

REFERENCE TITLE: **DUI; marijuana; impairment**

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2084

Introduced by
Representative Kavanagh

AN ACT

AMENDING SECTIONS 9-499.07, 11-251.15, 11-459, 28-1381, 28-1387, 28-1401
AND 28-3319, 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 9-499.07, Arizona Revised Statutes, is amended
3 to read:

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

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

14 B. A prisoner is not eligible for a prisoner work, community
15 restitution work and home detention program or a continuous alcohol
16 monitoring program if any of the following applies:

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

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

20 3. The sentencing judge states at the time of the sentence that the
21 prisoner may not be eligible for a prisoner work, community restitution
22 work and home detention program or a continuous alcohol monitoring
23 program.

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

39 D. If a prisoner is placed on electronic monitoring pursuant to
40 subsection C of this section, the court may order the prisoner to pay the
41 electronic monitoring fee in an amount ranging from zero to full cost and
42 ~~thirty dollars~~ \$30 per month while on electronic monitoring unless, after
43 determining the inability of the prisoner to pay these fees, the city or
44 town assesses a lesser fee. The city or town shall use the fees collected
45 to offset operational costs of the program.

1 E. The city or town may require that a prisoner who is employed
2 during the week also participate in community restitution work programs on
3 weekends.

4 F. The city or town may allow prisoners to be away from home
5 detention for special purposes, including church attendance, medical
6 appointments or funerals.

7 G. Community restitution work shall include public works projects
8 operated and supervised by the city or town or other public agencies of
9 this state or projects sponsored and supervised by public or private
10 community oriented organizations and agencies.

11 H. A city or town implementing a program established pursuant to
12 subsection A of this section may appoint a community restitution work
13 committee. The committee shall recommend to the city or town appropriate
14 community restitution work projects for home detention prisoners. Members
15 are not eligible to receive compensation.

16 I. At any time the city or town may terminate a prisoner's
17 participation in the prisoner work, community restitution work and home
18 detention program or continuous alcohol monitoring program and require
19 that the prisoner complete the remaining term of the prisoner's sentence
20 in jail confinement.

21 J. Nothing in this section shall prohibit a city or town from
22 entering into a joint exercise of powers agreement pursuant to section
23 11-952 for a prisoner work, community restitution work and home detention
24 program.

25 K. If authorized by the court, a person who is sentenced pursuant
26 to section 28-1381 or 28-1382 shall not be placed under home detention in
27 a prisoner work, community restitution work and home detention program or
28 continuous alcohol monitoring program except as provided in subsections L
29 through R of this section.

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

40 M. A city or town may establish a continuous alcohol monitoring
41 program for persons who are sentenced to jail confinement pursuant to
42 section 28-1381 or 28-1382, which shall be treated the same as confinement
43 in jail. The presiding judge of the city or town municipal court shall
44 approve the program before its implementation. A prisoner who is placed
45 under a continuous alcohol monitoring program established pursuant to this

1 subsection shall bear the cost of all testing, monitoring and enrollment
2 in the program and pay ~~thirty dollars~~ \$30 per month while in the program,
3 unless, after determining the inability of the prisoner to pay the cost,
4 the court assesses a lesser amount. The city or town shall use the
5 collected monies to offset operational costs of the program.

6 N. If the city or town establishes a home detention or continuous
7 alcohol monitoring program under subsection L or M of this section, a
8 prisoner must meet the following eligibility requirements for the program:

9 1. Subsection B of this section applies in determining eligibility
10 for the program.

11 2. If the prisoner is sentenced under section 28-1381, subsection
12 ~~+~~ J, the prisoner first serves a minimum of one day in jail.

13 3. Notwithstanding section 28-1387, subsection C, if the prisoner
14 is sentenced under section 28-1381, subsection ~~K~~ L or section 28-1382,
15 subsection D or E, the prisoner first serves a minimum of twenty ~~per cent~~
16 PERCENT of the initial term of incarceration in jail before being placed
17 under home detention or continuous alcohol monitoring.

