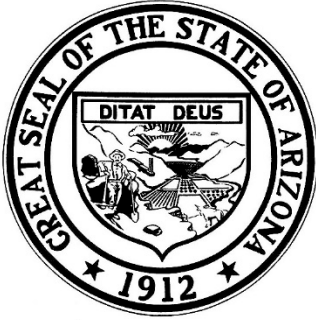


HOUSE FLOOR AMENDMENT EXPLANATION



Bill Number: **HB 2728**

Tsosie Floor Amendment

The Tsosie amendment dated 2/17/25 at 11:12 AM:

1. Adds voluntary participation in a religious program that is approved by the court.
2. Defines "evidence-based psychotherapy" as psychotherapy services that are offered by a psychologist who is licensed by the Board of Psychologist Examiners and who integrates the best available scientific research within clinical expertise based on the context of the patient's characteristics, culture, and preferences.

Amendment explanation prepared by Israel Kiyogera

Phone Number 6-5846

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2/19/2025

TSOSIE FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2728
(Reference to printed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Section 28-1381, Arizona Revised Statutes, is amended to
3 read:

4 28-1381. Driving or actual physical control while under the
5 influence; trial by jury; presumptions; admissible
6 evidence; sentencing; time limitation; violation;
7 classification; definition

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

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

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

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

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

25 5. While operating a vehicle for hire as defined in section 28-9501
26 or while providing transportation network services as defined in section
27 28-9551 as a transportation network company driver as defined in section
28 28-9551 if the person has an alcohol concentration of 0.04 or more.

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

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

6 D. A person using a drug as prescribed by a medical practitioner
7 who is licensed pursuant to title 32 and who is authorized to prescribe
8 the drug is not guilty of violating subsection A, paragraph 3 of this
9 section.

10 E. In any prosecution for a violation of this section, the state
11 shall allege, for the purpose of classification and sentencing pursuant to
12 this section, all prior convictions of violating this section, section
13 28-1382 or section 28-1383 occurring within the past thirty-six months,
14 unless there is an insufficient legal or factual basis to do so.

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

18 G. In a trial, action or proceeding for a violation of this section
19 or section 28-1383 other than a trial, action or proceeding involving a
20 person who is driving or ~~being~~ in actual physical control of a commercial
21 motor vehicle, ~~OR~~ a vehicle for hire as defined in section 28-9501 or
22 involving a person who is providing transportation network services as
23 defined in section 28-9551 as a transportation network company driver as
24 defined in section 28-9551, the defendant's alcohol concentration within
25 two hours of the time of driving or being in actual physical control as
26 shown by analysis of the defendant's blood, breath or other bodily
27 substance gives rise to the following presumptions:

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

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

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

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

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

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

4 2. Shall pay a fine of not less than \$250.

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

6 4. Shall pay an additional assessment of \$500 to be deposited by
7 the state treasurer in the prison construction and operations fund
8 established by section 41-1651. This assessment is not subject to any
9 surcharge. If the conviction occurred in the superior court or a justice
10 court, the court shall transmit the assessed monies to the county
11 treasurer. If the conviction occurred in a municipal court, the court
12 shall transmit the assessed monies to the city treasurer. The city or
13 county treasurer shall transmit the monies received to the state
14 treasurer.

15 5. Shall pay an additional assessment of \$500 to be deposited by
16 the state treasurer in the public safety equipment fund established by
17 section 41-1723. This assessment is not subject to any surcharge. If the
18 conviction occurred in the superior court or a justice court, the court
19 shall transmit the assessed monies to the county treasurer. If the
20 conviction occurred in a municipal court, the court shall transmit the
21 assessed monies to the city treasurer. The city or county treasurer shall
22 transmit the monies received to the state treasurer.

23 6. If the violation involved intoxicating liquor, shall be required
24 by the department, on report of the conviction, to equip any motor vehicle
25 the person operates with a certified ignition interlock device pursuant to
26 section 28-3319. In addition, the court may order the person to equip any
27 motor vehicle the person operates with a certified ignition interlock
28 device for more than twelve months beginning on the date the person
29 successfully completes the alcohol or other drug screening, education,
30 EVIDENCE-BASED PSYCHOTHERAPY or treatment program requirements of this
31 title and the person is otherwise eligible to reinstate the person's
32 driver license or driving privilege. The person who operates a motor
33 vehicle with a certified ignition interlock device under this paragraph
34 shall comply with article 5 of this chapter.

35 7. Shall be required by the department to attend and successfully
36 complete an approved traffic survival school course.

37 ~~[8. MAY BE ORDERED BY THE COURT TO PARTICIPATE IN A RELIGIOUS~~
38 ~~PROGRAM THAT IS APPROVED BY THE COURT.]~~

39 [8. AT THE PERSON'S OPTION, MAY BE ORDERED BY THE COURT TO
40 PARTICIPATE IN A RELIGIOUS PROGRAM THAT IS APPROVED BY THE COURT. AN
41 APPROVED RELIGIOUS PROGRAM MAY BE CONSIDERED BY THE COURT AS AN
42 ALTERNATIVE TO OTHER CONDITIONS IMPOSED PURSUANT TO THIS SECTION. THE
43 PERSON'S PARTICIPATION IN A RELIGIOUS PROGRAM MUST BE VOLUNTARY, AND THE
44 PURPOSE OF THE RELIGIOUS PROGRAM MAY NOT INCLUDE ANY EFFORT TO COERCE THE
45 PERSON TO ADOPT OR CHANGE ANY RELIGIOUS AFFILIATION OR BELIEFS.]

