

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1069

AN ACT

AMENDING SECTIONS 8-343, 28-1383, AND 28-1401, ARIZONA REVISED STATUTES;
RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-343, Arizona Revised Statutes, is amended to
3 read:

4 8-343. Disposition of offenses involving driving or in actual
5 physical control of a motor vehicle while under the
6 influence of intoxicating liquor or drugs

7 A. A juvenile who is adjudicated delinquent for a violation of section
8 28-1381 shall be detained for a period of not less than ten consecutive days
9 in a juvenile detention center as a condition of probation, except that the
10 judge may suspend all ten days of the sentence if the juvenile completes
11 alcohol or other drug screening pursuant to subsection L of this section.

12 B. A juvenile who within a period of eighty-four months is adjudicated
13 delinquent for a violation of section 28-1381 and who has previously been
14 adjudicated for a violation of section 28-1381, 28-1382 or 28-1383 or an act
15 in another state, a court of the United States or a tribal court that if
16 committed in this state would be a violation of section 28-1381, 28-1382 or
17 28-1383 shall be detained for a period of not less than ninety days in a
18 juvenile detention center as a condition of probation, except that the judge
19 may suspend all but thirty consecutive days of the sentence if the juvenile
20 completes alcohol or other drug screening pursuant to subsection L of this
21 section.

22 C. A juvenile who is adjudicated delinquent for a violation of section
23 28-1382, subsection A, paragraph 1 shall be detained for a period of not less
24 than thirty consecutive days in a juvenile detention center as a condition of
25 probation, except that the judge may suspend all but ten consecutive days of
26 the sentence if the juvenile completes alcohol or other drug screening
27 pursuant to subsection L of this section. A juvenile who is adjudicated
28 delinquent for a violation of section 28-1382, subsection A, paragraph 2
29 shall be detained for a period of not less than forty-five consecutive days
30 in a juvenile detention center as a condition of probation, except that the
31 judge may suspend all but fifteen consecutive days of the sentence if the
32 juvenile completes alcohol or other drug screening pursuant to subsection L
33 of this section.

34 D. If within a period of eighty-four months a juvenile is adjudicated
35 delinquent for a violation of section 28-1382 and has previously been
36 adjudicated for a violation of section 28-1381, 28-1382 or 28-1383 or an act
37 in another state, a court of the United States or a tribal court that if
38 committed in this state would be a violation of section 28-1381, 28-1382 or
39 28-1383, the juvenile:

40 1. Shall be detained for a period of not less than one hundred twenty
41 days in a juvenile detention center as a condition of probation if the
42 juvenile is adjudicated delinquent for a violation of section 28-1382,
43 subsection A, paragraph 1, except that the judge may suspend all but sixty
44 consecutive days of the sentence if the juvenile completes alcohol or other
45 drug screening pursuant to subsection L of this section.

1 2. Shall be detained for a period of not less than one hundred eighty
2 days in a juvenile detention center as a condition of probation if the
3 juvenile is adjudicated delinquent for a violation of section 28-1382,
4 subsection A, paragraph 2, except that the judge may suspend all but ninety
5 consecutive days of the sentence if the juvenile completes alcohol or other
6 drug screening pursuant to subsection L of this section.

7 E. A juvenile who is adjudicated delinquent for a violation of section
8 28-1383 shall be detained for a period of not less than four months in a
9 juvenile detention center or the department of juvenile corrections as a
10 condition of probation if the juvenile is adjudicated delinquent under ~~either~~
11 **ANY** of the following:

12 1. Section 28-1383, subsection A, paragraph 1 **OR** 4.

13 2. Section 28-1383, subsection A, paragraph 2 and within an
14 eighty-four month period has been adjudicated delinquent for two prior
15 violations of section 28-1381, 28-1382 or 28-1383, or any combination of
16 those sections, or acts in another jurisdiction that if committed in this
17 state would be a violation of section 28-1381, 28-1382 or 28-1383.

18 F. A juvenile who is adjudicated delinquent under section 28-1383,
19 subsection A, paragraph 2 and who within an eighty-four month period has been
20 adjudicated delinquent for three or more prior violations of section 28-1381,
21 28-1382 or 28-1383, or any combination of those sections, or acts in another
22 jurisdiction that if committed in this state would be a violation of section
23 28-1381, 28-1382 or 28-1383 shall be detained for a period of not less than
24 eight months in a juvenile detention center or the department of juvenile
25 corrections as a condition of probation.

26 G. A juvenile who is adjudicated delinquent under section 28-1383,
27 subsection A, paragraph 3, subdivision (a) shall serve at least the minimum
28 term of detention required pursuant to subsection A or B of this section.

