



SUPREME COURT  

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STATE OF ARIZONA



GOVERNOR'S OFFICE OF  
**HIGHWAY  
SAFETY**

# Hot Topics in Arizona Traffic Law

# HOT TOPICS IN ARIZONA TRAFFIC LAW



2025 GOHS Judicial  
Traffic Conference

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## CASE LAW UPDATES FROM LAST YEAR'S PRESENTATION



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## TRIVIA!

- ◉ In the movie *Clue*, based on the famous board game, how many different endings were filmed and shown in theaters?
- ◉ A) One
- ◉ B) Two
- ◉ C) Three
- ◉ D) Four

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## BLOOD SAMPLES

### SUPREME CT. OPINION (12/17/2024)

- ◉ **Jan. 2015** Mitcham consented to blood draw during DUI arrest. Not advised sample could be used for other purposes. He & police sign 90-day destruction notice. Sample is not destroyed.
- ◉ **In 2018** After determining Mitcham might have committed a murder, police test the DUI blood sample & create Mitcham's DNA profile without a warrant. Used it to connect Mitcham to the murder.
- ◉ Grand jury charges Mitcham with first-degree murder, second-degree burglary, & sexual assault.
- ◉ Mitcham challenges use of DUI blood for DNA.  
*State v. Mitcham*, 258 Ariz. 432, 559 P.3d 1099 (2024).

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## BLOOD SAMPLES

- ◉ **Holding:** Mitcham's consent was limited to using the blood draw in the DUI case. Using it to connect him to the 2018 murder violated his 4th Amendment Rights.
  
- **Petition for cert has been filed in the U.S. Supreme Ct.**

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## 4TH AMENDMENT REMINDERS FROM MITCHAM

- ◉ Must determine if a search occurred
  - Extracting the DNA from the sample was a search
- ◉ A search under the Fourth Amendment generally requires a warrant supported by probable cause
- ◉ Warrantless searches are permissible if they are "reasonable" for Fourth Amendment purposes
- ◉ Even unreasonable searches may be allowed under certain warrant exceptions

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## WARRANT EXCEPTION DISCUSSED IN *MITCHAM*

### ◉ Voluntary consent

- A person may consent to a search that would be otherwise prohibited by the 4th Amend.
- State has the burden to prove voluntariness by a preponderance of the evidence.
- The scope of consent to search is determined using a reasonable person objective standard.
- **Here**, a reasonable person would not have understood consenting to the blood draw to test for drugs or alcohol also included consenting to the creation of a DNA profile, especially years later.

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## ADDITIONAL WARRANT EXCEPTIONS NOT DISCUSSED IN *MITCHAM*

### ◉ Community Caretaking

- Applies to vehicles, but not homes - *Caniglia v. Strom*, 141 S.Ct. 1596 (2021).

### ◉ Exigency

### ◉ Inventory Search

### ◉ Statutory Exceptions

### ◉ Search Incident to Arrest

- Includes breath tests- but not blood

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**REMINDER:****BLOOD** DRAWS & BREATH TESTS**Breath**

- ◉ The 4th Amendment allows compelled warrantless breath test as a search incident to a lawful arrest. Voluntary consent is not required.

*Birchfield v. North Dakota*, 579 U.S. \_\_\_, 136 S. Ct. 2160 (2016).

**Blood**

- Blood tests are a much more serious search for Fourth Amendment purposes
- Consent must be voluntary

*Birchfield, Tyler, Valenzuela, Diaz, etc.*

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**EXCLUSIONARY RULE REMINDERS  
FROM MITCHAM**

- ◉ The exclusionary rule is not a constitutional right of the defendant.
- ◉ It is a rule created to deter future 4<sup>th</sup> Amendment violations.
- ◉ “Importantly, ‘[s]uppression of evidence ... has always been our last resort, not our first impulse.’ ”
- ◉ The exclusionary rule is only applied “where its deterrence benefits outweigh its ‘substantial social costs.’ ”

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## INEVITABLE DISCOVERY APPLIED

- ◉ Mitcham was convicted of multiple felonies in 2022. AZ law requires DOC to collect a sample for purposes of DNA profiling from every person convicted of a felony and sentenced to prison. **Inevitable discovery** invoked to preclude suppression of the DNA profile in this case.
- ◉ The exclusionary rule was not applied & the evidence was not suppressed.

