House Engrossed Senate Bill

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JANICE K. BREWER
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CHAPTER 195

SENATE BILL 1252

AN ACT

AMENDING SECTIONS 9-499.07, 11-459 AND 28-1382, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-499.07, Arizona Revised Statutes, is amended to read:

9-499.07. Prisoner work, community restitution work and home detention program; eligibility; monitoring; procedures; home detention for persons sentenced for driving under the influence of alcohol or drugs

A. A city or town may establish a prisoner work, community restitution work and home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail. The presiding judge of the city or town municipal court shall approve the program before its implementation.

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program if any of the following applies:

1. The prisoner is found by the city or town to constitute a risk to either himself or other members of the community.

2. The prisoner has a past history of violent behavior.

3. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program.

C. For prisoners who are selected for the program, the city or town may require electronic monitoring in the prisoner's home whenever the prisoner is not at the prisoner's regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left the prisoner's premises. In all other cases, the city or town shall implement a system of monitoring using telephone contact or other appropriate methods to assure compliance with the home detention requirements. The city or town may place appropriate restrictions on prisoners in the program, including testing prisoners for consumption of alcoholic beverages or drugs or prohibiting association with individuals who are determined to be detrimental to the prisoner's successful participation in the program.

D. If a prisoner is placed on electronic monitoring pursuant to subsection C of this section, the prisoner shall pay an electronic monitoring fee in an amount ranging from zero to full cost and thirty dollars per month while on electronic monitoring, unless, after determining the inability of the prisoner to pay these fees, the city or town assesses a lesser fee. The fees collected shall be used by the city or town to offset operational costs of the program.

E. Prisoners who are selected for the home detention program shall be employed within the county in which the city or town is located. The city or town shall review the place of employment to determine whether it is appropriate for a home detention prisoner. If the prisoner is terminated from employment or does not come to work, the employer shall notify the city

or town. Alternatively, or in addition, a community restitution work assignment may be made by the city or town to a program recommended by the community restitution work committee. If a prisoner is incapable of performing community restitution or being employed, the city or town may exempt the prisoner from these programs.

F. The city or town may require that a prisoner who is employed during the week also participate in community restitution work programs on weekends.

G. The city or town may allow prisoners to be away from home detention for special purposes, including church attendance, medical appointments or funerals.

H. Community restitution work shall include public works projects operated and supervised by the city or town or other public agencies of this state or projects sponsored and supervised by public or private community oriented organizations and agencies.

I. A city or town implementing a program under this section shall appoint a community restitution work committee. The committee shall recommend to the city or town appropriate community restitution work projects for home detention prisoners. Members are not eligible to receive compensation.

J. At any time the city or town may terminate a prisoner's participation in the prisoner work, community restitution work and home detention program and require that the prisoner complete the remaining term of the prisoner's sentence in jail confinement.

K. Nothing in this section shall prohibit a city or town from entering into a joint exercise of powers agreement pursuant to section 11-952 for a prisoner work, community restitution work and home detention program.

L. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention in a prisoner work, community restitution work and home detention program except as provided in subsections M through R of this section.

M. By a majority vote of the full membership of the governing body of the municipality after a public hearing and a finding of necessity, a city or town may establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The city or town shall use the collected monies to offset operational costs of the program.

N. If the city or town establishes a home detention program under subsection M of this section, a prisoner must meet the following eligibility requirements for the program:

1. ~~The provisions of~~ Subsection B of this section ~~apply~~ APPLIES in determining eligibility for the program.

2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of twenty-four consecutive hours in jail.

3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or F, the prisoner first serves a minimum of fifteen consecutive days in jail before being placed under home detention.

4. The prisoner is required to comply with all of the following provisions for the duration of the prisoner's participation in the home detention program:

(a) All of the provisions of subsections C through H of this section.

(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.

(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.

(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.

(e) All other provisions of the sentence imposed.

5. Any additional eligibility criteria that the city or town may impose.

O. If a city or town establishes a home detention program under subsection M of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection N, paragraph 2 of this section.

P. The court shall terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if:

1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection N, paragraph 4, subdivision (c) of this section~~,~~ OR section 28-1381, subsection J or L or VIOLATES AN ORDER PURSUANT TO section 28-1382, subsection E or G.

2. The court finds that the prisoner left the premises without permission of the court or supervising authority during a time the prisoner is ordered to be on the premises.

