

REFERENCE TITLE: prisoners; incarceration; county jail

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1136

Introduced by
Senators Chevront, Gray C

AN ACT

AMENDING SECTIONS 5-396, 13-701, 28-1383, 28-8288 AND 31-201.01, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-133; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 5-396, Arizona Revised Statutes, is amended to
3 read:

4 5-396. Aggravated operating or actual physical control of
5 motorized watercraft while under the influence of
6 intoxicating liquor or drugs; classification

7 A. A person is guilty of aggravated operating or actual physical
8 control of a motorized watercraft that is underway while under the influence
9 of intoxicating liquor or drugs if the person commits a third or subsequent
10 violation of section 5-395 or 5-397 or this section or is convicted of a
11 violation of section 5-395 or 5-397 or this section and has previously been
12 convicted of any combination of convictions of section 5-395 or 5-397 or this
13 section or acts committed in another state that if committed in this state
14 would be a violation of section 5-395 or 5-397 or this section within a
15 period of sixty months.

16 B. The dates of the commission of the offenses are the determining
17 factor in applying the sixty month provision provided in subsection A of this
18 section regardless of the sequence in which the offenses were committed. For
19 THE purposes of this section, a third or subsequent violation for which a
20 conviction occurs does not include a conviction for an offense arising out of
21 the same series of acts.

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

25 D. Notwithstanding section 41-1604.06, a person who is convicted under
26 subsection A of this section and who within a sixty month period has been
27 convicted of two prior violations of section 5-395 or 5-397 or this section,
28 or acts committed in another state that if committed in this state would be a
29 violation of section 5-395 or 5-397 or this section, is not eligible for
30 probation, pardon, commutation or suspension of sentence or release on any
31 other basis until the person has served not less than four months in ~~prison~~
32 JAIL.

33 E. Notwithstanding section 41-1604.06, a person who is convicted under
34 subsection A of this section and who within a sixty month period has been
35 convicted of three or more prior violations of section 5-395 or 5-397 or this
36 section, or acts committed in another state that if committed in this state
37 would be a violation of section 5-395 or 5-397 or this section, is not
38 eligible for probation, pardon, commutation or suspension of sentence or
39 release on any other basis until the person has served not less than eight
40 months in ~~prison~~ JAIL.

41 F. A person who is convicted of a violation of this section and who is
42 placed on probation shall attend and complete alcohol or drug screening,
43 counseling and education from an approved facility and, if ordered by the
44 court, treatment from an approved facility. If the person fails to comply

1 with this subsection, in addition to section 13-901 the court may order that
2 the person be incarcerated as a term of probation as follows:

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

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

9 G. The time that a person spends in custody pursuant to subsection D,
10 E or F of this section shall not be counted toward the sentence imposed if
11 the person's probation is revoked and the person is ~~sentenced to prison~~
12 **INCARCERATED** following revocation of probation.

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

15 I. In addition to any other penalty prescribed by law, persons
16 convicted pursuant to this section shall pay an additional assessment of one
17 thousand five hundred dollars to be deposited by the state treasurer in the
18 prison 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 J. In addition to any other penalty prescribed by law, persons
26 convicted pursuant to this section shall pay an additional assessment of one
27 thousand five hundred dollars to be deposited by the state treasurer in the
28 state general fund. This assessment is not subject to any surcharge. If the
29 conviction occurred in the superior court or a justice court, the court shall
30 transmit the assessed monies to the county treasurer. If the conviction
31 occurred in a municipal court, the court shall transmit the assessed monies
32 to the city treasurer. The city or county treasurer shall transmit the
33 monies received to the state treasurer.

34 Sec. 2. Section 13-701, Arizona Revised Statutes, is amended to read:
35 13-701. Sentence of imprisonment for felony; presentence report

36 A. A sentence of imprisonment for a felony shall be a definite term of
37 years and the person sentenced, unless otherwise provided by law **OR PURSUANT**
38 **TO SUBSECTION D OF THIS SECTION**, shall be committed to the custody of the
39 state department of corrections.

40 B. No prisoner may be transferred to the custody of the state
41 department of corrections without a certified copy of the judgment and
42 sentence, signed by the sentencing judge, and a copy of a recent presentence
43 investigation report unless the court has waived preparation of the report.

44 C. Except as provided in section 13-604 the term of imprisonment for a
45 felony shall be determined as follows for a first offense:

- 1 1. For a class 2 felony, five years.
- 2 2. For a class 3 felony, three and one-half years.
- 3 3. For a class 4 felony, two and one-half years.
- 4 4. For a class 5 felony, one and one-half years.
- 5 5. For a class 6 felony, one year.

