16 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a
17 motor vehicle.

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

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

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

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

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

34 1. Information that adequately identifies the arrested person.

35 2. A statement of the officer's grounds for belief that the person was
36 driving or in actual physical control of a motor vehicle in violation of
37 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
38 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201
39 or 13-1204 involving a motor vehicle.

40 3. A statement that the person was arrested for a violation of section
41 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or
42 for a violation of title 13, chapter 11 or section 13-1201 or 13-1204
43 involving a motor vehicle.

44 4. A report of the results of the blood or breath alcohol test that
45 was administered, if the results are available.

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

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

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

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

10 4. Shall be accompanied by printed forms THAT ARE ready to mail to the
11 department that the person may fill out and sign to indicate the person's
12 desire for a hearing AND THAT ADVISE THE PERSON THAT THE PERSON MAY
13 ALTERNATIVELY SUBMIT AN ONLINE REQUEST FOR A HEARING.

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

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

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

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

27 E. If the license or permit is not surrendered pursuant to subsection
28 C of this section, the officer shall state the reason for the nonsurrender.
29 If a valid license or permit is surrendered, the officer shall issue a
30 temporary driving permit that is valid for fifteen days. The officer shall
31 forward a copy of the completed order of suspension, a copy of any completed
32 temporary permit and any driver license or permit taken into possession under
33 this section to the department within five days after the issuance of the
34 order of suspension along with the report.

35 F. The department shall suspend the affected person's license or
36 permit to drive or right to apply for a license or permit or any nonresident
37 operating privilege for not less than ninety consecutive days from that date.
38 If the person is otherwise qualified, the department may reinstate the
39 person's driving privilege, license, permit, right to apply for a license or
40 permit or nonresident operating privilege following the period of suspension
41 only if the violator completes alcohol or other drug screening.

42 G. Notwithstanding subsections A through F of this section, the
43 department shall suspend the driving privileges of the person described in
44 subsection A of this section for not less than thirty consecutive days and
45 shall restrict the driving privileges of the person for not less than sixty

1 consecutive additional days to travel between the person's place of
2 employment and residence and during specified periods of time while at
3 employment, to travel between the person's place of residence and the
4 person's secondary or postsecondary school, according to the person's
5 employment or educational schedule, to travel between the person's place of
6 residence and the office of the person's probation officer for scheduled
7 appointments or to travel between the person's place of residence and a
8 screening, education or treatment facility for scheduled appointments if the
9 person:

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

13 2. Has not been convicted of a violation of section 4-244, paragraph
14 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four
15 months of the date of commission of the acts out of which the current action
16 arose. The dates of commission of the acts are the determining factor in
17 applying the eighty-four month provision.

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

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

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

42 I. A timely request for a hearing stays the suspension until a hearing
43 is held, except that the department shall not return any surrendered license
44 or permit to the person but may issue temporary permits to drive that expire
45 no later than when the department has made its final decision. If the person

1 is a resident without a license or permit or has an expired license or
2 permit, the department may allow the person to apply for a restricted license
3 or permit. If the department determines the person is otherwise entitled to
4 the restricted license or permit, the department shall issue, but retain, the
5 license or permit, subject to this section. All hearings requested under
6 this section shall be conducted in the same manner and under the same
7 conditions as provided in section 28-3306.

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

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

13 2. Whether the person was placed under arrest for a violation of
14 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
15 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
16 13-1204 involving a motor vehicle.

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

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

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

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

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

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

28 5. Whether the test results were accurately evaluated.

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

31 L. If the department determines at the hearing to suspend the affected
32 person's privilege to operate a motor vehicle, the suspension provided in
33 this section is effective fifteen days after giving written notice of the
34 suspension, except that the department may issue or extend a temporary
35 license that expires on the effective date of the suspension. If the person
36 is a resident without a license or permit or has an expired license or permit
37 to operate a motor vehicle in this state, the department shall deny the
38 issuance of a license or permit to the person for not less than ninety
39 consecutive days. The department may reinstate the person's driving
40 privilege, license, permit, right to apply for a license or permit or
41 nonresident operating privilege following the period of suspension only if
42 the violator completes alcohol or other drug screening.

43 M. A person may apply for a summary review of an order issued pursuant
44 to this section instead of a hearing at any time before the effective date of
45 the order. The person shall submit the application in writing to any

1 department driver license examining office together with any written
2 explanation as to why the department should not suspend the driving
3 privilege. The agent of the department receiving the notice shall issue to
4 the person an additional driving permit that expires twenty days from the
5 date the request is received. The department shall review all reports
6 submitted by the officer and any written explanation submitted by the person
7 and shall determine if the order of suspension should be sustained or
8 cancelled. The department shall not hold a hearing, and the review is not
9 subject to title 41, chapter 6. The department shall notify the person of
10 its decision before the temporary driving permit expires.