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## ADDITIONAL EXCEPTIONS TO THE EXCLUSIONARY RULE

- ◉ **Independent Source**
  - Applied if the evidence was discovered through an independent, untainted source. *Mitcham, supra*.
  - *Murray v. United States*, 487 U.S. 533 (1988).
- ◉ **Good Faith**
  - *United States v. Leon*, 468 U.S. 897 (1984);
  - *Herring v. United States*, 555 U.S. 135 (2009).

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## TRIVIA!

- ◉ Which 1927 film is famously credited with ending the silent movie era by introducing synchronized sound?
  
- ◉ A) *Metropolis*
- ◉ B) *The Jazz Singer*
- ◉ C) *Nosferatu*
- ◉ D) *City Lights*

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## 5<sup>TH</sup> AMENDMENT - INVOCATION SUPREME COURT OPINION (05/28/2025)

- ⦿ During investigation, Melendez is asked several times why he went to the location, why he had a gun, etc.
- ⦿ Said wanted to “hold that information”, “pass,” etc.
- ⦿ Claims self-defense
- ⦿ Cross-examining Melendez about his refusal to answer certain questions when interrogated & asking jury to hold that silence against him during closing argument did not violate his constitutional rights. [Reversed the Ct. of Appeals]

*State v. Melendez*, 145 Arizona Case Digest 38 (2025).

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## 5<sup>TH</sup> AMENDMENT - INVOCATION SUPREME COURT OPINION

- ⦿ 5<sup>th</sup> Amendment protections are not self-executing.
- ⦿ Melendez did not unequivocally invoke
- ⦿ “Melendez’s statements are more aptly characterized as tactical deferrals to responding to specific questions than unequivocal refusals to answer.”
- ⦿ Rather than remaining absolutely or selectively silent, Melendez continued to speak throughout the interrogation.

*State v. Melendez*, 145 Arizona Case Digest 38 (2025).

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## 5<sup>TH</sup> AMENDMENT - INVOCATION SUPREME COURT OPINION

- ◉ Did not have to reach claim that allowing the State to comment at trial on his decision to temporarily defer answering questions during his police interview—in violated the 14th Amend. Due Process Clause.
    - Because Melendez was not silent, did not unequivocally invoke
    - Unfairness concerns about penalizing post-*Miranda* silence are absent when a defendant is impeached with his prior inconsistent statements.
    - Taken as a whole, the prosecutor contrasted Melendez's self-defense testimony with the self-defense claim he made during his interview
- State v. Melendez*, 145 Arizona Case Digest 38 (2025).

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## REMINDERS FROM MELENDEZ

- ◉ 5<sup>th</sup> Amendment protections are not self-executing.
- ◉ The defendant must have clearly invoked rights.
- ◉ When a defendant invokes - Fifth Amendment issues can involve due process.



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## A SUSPECT MAY INVOKE FOR A LIMITED PURPOSE

*State v. Uraine*, 157 Ariz 21 (1988);  
*State v. Nevarez*, 235 Ariz. 129 (App. 2014).

For example - may invoke only for questioning (5<sup>th</sup> Amendment), or only for the blood/breath test (Rule 6), etc.

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## *E.H V. SLAYTON* - RESTITUTION

- ◉ The surviving sibling of a deceased victim sought restitution for future lost wages of the victim.
- ◉ The court found that future lost wages are recoverable as restitution.
- ◉ Cannot be speculative.
- ◉ “The victim must provide a reasonable basis for estimating the incurred loss.”

*E.H. v. Slayton in & for Cnty. of Coconino*, 568 P.3d 377, 380 (Ariz. 2025)

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## TRIVIA!

- ◉ What company introduced the first commercial video calling device, known as the “Picturephone,” at the 1964 World’s Fair?
  
- ◉ A) IBM
- ◉ B) AT&T
- ◉ C) Motorola
- ◉ D) RCA

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## WHITE V. STATE - VIRTUAL APPEARANCE FOR SENTENCING

- ◉ Defendant pled guilty to misdemeanor offenses in Superior Court and moved to appear virtually for sentencing because he lived out of state and couldn't afford to travel to AZ.
- ◉ The State stipulated to his virtual appearance.
- ◉ Trial court denied the request because court believed Ariz. Crim. Pro. R. 26.9 requires Defendant to appear in person absent extraordinary circumstances.

*White v. State, 259 Ariz. 310, 565 P.3d 1062 (App. 2025)*

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## WHITE V. STATE - VIRTUAL APPEARANCE FOR SENTENCING

- ◉ Court of Appeals: The court has discretion to permit a defendant to appear by videoconference when two requirements are met:
  - ◉ (1) the parties stipulate to the defendant's virtual appearance and
  - ◉ (2) the court finds that the defendant knowingly, intelligently, and voluntarily agreed to appear virtually.
- ◉ **Note:** Court still has discretion

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## TRIVIA!

