

Conference Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 307

SENATE BILL 1160

AN ACT

AMENDING SECTIONS 5-395.01, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

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

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

7 A. A person who is convicted of a violation of section 5-395 is guilty
8 of a class 1 misdemeanor. The person shall pay a fine of not less than two
9 hundred fifty dollars. In addition to any other penalties under this
10 section, the judge shall order the person to complete alcohol or other drug
11 screening that is provided by a facility approved by the department of health
12 services or a probation department. If a judge determines that the person
13 requires further alcohol or other drug education or treatment, the person may
14 be required pursuant to court order to obtain alcohol or other drug education
15 or treatment under the court's supervision from an approved facility. The
16 judge may review an education or treatment determination at the request of
17 the state or the defendant or on the judge's initiative. The person shall
18 pay the costs of the screening, education or treatment unless the court
19 waives part or all of the costs.

20 B. Except as provided in section 5-398.01, the court may suspend any
21 imposed sentence for a first violation of section 5-395 if the person
22 completes a court ordered alcohol or other drug screening, education or
23 treatment program. If the person fails to complete the court ordered alcohol
24 or other drug screening, education or treatment program and has not been
25 placed on probation, the court shall issue an order to show cause to the
26 defendant as to why the remaining jail sentence should not be served.

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

29 D. Notwithstanding subsection B of this section, if within a period of
30 sixty months a person is convicted of a second violation of section 5-395 or
31 is convicted of a violation of section 5-395 and has previously been
32 convicted of an act in another state that if committed in this state would be
33 a violation of section 5-395, the person shall be sentenced to serve not less
34 than ninety days in jail, thirty days of which shall be served consecutively,
35 and the person is not eligible for probation or suspension of execution of
36 sentence unless the entire sentence has been served, except that the judge
37 may suspend at the time of sentencing all but thirty days of the sentence if
38 the person completes a court ordered alcohol or other drug screening,
39 education or treatment program. If the person fails to complete the court
40 ordered alcohol or other drug screening, education or treatment program and
41 has not been placed on probation, the court shall issue an order to show
42 cause as to why the remaining jail sentence should not be served. The judge
43 shall order the person to pay a fine of not less than five hundred dollars.

44 E. The dates of the commission of the offense are the determining
45 factor in applying the sixty month provision of subsection D of this section,

1 irrespective of the sequence in which the offenses were committed. A second
2 violation for which a conviction occurs as provided in this section shall not
3 include a conviction for an offense arising out of the same series of acts.

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

7 G. Any political subdivision processing or utilizing the services of a
8 person ordered to perform community service pursuant to this section does not
9 incur any civil liability to the person ordered to perform community service
10 as a result of these activities unless the political subdivision or its agent
11 or employee acts with gross negligence.

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

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

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

37 K. If a person is placed on probation for violating section 5-395, the
38 probation shall be supervised unless the court finds that supervised
39 probation is not necessary or the court does not have supervisory probation
40 services.

41 L. Persons convicted pursuant to section 5-395 shall pay an additional
42 assessment of five hundred dollars or for a second violation pursuant to
43 subsection D of this section shall pay an additional assessment of one
44 thousand two hundred fifty dollars to be deposited by the state treasurer in
45 the prison construction and operations fund established by section

1 41-1651. These assessments are not subject to any surcharge. If the
2 conviction occurred in the superior court or a justice court, the court shall
3 transmit the assessed monies to the county treasurer. If the conviction
4 occurred in a municipal court, the court shall transmit the assessed monies
5 to the city treasurer. The city or county treasurer shall transmit the
6 monies received to the state treasurer.

7 M. PERSONS CONVICTED PURSUANT TO SECTION 5-395 SHALL PAY AN ADDITIONAL
8 ASSESSMENT OF FIVE HUNDRED DOLLARS OR FOR A SECOND VIOLATION PURSUANT TO
9 SUBSECTION D OF THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
10 THOUSAND TWO HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN
11 THE STATE GENERAL FUND. THESE ASSESSMENTS ARE NOT SUBJECT TO ANY SURCHARGE.
12 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE
13 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE
14 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE
15 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL
16 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

17 Sec. 2. Section 5-396, Arizona Revised Statutes, is amended to read:

18 5-396. Aggravated operating or actual physical control of
19 motorized watercraft while under the influence of
20 intoxicating liquor or drugs; classification

21 A. A person is guilty of aggravated operating or actual physical
22 control of a motorized watercraft that is underway while under the influence
23 of intoxicating liquor or drugs if the person commits a third or subsequent
24 violation of section 5-395 or 5-397 or this section or is convicted of a
25 violation of section 5-395 or 5-397 or this section and has previously been
26 convicted of any combination of convictions of section 5-395 or 5-397 or this
27 section or acts committed in another state that if committed in this state
28 would be a violation of section 5-395 or 5-397 or this section within a
29 period of sixty months.

