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Jane Dee Hull
Secretary of State

CHAPTER 200

HOUSE BILL 2029

AN ACT

AMENDING SECTIONS 5-341, 5-395.01, 5-395.03, 8-232.01, 28-691, 28-692.01, 28-695, 28-696 AND 28-697, ARIZONA REVISED STATUTES; REPEALING SECTION 28-698, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 28, CHAPTER 6, ARTICLE 5, ARIZONA REVISED STATUTES, TO "DRIVING UNDER THE INFLUENCE AND RECKLESS DRIVING"; RELATING TO OPERATING WATERCRAFT OR VEHICLE UNDER THE INFLUENCE.

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

Section 1. Section 5-341, Arizona Revised Statutes, is amended to read:

5-341. Negligent operation of watercraft or water skis; restriction in operation of watercraft

A. No person shall operate a watercraft in a careless, reckless or negligent manner ~~or in disregard of the safety of any person or property.~~

B. A person shall not operate a watercraft while allowing a person to ride on the gunwales, the transom or the decked over bow of a watercraft propelled by machinery operating in excess of wakeless speed except if:

1. That portion of the watercraft was designed and constructed for the purpose of carrying passengers at all speeds.

2. The watercraft is being maneuvered for anchoring, mooring or casting off moorings.

C. No watercraft shall be operated with a passenger or passengers on the bow in such a manner as to obstruct the view of the operator.

D. No person on water skis, a surfboard or a similar contrivance shall behave in a careless, reckless or negligent manner ~~or in disregard of the safety of any person or property.~~

1 E. Except in case of emergency no person under the age of twelve years
2 may operate a watercraft propelled by a motor of greater than eight
3 horsepower unless the person's parent or legal guardian or at least one
4 person who is eighteen years of age or older is present on the watercraft.

5 F. Except as provided in subsection E of this section, it is unlawful
6 for any person to allow another person under the age of twelve to operate a
7 motor-powered watercraft.

8 Sec. 2. Section 5-395.01, Arizona Revised Statutes, is amended to
9 read:

10 5-395.01. Operating or in actual physical control of a
11 motorized watercraft while intoxicated;
12 classification; penalties

13 A. A person who is convicted of a violation of section 5-395 is guilty
14 of a class 1 misdemeanor. In addition to any other penalties under this
15 section, THE JUDGE SHALL ORDER the person ~~shall~~ TO complete alcohol or other
16 drug screening that is provided by a facility approved by the department of
17 health services or a probation department. ~~If the court~~ A JUDGE determines
18 that the person requires further alcohol or other drug education or
19 treatment, ~~the court may order~~ the person MAY BE REQUIRED PURSUANT TO COURT
20 ORDER to obtain alcohol or other drug education or treatment under ~~its~~ THE
21 COURT'S supervision from an approved facility. THE JUDGE MAY REVIEW AN
22 EDUCATION OR TREATMENT DETERMINATION AT THE REQUEST OF THE STATE OR THE
23 DEFENDANT OR ON THE JUDGE'S INITIATIVE. The person shall pay the costs of
24 the screening, education or treatment unless the court waives part or all of
25 the costs.

26 B. The court may suspend any imposed sentence for a first violation
27 of section 5-395 if the person completes a court ordered alcohol or other
28 drug screening, education or treatment program. If the person fails to
29 complete the court ordered alcohol or other drug screening, education or
30 treatment program and has not been placed on probation, the court shall issue
31 an order to show cause to the defendant as to why the remaining jail sentence
32 should not be served.

33 C. A court may order a person sentenced pursuant to this section to
34 perform community service.

35 D. Notwithstanding subsection B of this section, if within a period
36 of sixty months a person is convicted of a second violation of section 5-395
37 or is convicted of a violation of section 5-395 and has previously been
38 convicted of an act in another state that if committed in this state would
39 be a violation of section 5-395, the person shall be sentenced to serve not
40 less than ninety days in jail, thirty days of which shall be served
41 consecutively, and the person is not eligible for probation or suspension or
42 execution of sentence unless the entire sentence has been served, except that
43 the judge may suspend at the time of sentencing all but thirty days of the
44 sentence if the person completes a court ordered alcohol or other drug

1 screening, education or treatment program. If the person fails to complete
2 the court ordered alcohol or other drug screening, education ~~and~~ OR treatment
3 program and has not been placed on probation, the court shall issue an order
4 to show cause as to why the remaining jail sentence should not be served.
5 The judge shall order the person to pay a fine of not less than ~~two hundred~~
6 ~~fifty dollars and not more than~~ five hundred dollars.