- ◉ Where was the world's first traffic light installed in 1868?
  
- ◉ A) New York City, USA
- ◉ B) London, England
- ◉ C) Paris, France
- ◉ D) Berlin, Germany

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## CASE TO KEEP AN EYE ON FROM LAST YEAR 28-672



Plain language of A.R.S. § 28-672(A)(1) [causing death by a moving violation – running red light] does not require a vehicle to have entered the intersection before the initial collision occurs when the crash encompasses one continuous event caused by the defendant’s failure to stop at a red light.

*State v. Gordon*, 544 P.3d 673 (App. 2024).  
Oral argument in AZ Supreme Ct. 02/20/2025

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## NEW OPINIONS SINCE THE LAST CONFERENCE DUI OPINION



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*Franz v. State*, 576 P.3d 716, 719 (Ariz. Ct. App. 2025), as amended (Sept. 24, 2025)

## WRONG WAY DUI

- ⦿ ARS § 28-1383(A)(5), [felony DUI- wrong way on a highway] is a strict liability offense.
- ⦿ State is not required to prove defendant knew or should have known was driving on a highway/public road in the wrong direction.
- ⦿ If defendant is impaired & driving the wrong way, defendant is guilty regardless of their awareness of impairment or the fact they are traveling the wrong way on the roadway.

*Franz & Schlemmer v. State*, 576 P.3d 716, 719 (Ariz. Ct. App. 2025), as amended (Sept. 24, 2025).

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## REMINDERS

- ⦿ Misdemeanor DUI offenses - whether driving or actual physical control - are strict liability
- ⦿ Any mens rea - including intent to drive, knowledge of impairment, etc. is irrelevant.

*State v. Parker*, 136 Ariz. 474 (App. 1983); *State v. Zaragoza*, 221 Ariz. 49 (2009); *State v. Williams*, 144 Ariz. 487 (1985); *State v. Thompson*, 138 Ariz. 341, 674 P.2d 895 (App. 1984), and *State v. Superior Court (Cunningham, Real Party in Interest)*, 184 Ariz. 409 (App. 1995).

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## APC IS STRICT LIABILITY

“We believe our supreme court . . . rejected a test which turns on the subjective intent of the driver and chose a determination based on the actual circumstances present at the time his vehicle is discovered by the authorities.”

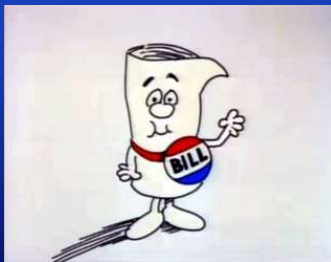
*State v. Superior Court in and for the County of Greenlee* (*Goseyun*, Real Party in Interest), 153 Ariz. 119, 122 (1987).

See also, *State v. Zaragoza*, 221 Ariz. 49, 209 P.3d 629 (2009); *State v. Vermuele*, 160 Ariz. 295, 772 P.2d 1148 (App. 1989) (citing, *State v. Zavala*, 136 Ariz. 356, 666 P.2d 456 (1983) and *State v. Webb*, 78 Ariz. 8, 274 P.2d 338 (1954)).


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# Legislative Update



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# 2025 DUI; alternative treatment

## HB 2728

- Permits the court to order a person convicted of DUI to participate in a religious program, at the person's option, that is approved by the court.
- Participation must be voluntary.
- The purpose of the religious program may not include an effort to coerce the defendant to adopt or change any religious affiliation or beliefs.
- Not an alternative to treatment, etc. for reduction of jail time.

**\*\*Effective - 90 days after the close of the legislative session**  
**Amends ARS § 28-1381**

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## 28-1381

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

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

\* \* \*

8. AT THE PERSON'S OPTION, MAY BE ORDERED BY THE COURT TO PARTICIPATE IN A RELIGIOUS PROGRAM THAT IS APPROVED BY THE COURT. THE PERSON'S PARTICIPATION IN A RELIGIOUS PROGRAM MUST BE VOLUNTARY, AND THE PURPOSE OF THE RELIGIOUS PROGRAM MAY NOT INCLUDE ANY EFFORT TO COERCE THE PERSON TO ADOPT OR CHANGE ANY RELIGIOUS AFFILIATION OR BELIEFS.

J. Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but one day of the sentence if the person completes a court ordered alcohol or other drug screening, education, EVIDENCE-BASED PSYCHOTHERAPY or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education, EVIDENCE-BASED PSYCHOTHERAPY 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.

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## REMINDER: STATUTORY INTERPRETATION CASE LAW

- ◉ When interpreting enactments, courts are not to supply meaning that is not found in the specific provision. *Kiley v. Jennings, Strouss and Salmon*, 187 Ariz. 136, 927 P.2d 796 (App. 1996).
- ◉ Absent constitutional infirmities, courts "are required to apply statutes as written." *City of Flagstaff v. Mangum*, 164 Ariz. 395, 401, 793 P.2d 548, 554 (1991).

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## REMINDER: STATUTORY INTERPRETATION CASE LAW

- ◉ The judiciary should not add to a provision that which the enacting body deemed unnecessary. *Werner v. Prins*, 168 Ariz. 271 (App. 1990). See, *Board of Regents v. Public Safety Retirement Fund Manager Administrator*, 160 Ariz. 150 (App. 1989).
- ◉ Where statutes include a phrase in one section and exclude it in others, courts will not read it into the excluded sections. *Redhair v. Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.*, 218 Ariz. 293 (App. 2008); *Samaritan Health Services v. AHCCS*, 178 Ariz. 534 (App. 1994).

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## DUI; alternative treatment

### HB 2728

- Adds court-ordered evidence-based psychotherapy as an alternative to alcohol or other drug screening, education, & treatment in the 28-1381(A)(1) sentencing provisions.
  - For the ignition interlock & reduction in jail time provisions.
- Defines evidence-based psychotherapy as:
  - “psychotherapy services that are offered by a psychologist who is licensed and who integrates the best available scientific research with clinical expertise based on the context of the patient's characteristics, culture and preferences.”

**\*\*Effective - 90 days after the close of the legislative session  
Amends ARS § 28-1381**

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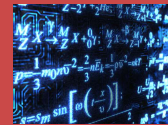
## Victims' Rights Assessment

**Effective September 26, 2025**


SB1103: penalty assessment; victims' rights enforcement

**Increases the victims' rights enforcement penalty assessment from \$2 to \$4** on every fine, penalty, and forfeiture imposed and collected by the courts for criminal offenses, civil traffic violations, motor vehicle statute violations, local ordinance violations related to vehicle operation, and violations of game and fish statutes. The assessments collected are deposited into the Victims' Rights Enforcement Fund.

Section amended: § 12-116.09



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## Arrest Warrants


Effective September 26, 2025  
**CH227 SB1232: arrest warrant; issuance; affidavit**

If a **magistrate** is satisfied by an affidavit sworn to or affirmed before the magistrate **that probable cause** exists that **a felony offense** has been committed and that a particular person committed the felony offense, **the court shall issue a warrant** commanding any peace officer to arrest the person named in the affidavit. When the arrest occurs, the person shall be taken to the nearest or most accessible magistrate in the county in which the arrest occurs, or if the offense for which the person is being arrested for was committed in another county, before either the nearest or most accessible magistrate in the county in which the arrest occurs or in the county where the alleged offense was committed.

**NOTE:** ARS 1-215.18. "**Magistrate**" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, **justices of the peace and judges of a municipal court.**



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## Narcotic Drugs; Definition [Nitazenes]

### SB 1622

- Adds the following substances to the definition of "narcotic drugs" under A.R.S. § 13-3401 :
 

a) butonitazene;	b) etodesnitazene;
c) etonitazepyne;	d) flunitazene;
e) isotonitazene;	f) metodesnitazene;
g) metonitazene;	h) protonitazene.
- Will fit under 28-1381(A)(3).

**\*\*Effective - 90 days after the legislative session ends**  
**Amends ARS § 13-3401; 13-3408**

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## NITAZENES

- ◎ **DPS Crime Lab tests for:**
  - Isotonitazene
  - Exploring developing additional methods
- ◎ **Phoenix Crime Lab tests for:**
  - Isotonitazene
  - Metonitazene
  - Protonitazene
- ◎ **NMS Lab tests for:**
  - Isotonitazene
  - Etonitazepyne
  - Metonitazene
  - Protonitazene

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## MAY SEE CASES WITH ONLY 28-1381(A)(1)



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## NITAZENES



- Nitazenes are specific subclass of synthetic opioids
  - Street names: "show and tell", Toni, ISO, atco, & hearse
- Developed 60 years ago as an alternate to morphine but abandoned due to high potential for overdose
- Often used as a cutting agent
  - If so, may have multiple drugs reported
  - But may see it alone
- More potent than morphine & fentanyl
- On the rise throughout the U.S.