30 B. The dates of the commission of the offenses are the determining
31 factor in applying the sixty month provision provided in subsection A of this
32 section regardless of the sequence in which the offenses were committed. For
33 purposes of this section, a third or subsequent violation for which a
34 conviction occurs does not include a conviction for an offense arising out of
35 the same series of acts.

36 C. Aggravated operating or actual physical control of a motorized
37 watercraft that is underway while under the influence of intoxicating liquor
38 or drugs is a class 4 felony.

39 D. Notwithstanding section 41-1604.06, a person who is convicted under
40 subsection A of this section and who within a sixty month period has been
41 convicted of two prior violations of section 5-395 or 5-397 or this section,
42 or acts committed in another state that if committed in this state would be a
43 violation of section 5-395 or 5-397 or this section, is not eligible for
44 probation, pardon, commutation or suspension of sentence or release on any
45 other basis until the person has served not less than four months in prison.

1 E. Notwithstanding section 41-1604.06, a person who is convicted under
2 subsection A of this section and who within a sixty month period has been
3 convicted of three or more prior violations of section 5-395 or 5-397 or this
4 section, or acts committed in another state that if committed in this state
5 would be a violation of section 5-395 or 5-397 or this section, is not
6 eligible for probation, pardon, commutation or suspension of sentence or
7 release on any other basis until the person has served not less than eight
8 months in prison.

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

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

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

22 G. The time that a person spends in custody pursuant to subsection D,
23 E or F of this section shall not be counted toward the sentence imposed if
24 the person's probation is revoked and the person is sentenced to prison
25 following revocation of probation.

26 H. A person convicted of a violation of this section shall pay a fine
27 of not less than seven hundred fifty dollars.

28 I. In addition to any other penalty prescribed by law, persons
29 convicted pursuant to this section shall pay an additional assessment of one
30 thousand five hundred dollars to be deposited by the state treasurer in the
31 prison construction and operations fund established by section 41-1651. This
32 assessment is not subject to any surcharge. If the conviction occurred in
33 the superior court or a justice court, the court shall transmit the assessed
34 monies to the county treasurer. If the conviction occurred in a municipal
35 court, the court shall transmit the assessed monies to the city treasurer.
36 The city or county treasurer shall transmit the monies received to the state
37 treasurer.

38 J. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, PERSONS
39 CONVICTED PURSUANT TO THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
40 THOUSAND FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE
41 STATE GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
42 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
43 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
44 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES

1 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
2 MONIES RECEIVED TO THE STATE TREASURER.

3 Sec. 3. Section 5-397, Arizona Revised Statutes, is amended to read:

4 5-397. Operating or in actual physical control of a motorized
5 watercraft while under the extreme influence of
6 intoxicating liquor; trial by jury; sentencing;
7 classification; definition

8 A. It is unlawful for a person to operate or be in actual physical
9 control of a motorized watercraft that is underway within this state if the
10 person has an alcohol concentration of 0.15 or more within two hours of
11 operating or being in actual physical control of the motorized watercraft and
12 the alcohol concentration results from alcohol consumed either before or
13 while operating or being in actual physical control of the motorized
14 watercraft.

15 B. A person who is convicted of a violation of this section is guilty
16 of operating or being in actual physical control of a motorized watercraft
17 while under the extreme influence of alcohol.

18 C. At the arraignment, the court shall inform the defendant that the
19 defendant may request a trial by jury and that the request, if made, shall be
20 granted.

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

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

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

26 3. May be ordered by a court to perform community service.