7 E. The dates of the commission of the offense are the determining
8 factor in applying the sixty month provision of subsection D of this section,
9 irrespective of the sequence in which the offenses were committed. A second
10 violation for which a conviction occurs as provided in this section shall not
11 include a conviction for an offense arising out of the same series of acts.

12 F. If a person is referred to a screening or treatment facility, that
13 facility shall report to the court whether the person has successfully
14 completed the screening, education or treatment program.

15 G. Any political subdivision processing or utilizing the services of
16 a person ordered to perform community service pursuant to this section does
17 not incur any civil liability to the person ordered to perform community
18 service as a result of these activities unless the political subdivision or
19 its agent or employee acts with gross negligence.

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

32 I. A person sentenced pursuant to this section is eligible for a home
33 detention program pursuant to the provisions of section 9-499.07, subsections
34 M through R or section 11-459, subsections L through Q.

35 J. The court shall allow the allegation of a prior conviction or other
36 pending charge of a violation of section 5-395 filed twenty or more days
37 before the date the case is actually tried and may allow the allegation of
38 a prior conviction or other pending charge of a violation of section 5-395
39 filed any time before the date the case is actually tried, provided that when
40 the allegation is filed this state must make available to the defendant a
41 copy of any information obtained concerning the prior conviction or other
42 pending charge. Any conviction may be used to enhance another conviction
43 irrespective of the dates on which the offenses occurred within the sixty
44 month provision.

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

5 Sec. 3. Section 5-395.03, Arizona Revised Statutes, is amended to
6 read:

7 5-395.03. Test for alcohol concentration or drug content;
8 refusal; violation; classification

9 A. Any person who operates a motorized watercraft that is underway
10 within this state shall submit, subject to the provisions of section 4-244,
11 paragraph 35, section 5-395 or section 5-396, to a test or tests of his
12 blood, breath, urine or other bodily substance for the purpose of determining
13 alcohol concentration or drug content if arrested for any offense arising out
14 of acts alleged to have been committed in violation of this chapter or
15 section 4-244, paragraph 35 while the person was operating or in actual
16 physical control of a motorized watercraft that was underway while under the
17 influence of intoxicating liquor or drugs. The test or tests chosen by the
18 law enforcement agency shall be administered at the direction of a law
19 enforcement officer having reasonable grounds to believe the person to have
20 been operating or in actual physical control of a motorized watercraft that
21 is underway within this state while under the influence of intoxicating
22 liquor or drugs, or if the person is under twenty-one years of age, with
23 spirituous liquor in the person's body.

24 B. Following an arrest a violator shall be requested to submit to and
25 successfully complete any test or tests prescribed by subsection A of this
26 section, and if the violator refuses he shall be informed that he is subject
27 to a civil sanction.

28 C. A person who refuses any test or tests prescribed by subsection A
29 of this section shall be charged with a ~~civil violation pursuant to title 28,~~
30 ~~chapter 6, article 21~~ PETTY OFFENSE. A PERSON WHO IS CONVICTED OF A PETTY
31 OFFENSE PURSUANT TO THIS SUBSECTION SHALL BE FINED THREE HUNDRED DOLLARS.

32 D. If a person under arrest refuses to submit to the test designated
33 by the law enforcement agency as provided in subsection A of this section
34 none shall be given, except as provided in section 5-395, subsection J or
35 pursuant to a search warrant.

36 ~~E. A person who refuses any test or tests prescribed by subsection A~~
37 ~~of this section is subject to a civil sanction of five hundred dollars.~~

38 Sec. 4. Section 8-232.01, Arizona Revised Statutes, is amended to
39 read:

40 8-232.01. Alcohol and drug related offenses; penalties;
41 treatment

42 A. If a juvenile admits committing a violation of section 28-692 or
43 28-697 or if the court finds that the juvenile committed a violation of
44 section 28-692 or 28-697, the juvenile hearing officer shall order the

1 juvenile to pay at least one hundred dollars but not more than five hundred
 2 dollars plus any applicable surcharges and assessments to the public agency
 3 processing the violation or the court may order the juvenile to perform at
 4 least eighty hours of community service under the supervision of the court.