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

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

21 Sec. 13. Section 28-1401, Arizona Revised Statutes, is amended to
22 read:

23 28-1401. Special ignition interlock restricted driver licenses;
24 application fee

25 A. A person whose class D or class G license has been **SUSPENDED**
26 **PURSUANT TO SECTION 28-1385 OR** suspended or revoked for a first ~~offense of~~
27 **REFUSAL PURSUANT TO** section 28-1321, **A SECOND VIOLATION OF SECTION 28-1381 OR**
28 **28-1382** or **A FIRST VIOLATION OF** section 28-1383, subsection A, paragraph 3,
29 may apply to the department for a special ignition interlock restricted
30 driver license that allows a person to operate a motor vehicle during the
31 period of suspension or revocation subject to the restrictions prescribed in
32 section 28-1402 and the certified ignition interlock device requirements
33 prescribed in article 5 of this chapter if the person's privilege to operate
34 a motor vehicle has been suspended or revoked due to an alcohol related
35 offense pursuant to ~~either~~ **ANY** of the following:

36 1. Section 28-1321, if the person meets the criteria of section
37 28-1321, subsection P.

38 2. **SECTION 28-1381, IF THE PERSON MEETS THE CRITERIA OF SECTION**
39 **28-1381, SUBSECTION O AND THE PERSON PRESENTS EVIDENCE THAT IS SATISFACTORY**
40 **TO THE DIRECTOR AND THAT SHOWS THAT THE PERSON HAS COMPLETED THE REQUIREMENTS**
41 **PRESCRIBED IN SECTION 28-1387, SUBSECTION B.**

42 3. **SECTION 28-1382, IF THE PERSON MEETS THE CRITERIA OF SECTION**
43 **28-1382, SUBSECTION H AND THE PERSON PRESENTS EVIDENCE THAT IS SATISFACTORY**
44 **TO THE DIRECTOR AND THAT SHOWS THAT THE PERSON HAS COMPLETED THE REQUIREMENTS**
45 **PRESCRIBED IN SECTION 28-1387, SUBSECTION B.**

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

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

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

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

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

15 Sec. 15. Section 28-1461, Arizona Revised Statutes, is amended to
16 read:

17 28-1461. Use of certified ignition interlock devices; reporting

18 A. If a person's driving privilege is limited pursuant to section
19 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
20 28-1402:

21 1. The person shall:

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

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

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

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

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

39 B. While a person maintains a functioning certified ignition interlock
40 device in a vehicle pursuant to this chapter, each time an installer obtains
41 information recorded by a certified ignition interlock device the installer
42 shall electronically provide to the department in a form prescribed by the
43 department the following information:

- 1 1. Any tampering or circumvention.
- 2 2. Any failure to provide proof of compliance or inspection of the
- 3 certified ignition interlock device as prescribed in this section.
- 4 3. Any attempt to operate the vehicle with an alcohol concentration
- 5 exceeding the presumptive limit as prescribed in section 28-1381,
- 6 subsection G, paragraph 3 or, if the person is under twenty-one years of age,
- 7 any attempt to operate the vehicle with any spirituous liquor in the person's
- 8 body.
- 9 C. If the person is under eighteen years of age, the installer shall
- 10 also provide to the person's parent or legal guardian the information
- 11 prescribed in subsection B of this section.
- 12 D. On request, the installer shall provide the information prescribed
- 13 in subsection B of this section to:
- 14 1. The department of health services authorized provider.
- 15 2. The probation department that is providing alcohol or other drug
- 16 screening, education or treatment to the person.
- 17 3. The physician, psychologist or substance abuse counselor who is
- 18 evaluating the person's ability to safely operate a motor vehicle following a
- 19 revocation of the person's driving privilege as prescribed in section
- 20 28-3315, subsection D.
- 21 4. The court.
- 22 E. The department shall extend an ignition interlock restricted or
- 23 limited driver license and the certified ignition interlock device period **FOR**
- 24 **SIX MONTHS** if the department has reasonable grounds to believe that any of
- 25 the following applies:
- 26 1. The person tampered with or circumvented the certified ignition
- 27 interlock device.
- 28 2. The person attempted to operate the vehicle with an alcohol
- 29 concentration exceeding the presumptive limit as prescribed in section
- 30 28-1381, subsection G, paragraph 3 ~~three~~ **TWO** or more times during the period
- 31 of license restriction or limitation.
- 32 3. If the person is under twenty-one years of age, the person
- 33 attempted to operate the vehicle with any spirituous liquor in the person's
- 34 body during the period of license restriction or limitation.
- 35 4. The person failed to provide proof of compliance or inspection as
- 36 prescribed in this section.
- 37 5. **THE PERSON ATTEMPTS TO OPERATE THE VEHICLE WITH AN ALCOHOL**
- 38 **CONCENTRATION OF 0.08 OR MORE DURING A SIX MONTH EXTENSION PURSUANT TO THIS**
- 39 **SUBSECTION.**
- 40 F. If the special ignition interlock restricted license is extended
- 41 pursuant to subsection E of this section, the limitations prescribed in
- 42 sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the
- 43 restrictive period of the license ends.

