

REFERENCE TITLE: **watercraft; civil and criminal penalties**

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2003

Introduced by
Representatives Borrelli, Goodale

AN ACT

**AMENDING SECTIONS 5-349, 5-383, 5-395.01, 5-395.03, 5-396, 5-397 AND 41-1273,
ARIZONA REVISED STATUTES; RELATING TO BOATING.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 5-349. Watercraft casualties; violation; classification

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

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

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

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

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

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

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

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

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

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

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

7 5-383. Law enforcement and boating safety fund; boating law
8 enforcement, personnel, equipment and training funding
9 to counties

10 A. A law enforcement and boating safety fund is established that
11 consists of monies distributed to the fund pursuant to ~~section~~ SECTIONS
12 5-323, 5-395.01, 5-395.03, 5-396 AND 5-397. The monies are subject to
13 legislative appropriation.

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

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

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

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

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

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

29 4. The county water safety record.

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

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

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

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

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

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

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

3 5-395.01. Operating or in actual physical control of a
4 motorized watercraft while under the influence;
5 classification; penalties

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

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

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

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

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

21 5. Shall pay an additional assessment of five hundred dollars to be
22 deposited by the state treasurer in the ~~public safety equipment~~ LAW
23 ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~
24 5-383. This assessment is not subject to any surcharge. If the conviction
25 occurred in the superior court or a justice court, the court shall transmit
26 the assessed monies to the county treasurer. If the conviction occurred in a
27 municipal court, the court shall transmit the assessed monies to the city
28 treasurer. The city or county treasurer shall transmit the monies received
29 to the state treasurer.

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

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

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

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

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

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

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

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

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

40 5. Shall pay an additional assessment of one thousand two hundred
41 fifty dollars to be deposited by the state treasurer in the ~~public safety~~
42 ~~equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section
43 ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the
44 conviction occurred in the superior court or a justice court, the court shall
45 transmit the assessed monies to the county treasurer. If the conviction

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

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

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

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

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

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

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

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

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

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

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

10 5-395.03. Test for alcohol concentration or drug content;
11 refusal; civil penalty

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

27 B. Following an arrest a violator shall be requested to submit to and
28 successfully complete any test or tests prescribed by subsection A of this
29 section, AND, IF THE VIOLATOR REFUSES TO SUBMIT TO OR COMPLETE THE TEST OR
30 TESTS, THE VIOLATOR SHALL BE INFORMED THAT THE VIOLATOR IS SUBJECT TO A CIVIL
31 PENALTY.

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

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

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

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

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

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

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

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

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

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

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

39 (a) SECTION 5-395.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 5-397. Operating or in actual physical control of a motorized
38 watercraft while under the extreme influence of
39 intoxicating liquor; trial by jury; sentencing;
40 classification; definition

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

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

3 1. 0.15 or more but less than 0.20.

4 2. 0.20 or more.

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

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

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

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

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

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

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

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

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

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

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

16 F. If within a period of eighty-four months a person is convicted of a
17 second violation of this section or is convicted of a violation of this
18 section and has previously been convicted of a violation of section 5-395 or
19 5-396 or an act in another jurisdiction that if committed in this state would
20 be a violation of this section or section 5-395 or 5-396, the person:

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

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

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

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

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

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

13 6. Shall pay an additional assessment of one thousand two hundred
14 fifty dollars to be deposited by the state treasurer in the ~~public safety~~
15 ~~equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section
16 ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the
17 conviction occurred in the superior court or a justice court, the court shall
18 transmit the assessed monies to the county treasurer. If the conviction
19 occurred in a municipal court, the court shall transmit the assessed monies
20 to the city treasurer. The city or county treasurer shall transmit the monies
21 received to the state treasurer.

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

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

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

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

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

41 Sec. 7. Section 41-1723, Arizona Revised Statutes, is amended to read:
42 41-1723. Public safety equipment fund; distribution

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

1 12-116.04, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288.
2 The department shall administer the fund.

3 B. Monies deposited in the fund pursuant to sections ~~5-395.01, 5-396,~~
4 ~~5-397,~~ 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288 shall
5 be distributed as follows:

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

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

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