6 D. IF THE LENGTH OF INCARCERATION A PERSON WILL ACTUALLY SERVE IN THE
7 STATE DEPARTMENT OF CORRECTIONS IS ONE YEAR OR LESS, THE PERSON SHALL BE
8 COMMITTED TO THE CUSTODY OF THE COUNTY JAIL. THE ONE YEAR PERIOD IS
9 DETERMINED AT THE TIME OF SENTENCING AFTER SUBTRACTING CREDIT FOR TIME
10 SERVED. A PERSON WHO IS SENTENCED TO A CONCURRENT TERM OF INCARCERATION THAT
11 REQUIRES THE PERSON TO BE ACTUALLY INCARCERATED FOR MORE THAN ONE YEAR SHALL
12 BE INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS.

13 Sec. 3. Section 28-1383, Arizona Revised Statutes, is amended to read:
14 28-1383. Aggravated driving or actual physical control while
15 under the influence; violation; classification;
16 definition

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

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

25 2. Within a period of eighty-four months commits a third or subsequent
26 violation of section 28-1381, section 28-1382 or this section or is convicted
27 of a violation of section 28-1381, section 28-1382 or this section and has
28 previously been convicted of any combination of convictions of section
29 28-1381, section 28-1382 or this section or acts in another jurisdiction that
30 if committed in this state would be a violation of section 28-1381, section
31 28-1382 or this section.

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

34 (a) Section 28-1381.

35 (b) Section 28-1382.

36 4. While the person is ordered by the court or required pursuant to
37 section 28-3319 by the department to equip any motor vehicle the person
38 operates with a certified ignition interlock device, does either of the
39 following:

40 (a) While under arrest refuses to submit to any test chosen by a law
41 enforcement officer pursuant to section 28-1321, subsection A.

42 (b) Commits a violation of section 28-1381, section 28-1382 or this
43 section.

44 B. The dates of the commission of the offenses are the determining
45 factor in applying the eighty-four month provision provided in subsection A,

1 paragraph 2 of this section regardless of the sequence in which the offenses
2 were committed. For the purposes of this section, a third or subsequent
3 violation for which a conviction occurs does not include a conviction for an
4 offense arising out of the same series of acts. The time that a probationer
5 is found to be on absconder status or the time that a person is incarcerated
6 in any state, federal, county or city jail or correctional facility is
7 excluded when determining the eighty-four month period provided in subsection
8 A, paragraph 2 and subsection E of this section.

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

12 D. A person is not eligible for probation, pardon, commutation or
13 suspension of sentence or release on any other basis until the person has
14 served not less than four months in ~~prison~~ JAIL if the person is convicted
15 under either of the following:

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

17 2. Subsection A, paragraph 2 of this section and within an eighty-four
18 month period has been convicted of two prior violations of section 28-1381,
19 section 28-1382 or this section, or any combination of those sections, or
20 acts in another jurisdiction that if committed in this state would be a
21 violation of section 28-1381, section 28-1382 or this section.

22 E. A person who is convicted under subsection A, paragraph 2 of this
23 section and who within an eighty-four month period has been convicted of
24 three or more prior violations of section 28-1381, section 28-1382 or this
25 section, or any combination of those sections, or acts in another
26 jurisdiction that if committed in this state would be a violation of section
27 28-1381, section 28-1382 or this section is not eligible for probation,
28 pardon, commutation or suspension of sentence or release on any other basis
29 until the person has served not less than eight months in ~~prison~~ JAIL.

30 F. A person who is convicted under subsection A, paragraph 3,
31 subdivision (a) of this section shall serve at least the minimum term of
32 incarceration required pursuant to section 28-1381.

33 G. A person who is convicted under subsection A, paragraph 3,
34 subdivision (b) of this section shall serve at least the minimum term of
35 incarceration required pursuant to section 28-1382.

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

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

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

4 I. The time that a person spends in custody pursuant to subsection H
5 of this section shall not be counted towards the sentence imposed if the
6 person's probation is revoked and the person is ~~sentenced to prison after~~
7 **INCARCERATED FOLLOWING** revocation of probation.