18 4. If placed under home detention, the prisoner is required to
19 comply with all of the following provisions for the duration of the
20 prisoner's participation in the home detention program:

21 (a) All of the provisions of subsections C through G of this
22 section.

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

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

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

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

33 5. Any additional eligibility criteria that the city or town may
34 impose.

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

44 P. The court may terminate a prisoner's participation in the home
45 detention or continuous alcohol monitoring program and require the

prisoner to complete the remaining term of the jail sentence by jail confinement if:

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

2. If placed under home detention, the court finds that the prisoner left the premises without permission of the court or supervising authority during a time the prisoner is ordered to be on the premises.

Q. At any other time the court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

R. The governing body of the city or town may terminate the program established under subsection L of this section by a majority vote of the full membership of the governing body.

Sec. 2. Section 11-251.15, Arizona Revised Statutes, is amended to read:

11-251.15. Prisoner home detention program; eligibility; monitoring; procedures; continuous alcohol monitoring program; home detention for persons sentenced for driving under the influence of alcohol or drugs

A. A county may establish a home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail. The presiding justice of the peace of the county justice court shall approve the program before its implementation.

B. A prisoner is not eligible for a home detention program or a continuous alcohol monitoring program if any of the following applies:

1. The prisoner is found by the court to constitute a risk to either himself or other members of the community.

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

3. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a home detention program or a continuous alcohol monitoring program.

C. For prisoners who are selected for a program established pursuant to subsection A of this section, the court may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left the prisoner's premises. In all other cases, the court shall implement a system of monitoring using telephone contact or other appropriate methods to ~~assure~~ ENSURE compliance with the home

1 detention requirements. The court may place appropriate restrictions on
2 prisoners in the program, including testing prisoners for consumption of
3 alcoholic beverages or drugs or prohibiting association with individuals
4 who are determined to be detrimental to the prisoner's successful
5 participation in the program.

6 D. If a prisoner is placed on electronic monitoring pursuant to
7 subsection C of this section, the court may order the prisoner to pay the
8 electronic monitoring fee in an amount ranging from zero to full cost and
9 ~~thirty dollars~~ \$30 per month while on electronic monitoring unless, after
10 determining the inability of the prisoner to pay these fees, the court
11 assesses a lesser fee. The county shall use the fees collected to offset
12 operational costs of the program.

13 E. The court may allow prisoners to be away from home detention for
14 special purposes, including church attendance, medical appointments or
15 funerals.

16 F. At any time the court may terminate a prisoner's participation
17 in the home detention program or continuous alcohol monitoring program and
18 require that the prisoner complete the remaining term of the prisoner's
19 sentence in jail confinement.

20 G. If authorized by the court, a person who is sentenced pursuant
21 to section 28-1381 or 28-1382 shall not be placed under home detention or
22 a continuous alcohol monitoring program except as provided in subsections
23 H through M of this section.

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

33 I. A county may establish a continuous alcohol monitoring program
34 for persons who are sentenced to jail confinement pursuant to section
35 28-1381 or 28-1382, which shall be treated the same as confinement in
36 jail. The presiding justice of the peace of the county justice court
37 shall approve the program before its implementation. A prisoner who is
38 placed under a continuous alcohol monitoring program established pursuant
39 to this section shall bear the cost of all testing, monitoring and
40 enrollment in the program and pay ~~thirty dollars~~ \$30 per month while in
41 the program, unless, after determining the inability of the prisoner to
42 pay the cost, the court assesses a lesser amount. The county shall use
43 the collected monies to offset operational costs of the program.

J. If the county establishes a home detention or continuous alcohol monitoring program under subsection H or I of this section, a prisoner must meet the following eligibility requirements for the program:

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

2. If the prisoner is sentenced under section 28-1381, subsection ~~J~~, the prisoner first serves a minimum of one day in jail.

