

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED
OCT 1 1997
NOEL K. DESSAINT
CLERK SUPREME COURT
BY *[Signature]*

In The Matter Of:) Administrative Order
)
DEFENSIVE DRIVING PROGRAM) No. 97 - 52
ADMINISTRATIVE REQUIREMENTS) (Revising Administrative
) Order No. 90-51
)
_____)

Administrative Order 89-25, provided for the administration of the Defensive Driving Program pursuant to A.R.S. § 28-492 and 28-493. Administrative Order 90-51 superseded Administrative Order 89-25 on November 15, 1990. Effective October 1, 1997, A.R.S. Title 28 is revised and renumbered, necessitating a revision of Administrative Order 90-51 to replace references to the original statute numbers, now changed to A.R.S. § 28-3391 through 28-3397. Pursuant to A.R. S. § 28-3395, the Supreme Court shall supervise the use of the Defensive Driving Program by the courts in this state.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, and A.R.S. § 28-3395,

IT IS ORDERED that the attached Administrative Requirements for Supervision of the Defensive Driving Program are approved for supervision of said courts and schools and that this order shall replace Administrative Order 90-51, and

IT IS FURTHER ORDERED that this Administrative Order shall be effective upon entry and that Administrative Orders 89-25 and 90-51 be rescinded, and

IT IS FURTHER ORDERED that a copy of the attached Administrative Requirements for Supervision of the Defensive Driving Program shall be distributed to the presiding judge of the Superior Court of each county, each Superior Court Administrator, and the presiding judge of each justice and municipal court.

Dated this 1st day of October, 1997.

THOMAS A. ZLAKET
Chief Justice

**ADMINISTRATIVE REQUIREMENTS
FOR SUPERVISION OF THE DEFENSIVE DRIVING PROGRAM**

A. Administration

1. Administration of the Defensive Driving Program, the Defensive Driving School Fund, and the certification and monitoring process for defensive driving schools and instructors that serve as court authorized diversion programs, shall be under the direction of the Administrative Director of the Courts. The Director is authorized to establish policies, procedures, forms and reports necessary to administer the program.
2. The Director may prepare fiscal projections and create a budget based upon those projections for the purpose of administering the Defensive Driving Program.
3. The Director is authorized to allocate and expend funds pursuant to A.R.S. § 28-3398(B) for administrative costs associated with the Defensive Driving Program and expend funds to further expedite the processing of all offenses prescribed in Chapters 3 and 4 of this title. The Director may contract for professional services to maintain the Defensive Driving tracking database, to assist in the certifying and monitoring of defensive driving schools and instructors, and other necessary services pursuant to A.R.S. § 28-3395.
4. The Director is authorized to appoint advisory groups and/or committees to facilitate implementation and administration of the Defensive Driving Program.
5. The Director is authorized to propose rules which establish criteria for certification of qualified defensive driving schools and instructors used by the courts pursuant to A.R.S. § 28-3395(B)(4).

B. Court Requirements

1. A municipal, justice or juvenile court may refer any eligible person to any certified defensive driving school or a court may choose to contract with one or more certified primary providers for defensive driving school services. If a court selects one or more primary providers, the court shall have a written contract with each provider. The Director may require specific provisions to be included in each contract. In selecting primary provider(s), the presiding judge must follow the applicable procurement codes and regulations, but the ultimate authority for selection of the primary provider(s) rests with the presiding judge of each court and not with any other governmental entity.

2. A court may choose to operate its own defensive driving school program for the purposes of Article 7 of Title 28. If a court chooses to operate its own defensive driving school program, it must adhere to all applicable certification criteria as approved by the Director. The court shall set a school fee that represents only the cost to operate the school.
3. No court officer or employee, voluntary or paid, may own, operate, be employed by, or receive compensation from a defensive driving school except in cases where the court operates a certified defensive driving school.
4. No court officer or employee may accept compensation or incentives, either directly or indirectly, to enrol students in a school or for selection of a specific school as a primary provider.
5. A court shall promptly report violations of the defensive driving school certification criteria as directed in established defensive driving program procedures.
6. The presiding judge of each court may establish a diversion fee to be assessed to each individual attending a defensive driving school. This diversion fee may be changed by the presiding judge twice annually to be effective on January 1 and July 1 of each year. A court may designate only one diversion fee for all instances under which all defendants may attend a defensive driving school as a court diversion program pursuant to the provisions of Article 7 of Title 28. A court shall notify the administrative office of the courts thirty (30) calendar days prior to the effective date of the change, using the form designated for this purpose. The diversion fee may be waived at the option of the court.
7. When a court orders a person to attend defensive driving school pursuant to A.R.S. § 28-3392(C), the court shall provide the person with a written court order which specifies the violation date, violation code, and any special conditions that the person or school must fulfill. A court may not collect both a fine and a diversion fee from a person ordered to attend a defensive driving school. The court shall note on the court order if the person has been fined for the violation. Where no fine is noted, the defensive driving school will collect the court's diversion fee from the person attending the course.

C. Defensive Driving School Fund Requirements

1. The Director is authorized to set a Defensive Driving Program Fee (DDPF) up to fifteen dollars, pursuant to A.R.S. § 28-3397(A). In addition to the DDPF, a five dollar Judicial Collection Enhancement Fund (JCEF) surcharge is collected pursuant to A.R.S. § 12-114. The Director may review and adjust the DDPF amount as necessary. The DDPF and JCEF surcharge shall be assessed to each person who

attends a defensive driving school pursuant to a court diversion program or as part of a sentence imposed by a court. The DDPF and JCEF surcharge shall also be charged to persons attending a defensive driving school in Arizona for an out-of-state violation.

2. The DDPF and JCEF surcharge (collectively known as the "State Fee") shall be collected and remitted by the defensive driving school and shall generally be non-refundable once paid. If the school determines that an individual has demonstrated good cause, the school may refund the State Fee, only if the school fee and the court diversion fee also are refunded. Once a person begins a class, the State Fee shall be non-refundable. Other registration fees may be refundable in accordance with each school's guidelines.
3. The State Fees collected by a defensive driving school between the first and the fifteenth day of the month shall be remitted to the Administrative Office of the Courts for deposit with the State Treasurer in the Defensive Driving School Fund by the twenty-second day of the same month. The State Fees collected by a defensive driving school between the sixteenth and last day of the month shall be remitted to the Administrative Office of the Courts for deposit with the State Treasurer in the Defensive Driving School Fund by the seventh day of the following month. A defensive driving school that has had no receipts during a reporting period (as required by this paragraph) shall submit a report so stating, using the form provided by the Defensive Driving Program for this purpose.
4. Each defensive driving school shall collect the court's diversion fee pursuant to A.R.S. § 28-3396(C). The school shall remit the diversion fee for each individual to the appropriate court according to the schedule set forth in the written contract between the court and the school, but not less than once each month. If no contract exists, the fees collected and all supporting information concerning the student's attendance shall be submitted to the court of jurisdiction at least once each month.

D. MODIFICATION

These administrative requirements are subject to modification as deemed necessary and any time limit or schedule contained therein may be waived at the request of the Director if agreed to by the Chief Justice.