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

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

9 Sec. 16. Section 28-1464, Arizona Revised Statutes, is amended to
10 read:

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

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

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

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

40 D. During any period when a person whose driving privilege is limited
41 pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted
42 pursuant to section 28-1402 is required to operate only a motor vehicle that
43 is equipped with a certified ignition interlock device, the person shall not
44 request or permit any other person to breathe into the ignition interlock

1 device or start a motor vehicle equipped with an ignition interlock device
2 for the purpose of providing the person with an operable motor vehicle.

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

8 F. A person whose driving privilege is limited pursuant to section
9 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
10 28-1402 shall not tamper with or circumvent the operation of an ignition
11 interlock device.

12 G. A person who is not a manufacturer's authorized installer or an
13 agent of a manufacturer's authorized installer and who is not a person whose
14 driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or
15 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or
16 circumvent the operation of an ignition interlock device.

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

22 I. If the ignition interlock device is removed from a vehicle by an
23 installer, the installer shall electronically notify the department in a form
24 prescribed by the department that the ignition interlock device has been
25 removed from the vehicle.

26 J. If the person does not provide evidence to the department within
27 seventy-two hours that the person has installed a functioning certified
28 ignition interlock device in each vehicle operated by the person and has
29 provided proof of installation to the department, the department shall
30 suspend the special ignition interlock restricted driver license or privilege
31 as prescribed in section 28-1463.

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

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

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

44 ~~L~~ N. For the purposes of this section, "substantial emergency" means
45 that a person other than the person whose driving privilege is limited

1 pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted
2 pursuant to section 28-1402 is not reasonably available to drive in response
3 to an emergency.

4 Sec. 17. Section 28-1465, Arizona Revised Statutes, is amended to
5 read:

6 28-1465. Rule making; manufacturers and installers; civil
7 penalty

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

18 Sec. 18. Title 28, chapter 5, article 2, Arizona Revised Statutes, is
19 amended by adding section 28-1525, to read:

20 28-1525. Assessment; failure to pay fine

21 IN ADDITION TO ANY FINE, FEE, PENALTY OR ASSESSMENT AUTHORIZED BY LAW,
22 A PERSON WHO IS CONVICTED IN THE SUPERIOR COURT OR A JUSTICE COURT FOR A
23 VIOLATION OF THIS TITLE SHALL PAY AN ASSESSMENT OF ONE HUNDRED TWENTY-FIVE
24 DOLLARS IF A WARRANT FOR FAILURE TO PAY A FINE, FEE, PENALTY OR ASSESSMENT
25 IMPOSED AS A RESULT OF THE CONVICTION IS ISSUED FOR THE ARREST OF THE
26 DEFENDANT. THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY
27 TREASURER FOR DEPOSIT IN THE COUNTY GENERAL FUND. THE ASSESSMENT IS NOT
28 SUBJECT TO ANY SURCHARGE.

29 Sec. 19. Section 28-2163, Arizona Revised Statutes, is amended to
30 read:

31 28-2163. Cancellation of registration; refusal to renew
32 registration

33 A. The department shall cancel, suspend, revoke or deny the
34 registration of a vehicle that it determines is unsafe or unfit to be
35 operated or that is not equipped as required by law and shall retrieve
36 license plates and registration cards for these vehicles.

37 B. The department shall cancel the registration of a vehicle if the
38 person to whom the registration card or license plates have been issued makes
39 or permits to be made an unlawful use of the vehicle or permits the use of
40 the vehicle by a person not entitled to the use.