5 B. In addition to any other penalties prescribed by law, if a juvenile
 6 admits committing a violation of section 28-692 or 28-697 or if the court
 7 finds that the juvenile committed a violation of section 28-692 or 28-697,
 8 the juvenile hearing officer shall order the juvenile to complete alcohol or
 9 other drug ~~abuse~~ screening that is provided by a facility approved by the
 10 department of health services or a probation department. If ~~the~~ A juvenile
 11 hearing officer ~~subsequently~~ determines that the juvenile requires further
 12 alcohol or other drug education or treatment, ~~the juvenile hearing officer~~
 13 ~~may require~~ the juvenile MAY BE REQUIRED PURSUANT TO COURT ORDER to obtain
 14 education or treatment under ~~the~~ THE COURT'S supervision from an approved
 15 facility. THE JUVENILE HEARING OFFICER MAY REVIEW AN EDUCATION OR TREATMENT
 16 DETERMINATION AT THE REQUEST OF THE STATE OR THE DEFENDANT OR ON THE JUVENILE
 17 HEARING OFFICER'S INITIATIVE. The juvenile shall pay the costs of the
 18 screening, education or treatment unless the court waives part or all of the
 19 costs. The court may order the parent or guardian of the juvenile to pay
 20 part or all of the costs of the screening, education or treatment.

21 Sec. 5. Heading change

22 The article heading of title 28, chapter 6, article 5, Arizona Revised
 23 Statutes, is changed from "DRIVING WHILE INTOXICATED AND RECKLESS DRIVING"
 24 to "DRIVING UNDER THE INFLUENCE AND RECKLESS DRIVING".

25 Sec. 6. Section 28-691, Arizona Revised Statutes, is amended to read:

26 28-691. Implied consent to test; suspension of license on
 27 refusal; hearing; review of suspension order;
 28 violation; classification

29 A. Any person who operates a motor vehicle within this state gives
 30 consent, subject to the provisions of section 4-244, paragraph 34, section
 31 28-692 or section 28-697, to a test or tests of his blood, breath, urine or
 32 other bodily substance for the purpose of determining alcohol concentration
 33 or drug content if arrested for any offense arising out of acts alleged to
 34 have been committed in violation of this chapter or section 4-244, paragraph
 35 34 while the person was driving or in actual physical control of a motor
 36 vehicle while under the influence of intoxicating liquor or drugs. ANY
 37 PERSON WHO OPERATES A MOTOR VEHICLE WITHIN THIS STATE GIVES CONSENT TO A TEST
 38 OR TESTS OF THE PERSON'S BLOOD, BREATH, URINE OR OTHER BODILY SUBSTANCE FOR
 39 THE PURPOSES OF DETERMINING ALCOHOL CONCENTRATION OR DRUG CONTENT IF THE
 40 PERSON IS INVOLVED IN A TRAFFIC ACCIDENT RESULTING IN DEATH OR SERIOUS
 41 PHYSICAL INJURY AS DEFINED IN SECTION 13-105 AND A LAW ENFORCEMENT OFFICER
 42 HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON CAUSED THE ACCIDENT OR THE
 43 PERSON IS ISSUED A CITATION FOR A VIOLATION OF ANY PROVISION OF ARTICLES 2
 44 THROUGH 15 OF THIS CHAPTER. The test or tests chosen by the law enforcement

1 agency shall be administered at the direction of a law enforcement officer
2 having reasonable grounds to believe the person to have been driving or in
3 actual physical control of a motor vehicle within this state while under the
4 influence of intoxicating liquor or drugs, or if the person is under
5 twenty-one years of age, with spirituous liquor in the person's body.

6 B. Following an arrest a violator shall be requested to submit to and
7 successfully complete any test or tests prescribed by subsection A of this
8 section, and if the violator refuses he shall be informed that his license
9 or permit to drive will be suspended or denied for twelve months unless he
10 expressly agrees to submit to and successfully completes the test or tests.
11 A failure to expressly agree to the test or successfully complete the test
12 is deemed a refusal. The violator shall also be informed that if the test
13 results show a blood or breath alcohol concentration of 0.10 or more, or if
14 the results show a blood or breath alcohol concentration of 0.04 or more and
15 the person was driving or in actual physical control of a commercial motor
16 vehicle, his license or permit to drive will be suspended or denied for not
17 less than ninety consecutive days. In this subsection "alcohol
18 concentration" means grams of alcohol per one hundred milliliters of blood
19 or grams of alcohol per two hundred ten liters of breath.