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## ISOTONITAZENE (ISO)

- Synthetic opioid
- 20 - 200 times stronger than Fentanyl
- Like Fentanyl - being mixed with other drugs
- Narcan may not work - or need several doses
- First seen in Florida
- Many labs test for it



Isotonitazene



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## OPIOID/NARCOTICS EFFECTS

### CLINICAL INDICATORS

- ◉ No HGN
  - ◉ No VGN
    - This is what is expected
  - ◉ Constricted pupils
  - ◉ Flaccid muscle tone
- ◉ Decreased pulse
  - ◉ Decreased BP
  - ◉ Decreased temp

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## OPIOID/NARCOTICS EFFECTS

### GENERAL INDICATORS (COMMON IMPAIRING EFFECTS)

- ◉ Blurred vision
- ◉ Droopy eyelids
- ◉ Drowsiness
- ◉ Slowed reflexes
- ◉ Confusion
- ◉ Inability to concentrate
- ◉ Lethargy
- ◉ “On the nod”
- ◉ Slow speech
- ◉ Skin cool to touch
- ◉ Slow movements
- ◉ Slow breathing
- ◉ Weakness
- ◉ Itchy

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## FOURTH AMENDMENT



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### CURRENT **HOT** TOPIC EXITING THE CAR FOR FSTS

Common issue raised in motion practice

Review *Devlin v. Browning*, 249 Ariz 143 (2020).

- ◉ Addressed the investigation, not the stop
  - standard to detain is reasonable suspicion
- ◉ Def. was speeding “early morning hours” on road with lots of bars, bloodshot watery eyes, odor of alcohol, admitted drinking, lack of smooth pursuit on one-pass HGN.
- ◉ Def. claimed not enough to begin a DUI investigation
- ◉ Ct. of Apps. found totality of circumstances provided reasonable suspicion.

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## ADDITIONAL REMINDERS FROM DEVLIN

*Reminder!*

- ◉ Officer's considerations for the SFSTs are not limited to the defined NHTSA cues
- ◉ Neither the officer nor the court are required to rule out innocent explanations for the conduct observed
  - ◉ *See also, Kansas v. Glover, 140 S.Ct. 1183 (2020).*
- ◉ Rules of Evidence (including Rule 702) do not apply in these suppression motion hearings
- ◉ Did not reach the issue of consent

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### 1<sup>st</sup> Responder Supplemental Death Benefit

- ARS 12-116.12 (Prop 311)
- A. Beginning from and after June 30, 2025, in addition to any other penalty, fine, fee, surcharge or assessment authorized by law, a person shall pay a **penalty** fee of \$20 on every conviction for a criminal offense.
- D. The court **may not waive or mitigate** the penalty fee – even if no other financial sanction is imposed.



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## TRIVIA!

- ◉ Which U.S. state was the first to require license plates on automobiles?
  
- ◉ A) California
- ◉ B) New York
- ◉ C) Ohio
- ◉ D) Massachusetts

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*STATE V. SIDOR, 258 ARIZ. 376 (APP. 2024).*

- ⦿ DPS officer sees suspicious vehicle/driver; follows, stops for traveling 1.19 seconds behind a semi in a 75 mph zone.
- ⦿ Uses DEASIL (US DEA database of pictures of license plates captured in travel) to obtain travel history data for the car.
- ⦿ To access DEASIL he certified he had reasonable suspicion that the car had been involved in “narcotics trafficking or bulk cash smuggling”.
- ⦿ Data showed car had come through Kingman once a month for 3 months to justify detaining him until a drug-detecting DPS K-9. Dog alerted

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*STATE V. SIDOR, 258 ARIZ. 376 (APP. 2024).*

- ⦿ Challenge to the length of the stop -
- ⦿ 11 min. to issue the warning was reasonable
  - inquiries unrelated to stop, including: was there “anything illegal” in car such as drugs, large amounts of money, or weapons, did not unreasonably prolong it
- ⦿ **Officer could only detain for the K9 if he had reasonable suspicion of criminal activity**
- ⦿ DEASIL data showing distinctive pattern in car’s travels & fact that Sidor was driving a borrowed car, with Minnesota plates, whose owner he did not know created reasonable suspicion for continued detention (drug activity). Use of DEASIL photo did not violate privacy right.
- ⦿ Driving w/hands 10 to 2, head straight a head & nervousness did not (didn’t look nervous on body cam)

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# THANK YOU!



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