3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection ~~K~~ L or section 28-1382, subsection D or E, the prisoner first serves a minimum of twenty ~~per cent~~ PERCENT of the initial term of incarceration in jail before being placed under home detention or continuous alcohol monitoring.

4. If placed under home detention, the prisoner is required to comply with all of the following provisions for the duration of the prisoner's participation in the home detention program:

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

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

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

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

(e) All other provisions of the sentence imposed.

5. Any additional eligibility criteria that the court may impose.

K. If a county establishes a home detention program under subsection H of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises.

L. The court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if:

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

2. If placed under home detention, the court finds that the prisoner left the premises without permission of the court or supervising authority during a time the prisoner is ordered to be on the premises.

M. At any other time the court may terminate a prisoner's participation in the home detention or continuous alcohol monitoring program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

N. The county board of supervisors may terminate the program established under subsection H of this section by a majority vote of the full membership of the governing body.

Sec. 3. Section 11-459, Arizona Revised Statutes, is amended to read:

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

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

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program if any of the following applies:

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

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

3. The prisoner has been convicted of a serious offense as defined in section 13-706 or has been sentenced as a dangerous offender pursuant to section 13-704 or repetitive offender pursuant to section 13-703.

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

5. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program or a continuous alcohol monitoring program.

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

C. If a prisoner is selected for a program established pursuant to subsection A of this section, the sheriff may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that

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

10 D. If a prisoner is placed on electronic monitoring pursuant to
11 subsection C of this section, the court may order the prisoner to pay the
12 electronic monitoring fee in an amount ranging from zero to full cost and
13 ~~thirty dollars~~ \$30 per month while on electronic monitoring unless, after
14 determining the inability of the prisoner to pay these fees, the sheriff
15 assesses a lesser fee. The sheriff shall use the fees collected to offset
16 operational costs of the program.

17 E. The sheriff may require that a prisoner who is employed during
18 the week also participate in community restitution work programs on
19 weekends.

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

25 G. Community restitution work shall include public works projects
26 operated and supervised by public agencies of this state or counties,
27 cities or towns on recommendation of the community restitution work
28 committee and approval of the sheriff. The community restitution work
29 committee may also recommend and the sheriff may approve other forms of
30 community restitution work sponsored and supervised by public or private
31 community oriented organizations and agencies.

32 H. The community restitution work committee is established in each
33 county and is composed of two designees of the sheriff, a representative
34 of the county attorney's office selected by the county attorney, a
35 representative of a local police agency selected by the police chief of
36 the largest city in the county and three persons selected by the county
37 board of supervisors from the private sector. A sheriff's designee shall
38 serve as committee chairman and schedule all meetings. The committee
39 shall meet as often as necessary, but ~~no~~ NOT less than once every three
40 months, for the purpose of considering and recommending appropriate
41 community restitution work projects for home detention prisoners. The
42 committee shall make its recommendations to the sheriff. Members are not
43 eligible to receive compensation.

44 I. At any time the sheriff may terminate a prisoner's participation
45 in the prisoner work, community restitution work and home detention

1 program or continuous alcohol monitoring program and require that the
 2 prisoner complete the remaining term of the prisoner's sentence in jail
 3 confinement.

4 J. If authorized by the court, a person who is sentenced pursuant
 5 to section 28-1381 or 28-1382 shall not be placed under home detention in
 6 a prisoner work, community restitution work and home detention program or
 7 a continuous alcohol monitoring program except as provided in subsections
 8 K through Q of this section.

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

20 L. A county sheriff may establish a continuous alcohol monitoring
 21 program for persons who are sentenced to jail confinement pursuant to
 22 section 28-1381 or 28-1382, which shall be treated the same as confinement
 23 in jail and shall fulfill the sheriff's duty to take charge of and keep
 24 the county jail and prisoners. A prisoner who is placed under a
 25 continuous alcohol monitoring program established pursuant to this
 26 subsection shall bear the cost of all testing, monitoring and enrollment
 27 in the program and pay ~~thirty dollars~~ \$30 per month while in the program,
 28 unless, after determining the inability of the prisoner to pay the cost,
 29 the court assesses a lesser amount. The county shall use the collected
 30 monies to offset operational costs of the program.