20 C. Any person who is dead, unconscious or otherwise in a condition
21 rendering him 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
23 be administered, subject to the provisions of section 4-244, paragraph 34,
24 section 28-692 and section 28-697.

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 none shall be given, except as provided in section 28-692, subsection J or
28 pursuant to a search warrant. However, the law enforcement officer directing
29 administration of the test shall file a certified report of the refusal with
30 the department and serve, on behalf of the department, an order of suspension
31 on the person which is effective fifteen days after that date. In addition,
32 the law enforcement officer shall require the immediate surrender of any
33 license or permit to drive which is issued by this state and is in the
34 possession or control of the person. If the license or permit is not
35 surrendered, the officer shall state the reason for the nonsurrender. If a
36 valid license or permit is surrendered, the officer shall issue a temporary
37 driving permit which is valid for fifteen days. The officer shall forward
38 the report of refusal, a copy of the completed notice of suspension, a copy
39 of any completed temporary permit and any driver's license or permit taken
40 into possession under this section to the motor vehicle division within five
41 days after the issuance of the notice of suspension. The certified report
42 is subject to the penalty for perjury as prescribed by section 28-1062 and
43 shall state the officer's reasonable grounds to believe the arrested person
44 had been driving or was in actual physical control of a motor vehicle within

1 this state while under the influence of intoxicating liquor or drugs, or if
2 the person is under twenty-one years of age, with spirituous liquor in the
3 person's body, OR THAT THE PERSON WAS INVOLVED IN A TRAFFIC ACCIDENT
4 RESULTING IN DEATH OR SERIOUS PHYSICAL INJURY AND THE OFFICER HAD PROBABLE
5 CAUSE TO BELIEVE THAT THE PERSON CAUSED THE ACCIDENT OR THE PERSON WAS ISSUED
6 A CITATION FOR A VIOLATION OF ANY PROVISION OF ARTICLES 2 THROUGH 15 OF THIS
7 CHAPTER, the manner in which the person refused to submit to the test or
8 tests and that the person was advised of the consequences of refusal.

9 E. The department, on receipt of the report of refusal and a copy of
10 the order of suspension, shall, on the effective date stated on the order,
11 enter the order of suspension on its records unless a written request for a
12 hearing as provided in this section has been filed by the accused. If the
13 department receives only the report of refusal it shall notify the person
14 named in the report in writing sent by mail that fifteen days after the date
15 of issuance of the notice the department will suspend the person's license
16 or permit, driving privilege or nonresident driving privilege. The notice
17 shall also state that the department will provide an opportunity for a
18 hearing if the person requests a hearing in writing which is received by the
19 department within fifteen days after the notice is sent.

20 F. The order of suspension issued by a law enforcement officer or the
21 department under this section shall notify the person that he may submit a
22 written request for a hearing which must be received by the department within
23 fifteen days after the date of the notice or the order of suspension will
24 become final and that the affected person's license or permit to drive or
25 right to apply for such a license or permit or any nonresident operating
26 privilege will be suspended for twelve months from that date. The order for
27 suspension shall be accompanied by printed forms ready to mail to the
28 department which may be filled out and signed by the person to indicate his
29 desire for a hearing, and the order shall advise the person that unless he
30 has surrendered any driver's license or permit issued by this state his
31 hearing request will not be accepted, except that he may certify pursuant to
32 section 28-425 that the license or permit is lost or destroyed. On the
33 receipt of a request for a hearing the department shall set the hearing
34 within thirty days in the county where the person named in the report resides
35 unless the law enforcement agency filing the report of refusal requests at
36 the time of its filing that the hearing be held in the county where the
37 refusal occurred.