41 C. THE DEPARTMENT SHALL REFUSE TO RENEW THE REGISTRATION OF A VEHICLE
42 OWNED BY A PERSON WHO HAS FAILED TO COMPLY WITH THE IGNITION INTERLOCK
43 REQUIREMENTS UNDER CHAPTER 4, ARTICLES 3.1 AND 5 OF THIS TITLE.

1 Sec. 20. Section 28-3315, Arizona Revised Statutes, is amended to
2 read:

3 28-3315. Period of suspension, revocation or disqualification:
4 unlicensed drivers

5 A. The department shall not suspend, revoke or disqualify a driver
6 license or privilege to drive a motor vehicle on the public highways for more
7 than one year from the date of a conviction or judgment, if any, against a
8 person for which this chapter makes revocation, suspension or
9 disqualification mandatory or from the date the notice is sent pursuant to
10 section 28-3318 if no conviction was involved, except as permitted under
11 subsection E of this section and sections ~~28-1383~~, 28-3312, 28-3319, ~~AND~~
12 28-3320 ~~and 28-3473~~.

13 B. A person whose license or privilege to drive a motor vehicle on the
14 public highways has been revoked may apply for a new license as provided by
15 law after the cause of the revocation is removed or after expiration of the
16 revocation period prescribed by law. After the department investigates an
17 applicant's driving record in this state or another state by examining
18 department records or other sufficient evidence to determine that all
19 withdrawal actions are complete, that the applicant has not committed any
20 traffic violations within twelve months preceding application and that all
21 other statutory requirements are satisfied, the department may issue a new
22 license.

23 C. The department shall not accept an application for reinstatement of
24 a driver license until after the twelve month period prescribed in subsection
25 B of this section has elapsed.

26 D. If the revocation is related to alcohol or other drugs, the person
27 shall provide the department with a current evaluation from a physician
28 licensed pursuant to title 32, chapter 13, 17 or 29, a psychologist licensed
29 pursuant to title 32, chapter 19.1 or a substance abuse counselor as defined
30 in section 28-3005 indicating that, in the opinion of the physician,
31 psychologist or counselor, the condition does not affect or impair the
32 person's ability to safely operate a motor vehicle. For the purposes of
33 reinstating a license or driving privilege pursuant to this article, the
34 department may rely on the opinion of a physician licensed pursuant to title
35 32, chapter 13, 17 or 29, a psychologist licensed pursuant to title 32,
36 chapter 19.1 or a substance abuse counselor as defined in section 28-3005.

37 E. Notwithstanding subsections A and B of this section:

38 1. A person whose license or privilege to drive is revoked pursuant to
39 section ~~28-1383, subsection J or~~ section 28-3304, subsection A, paragraph 1
40 or 12 is not entitled to have the person's license or privilege renewed or
41 restored for three years.

42 2. A person whose license or privilege to drive is revoked pursuant to
43 section 13-1209 is not entitled to have the person's license or privilege
44 renewed or restored for the period of time ordered by the court.

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

3 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
4 or 28-3322, an unlicensed resident is denied a license or permit to operate a
5 motor vehicle, the department shall not issue a license or permit until the
6 person provides proof of financial responsibility pursuant to chapter 9,
7 article 3 of this title.

8 C. If a person whose license or driving privilege is suspended or
9 revoked pursuant to section 28-1321, 28-1381, 28-1382, 28-1383 or 28-1385 is
10 ordered, pursuant to section 28-1381, 28-1382, 28-1383 or 28-1385, to attend
11 alcohol or other drug screening, education or treatment, the department shall
12 not either:

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

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

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

28 1. For twelve months if:

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

33 (b) The department determines that within a period of eighty-four
34 months the person is convicted of a second or subsequent violation of section
35 28-1381 or section 28-1382, subsection A, paragraph 1 with a prior conviction
36 of a violation of section 28-1381, 28-1382 or 28-1383 or an act in another
37 jurisdiction that if committed in this state would be a violation of section
38 28-1381, 28-1382 or 28-1383.

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

41 3. For twenty-four months if:

42 (a) The person is convicted of a violation of section 28-1382,
43 subsection A, paragraph 2 and the department determines that within a period
44 of eighty-four months the person has a prior conviction of a violation of
45 section 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if

1 committed in this state would be a violation of section 28-1381, 28-1382 or
2 28-1383.

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

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

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

12 G. THE DEPARTMENT SHALL REMOVE THE REQUIREMENT THAT THE PERSON
13 MAINTAIN A FUNCTIONING CERTIFIED IGNITION INTERLOCK DEVICE IF THE PERSON IS
14 ONLY CONVICTED OF A VIOLATION OF SECTION 28-1381, SUBSECTION A, PARAGRAPH 3
15 AND COMPLETES ALCOHOL OR OTHER DRUG SCREENING REQUIRED PURSUANT TO SECTION
16 28-1387 AND THE COURT DETERMINES THAT NO ALCOHOL EDUCATION OR TREATMENT IS
17 REQUIRED.