31 M. If a county sheriff establishes a home detention or continuous
 32 alcohol monitoring program under subsection K or L of this section, a
 33 prisoner must meet the following eligibility requirements for the program:

34 1. Subsection B of this section applies in determining eligibility
 35 for the program.

36 2. If the prisoner is sentenced under section 28-1381, subsection
 37 ~~+~~ J, the prisoner first serves a minimum of one day in jail.

38 3. Notwithstanding section 28-1387, subsection C, if the prisoner
 39 is sentenced under section 28-1381, subsection ~~+~~ L or section 28-1382,
 40 subsection D or E, the prisoner first serves a minimum of twenty ~~per cent~~
 41 PERCENT of the initial term of incarceration in jail before being placed
 42 under home detention or continuous alcohol monitoring.

43 4. If placed under home detention, the prisoner is required to
 44 comply with all of the following requirements for the duration of the
 45 prisoner's participation in the home detention program:

1 (a) All of the provisions of subsections C through G of this
2 section.

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

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

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

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

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

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

23 O. The court may terminate a prisoner's participation in the home
24 detention or continuous alcohol monitoring program and require the
25 prisoner to complete the remaining term of the jail sentence by jail
26 confinement if either:

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

31 2. If placed under home detention, the prisoner leaves the premises
32 during a time that the prisoner is ordered to be on the premises without
33 permission of the court or supervising authority.

34 P. At any other time the court may terminate a prisoner's
35 participation in the home detention or continuous alcohol monitoring
36 program and require the prisoner to complete the remaining term of the
37 jail sentence by jail confinement.

38 Q. The sheriff may terminate a program established pursuant to this
39 section at any time.

1 Sec. 4. Section 28-1381, Arizona Revised Statutes, is amended to
2 read:

3 28-1381. Driving or actual physical control while under the
4 influence; trial by jury; presumptions; admissible
5 evidence; sentencing; classification

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

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

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

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

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

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

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

28 D. A person using a drug as prescribed by a medical practitioner
29 who is licensed pursuant to title 32 and who is authorized to prescribe
30 the drug is not guilty of violating subsection A, paragraph 3 of this
31 section.

32 E. In any prosecution for a violation of this section, the state
33 shall allege, for the purpose of classification and sentencing pursuant to
34 this section, all prior convictions of violating this section, section
35 28-1382 or section 28-1383 occurring within the past thirty-six months,
36 unless there is an insufficient legal or factual basis to do so.

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

40 G. In a trial, action or proceeding for a violation of this section
41 or section 28-1383 other than a trial, action or proceeding involving
42 driving or being in actual physical control of a commercial vehicle, the
43 defendant's alcohol concentration within two hours of the time of driving
44 or being in actual physical control as shown by analysis of the

defendant's blood, breath or other bodily substance gives rise to the following presumptions:

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

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

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

H. IN A TRIAL, ACTION OR PROCEEDING FOR A VIOLATION OF THIS SECTION, IT IS PRESUMED THAT A DEFENDANT IS UNDER THE INFLUENCE AND IMPAIRED BY MARIJUANA IF THE DEFENDANT HAS A BLOOD CONCENTRATION OF 2.0 NANOGRAMS PER MILLILITER OR MORE OF TETRAHYDROCANNABINOL WITHIN TWO HOURS OF THE TIME OF DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF A VEHICLE AS SHOWN BY AN ANALYSIS OF THE DEFENDANT'S BLOOD.

~~H. I. Subsection~~ SUBSECTIONS G AND H of this section ~~does~~ DO not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor OR TETRAHYDROCANNABINOL.