38 G. A timely request for a hearing also operates to stay the suspension
39 until a hearing is held, except that the department shall not return any
40 surrendered license or permit to the person but may issue temporary permits
41 to drive which expire no later than when the motor vehicle division has made
42 its final decision. If the person is a resident without a license or permit
43 or has an expired license or permit, the department may allow the person to
44 apply for a license or permit. If the department determines the person is

1 otherwise entitled to the license or permit, the department shall issue and
2 retain a license or permit subject to this section. All hearings requested
3 under this section shall be conducted in the same manner and under the same
4 conditions as provided in section 28-446, subsection B. The scope of the
5 hearing for the purposes of this section shall include only the issues of
6 whether a law enforcement officer had reasonable grounds to believe the
7 person had been driving or was in actual physical control of a motor vehicle
8 within this state while under the influence of intoxicating liquor or drugs,
9 or if the person is under twenty-one years of age, with spirituous liquor in
10 the person's body, OR THAT THE PERSON WAS INVOLVED IN A TRAFFIC ACCIDENT
11 RESULTING IN DEATH OR SERIOUS PHYSICAL INJURY AND THE OFFICER HAD PROBABLE
12 CAUSE TO BELIEVE THAT THE PERSON CAUSED THE ACCIDENT OR THE PERSON WAS ISSUED
13 A CITATION FOR A VIOLATION OF ANY PROVISION OF ARTICLES 2 THROUGH 15 OF THIS
14 CHAPTER, whether the person was placed under arrest, whether he refused to
15 submit to the test and whether he was informed of the consequences of
16 refusal. If the department determines at the hearing to suspend the affected
17 person's privilege to operate a motor vehicle, the suspension provided in
18 this section is effective fifteen days after giving written notice of the
19 suspension, except that the department may issue or extend a temporary
20 license, which expires on the effective date of the suspension. If the
21 person is a resident without a license or permit or has an expired license
22 or permit to operate a motor vehicle in this state, the department shall deny
23 to the person the issuance of a license or permit for a period of twelve
24 months after the order of suspension becomes effective.

25 H. If the suspension order is sustained after the hearing, a motion
26 for rehearing is not required. The affected person may file a petition
27 within thirty days of a suspension order being sustained in the superior
28 court to review the final order of suspension or denial by the department
29 in the same manner provided in section 28-451. The review of the final order
30 of suspension or denial shall be heard on an expedited basis.

31 I. If the suspension or determination that there should be a denial
32 of issuance is not sustained, the ruling shall not be admissible in or have
33 an effect on any civil or criminal court proceeding.

34 J. If it has been determined under the procedures of this section that
35 a nonresident's privilege to operate a motor vehicle in this state has been
36 suspended, the department shall give information in writing of the action
37 taken to the motor vehicle administrator of the state of the person's
38 residence and of any state in which he has a license.

39 Sec. 7. Section 28-692.01, Arizona Revised Statutes, is amended to
40 read:

1 ON A JUDGE'S INITIATIVE. The person shall pay the costs of the screening,
2 education or treatment unless the court waives part or all of the costs.

3 E. ~~Notwithstanding subsection B of this section,~~ If within a period
4 of sixty months a person is convicted of a second violation of section 28-692
5 or is convicted of a violation of section 28-692 and has previously been
6 convicted of A VIOLATION OF SECTION 28-697 OR an act in another state, A
7 COURT OF THE UNITED STATES OR A TRIBAL COURT which if committed in this state
8 would be a violation of section 28-692, the person shall be sentenced to
9 serve not less than ninety days in jail, thirty days of which shall be served
10 consecutively, and the person is not eligible for probation or suspension or
11 execution of sentence unless the entire sentence has been served, except that
12 the judge may at the time of sentencing suspend all but thirty days of the
13 sentence if the person completes a court ordered alcohol or OTHER drug
14 screening, education or treatment program. If the person fails to complete
15 the court ordered alcohol or OTHER drug screening, education or treatment
16 program and has not been placed on probation the court shall issue an order
17 to show cause as to why the remaining jail sentence should not be served.
18 The judge shall order the person to pay a fine of not less than five hundred
19 dollars. The judge shall order the surrender of any driver's license of the
20 convicted person, and the clerk of the court shall invalidate or destroy the
21 driver's license and forward the abstract of conviction to the department.
22 The department upon receipt of the license shall revoke the driving privilege
23 of the person.

24 F. The dates of the commission of the offense shall be the determining
25 factor in applying the sixty month provision of subsections D and E of this
26 section, irrespective of the sequence in which the offenses were committed.
27 A second violation for which a conviction occurs as provided in this section
28 shall not include a conviction for an offense arising out of the same series
29 of acts.