Q. At any other time the court may terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

R. The governing body of the city or town may terminate the program established under subsection M of this section by a majority vote of the full membership of the governing body.

Sec. 2. Section 11-459, Arizona Revised Statutes, is amended to read:

11-459. Prisoner work, community restitution work and home detention program; eligibility; monitoring; procedures; home detention for persons sentenced for driving under the influence of alcohol or drugs; community restitution work committee; members; duties

A. The sheriff may establish a prisoner work, community restitution work and home detention program for eligible sentenced prisoners, which shall be treated the same as confinement in jail and shall fulfill the sheriff's duty to take charge of and keep the county jail and prisoners.

B. A prisoner is not eligible for a prisoner work, community restitution work and home detention program if any of the following applies:

1. After independent review and determination of the jail's classification program, the prisoner is found by the sheriff to constitute a risk to either himself or other members of the community.

2. The prisoner has a past history of violent behavior.

3. The prisoner has been convicted of a serious offense as defined ~~by~~ IN section 13-604 or has been determined to be a dangerous and repetitive offender.

4. Jail time is being served as a result of a felony conviction.

5. The sentencing judge states at the time of the sentence that the prisoner may not be eligible for a prisoner work, community restitution work and home detention program.

6. The prisoner is sentenced to a county jail and is being held for another jurisdiction.

C. For prisoners who are selected for the program, the sheriff may require electronic monitoring in the prisoner's home whenever the prisoner is not at ~~his~~ THE PRISONER'S regular place of employment or while the prisoner is assigned to a community work task. If electronic monitoring is required, the prisoner shall remain under the control of a home detention device that constantly monitors the prisoner's location in order to determine that the prisoner has not left ~~his~~ THE PRISONER'S premises. In all other cases, the sheriff shall implement a system of monitoring using visitation, telephone contact or other appropriate methods to assure compliance with the home detention requirements. The sheriff may place appropriate restrictions on prisoners in the program, including testing prisoners for consumption of alcoholic beverages or drugs or prohibiting association with individuals who are determined to be detrimental to the prisoner's successful participation in the program.

D. If a prisoner is placed on electronic monitoring pursuant to subsection C of this section, the prisoner shall pay an electronic monitoring fee in an amount ranging from zero to full cost and thirty dollars per month

while on electronic monitoring, unless, after determining the inability of the prisoner to pay these fees, the sheriff assesses a lesser fee. The fees collected shall be used by the sheriff to offset operational costs of the program.

E. Prisoners who are selected for the home detention program shall be employed in the county in which they are incarcerated. The sheriff shall review the place of employment to determine whether it is appropriate for a home detention prisoner. If the prisoner is terminated from employment or does not come to work, the employer shall notify the sheriff's office. Alternatively, or in addition, a community restitution work assignment may be made by the sheriff to a program recommended to the sheriff by the community restitution work committee. If a prisoner is incapable of performing community restitution or being employed, the sheriff may exempt the prisoner from these programs.

F. The sheriff may require that a prisoner who is employed during the week also participate in community restitution work programs on weekends.

G. The sheriff may allow prisoners to be away from home detention for special purposes, including church attendance, medical appointments or funerals. The standard for review and determination of such leave is the same as that implemented to decide transportation requests for similar purposes made by prisoners confined in the county jail.

H. Community restitution work shall include public works projects operated and supervised by public agencies of this state or counties, cities or towns on recommendation of the community restitution work committee and approval of the sheriff. The community restitution work committee may also recommend and the sheriff may approve other forms of community restitution work sponsored and supervised by public or private community oriented organizations and agencies.

I. The community restitution work committee is established in each county and is composed of two designees of the sheriff, a representative of the county attorney's office selected by the county attorney, a representative of a local police agency selected by the police chief of the largest city in the county and three persons selected by the county board of supervisors from the private sector. A sheriff's designee shall serve as committee chairman and schedule all meetings. The committee shall meet as often as necessary, but no less than once every three months, for the purpose of considering and recommending appropriate community restitution work projects for home detention prisoners. The committee shall make its recommendations to the sheriff. Members are not eligible to receive compensation.

J. At any time the sheriff may terminate a prisoner's participation in the prisoner work, community restitution work and home detention program and require that the prisoner complete the remaining term of the prisoner's sentence in jail confinement.