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

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

2. Shall pay a fine of not less than \$250.

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

4. Shall pay an additional assessment of \$500 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

5. Shall pay an additional assessment of \$500 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court

1 shall transmit the assessed monies to the county treasurer. If the
2 conviction occurred in a municipal court, the court shall transmit the
3 assessed monies to the city treasurer. The city or county treasurer shall
4 transmit the monies received to the state treasurer.

5 6. If the violation involved intoxicating liquor, shall be required
6 by the department, on report of the conviction, to equip any motor vehicle
7 the person operates with a certified ignition interlock device pursuant to
8 section 28-3319. In addition, the court may order the person to equip any
9 motor vehicle the person operates with a certified ignition interlock
10 device for more than twelve months beginning on the date the person
11 successfully completes the alcohol or other drug screening, education or
12 treatment program requirements of this title and the person is otherwise
13 eligible to reinstate the person's driver license or driving
14 privilege. The person who operates a motor vehicle with a certified
15 ignition interlock device under this paragraph shall comply with article 5
16 of this chapter.

17 7. Shall be required by the department to attend and successfully
18 complete an approved traffic survival school course.

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

27 ~~K.~~ L. If within a period of eighty-four months a person is
28 convicted of a second violation of this section or is convicted of a
29 violation of this section and has previously been convicted of a violation
30 of section 28-1382 or 28-1383 or an act in another jurisdiction that if
31 committed in this state would be a violation of this section or section
32 28-1382 or 28-1383, the person:

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

37 2. Shall pay a fine of not less than \$500.

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

40 4. Shall have the person's driving privilege revoked for one year.
41 The court shall report the conviction to the department. On receipt of
42 the report, the department shall revoke the person's driving privilege
43 and, if the violation involved intoxicating liquor, shall require the
44 person to equip any motor vehicle the person operates with a certified
45 ignition interlock device pursuant to section 28-3319. In addition, the

1 court may order the person to equip any motor vehicle the person operates
 2 with a certified ignition interlock device for more than twelve months
 3 beginning on the date the person successfully completes the alcohol or
 4 other drug screening, education or treatment program requirements of this
 5 title and the person is otherwise eligible to reinstate the person's
 6 driver license or driving privilege. The person who operates a motor
 7 vehicle with a certified ignition interlock device under this paragraph
 8 shall comply with article 5 of this chapter.

9 5. Shall pay an additional assessment of \$1,250 to be deposited by
 10 the state treasurer in the prison construction and operations fund
 11 established by section 41-1651. This assessment is not subject to any
 12 surcharge. If the conviction occurred in the superior court or a justice
 13 court, the court shall transmit the assessed monies to the county
 14 treasurer. If the conviction occurred in a municipal court, the court
 15 shall transmit the assessed monies to the city treasurer. The city or
 16 county treasurer shall transmit the monies received to the state
 17 treasurer.

18 6. Shall pay an additional assessment of \$1,250 to be deposited by
 19 the state treasurer in the public safety equipment fund established by
 20 section 41-1723. This assessment is not subject to any surcharge. If the
 21 conviction occurred in the superior court or a justice court, the court
 22 shall transmit the assessed monies to the county treasurer. If the
 23 conviction occurred in a municipal court, the court shall transmit the
 24 assessed monies to the city treasurer. The city or county treasurer shall
 25 transmit the monies received to the state treasurer.

26 7. Shall be required by the department to attend and successfully
 27 complete an approved traffic survival school course.

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

36 ~~M.~~ N. In applying the eighty-four month provision of subsection
 37 ~~L.~~ of this section, the dates of the commission of the offense shall be
 38 the determining factor, irrespective of the sequence in which the offenses
 39 were committed.

40 ~~N.~~ O. A second violation for which a conviction occurs as provided
 41 in this section shall not include a conviction for an offense arising out
 42 of the same series of acts.