30 G. If a person is referred to a screening or treatment facility, that
31 facility shall report to the court whether the person has successfully
32 completed the screening, education or treatment program.

33 H. Any political subdivision processing or utilizing the services of
34 a person ordered to perform community service pursuant to this section shall
35 not incur any civil liability to the person ordered to perform community
36 service as a result of these activities unless the political subdivision or
37 its agent or employee acts with gross negligence.

38 I. After a person who is sentenced pursuant to subsection B of this
39 section has served twenty-four consecutive hours in jail or after a person
40 who is sentenced pursuant to subsection E of this section has served
41 forty-eight consecutive hours in jail and after receiving confirmation that
42 the person is employed or is a student, the court may, upon pronouncement of
43 any jail sentence under this section, provide in the sentence that the person
44 may be permitted, if the person is employed or is a student and can continue

1 the person's employment or studies, to continue such employment or studies
2 for not more than twelve hours per day nor more than five days per week, and
3 the remaining day, days or parts of days shall be spent in jail until the
4 sentence is served. The person shall be allowed out of jail only long enough
5 to complete the actual hours of employment or studies and no longer.

6 J. The court shall allow the allegation of a prior conviction or other
7 pending charge of a violation of section 28-692 OR 28-697 OR AN ACT IN
8 ANOTHER STATE, A COURT OF THE UNITED STATES OR A TRIBAL COURT WHICH IF
9 COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-692, filed twenty
10 or more days before the date the case is actually tried and may in its
11 discretion allow the allegation of a prior conviction or other pending charge
12 of a violation of section 28-692 OR 28-697 OR AN ACT IN ANOTHER STATE, A
13 COURT OF THE UNITED STATES OR A TRIBAL COURT WHICH IF COMMITTED IN THIS STATE
14 WOULD BE A VIOLATION OF SECTION 28-692, filed any time prior to the date the
15 case is actually tried, provided that when the allegation is filed this state
16 must make available to the defendant a copy of any information obtained
17 concerning the prior conviction or other pending charge. Any conviction may
18 be used to enhance another conviction irrespective of the dates on which the
19 offenses occurred within the sixty month provision.

20 K. Unless the license of a person sentenced under subsection B or C
21 of this section has been or is suspended pursuant to section 28-691 or
22 28-694, the department on receipt of the abstract of conviction shall suspend
23 the license of the affected person for not less than ninety consecutive days.
24 When the department receives notification that the person meets the criteria
25 provided in section 28-694, subsection B, the department shall suspend the
26 driving privileges of the person for a period of not less than thirty
27 consecutive days and restrict the driving privileges of the person for a
28 period of not less than sixty consecutive additional days to travel between
29 the person's place of employment and residence and during specified periods
30 of time while at employment, to travel between the person's place of
31 residence and his secondary or postsecondary school, according to the
32 person's employment or educational schedule, or to travel between the
33 person's place of residence and a treatment facility for scheduled
34 appointments.

35 L. If a person is placed on probation for violating section 28-692,
36 the probation shall be supervised unless the court finds that supervised
37 probation is not necessary or the court does not have supervisory probation
38 services.

39 Sec. 8. Section 28-695, Arizona Revised Statutes, is amended to read:
40 28-695. Admissibility of breath test or other records; adoption
41 of rules for tests; permits

42 A. The results of a breath test administered for the purpose of
43 determining a person's alcohol concentration are admissible as evidence in

1 any trial, action or proceeding upon establishing the following foundational
2 requirements:

3 1. The test was performed using a quantitative breath testing device
4 approved by the department of health services. A properly authenticated
5 certification by the department of health services OR JUDICIAL NOTICE OF
6 DEPARTMENT OF HEALTH SERVICES RULES is sufficient to establish this
7 requirement.

8 2. The operator who conducted the test possessed a valid permit issued
9 by the department of health services to operate the device used to conduct
10 the test.

11 3. Duplicate tests were administered and the tests results were within
12 0.02 alcohol concentration of each other or an operator observed the person
13 charged with the violation for twenty minutes immediately preceding the
14 administration of the test.