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

35 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
36 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
37 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
38 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
39 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
40 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
41 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

42 E. Notwithstanding subsection D, paragraph 1 of this section, at the
43 time of sentencing the judge may suspend all but ten days of the sentence if
44 the person completes a court ordered alcohol or other drug screening,
45 education or treatment program. If the person fails to complete the court

1 ordered alcohol or other drug screening, education or treatment program and
2 has not been placed on probation, the court shall issue an order to show
3 cause to the defendant as to why the remaining jail sentence should not be
4 served.

5 F. If within a period of sixty months a person is convicted of a
6 second violation of this section or is convicted of a violation of this
7 section and has previously been convicted of a violation of section 5-395 or
8 5-396 or an act in another jurisdiction that if committed in this state would
9 be a violation of this section or section 5-395 or 5-396, the person:

10 1. Shall be sentenced to serve not less than one hundred twenty days
11 in jail, sixty days of which shall be served consecutively, and is not
12 eligible for probation or suspension of execution of sentence unless the
13 entire sentence has been served.

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

15 3. May be ordered by a court to perform community service.

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

25 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
26 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
27 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
28 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
29 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
30 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
31 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
32 THE STATE TREASURER.

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

40 H. In applying the sixty month provision of subsection F of this
41 section, the dates of the commission of the offense shall be the determining
42 factor, irrespective of the sequence in which the offenses were committed.

43 I. A second violation for which a conviction occurs as provided in
44 this section shall not include a conviction for an offense arising out of the
45 same series of acts.

1 J. A person who is convicted of a violation of this section is guilty
2 of a class 1 misdemeanor.

3 K. For the purposes of this section, "alcohol concentration" means
4 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
5 two hundred ten liters of breath.

6 Sec. 4. Section 28-1381, Arizona Revised Statutes, is amended to read:
7 28-1381. Driving or actual physical control while under the
8 influence; trial by jury; presumptions; admissible
9 evidence; sentencing; classification

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

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

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

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

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

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

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

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

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

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

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

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1 actual physical control as shown by analysis of the defendant's blood, breath
2 or other bodily substance gives rise to the following presumptions:

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

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

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

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

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

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

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

23 3. May be ordered by a court to perform community service.

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

32 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE
33 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
34 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
35 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
36 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
37 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
38 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

39 J. Notwithstanding subsection I, paragraph 1 of this section, at the
40 time of sentencing the judge may suspend all but twenty-four consecutive
41 hours of the sentence if the person completes a court ordered alcohol or
42 other drug screening, education or treatment program. If the person fails to
43 complete the court ordered alcohol or other drug screening, education or
44 treatment program and has not been placed on probation, the court shall issue

1 an order to show cause to the defendant as to why the remaining jail sentence
2 should not be served.

3 K. If within a period of sixty months a person is convicted of a
4 second violation of this section or is convicted of a violation of this
5 section and has previously been convicted of a violation of section 28-1382
6 or 28-1383 or an act in another jurisdiction that if committed in this state
7 would be a violation of this section or section 28-1382 or 28-1383, the
8 person:

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

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

14 3. May be ordered by a court to perform community service.

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

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

37 6. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
38 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
39 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
40 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
41 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
42 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
43 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED
44 TO THE STATE TREASURER.

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

8 M. In applying the sixty month provision of subsection K of this
9 section, the dates of the commission of the offense shall be the determining
10 factor, irrespective of the sequence in which the offenses were committed.

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

14 Sec. 5. Section 28-1382, Arizona Revised Statutes, is amended to read:
15 28-1382. Driving or actual physical control while under the
16 extreme influence of intoxicating liquor; trial by
17 jury; sentencing; classification

18 A. It is unlawful for a person to drive or be in actual physical
19 control of a vehicle in this state if the person has an alcohol concentration
20 of 0.15 or more within two hours of driving or being in actual physical
21 control of the vehicle and the alcohol concentration results from alcohol
22 consumed either before or while driving or being in actual physical control
23 of the vehicle.

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

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

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

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

34 2. Shall pay a fine of not less than two hundred fifty dollars. The
35 fine prescribed in this paragraph and any assessments, restitution and
36 incarceration costs shall be paid before the assessment prescribed in
37 paragraph 3 of this subsection.