43 ~~O.~~ P. After completing forty-five days of the revocation period
 44 prescribed by subsection ~~L.~~ of this section, a person whose driving
 45 privilege is revoked for a violation of this section and who is sentenced

1 pursuant to subsection ~~K~~ L of this section is eligible for a special
2 ignition interlock restricted driver license pursuant to section 28-1401.

3 ~~P.~~ Q. The court may order a person who is convicted of a violation
4 of this section that does not involve intoxicating liquor to equip any
5 motor vehicle the person operates with a certified ignition interlock
6 device pursuant to section 28-3319. On receipt of the report of
7 conviction and certified ignition interlock device requirement, the
8 department shall require the person to equip any motor vehicle the person
9 operates with a certified ignition interlock device pursuant to section
10 28-3319. In addition, the court may order the person to equip any motor
11 vehicle the person operates with a certified ignition interlock device for
12 more than twelve months beginning on the date the person successfully
13 completes the alcohol or other drug screening, education or treatment
14 program requirements of this title and the person is otherwise eligible to
15 reinstate the person's driver license or driving privilege. The person
16 who operates a motor vehicle with a certified ignition interlock device
17 under this subsection shall comply with article 5 of this chapter.

18 Sec. 5. Section 28-1387, Arizona Revised Statutes, is amended to
19 read:

20 28-1387. Prior convictions; alcohol or other drug screening,
21 education and treatment; license suspension;
22 supervised probation; civil liability; procedures

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

39 B. In addition to any other penalties prescribed by law, the judge
40 shall order a person who is convicted of a violation of section 28-1381,
41 28-1382 or 28-1383 to complete alcohol or other drug screening that is
42 provided by a facility approved by the department of health services, the
43 United States department of veterans affairs or a probation department.
44 If a judge determines that the person requires further alcohol or other
45 drug education or treatment, the person may be required pursuant to court

1 order to obtain alcohol or other drug education or treatment under the
2 court's supervision from an approved facility. The judge may review an
3 education or treatment determination at the request of the state, the
4 defendant or the probation officer or on the judge's initiative. The
5 person shall pay the costs of the screening, education or treatment
6 unless, after considering the person's ability to pay all or part of the
7 costs, the court waives all or part of the costs. If a person is referred
8 to a screening, education or treatment facility, the facility shall report
9 to the court whether the person has successfully completed the screening,
10 education or treatment program. The court may accept evidence of a
11 person's completion of alcohol or other drug screening pursuant to section
12 28-1445 as sufficient to meet the requirements of this section or section
13 28-1381, 28-1382 or 28-1383 or may order the person to complete additional
14 alcohol or other drug screening, education or treatment programs. If a
15 person has previously been ordered to complete an alcohol or other drug
16 screening, education or treatment program pursuant to this section, the
17 judge shall order the person to complete an alcohol or other drug
18 screening, education or treatment program unless the court determines that
19 alternative sanctions are more appropriate.

20 C. After a person who is sentenced pursuant to section 28-1381,
21 subsection ~~+~~ J has served twenty-four consecutive hours in jail or after
22 a person who is sentenced pursuant to section 28-1381, subsection ~~+~~ L or
23 section 28-1382, subsection D or E has served forty-eight consecutive
24 hours in jail and after the court receives confirmation that the person is
25 employed or is a student, the court shall provide in the sentence that the
26 defendant, if the defendant is employed or is a student and can continue
27 the defendant's employment or schooling, may continue the employment or
28 schooling for not more than twelve hours a day nor more than six days a
29 week, unless the court finds good cause to not allow the release and
30 places those findings on the record. The person shall spend the remaining
31 day, days or parts of days in jail until the sentence is served and shall
32 be allowed out of jail only long enough to complete the actual hours of
33 employment or schooling.

34 D. Unless the license of a person convicted under section 28-1381
35 or 28-1382 has been or is suspended pursuant to section 28-1321 or
36 28-1385, the department on receipt of the abstract of conviction of a
37 violation of section 28-1381 or 28-1382 shall suspend the license of the
38 affected person for not less than ninety consecutive days.