K. If authorized by the court, a person who is sentenced pursuant to section 28-1381 or 28-1382 shall not be placed under home detention in a prisoner work, community restitution work and home detention program except as provided in subsections L through Q of this section.

L. By a majority vote of the full membership of the board of supervisors after a public hearing and a finding of necessity a county may authorize the sheriff to establish a home detention program for persons who are sentenced to jail confinement pursuant to section 28-1381 or 28-1382. If the board authorized the establishment of a home detention program, a county sheriff may establish the program. A prisoner who is placed under the program established pursuant to this subsection shall bear the cost of all testing, monitoring and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. The county shall use the collected monies to offset operational costs of the program.

M. If a county sheriff establishes a home detention program under subsection L of this section, a prisoner must meet the following eligibility requirements for the program:

1. ~~The provisions of~~ Subsection B of this section ~~apply~~ APPLIES in determining eligibility for the program.

2. If the prisoner is sentenced under section 28-1381, subsection I, the prisoner first serves a minimum of twenty-four consecutive hours in jail.

3. Notwithstanding section 28-1387, subsection C, if the prisoner is sentenced under section 28-1381, subsection K or section 28-1382, subsection D or F, the prisoner first serves a minimum of fifteen consecutive days in jail before being placed under home detention.

4. The prisoner is required to comply with all of the following requirements for the duration of the prisoner's participation in the home detention program:

(a) All of the provisions of subsections C through H of this section.

(b) Testing at least once a day for the use of alcoholic beverages or drugs by a scientific method that is not limited to urinalysis or a breath or intoxication test in the prisoner's home or at the office of a person designated by the court to conduct these tests.

(c) Participation in an alcohol or drug program, or both. These programs shall be accredited by the department of health services or a county probation department.

(d) Prohibition of association with any individual determined to be detrimental to the prisoner's successful participation in the program.

(e) All other provisions of the sentence imposed.

5. Any additional eligibility criteria that the county may impose.

N. If a county sheriff establishes a home detention program under subsection L of this section, the court, on placing the prisoner in the program, shall require electronic monitoring in the prisoner's home and, if consecutive hours of jail time are ordered, shall require the prisoner to

remain at home during the consecutive hours ordered. The detention device shall constantly monitor the prisoner's location to ensure that the prisoner does not leave the premises. Nothing in this subsection shall be deemed to waive the minimum jail confinement requirements under subsection M, paragraph 2 of this section.

O. The court shall terminate a prisoner's participation in the home detention program and shall require the prisoner to complete the remaining term of the jail sentence by jail confinement if either:

1. The prisoner fails to successfully complete a court ordered alcohol or drug screening, counseling, education and treatment program pursuant to subsection M, paragraph 4, subdivision (c) of this section~~,~~ OR section 28-1381, subsection J or L or VIOLATES AN ORDER PURSUANT TO section 28-1382, subsection E or G.

2. The prisoner leaves the premises during a time that the prisoner is ordered to be on the premises without permission of the court or supervising authority.

P. At any other time the court may terminate a prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement.

Q. The sheriff may terminate the program at any time.

R. A person who is sentenced pursuant to section 28-1383 shall not be placed under home detention in a prisoner work, community restitution work and home detention program.

Sec. 3. Section 28-1382, Arizona Revised Statutes, is amended to read:

28-1382. Driving or actual physical control while under the extreme influence of intoxicating liquor; trial by jury; sentencing; classification

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

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

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.

2. Shall pay a fine of not less than two hundred fifty 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 monies received pursuant to this paragraph to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the monies received pursuant to this paragraph 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 be required by the department, on receipt of the report of conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

6. 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.

7. Shall pay an additional assessment of one thousand dollars to be deposited by the state treasurer in the state general fund. 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 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~~ ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF THIRTY DAYS OR

MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS ALCOHOL MONITORING.

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 28-1381 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of this section or section 28-1381 or 28-1383, 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.

2. 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 monies received pursuant to this paragraph to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the monies received pursuant to this paragraph 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.

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

6. 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.

7. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the state general fund. 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 E, paragraph 1 of this section, at the time of sentencing, 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.~~

G. AT THE TIME OF SENTENCING, THE JUDGE MAY ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF NINETY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR A MINIMUM OF TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS ALCOHOL MONITORING.

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.

APPROVED BY THE GOVERNOR MAY 8, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2007.