38 3. Shall pay an additional assessment of two hundred fifty dollars. If
39 the conviction occurred in the superior court or a justice court, the court
40 shall transmit the monies received pursuant to this paragraph to the county
41 treasurer. If the conviction occurred in a municipal court, the court shall
42 transmit the monies received pursuant to this paragraph to the city
43 treasurer. The city or county treasurer shall transmit the monies received to
44 the state treasurer. The state treasurer shall deposit the monies received

1 in the driving under the influence abatement fund established by section
2 28-1304.

3 4. May be ordered by a court to perform community service.

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

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

22 7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
23 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
24 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
25 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
26 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
27 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
28 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

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

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

SENATE

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

5 2. Shall pay a fine of not less than five hundred dollars. The fine
6 prescribed in this paragraph and any assessments, restitution and
7 incarceration costs shall be paid before the assessment prescribed in
8 paragraph 3 of this subsection.

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

18 4. May be ordered by a court to perform community service.

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

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

40 7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
41 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
42 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
43 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
44 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
45 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY

1 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
2 THE STATE TREASURER.

3 G. Notwithstanding subsection F, paragraph 1 of this section, at the
4 time of sentencing, the judge may suspend all but sixty days of the sentence
5 if the person completes a court ordered alcohol or other drug screening,
6 education or treatment program. If the person fails to complete the court
7 ordered alcohol or other drug screening, education or treatment program and
8 has not been placed on probation, the court shall issue an order to show
9 cause as to why the remaining jail sentence should not be served.

10 H. In applying the sixty month provision of subsection F of this
11 section, the dates of the commission of the offense shall be the determining
12 factor, irrespective of the sequence in which the offenses were committed.

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

16 J. A person who is convicted of a violation of this section is guilty
17 of a class 1 misdemeanor.

18 Sec. 6. Section 28-1383, Arizona Revised Statutes, is amended to read:

19 28-1383. Aggravated driving or actual physical control while
20 under the influence; violation; classification;
21 definition

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

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

30 2. Within a period of sixty months commits a third or subsequent
31 violation of section 28-1381, section 28-1382 or this section or is convicted
32 of a violation of section 28-1381, section 28-1382 or this section and has
33 previously been convicted of any combination of convictions of section
34 28-1381, section 28-1382 or this section or acts in another jurisdiction that
35 if committed in this state would be a violation of section 28-1381, section
36 28-1382 or this section.

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

39 (a) Section 28-1381.

40 (b) Section 28-1382.

41 B. The dates of the commission of the offenses are the determining
42 factor in applying the sixty month provision provided in subsection A,
43 paragraph 2 of this section regardless of the sequence in which the offenses
44 were committed. For the purposes of this section, a third or subsequent



1 violation for which a conviction occurs does not include a conviction for an
2 offense arising out of the same series of acts.

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

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

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

11 2. Subsection A, paragraph 2 of this section and within a sixty month
12 period has been convicted of two prior violations of section 28-1381, section
13 28-1382 or this section, or any combination of those sections, or acts in
14 another jurisdiction that if committed in this state would be a violation of
15 section 28-1381, section 28-1382 or this section.

16 E. A person who is convicted under subsection A, paragraph 2 of this
17 section and who within a sixty month period has been convicted of three or
18 more prior violations of section 28-1381, section 28-1382 or this section, or
19 any combination of those sections, or acts in another jurisdiction that if
20 committed in this state would be a violation of section 28-1381, section
21 28-1382 or this section is not eligible for probation, pardon, commutation or
22 suspension of sentence or release on any other basis until the person has
23 served not less than eight months in prison.

24 F. In addition to any other penalty provided by law, a person who is
25 convicted under subsection A, paragraph 3, subdivision (a) of this section
26 shall be sentenced to at least the minimum sentence required pursuant to
27 section 28-1381, except that if a person has been convicted of at least two
28 prior violations of section 28-1381, section 28-1382 or this section, or any
29 combination of those sections, or convicted of at least two prior acts in
30 another jurisdiction that if committed in this state would be violations of
31 section 28-1381, section 28-1382 or this section, or any combination of those
32 sections, within a sixty month period, the person shall be sentenced to serve
33 at least the minimum sentence required pursuant to this section.