46 J. Notwithstanding subsection I, paragraph 1 of this section, at
47 the time of sentencing the judge may suspend all but one day of the

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

8 K. If within a period of eighty-four months a person is convicted
9 of a second violation of this section or is convicted of a violation of
10 this section and has previously been convicted of a violation of section
11 28-1382 or 28-1383 or an act in another jurisdiction that if committed in
12 this state would be a violation of this section or section 28-1382 or
13 28-1383, the person:

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

18 2. Shall pay a fine of not less than \$500.

19 3. Shall be ordered by a court to perform at least thirty hours of
20 community restitution.

21 4. Shall have the person's driving privilege revoked for one year.
22 The court shall report the conviction to the department. On receipt of
23 the report, the department shall revoke the person's driving privilege
24 and, if the violation involved intoxicating liquor, shall require the
25 person to equip any motor vehicle the person operates with a certified
26 ignition interlock device pursuant to section 28-3319. In addition, the
27 court may order the person to equip any motor vehicle the person operates
28 with a certified ignition interlock device for more than twelve months
29 beginning on the date the person successfully completes the alcohol or
30 other drug screening, education, EVIDENCE-BASED PSYCHOTHERAPY or treatment
31 program requirements of this title and the person is otherwise eligible to
32 reinstate the person's driver license or driving privilege. The person
33 who operates a motor vehicle with a certified ignition interlock device
34 under this paragraph shall comply with article 5 of this chapter.

35 5. Shall pay an additional assessment of \$1,250 to be deposited by
36 the state treasurer in the prison construction and operations fund
37 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
40 treasurer. If the conviction occurred in a municipal court, the court
41 shall transmit the assessed monies to the city treasurer. The city or
42 county treasurer shall transmit the monies received to the state
43 treasurer.

44 6. Shall pay an additional assessment of \$1,250 to be deposited by
45 the state treasurer in the public safety equipment fund established by
46 section 41-1723. This assessment is not subject to any surcharge. If the
47 conviction occurred in the superior court or a justice court, the court

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

5 7. Shall be required by the department to attend and successfully
6 complete an approved traffic survival school course.

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

16 M. In applying the eighty-four month provision of subsection K of
17 this section, the dates of the commission of the offense shall be the
18 determining factor, irrespective of the sequence in which the offenses
19 were committed.

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

23 O. After completing forty-five days of the revocation period
24 prescribed by subsection K of this section, a person whose driving
25 privilege is revoked for a violation of this section and who is sentenced
26 pursuant to subsection K of this section is eligible for a special
27 ignition interlock restricted driver license pursuant to section 28-1401.

28 P. The court may order a person who is convicted of a violation of
29 this section that does not involve intoxicating liquor to equip any motor
30 vehicle the person operates with a certified ignition interlock device
31 pursuant to section 28-3319. On receipt of the report of conviction and
32 certified ignition interlock device requirement, the department shall
33 require the person to equip any motor vehicle the person operates with a
34 certified ignition interlock device pursuant to section 28-3319. In
35 addition, the court may order the person to equip any motor vehicle the
36 person operates with a certified ignition interlock device for more than
37 twelve months beginning on the date the person successfully completes the
38 alcohol or other drug screening, education, EVIDENCE-BASED PSYCHOTHERAPY
39 or treatment program requirements of this title and the person is
40 otherwise eligible to reinstate the person's driver license or driving
41 privilege. The person who operates a motor vehicle with a certified
42 ignition interlock device under this subsection shall comply with article
43 5 of this chapter.

44 Q. A prosecution for a violation of this section involving a
45 collision that resulted in serious physical injury or death as identified
46 in a written accident report completed pursuant to section 28-667 must be
47 commenced within two years after actual discovery of the offense by the

1 state or the political subdivision having jurisdiction or discovery by the
2 state or the political subdivision that should have occurred with the
3 exercise of reasonable diligence, whichever first occurs.

4 [R. FOR THE PURPOSES OF THIS SECTION, "EVIDENCE-BASED
5 PSYCHOTHERAPY" MEANS PSYCHOTHERAPY SERVICES THAT ARE OFFERED BY A
6 PSYCHOLOGIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 19.1 AND WHO
7 INTEGRATES THE BEST AVAILABLE SCIENTIFIC RESEARCH WITH CLINICAL EXPERTISE
8 BASED ON THE CONTEXT OF THE PATIENT'S CHARACTERISTICS, CULTURE AND
9 PREFERENCES.]

10 Enroll and engross to conform

11 Amend title to conform

MYRON TSOSIE

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02/17/2025

11:12 AM

C: JR