15 4. The operator who conducted the test followed an operational
16 checklist approved by the department of health services for the operation of
17 the device used to conduct the test. The testimony of the operator is
18 sufficient to establish this requirement.

19 5. The device used to conduct the test was in proper operating
20 condition. Records of periodic maintenance which show that the device was
21 in proper operating condition at a time before and after the test are
22 admissible in any proceeding as prima facie evidence that the device was in
23 proper operating condition at the time of the test. Such records are public
24 records.

25 B. Compliance with subsection A is the only requirement for the
26 admission in evidence of a breath test result.

27 C. Records that may be obtained or are otherwise maintained pursuant
28 to section 28-695.01 are admissible as evidence in any trial, action or
29 proceeding.

30 D. The director of the department of health services shall adopt rules
31 prescribing methods and procedures for the administration of breath tests to
32 determine alcohol concentration. These rules shall include:

33 1. The approval of quantitative breath testing devices.

34 2. Procedures for ensuring the accuracy of results obtained from
35 approved breath testing devices.

36 3. Qualifications for persons who conduct breath tests.

37 4. Qualifications for persons who instruct others in the operation of
38 breath testing devices.

39 E. The director of the department of health services shall issue
40 permits to operators who have received approved instruction and have
41 demonstrated their ability to accurately operate an approved breath testing
42 device. The director of the department of health services may revoke the
43 permit of a person who fails to operate a breath testing device according to
44 the rules established by the director.

1 Sec. 9. Section 28-696, Arizona Revised Statutes, is amended to read:
2 28-696. Blood test; rules; permits

3 A. The director of the department of health services shall adopt rules
4 prescribing the approval of methods for the analysis of blood or other bodily
5 substances to determine blood alcohol concentration.

6 B. The director of the department of health services shall issue a
7 permit to an analyst who has demonstrated his ability to accurately analyze
8 blood or other bodily substances for alcohol concentration.

9 C. The director OF THE DEPARTMENT OF HEALTH SERVICES may revoke the
10 permit of an analyst who ~~is not analyzing~~ HAS DEMONSTRATED AN INABILITY TO
11 ACCURATELY ANALYZE blood or other bodily substances ~~pursuant to the rules~~
12 ~~adopted by the director~~ FOR ALCOHOL CONCENTRATION.

13 D. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES MAY REVOKE THE
14 PERMIT OF AN ANALYST WHO FAILS TO ANALYZE BLOOD OR OTHER BODILY SUBSTANCES
15 FOR ALCOHOL CONCENTRATION ACCORDING TO THE RULES ADOPTED BY THE DIRECTOR.

16 Sec. 10. Section 28-697, Arizona Revised Statutes, is amended to read:
17 28-697. Aggravated driving or actual physical control while

18 under the influence of intoxicating liquor or drugs;
19 violation; classification; penalties; notice;
20 definition

21 A. A person is guilty of aggravated driving or actual physical control
22 while under the influence of intoxicating liquor or drugs if the person does
23 either of the following:

24 1. Commits a violation of section 28-692 or this section while the
25 person's driver's license or privilege to drive is suspended, cancelled,
26 revoked or refused, or the person's driver's license or privilege to drive
27 is restricted as a result of violating section 28-692 or under section
28 28-694.

29 2. Commits a third or subsequent violation of section 28-692 or this
30 section or is convicted of a violation of section 28-692 or this section and
31 has previously been convicted of any combination of convictions of section
32 28-692 or this section or acts ~~committed~~ in another state, A COURT OF THE
33 UNITED STATES OR A TRIBAL COURT which if committed in this state would be a
34 violation of section 28-692 or this section within a period of sixty months.

35 3. COMMITS A VIOLATION OF SECTION 28-692 WHILE A PERSON UNDER FIFTEEN
36 YEARS OF AGE IS IN THE VEHICLE.

37 B. The dates of the commission of the offenses are the determining
38 factor in applying the sixty month provision provided in subsection A,
39 paragraph 2 of this section regardless of the sequence in which the offenses
40 were committed. For purposes of this section, a third or subsequent
41 violation for which a conviction occurs does not include a conviction for an
42 offense arising out of the same series of acts.

43 C. The notice to a person of the suspension, cancellation, revocation
44 or refusal of a driver's license or privilege to drive is effective as

1 provided in section 28-453 or pursuant to the laws of the state issuing the
2 license.