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

9 1. Shall report the conviction to the department. On receipt of the
10 report, the department shall revoke the driving privilege of the person. The
11 department shall not issue the person a new driver license within three years
12 of the date of the conviction and, for a conviction of a violation of
13 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b) of this
14 section, shall require the person to equip any motor vehicle the person
15 operates with a certified ignition interlock device pursuant to section
16 28-3319. In addition, the court may order the person to equip any motor
17 vehicle the person operates with a certified ignition interlock device for
18 more than twelve months beginning on the date of reinstatement of the
19 person's driving privilege following a suspension or revocation or on the
20 date of the department's receipt of the report of conviction, whichever
21 occurs later. The person who operates a motor vehicle with a certified
22 ignition interlock device under this paragraph shall comply with article 5 of
23 this chapter.

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

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

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

1 shall transmit the assessed monies to the city treasurer. The city or county
2 treasurer shall transmit the monies received to the state treasurer.

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

12 K. After completing the period of suspension required by section
13 28-1385, a person whose driving privilege is revoked for a violation of
14 subsection A, paragraph 3 of this section may apply to the department for a
15 special ignition interlock restricted driver license pursuant to section
16 28-1401.

17 L. Aggravated driving or actual physical control while under the
18 influence of intoxicating liquor or drugs committed under:

19 1. Subsection A, paragraph 1 or 2 or paragraph 4, subdivision (b) of
20 this section is a class 4 felony.

21 2. Subsection A, paragraph 3 or paragraph 4, subdivision (a) of this
22 section is a class 6 felony.

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

26 Sec. 4. Section 28-8288, Arizona Revised Statutes, is amended to read:
27 28-8288. Third or subsequent offense

28 A. If a person is convicted of a third or subsequent violation of
29 section 28-8282 or is convicted of a violation of section 28-8282 and has
30 previously been convicted of any combination of convictions of section
31 28-8282 or acts committed in another state that if committed in this state
32 would be a violation of section 28-8282 within a period of sixty months:

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

34 2. The person is not eligible for probation, pardon, suspension of
35 sentence or release on any basis except as specifically authorized by section
36 31-233, subsection A or B until the person has served not less than six
37 months in ~~prison~~ JAIL.

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

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

42 5. In addition to any other penalty prescribed by law, the person
43 shall pay an additional assessment of one thousand five hundred dollars to be
44 deposited by the state treasurer in the prison construction and operations
45 fund established by section 41-1651. This assessment is not subject to any

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

6 6. In addition to any other penalty prescribed by law, the person
7 shall pay an additional assessment of one thousand five hundred dollars to be
8 deposited by the state treasurer in the state general fund. This assessment
9 is not subject to any surcharge. If the conviction occurred in the superior
10 court or a justice court, the court shall transmit the assessed monies to the
11 county treasurer. If the conviction occurred in a municipal court, the court
12 shall transmit the assessed monies to the city treasurer. The city or county
13 treasurer shall transmit the monies received to the state treasurer.

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

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

19 Sec. 5. Title 31, chapter 1, article 2, Arizona Revised Statutes, is
20 amended by adding section 31-133, to read:

21 31-133. Receiving and keeping state prisoners

22 THE SHERIFF SHALL RECEIVE AND KEEP IN THE COUNTY JAIL ANY PRISONER WHO
23 IS SENTENCED TO SERVE A TERM OF IMPRISONMENT IN THE STATE DEPARTMENT OF
24 CORRECTIONS AND WHOSE ACTUAL LENGTH OF IMPRISONMENT IS ONE YEAR OR LESS.

25 Sec. 6. Section 31-201.01, Arizona Revised Statutes, is amended to
26 read:

27 31-201.01. Duties of the director: tort actions: medical
28 treatment costs: state immunity: definitions

29 A. The director shall hold in custody all persons sentenced to the
30 department under the law and shall hold such persons for the term directed by
31 the court, subject to law, EXCEPT THAT IF THE LENGTH OF THE PERSON'S ACTUAL
32 INCARCERATION IS ONE YEAR OR LESS, THE PERSON SHALL BE PLACED IN THE CUSTODY
33 OF A COUNTY JAIL.

34 B. In addition to the medical and health services to be provided
35 pursuant to subsection D of this section, the director ~~may~~, in cooperation
36 with the department of health services, MAY provide to prisoners WHO ARE
37 INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS psychiatric care and
38 treatment pursuant to sections 31-226 and 31-226.01.

39 C. The director may institute and pursue programs ~~which~~ THAT promote
40 the rehabilitation of the prisoners in the director's charge.

