House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

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Second Regular Session
2014

CHAPTER 127

HOUSE BILL 2003

AN ACT

AMENDING SECTIONS 5-349, 5-383, 5-395.01, 5-395.03, 5-396, 5-397 AND 41-1723, ARIZONA REVISED STATUTES; RELATING TO BOATING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 5-349, Arizona Revised Statutes, is amended to read:

5-349. Watercraft casualties; violation; classification

A. The operator of a watercraft involved in a collision, accident or other casualty, to the extent the operator can do so without serious danger to the operator's own watercraft or persons aboard, shall:

1. Immediately stop the watercraft at the scene of the collision, accident or other casualty or as close to the scene of the collision, accident or other casualty as possible but shall immediately return to the scene.

2. Render all practical and necessary assistance to persons affected to save them from danger caused by the collision, accident or other casualty.

3. Remain at the scene of the collision, accident or other casualty until the operator has complied with subsection B of this section.

B. The operator of a watercraft involved in a collision, accident or other casualty shall give the operator's name and address and the identification of the operator's watercraft to any person injured and to the owners of any property damaged.

C. Whenever death or injury results from any watercraft collision, accident or other casualty, a written report shall be submitted within forty-eight hours. For every other collision, accident or other casualty involving property damage exceeding five hundred dollars, a report shall be submitted within five days after the incident by the operator or owner of the watercraft involved. Written reports shall be submitted directly to the department for use in statistical studies for casualty prevention. Reports shall not be used as evidence in any trial, civil or criminal, arising from any collision, accident or other casualty. On request, a report shall be forwarded to the United States coast guard or other authorized federal agency to be used in statistical studies for casualty prevention.

D. To maintain uniformity, watercraft casualty reports shall be on a form approved by the commission.

E. Every peace officer who, in the regular course of duty, investigates any watercraft collision, accident or other casualty involving death or personal injury or involving property damage exceeding five hundred dollars shall prepare and transmit a report to the department pursuant to subsection C of this section.

F. If the operator of a watercraft is involved in a collision or accident that results in death or serious physical injury, as defined in section 13-105, and the operator fails to stop or comply with the requirements of subsection A of this section, the operator is guilty of a class 5 felony. If the operator of a watercraft is involved in a collision or accident that results in injury other than death or serious physical injury and the operator fails to stop and comply with the requirements of subsection A of this section, the operator is guilty of a class 6 felony. If

the operator of a watercraft is involved in a collision or accident that results only in damage to PROPERTY OF ANOTHER OR another watercraft ~~that is operated or attended by another person~~, and the operator fails to stop and comply with the requirements of subsection B of this section, the operator is guilty of a class 3 misdemeanor.

Sec. 2. Section 5-383, Arizona Revised Statutes, is amended to read:

5-383. Law enforcement and boating safety fund; boating law enforcement, personnel, equipment and training funding to counties

A. A law enforcement and boating safety fund is established that consists of monies distributed to the fund pursuant to ~~section~~ SECTIONS 5-323, 5-395.01, 5-395.03, 5-396 AND 5-397. The monies are subject to legislative appropriation.

B. Only a board of supervisors of a county that has a law enforcement and boating safety program that was in existence before July 1, 1990 shall be eligible to receive law enforcement and boating safety fund monies.

C. The state treasurer shall administer the fund. Using an allocation formula as determined annually by the commission, the state treasurer shall distribute monies monthly from the law enforcement and boating safety fund to eligible counties as prescribed in subsection B of this section.

D. In determining the allocation formula, the commission may consider the following:

1. The adequacy of existing county boating safety programs that include accident investigations.

2. The number of recreational days of use on water within the jurisdiction of the counties in areas of administrative authority.

3. The surface acreage of water within the jurisdiction of the counties in areas of administrative authority.

4. The county water safety record.

5. The ability of the county to constructively use additional monies.

6. The ratio of boating use to water surface within the jurisdiction of the counties in areas of administrative authority.

7. The ability of participating counties to provide continued funding of the program.

8. Annual input and feedback from the county boards of supervisors receiving funds.

9. Boat accident data for the waterways within the jurisdiction of the county.

E. The monies distributed to a county board of supervisors shall be used by the law enforcement agencies of the county solely for boating law enforcement, personnel, equipment and training.