34 G. In addition to any other penalty provided by law, a person who is
35 convicted under subsection A, paragraph 3, subdivision (b) of this section
36 shall be sentenced to at least the minimum sentence required pursuant to
37 section 28-1382, except that if a person has been convicted of at least two
38 prior violations of section 28-1381, section 28-1382 or this section, or any
39 combination of those sections, or convicted of at least two prior acts in
40 another jurisdiction that if committed in this state would be a violation of
41 section 28-1381, section 28-1382 or this section, or any combination of those
42 sections, within a sixty month period, the person shall be sentenced to serve
43 at least the minimum sentence required pursuant to this section.

44 H. A person who is convicted of a violation of this section shall
45 attend and complete alcohol or other drug screening, education or treatment

1 from an approved facility. If the person fails to comply with this
2 subsection and is placed on probation, in addition to the provisions of
3 section 13-901 the court may order that the person be incarcerated as a term
4 of probation as follows:

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

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

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

15 J. The court:

16 1. Shall report the conviction to the department. On receipt of the
17 report, the department shall revoke the driving privilege of the person. The
18 department shall not issue the person a new driver license within three years
19 of the date of the conviction and, for a conviction of a violation of
20 subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this
21 section, shall require the person to equip any motor vehicle the person
22 operates with a certified ignition interlock device pursuant to section
23 28-3319. In addition, the court may order the person to equip any motor
24 vehicle the person operates with a certified ignition interlock device for
25 more than twelve months beginning on the date of reinstatement of the
26 person's driving privilege following a suspension or revocation or on the
27 date of the department's receipt of the report of conviction, whichever
28 occurs later. The person who operates a motor vehicle with a certified
29 ignition interlock device under this paragraph shall comply with article 5 of
30 this chapter.

31 2. In addition to any other penalty prescribed by law, shall order the
32 person to pay an additional assessment of two hundred fifty dollars. If the
33 conviction occurred in the superior court or a justice court, the court shall
34 transmit the monies received pursuant to this paragraph to the county
35 treasurer. If the conviction occurred in a municipal court, the court shall
36 transmit the monies received pursuant to this paragraph to the city
37 treasurer. The city or county treasurer shall transmit the monies received
38 to the state treasurer. The state treasurer shall deposit the monies
39 received in the driving under the influence abatement fund established by
40 section 28-1304. Any fine imposed for a violation of this section and any
41 assessments, restitution and incarceration costs shall be paid before the
42 assessment prescribed in this paragraph.

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

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

10 5. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE
11 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS
12 TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS
13 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
14 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
15 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
16 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
17 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
18 TREASURER.

19 K. Aggravated driving or actual physical control while under the
20 influence of intoxicating liquor or drugs committed under:

21 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

22 2. Subsection A, paragraph 3 of this section is a class 6 felony.

23 L. For the purposes of this section, "suspension, cancellation,
24 revocation or refusal" means any suspension, cancellation, revocation or
25 refusal.

26 Sec. 7. Section 28-8284, Arizona Revised Statutes, is amended to read:
27 28-8284. Violation; classification

28 A. A person who is convicted of a violation of section 28-8282 is
29 guilty of a class 1 misdemeanor and shall be sentenced to serve not less than
30 twenty-four consecutive hours in jail.

31 B. The court shall order the person to pay a fine of not less than two
32 hundred fifty dollars and may order the person to perform not less than eight
33 or more than twenty-four hours of community service.

34 C. A court shall not grant probation to or suspend any part or all of
35 the imposition or execution of a sentence required by this section, except on
36 the condition that the person serve not less than twenty-four consecutive
37 hours in jail and pay a fine of not less than two hundred fifty dollars.

38 D. The court:

39 1. Shall not excuse an offender from spending twenty-four consecutive
40 hours in jail.

41 2. May require the offender to attend traffic safety or alcohol abuse
42 classes at the offender's expense.

43 3. If in the court's opinion the offender has the problem of habitual
44 abuse of alcohol or drugs, shall require the offender to obtain treatment
45 under its supervision.

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

10 5. SHALL ORDER THE OFFENDER TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
11 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
12 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
13 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
14 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
15 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
16 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
17 THE STATE TREASURER.

18 E. Notwithstanding subsection A of this section, the judge may
19 sentence a person pursuant to section 28-8286 instead of pursuant to
20 subsection A of this section, if all of the following conditions are met:

21 1. The person is convicted of a violation of section 28-8282.