3 D. Aggravated driving or actual physical control while under the
4 influence of intoxicating liquor or drugs COMMITTED UNDER:

5 1. SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION is a class 4 felony.

6 2. SUBSECTION A, PARAGRAPH 3 OF THIS SECTION IS A CLASS 6 FELONY.

7 E. ~~Notwithstanding section 41-1604.06,~~ A person who is convicted
8 under subsection A, paragraph 1 of this section is not eligible for
9 probation, pardon, commutation or suspension of sentence or release on any
10 other basis until the person has served not less than four months in prison.

11 F. ~~Notwithstanding section 41-1604.06,~~ A person who is convicted
12 under subsection A, paragraph 2 of this section and who within a sixty month
13 period has been convicted of two prior violations of section 28-692 or this
14 section, or both, or acts committed in another state, A COURT OF THE UNITED
15 STATES OR A TRIBAL COURT that if committed in this state would be a violation
16 of section 28-692 or this section is not eligible for probation, pardon,
17 commutation or suspension of sentence or release on any other basis until the
18 person has served not less than four months in prison.

19 G. ~~Notwithstanding section 41-1604.06,~~ A person who is convicted
20 under subsection A, paragraph 2 of this section and who within a sixty month
21 period has been convicted of three or more prior violations of section 28-692
22 or this section, or both, or acts committed in another state, A COURT OF THE
23 UNITED STATES OR A TRIBAL COURT that if committed in this state would be a
24 violation of section 28-692 or this section is not eligible for probation,
25 pardon, commutation or suspension of sentence or release on any other basis
26 until the person has served not less than eight months in prison.

27 H. IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, A PERSON WHO IS
28 CONVICTED UNDER SUBSECTION A, PARAGRAPH 3 OF THIS SECTION SHALL BE SENTENCED
29 TO AT LEAST THE MINIMUM SENTENCE REQUIRED PURSUANT TO SECTION 28-692.01,
30 EXCEPT THAT IF A PERSON HAS BEEN CONVICTED OF AT LEAST TWO PRIOR VIOLATIONS
31 OF SECTION 28-692 OR THIS SECTION, OR BOTH, OR CONVICTED OF AT LEAST TWO
32 PRIOR ACTS IN ANOTHER STATE; A COURT OF THE UNITED STATES OR A TRIBAL COURT
33 THAT IF COMMITTED IN THIS STATE WOULD BE VIOLATIONS OF SECTION 28-692 OR THIS
34 SECTION, OR BOTH, WITHIN A SIXTY MONTH PERIOD, THE PERSON SHALL BE SENTENCED
35 TO SERVE AT LEAST THE MINIMUM SENTENCE REQUIRED PURSUANT TO THIS SECTION.

36 ~~H.~~ I. A person who is convicted of a violation of this section and
37 who is placed on probation shall attend and complete alcohol ~~and~~ OR other
38 drug screening, education or treatment from an approved facility. If the
39 person fails to comply with the provisions of this subsection, in addition
40 to the provisions of section 13-901 the court may order that the person be
41 incarcerated as a term of probation as follows:

42 1. For a person sentenced pursuant to subsection E or F of this
43 section, for an individual period of not more than four months and a total
44 period of not more than one year.

H.B. 2029

1 2. For a person sentenced pursuant to subsection G of this section,
2 for an individual period of not more than eight months and a total period of
3 not more than two years.

4 ~~I~~ J. The time that a person spends in custody pursuant to subsection
5 ~~E, F, G or H~~ I of this section shall not be counted towards the sentence
6 imposed if the person's probation is revoked and the person is sentenced to
7 prison following revocation of probation.

8 ~~J~~ K. The judge shall order the surrender of the person's driver's
9 license, and the clerk of the court shall invalidate or destroy the driver's
10 license and forward the abstract of conviction to the department. On receipt
11 of the abstract, the department shall revoke the driving privilege of the
12 person and shall not issue the person a new driver's license within three
13 years of the date of the conviction.

14 ~~K~~ L. For the purposes of this section, "suspension, cancellation,
15 revocation or refusal" means any suspension, cancellation, revocation or
16 refusal.

17 Sec. 11. Repeal
18 Section 28-698, Arizona Revised Statutes, is repealed.

APPROVED BY THE GOVERNOR APRIL 18, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 1996