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

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

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

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

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

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

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

5. Shall pay an additional assessment of five hundred dollars to be deposited by the state treasurer in the ~~public safety equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

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

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

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

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

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

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

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

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

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

5. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the ~~public safety equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction

occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

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

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

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

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

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

J. A person who is sentenced pursuant to this section is eligible for a home detention program pursuant to section 9-499.07, subsections L through R or section 11-459, subsections K through Q.

K. The court shall allow the allegation of a prior conviction or other pending charge of a violation of section 5-395 filed twenty or more days before the date the case is actually tried and may allow the allegation of a prior conviction or other pending charge of a violation of section 5-395 filed any time before the date the case is actually tried, provided that when the allegation is filed this state must make available to the defendant a copy of any information obtained concerning the prior conviction or other

pending charge. Any conviction may be used to enhance another conviction irrespective of the dates on which the offenses occurred within the eighty-four month provision.

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

Sec. 4. Section 5-395.03, Arizona Revised Statutes, is amended to read:

5-395.03. Test for alcohol concentration or drug content; refusal; civil penalty

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

B. Following an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by subsection A of this section, AND, IF THE VIOLATOR REFUSES TO SUBMIT TO OR COMPLETE THE TEST OR TESTS, THE VIOLATOR SHALL BE INFORMED THAT THE VIOLATOR IS SUBJECT TO A CIVIL PENALTY. THE CASE SHALL PROCEED AS PROVIDED IN TITLE 28, CHAPTER 5, ARTICLE 4.

C. A PERSON WHO REFUSES ANY TEST OR TESTS PRESCRIBED BY SUBSECTION A OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF SEVEN HUNDRED FIFTY DOLLARS AND:

1. AN ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THE CIVIL PENALTY AUTHORIZED PURSUANT TO THIS PARAGRAPH IS NOT SUBJECT TO ANY SURCHARGE. IF THE CIVIL PENALTY AUTHORIZED PURSUANT TO THIS PARAGRAPH IS IMPOSED BY THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED TO THE COUNTY TREASURER. IF THE CIVIL PENALTY AUTHORIZED PURSUANT TO THIS PARAGRAPH IS IMPOSED BY A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE STATE TREASURER.

2. IF THE PERSON IS CONVICTED OR ADJUDICATED OF ANY OFFENSE ARISING OUT OF ACTS COMMITTED IN VIOLATION OF THIS CHAPTER OR SECTION 4-244, PARAGRAPH 35 WHILE THE PERSON WAS OPERATING OR IN ACTUAL PHYSICAL CONTROL OF A MOTORIZED WATERCRAFT THAT WAS UNDERWAY WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS, AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE LAW ENFORCEMENT AND BOATING SAFETY FUND ESTABLISHED BY SECTION 5-383. THE ASSESSMENT IMPOSED PURSUANT TO THIS PARAGRAPH IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OR ADJUDICATION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OR ADJUDICATION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE STATE TREASURER.

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

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

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

A. A person is guilty of aggravated operating or actual physical control of a motorized watercraft that is underway while under the influence of intoxicating liquor or drugs if the person does any of the following:

1. Within a period of eighty-four months commits a third or subsequent violation of section 5-395 or 5-397 or this section or is convicted of a violation of section 5-395 or 5-397 or this section and has previously been convicted of any combination of convictions of section 5-395 or 5-397 or this section or acts committed in another jurisdiction that if committed in this state would be a violation of section 5-395 or 5-397 or this section.

2. While a person under fifteen years of age is aboard the motorized watercraft, commits ~~any of the following~~ A VIOLATION OF EITHER:

~~(a) A first violation of section 5-395, if the person recklessly endangers the person who is under fifteen years of age with a substantial risk of physical injury.~~

~~(b) A second violation of section 5-395 within a period of eighty-four months.~~

(a) SECTION 5-395.

~~(c)~~ (b) ~~A violation of~~ Section 5-397.