22 2. The prosecutor alleges the provisions of this subsection.

23 3. The court finds that alternative sentencing will serve the best
24 interests of this state and that the person:

25 (a) Has not been convicted of one or more violations of section
26 28-8282 within sixty months of the date of commission of the acts out of
27 which the charges arose. The dates of commission of the offense are the
28 determining factor in applying this paragraph.

29 (b) Was not flying with 0.08 per cent or more by weight of alcohol in
30 the person's blood.

31 (c) Did not cause serious physical injury as defined in section 13-105
32 to another person during the same event or course of conduct that resulted in
33 the conviction for which the person is to be sentenced.

34 Sec. 8. Section 28-8286, Arizona Revised Statutes, is amended to read:
35 28-8286. Alternative sentencing

36 If pursuant to section 28-8284, subsection E a court orders a person
37 convicted of a violation of section 28-8282 to be sentenced pursuant to this
38 section, the court:

39 1. Shall order the person to pay a fine of not less than two hundred
40 fifty dollars.

41 2. May order the person to perform not less than eight or more than
42 twenty-four hours of community service.

43 3. May require the person to attend traffic safety or alcohol abuse
44 classes at the person's expense.

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

4 5. Shall not suspend any part or all of the imposition or execution of
5 any sentence required by this section.

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

15 7. SHALL ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
16 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
17 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
18 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
19 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
20 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
21 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
22 THE STATE TREASURER.

23 Sec. 9. Section 28-8287, Arizona Revised Statutes, is amended to read:
24 28-8287. Second offense

25 A. If a person is convicted of a second violation of section 28-8282
26 or is convicted of a violation of section 28-8282 and has previously been
27 convicted of an act in another state that if committed in this state would be
28 a violation of section 28-8282 within a period of sixty months:

29 1. The person is guilty of a class 1 misdemeanor.

30 2. The person shall be sentenced to serve not less than sixty days in
31 jail.

32 3. The court shall order the person to pay a fine of not less than
33 five hundred dollars.

34 4. The court shall not grant probation to or suspend any part or all
35 of the imposition or execution of any sentence required by this subsection,
36 except on the condition that the person serve not less than sixty days in
37 jail and pay a fine of not less than five hundred dollars.

38 5. If in the court's opinion the offender has the problem of habitual
39 abuse of alcohol or drugs, the court shall require the person to obtain
40 treatment under its supervision.

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

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

5 7. THE PERSON SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO
6 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE
7 GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
8 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
9 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
10 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES
11 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
12 MONIES RECEIVED TO THE STATE TREASURER.

13 B. The dates of the commission of the offense are the determining
14 factor in applying this section.

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

18 Sec. 10. Section 28-8288, Arizona Revised Statutes, is amended to
19 read:

20 28-8288. Third or subsequent offense

21 A. If a person is convicted of a third or subsequent violation of
22 section 28-8282 or is convicted of a violation of section 28-8282 and has
23 previously been convicted of any combination of convictions of section
24 28-8282 or acts committed in another state that if committed in this state
25 would be a violation of section 28-8282 within a period of sixty months:

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

27 2. The person is not eligible for probation, pardon, suspension of
28 sentence or release on any basis except as specifically authorized by section
29 31-233, subsection A or B until the person has served not less than six
30 months in prison.

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

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

35 5. In addition to any other penalty prescribed by law, the person
36 shall pay an additional assessment of one thousand five hundred dollars to be
37 deposited by the state treasurer in the prison construction and operations
38 fund established by section 41-1651. This assessment is not subject to any
39 surcharge. If the conviction occurred in the superior court or a justice
40 court, the court shall transmit the assessed monies to the county
41 treasurer. If the conviction occurred in a municipal court, the court shall
42 transmit the assessed monies to the city treasurer. The city or county
43 treasurer shall transmit the monies received to the state treasurer.

44 6. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE PERSON
45 SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS TO BE

1 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
2 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
3 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
4 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
5 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
6 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

7 B. The dates of the commission of the offense are the determining
8 factor in applying this section.

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

12 Sec. 11. Appropriation; purpose; exemption; annual budget
13 request; legislative intent

14 A. The sum of \$6,897,000 is appropriated from the state general fund
15 in fiscal year 2005-2006 to the department of public safety to be used as
16 follows:

- 17 1. \$3,000,000 for:
18 (a) Protective body armor.
19 (b) Electronic stun devices.
20 (c) Other safety equipment.