18 H. THE DEPARTMENT SHALL DEFER THE REMAINDER OF THE TIME PERIOD
19 PRESCRIBED IN SUBSECTION D, PARAGRAPH 1, SUBDIVISION (a) OF THIS SECTION
20 COMMENCING WITH THE LATER OF SIX MONTHS FROM THE DATE THE INTERLOCK WAS
21 INSTALLED OR THE COMPLETION OF THE REQUIREMENTS OF THIS SUBSECTION IF ALL OF
22 THE FOLLOWING APPLY:

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

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

26 3. THE PERSON HAS MAINTAINED A FUNCTIONING IGNITION INTERLOCK DEVICE
27 ON ALL MOTOR VEHICLES THE PERSON OPERATES AND HAS MET THE REQUIREMENTS OF
28 SECTION 28-1461.

29 4. THE PERSON HAS NOT ATTEMPTED TO OPERATE A VEHICLE WITH AN ALCOHOL
30 CONCENTRATION OF 0.08 OR MORE TWO OR MORE TIMES DURING THE PERIOD OF LICENSE
31 RESTRICTION OR LIMITATION.

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

34 6. ALL NECESSARY COMPLIANCE INFORMATION HAS BEEN PROVIDED TO THE
35 DEPARTMENT BY THE IGNITION INTERLOCK DEVICE PROVIDER, THE ALCOHOL SCREENING
36 PROGRAM AND THE ALCOHOL EDUCATION PROGRAM.

37 I. THE DEFERMENT PURSUANT TO SUBSECTION H OF THIS SECTION IS
38 PERMANENT, UNLESS THE PERSON IS ARRESTED FOR A VIOLATION OF SECTION 28-1381,
39 28-1382 OR 28-1383 THAT OCCURS DURING THE PERIOD OF THE DEFERMENT. IF THE
40 PERSON IS ARRESTED AS DESCRIBED IN THIS SUBSECTION, THE DEPARTMENT SHALL
41 REVOKE THE DEFERMENT AND REQUIRE THE PERSON TO COMPLETE THE REMAINDER OF THE
42 TIME PERIOD PRESCRIBED IN SUBSECTION D, PARAGRAPH 1, SUBDIVISION (a) OF THIS
43 SECTION.

44 J. ON A SHOWING OF SUFFICIENT MEDICAL EVIDENCE OR AN EMPLOYMENT
45 REQUIREMENT, THE DEPARTMENT MAY ALLOW A PERSON WHO IS UNABLE TO OPERATE AN

1 IGNITION INTERLOCK DEVICE TO BE PLACED IN A CONTINUOUS ALCOHOL MONITORING
2 PROGRAM INSTEAD OF EQUIPPING ANY MOTOR VEHICLE THE PERSON OPERATES WITH AN
3 IGNITION INTERLOCK DEVICE. THE PERSON SHALL BEAR THE COST OF ALL TESTING,
4 MONITORING AND ENROLLMENT IN THE CONTINUOUS ALCOHOL MONITORING PROGRAM. A
5 PERSON WHO IS PLACED IN A CONTINUOUS ALCOHOL MONITORING PROGRAM PURSUANT TO
6 THIS SUBSECTION SHALL REMAIN IN THE PROGRAM FOR THE SAME AMOUNT OF TIME THE
7 PERSON IS REQUIRED TO MAINTAIN AN IGNITION INTERLOCK DEVICE. DURING THE
8 PERIOD OF CONTINUOUS ALCOHOL MONITORING THE PERSON SHALL BE TESTED AT A
9 MINIMUM ONCE A DAY FOR THE USE OF ALCOHOLIC BEVERAGES BY A SCIENTIFIC METHOD
10 THAT IS CHOSEN BY THE DIRECTOR. IF THE PERSON TESTS POSITIVE FOR ALCOHOL TWO
11 TIMES, THE DEPARTMENT SHALL DISCONTINUE THE CONTINUOUS ALCOHOL MONITORING AND
12 REQUIRE THE PERSON TO INSTALL A CERTIFIED IGNITION INTERLOCK DEVICE AS
13 OTHERWISE PROVIDED BY LAW.

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

16 Sec. 22. Section 31-233, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 23. Effective date

28 This act is effective from and after December 31, 2011.