B. The dates of the commission of the offenses are the determining factor in applying the eighty-four month provision provided in subsection A, paragraph 1 ~~or paragraph 2, subdivision (b)~~ of this section regardless of the sequence in which the offenses were committed. For THE purposes of this section, a third or subsequent violation for which a conviction occurs does

not include a conviction for an offense arising out of the same series of acts. The time that a probationer is found to be on absconder status or the time that a person is incarcerated in any state, federal, county or city jail or correctional facility is excluded when determining the eighty-four month period provided in subsection A, paragraph 1~~, subsection A, paragraph 2, subdivision (b)~~ and subsection D of this section.

C. A person who is convicted under subsection A, paragraph 1 of this section and who within an eighty-four month period has been convicted of two prior violations of section 5-395 or 5-397 or this section, or acts committed in another jurisdiction that if committed in this state would be a violation of section 5-395 or 5-397 or this section, is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than four months in prison.

D. A person who is convicted under subsection A, paragraph 1 of this section and who within an eighty-four month period has been convicted of three or more prior violations of section 5-395 or 5-397 or this section, or acts committed in another jurisdiction that if committed in this state would be a violation of section 5-395 or 5-397 or this section, is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight months in prison.

E. A person who is convicted under subsection A, paragraph 2, subdivision (a) ~~or (b)~~ of this section shall serve at least the minimum term of incarceration required pursuant to section 5-395.01.

F. A person who is convicted under subsection A, paragraph 2, subdivision ~~(c)~~ (b) of this section shall serve at least the minimum term of incarceration required pursuant to section 5-397.

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

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

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

H. The time that a person spends in custody pursuant to subsection G of this section shall not be counted toward the sentence imposed if the person's probation is revoked and the person is sentenced to prison following revocation of probation.

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

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

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

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

4. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of one thousand five hundred dollars to be deposited by the state treasurer in the ~~public safety equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

J. Aggravated operating or actual physical control of a motorized watercraft that is underway while under the influence of an intoxicating liquor or drugs committed under:

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

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

Sec. 6. Section 5-397, Arizona Revised Statutes, is amended to read:

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

A. It is unlawful for a person to operate or be in actual physical control of a motorized watercraft that is underway within this state if the person has an alcohol concentration as follows within two hours of operating or being in actual physical control of the motorized watercraft and the

alcohol concentration results from alcohol consumed either before or while operating or being in actual physical control of the motorized watercraft:

1. 0.15 or more but less than 0.20.

2. 0.20 or more.

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

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

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

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

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

3. Shall pay an additional assessment of two hundred fifty dollars. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the driving under the influence abatement fund established by section 28-1304.

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

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

6. Shall pay an additional assessment of one thousand dollars to be deposited by the state treasurer in the ~~public safety equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383.

This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

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

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

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

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

3. Shall pay an additional assessment of two hundred fifty dollars. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the driving under the influence abatement fund established by section 28-1304.

4. Shall be ordered by a court to perform at least thirty hours of community restitution. If the person fails to complete the community

restitution ordered pursuant to this paragraph, the court may order alternative sanctions if the court determines that alternative sanctions are more appropriate.

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

6. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the ~~public safety equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

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

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

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

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

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

Sec. 7. Section 41-1723, Arizona Revised Statutes, is amended to read:

41-1723. Public safety equipment fund; distribution

A. The public safety equipment fund is established consisting of monies deposited in the fund pursuant to sections ~~5-395.01, 5-396, 5-397,~~

12-116.04, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288. The department shall administer the fund.

B. Monies deposited in the fund pursuant to sections ~~5-395.01, 5-396, 5-397,~~ 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288 shall be distributed as follows:

1. The first one million two hundred thousand dollars received each fiscal year as a continuing appropriation to the department for vehicles, protective armor, electronic stun devices and other safety equipment. Monies appropriated pursuant to this paragraph are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

2. All other monies each fiscal year shall be deposited in the state general fund.

C. Monies deposited in the fund pursuant to section 12-116.04 are subject to legislative appropriation and shall be used by the department for vehicles, protective armor, electronic stun devices and other safety equipment.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2014.

Passed the House March 5, 2014

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 16, 2014

by the following vote: 26 Ayes,

3 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

16 day of April, 2014

at 11:50 o'clock A M.

Mikhala Howard

Secretary to the Governor

Approved this 22nd day of

April

at 3:17 o'clock P M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 23rd day of April, 2014

at 9:40 o'clock a M.

Ken Bennett

Secretary of State

H.B. 2003