39 E. When the department receives notification that the person meets
40 the criteria provided in section 28-1385, subsection G, the department
41 shall suspend the driving privileges of the person for not less than
42 thirty consecutive days and shall restrict the person's driving privileges
43 as described in section 28-144 for not less than sixty consecutive
44 additional days.

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

5 G. Any political subdivision processing or using the services of a
6 person ordered to perform community restitution pursuant to section
7 28-1381 or 28-1382 does not incur any civil liability to the person
8 ordered to perform community restitution as a result of these activities
9 unless the political subdivision or its agent or employee acts with gross
10 negligence.

11 H. The court may order alternative sanctions to community
12 restitution that is ordered pursuant to section 28-1381, subsection ~~K~~ L
13 or section 28-1382, subsection E if the court determines that education,
14 treatment or other alternative sanctions are more appropriate.

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

18 Sec. 6. Section 28-1401, Arizona Revised Statutes, is amended to
19 read:

20 28-1401. Special ignition interlock restricted driver
21 licenses; application fee

22 A. A person whose class D or class G license has been suspended
23 pursuant to section 28-1385 or suspended or revoked for a first refusal
24 pursuant to section 28-1321, a second violation of section 28-1381 or
25 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3
26 may apply to the department for a special ignition interlock restricted
27 driver license that allows a person to operate a motor vehicle during the
28 period of suspension or revocation subject to the restrictions described
29 in section 28-144 and the certified ignition interlock device requirements
30 prescribed in article 5 of this chapter if the person's privilege to
31 operate a motor vehicle has been suspended or revoked due to an alcohol
32 related offense pursuant to any of the following:

33 1. Section 28-1321, if the person meets the criteria of section
34 28-1321, subsection P.

35 2. Section 28-1381, if the person meets the criteria of section
36 28-1381, subsection ~~Q~~ P and the person presents evidence that is
37 satisfactory to the director and that shows that the person has completed
38 the requirements prescribed in section 28-1387, subsection B.

39 3. Section 28-1382, if the person meets the criteria of section
40 28-1382, subsection H and the person presents evidence that is
41 satisfactory to the director and that shows that the person has completed
42 the requirements prescribed in section 28-1387, subsection B.

43 4. Section 28-1383, if the person meets the criteria of section
44 28-1383, subsection L and the person presents evidence that is

1 satisfactory to the director and that shows that the person has completed
2 the requirements prescribed in section 28-1387, subsection B.

3 5. Section 28-1385, if the person meets the criteria of section
4 28-1385, subsection G.

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

8 C. The department shall issue a special ignition interlock
9 restricted driver license during the period of a ~~court-ordered~~
10 COURT-ORDERED restriction pursuant to sections 28-3320 and 28-3322 subject
11 to the restrictions described in section 28-144 and the certified ignition
12 interlock requirements prescribed in article 5 of this chapter.

13 D. If the department issues a special ignition interlock restricted
14 driver license, the department shall not delete a suspension or revocation
15 from its records.

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

19 Sec. 7. Section 28-3319, Arizona Revised Statutes, is amended to
20 read:

21 28-3319. Action after license suspension, revocation or
22 denial for driving under the influence or refusal
23 of test; ignition interlock device requirement;
24 definition

25 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383,
26 28-3320 or 28-3322, the license of a driver or the driving privilege of a
27 nonresident is suspended or revoked, the department shall not terminate
28 the suspension or revocation or issue a special ignition interlock
29 restricted driver license, if applicable, pursuant to chapter 4, article
30 3.1 of this title until the person provides proof of financial
31 responsibility pursuant to chapter 9, article 3 of this title.

32 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383,
33 28-3320 or 28-3322, an unlicensed resident is denied a license or permit
34 to operate a motor vehicle, the department shall not issue a license or
35 permit until the person provides proof of financial responsibility
36 pursuant to chapter 9, article 3 of this title.