21 2. In addition to any other appropriation made in the general
22 appropriations act for the gang intelligence team enforcement mission
23 (GITEM), the sum of \$3,897,000 for GITEM. If the department of public safety
24 uses any of the monies appropriated for GITEM in the general appropriations
25 act or in this section for an agreement or contract with a city, town, county
26 or other entity to provide services for the GITEM program, the city, town,
27 county or other entity shall provide twenty-five per cent of the cost of the
28 services and the department of public safety shall provide seventy-five per
29 cent of the cost for each agreement or contract.

30 B. The appropriation made pursuant to subsection A, paragraph 2 of
31 this section is exempt from the provisions of section 35-190, Arizona Revised
32 Statutes, relating to lapsing of appropriations.

33 C. The department of public safety shall include in its annual budget
34 request an amount sufficient to adequately fund the department needs
35 prescribed in subsection A of this section.

36 D. It is the intent of the legislature that the department of public
37 safety allocate monies for the GITEM program to encourage multidistrict
38 relations.

39 E. The legislature intends that future fiscal year adjustments to
40 appropriations for the GITEM program shall be based on inflationary costs.

41 F. It is the intent of the legislature that the assessments
42 established by this act be used to offset the cost to the state general fund
43 of the appropriation to the department of public safety for protective body
44 armor, electronic stun devices, other safety equipment and the GITEM program
45 as prescribed by this section.

Passed the House April 27, 20 05,

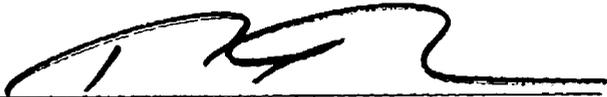
Passed the Senate March 15, 20 05,

by the following vote: 43 Ayes,

by the following vote: 29 Ayes,

13 Nays, 4 Not Voting

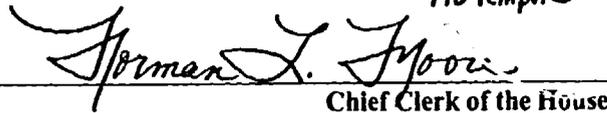
1 Nays, 0 Not Voting



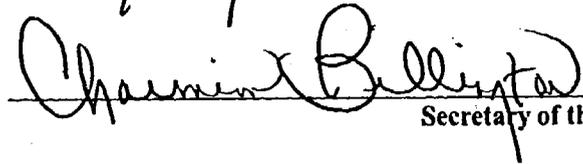
Speaker of the House
Pro Tempore



President of the Senate



Chief Clerk of the House



Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1160

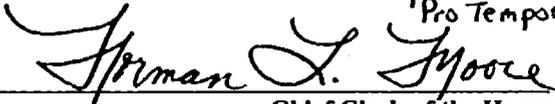
HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 12, 2005,

by the following vote: 46 Ayes,

3 Nays, 11 Not Voting



Speaker of the House
Pro Tempore


Chief Clerk of the House

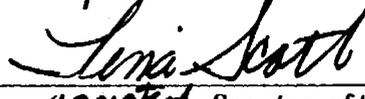
SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 11, 2005

by the following vote: 19 Ayes,

5 Nays, 6 Not Voting



President of the Senate


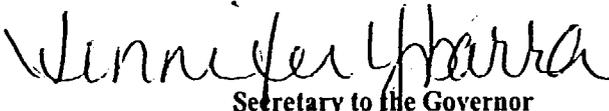
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 13th day of May, 2005

at 8:38 o'clock A M.



Secretary to the Governor

Approved this 20 day of

May, 2005,

at 9:30 o'clock A M.



Governor of Arizona

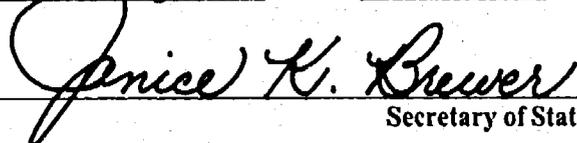
S.B. 1160

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2005

at 3:03 o'clock P M.



Secretary of State