41 D. The director shall provide medical and health services for the
42 prisoners WHO ARE INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS. The
43 director may contract for professional services to assist the director in
44 carrying out this responsibility on behalf of the state, ~~provided~~ EXCEPT that
45 all records made and retained in connection with the services provided by

1 this subsection shall be made and retained only by duly authorized or
2 qualified medical and professional personnel and not by any prisoner. Such
3 records when not in use shall be retained in a safe and secure place.

4 E. If a victim of a person for whom a cost of incarceration has been
5 calculated notifies the state that full restitution has not been made by the
6 person for whom a cost of incarceration has been calculated, the state shall
7 interplead with the superior court the disputed amount and set off the
8 amounts owed the state from the remaining obligation.

9 F. Any and all causes of action ~~which~~ THAT may arise out of tort
10 caused by the director, prison officers or employees of the department,
11 within the scope of their legal duty, shall run only against the state.

12 G. The director shall establish by rule reasonable medical and health
13 ~~service~~ SERVICES fees for the medical and health services that are provided
14 pursuant to subsection D of this section. Except as provided in subsection I
15 of this section, every inmate shall be charged a reasonable medical and
16 health services fee for each medical visit an inmate makes pursuant to a
17 health needs request form or for emergency treatment.

18 H. Except as provided in subsection I of this section, the director
19 may charge each inmate a reasonable fee for prescriptions, ~~medication~~
20 MEDICATIONS or prosthetic devices.

21 I. The director shall exempt the following inmates or medical visits
22 by inmates from payment of medical and health services fees and fees for
23 prescriptions, ~~medication~~ MEDICATIONS or prosthetic devices:

24 1. Medical visits initiated by the medical or mental health staff of
25 the department.

26 2. Medical visits to a physician by inmates who are referred by a
27 physician assistant or nurse practitioner.

28 3. Inmates at reception centers.

29 4. Juvenile inmates.

30 5. Pregnant inmates.

31 6. Seriously mentally ill inmates. For the purposes of this
32 paragraph, "seriously mentally ill inmates" means inmates who as a result of
33 a mental disorder as defined in section 36-501 exhibit emotional or
34 behavioral functioning ~~which~~ THAT is so impaired as to interfere
35 substantially with their capacity to remain in the general prison population
36 without supportive treatment or services of a long-term or indefinite
37 duration and whose mental disability is severe and persistent, resulting in a
38 long-term limitation of their functional capacities for primary activities of
39 daily living, including interpersonal relationships, self-care, employment
40 and recreation.

41 7. Developmentally disabled inmates who are housed in a special
42 programs unit.

43 8. Inmates who are housed in unit 8 at the Florence prison facility.

44 9. Inmates who are inpatients at the Alhambra prison facility special
45 programs psychiatric hospital.

1 10. Inmates who are inpatients at the Flamenco prison facility mental
2 health treatment unit.

3 11. Inmates who are undergoing administrative physical examinations for
4 statewide driver status and fire fighting crews.

5 12. Inmates who are undergoing follow-up medical treatment for chronic
6 diseases.

7 J. An inmate shall not be refused medical treatment for financial
8 reasons.

9 K. All monies received by the department for medical and health
10 ~~service~~ SERVICES fees shall be deposited in the general fund.

11 L. A person who is convicted of a felony offense and who is
12 incarcerated while awaiting sentence or while serving a sentence imposed by a
13 court of law may not bring a cause of action seeking damages or equitable
14 relief from the state or its political subdivisions, agencies, officers or
15 employees for injuries suffered while in the custody of the state or its
16 political subdivisions or agencies unless the complaint alleges specific
17 facts from which the court may conclude that the plaintiff suffered serious
18 physical injury or the claim is authorized by a federal statute.

19 M. The director shall establish criteria for reasonable deductions
20 from monies credited to the prisoner's spendable account to repay the cost
21 of:

22 1. State property that the inmate wilfully damages or destroys during
23 the inmate's incarceration.

24 2. Medical treatment for injuries that the inmate inflicts on himself
25 or others.

26 3. Searching for and apprehending an inmate who escapes or attempts to
27 escape.

28 4. Quelling a riot or other disturbance in which the inmate is
29 unlawfully involved.

30 N. For THE purposes of this section:

31 1. "Reasonable fee" means an amount not to exceed five dollars.

32 2. "Serious physical injury" means an impairment of physical condition
33 that creates a substantial risk of death or that causes serious
34 disfigurement, prolonged impairment of health or prolonged loss or impairment
35 of the function of any bodily organ.