37 C. If a person whose license or driving privilege is suspended or
38 revoked pursuant to section 28-1321, 28-1381, 28-1382, 28-1383 or 28-1385
39 is ordered, pursuant to section 28-1381, 28-1382, 28-1383 or 28-1385, to
40 attend alcohol or other drug screening, education or treatment, the
41 department shall not either:

42 1. Terminate the suspension or issue a special ignition interlock
43 restricted driver license, if applicable, pursuant to chapter 4, article
44 3.1 of this title until the person or licensed treatment facility provides

1 proof that the person has completed or is participating satisfactorily in
2 alcohol or other drug screening, education or treatment.

3 2. Issue a new license or a special ignition interlock restricted
4 driver license, if applicable, pursuant to chapter 4, article 3.1 of this
5 title to operate a motor vehicle after the revocation until the person or
6 licensed treatment facility provides proof that the person has completed
7 the ~~court-ordered~~ COURT-ORDERED program.

8 D. On receipt of a report of conviction from a court for a
9 violation that involved intoxicating liquor or that specifically requires
10 the installation of a certified ignition interlock device, the department
11 shall require any motor vehicle the convicted person operates to be
12 equipped with a functioning certified ignition interlock device and the
13 convicted person to meet the requirements prescribed in section 28-1461 as
14 follows:

15 1. For twelve months if:

16 (a) Except as provided in subsection G of this section, the person
17 is convicted of a violation of section 28-1381, section 28-1382,
18 subsection A, paragraph 1 or section 28-1383, subsection A, paragraph 3,
19 subdivision (a).

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

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

28 3. For twenty-four months if:

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

35 (b) The person is convicted of a violation of section 28-1383,
36 subsection A, paragraph 1, 2, 4 or 5 or paragraph 3, subdivision (b).

37 E. The requirement prescribed in subsection D of this section
38 begins on the date the person successfully completes the alcohol or other
39 drug screening, education or treatment program requirements of this title
40 and the person is otherwise eligible to reinstate the person's driver
41 license or driving privilege.

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

1 G. The department shall defer the remainder of the time period
2 prescribed in subsection D, paragraph 1, subdivision (a) of this section
3 commencing with the later of six months from the date the interlock was
4 installed or the completion of the requirements of this subsection if all
5 of the following apply:

6 1. The person is sentenced pursuant to section 28-1381,
7 subsection ~~I~~ J.

8 2. The person successfully completes an alcohol education program
9 consisting of at least sixteen hours pursuant to section 28-1381.

10 3. The person has maintained a functioning ignition interlock
11 device on all motor vehicles the person operates and has met the
12 requirements of section 28-1461.

13 4. The person has not attempted to operate a vehicle with an
14 alcohol concentration of 0.08 or more two or more times during the period
15 of license restriction or limitation.

16 5. At the time of the offense, the person was not involved in a
17 motor vehicle accident that resulted in physical injury or property
18 damage.

19 6. All necessary compliance information has been provided to the
20 department by the ignition interlock device provider, the alcohol
21 screening program and the alcohol education program.

22 H. The deferment pursuant to subsection G of this section is
23 permanent, unless the person is arrested for a violation of section
24 28-1381, 28-1382 or 28-1383 that occurs during the period of the
25 deferment. If the person is arrested as described in this subsection, the
26 department shall revoke the deferment and require the person to complete
27 the remainder of the time period prescribed in subsection D, paragraph 1,
28 subdivision (a) of this section.

29 I. Notwithstanding any other law, the department shall reduce the
30 length of time that a person is required to have a functioning certified
31 ignition interlock device installed in a motor vehicle pursuant to
32 subsection D of this section by the length of time that the person is
33 incarcerated in a jail or prison facility for a violation of section
34 28-1381 or 28-1383 that did not involve intoxicating liquor.

35 J. For the purposes of this section, "certified ignition interlock
36 device" has the same meaning prescribed in section 28-1301.