29 H. A juvenile who is adjudicated delinquent under section 28-1383,
30 subsection A, paragraph 3, subdivision (b) shall serve at least the minimum
31 term of detention required pursuant to subsection C or D of this section.

32 I. Notwithstanding subsection E or F of this section, at the time of
33 sentencing, the judge may suspend all but two months of the sentence if the
34 juvenile completes alcohol or other drug screening pursuant to subsection L
35 of this section.

36 J. If a juvenile is adjudicated delinquent for a violation of section
37 28-1381, 28-1382 or 28-1383, the court shall order the juvenile to pay at
38 least two hundred fifty dollars but not more than five hundred dollars plus
39 any applicable surcharges and assessments to the public agency processing the
40 violation or the court may order the juvenile to perform at least eighty
41 hours of community restitution under the supervision of the court.

42 K. The dates of the commission of the offense shall be the determining
43 factor in applying the eighty-four month provision of subsection B, D, E or F
44 of this section, irrespective of the sequence in which the offenses were
45 committed. A second violation for which a conviction occurs as provided in

1 this section shall not include a conviction for an offense arising out of the
2 same series of acts.

3 L. In addition to any other penalties prescribed by law, if a juvenile
4 is adjudicated delinquent for a violation of section 28-1381, 28-1382 or
5 28-1383, the court shall order the juvenile to complete alcohol or other drug
6 screening that is provided by a facility approved by the department of health
7 services or a probation department. If the court determines that the
8 juvenile requires further alcohol or other drug education or treatment, the
9 juvenile may be required pursuant to court order to obtain education or
10 treatment under the court's supervision from an approved facility. The court
11 may review an education or treatment determination at the request of the
12 state or the defendant or on the court's initiative. The juvenile shall pay
13 the costs of the screening, education or treatment unless the court waives
14 part or all of the costs. The court may order the parent or guardian of the
15 juvenile to pay part or all of the costs of the screening, education or
16 treatment.

17 M. The court shall order a juvenile or the parents of a juvenile who
18 is sentenced to a term of detention to reimburse the county that is
19 responsible for the costs of the juvenile's detention for those detention
20 costs. The court may determine the amount of detention costs to be paid
21 based on the following factors:

22 1. The per diem per juvenile cost of detention incurred by the county
23 that detains the juvenile.

24 2. The ability of the juvenile or the parents of the juvenile to pay
25 part or all of the detention costs.

26 Sec. 2. Section 28-1383, Arizona Revised Statutes, is amended to read:

27 28-1383. Aggravated driving or actual physical control while
28 under the influence; violation; classification;
29 definition

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

33 1. Commits a violation of section 28-1381, section 28-1382 or this
34 section while the person's driver license or privilege to drive is suspended,
35 canceled, revoked or refused or while a restriction is placed on the person's
36 driver license or privilege to drive as a result of violating section 28-1381
37 or 28-1382 or under section 28-1385.

38 2. Within a period of eighty-four months commits a third or subsequent
39 violation of section 28-1381, section 28-1382 or this section or is convicted
40 of a violation of section 28-1381, section 28-1382 or this section and has
41 previously been convicted of any combination of convictions of section
42 28-1381, section 28-1382 or this section or acts in another jurisdiction that
43 if committed in this state would be a violation of section 28-1381, section
44 28-1382 or this section.

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

3 (a) Section 28-1381.

4 (b) Section 28-1382.

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

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

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

13 B. The dates of the commission of the offenses are the determining
14 factor in applying the eighty-four month provision provided in subsection A,
15 paragraph 2 of this section regardless of the sequence in which the offenses
16 were committed. For the purposes of this section, a third or subsequent
17 violation for which a conviction occurs does not include a conviction for an
18 offense arising out of the same series of acts. The time that a probationer
19 is found to be on absconder status or the time that a person is incarcerated
20 in any state, federal, county or city jail or correctional facility is
21 excluded when determining the eighty-four month period provided in subsection
22 A, paragraph 2 and subsection E of this section.

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

26 D. A person is not eligible for probation, pardon, commutation or
27 suspension of sentence or release on any other basis until the person has
28 served not less than four months in prison if the person is convicted under
29 ~~either~~ ANY of the following:

30 1. Subsection A, paragraph 1 OR 4 of this section.

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

36 E. A person who is convicted under subsection A, paragraph 2 of this
37 section and who within an eighty-four month period has been convicted of
38 three or more prior violations of section 28-1381, section 28-1382 or this
39 section, or any combination of those sections, or acts in another
40 jurisdiction that if committed in this state would be a violation of section
41 28-1381, section 28-1382 or this section is not eligible for probation,
42 pardon, commutation or suspension of sentence or release on any other basis
43 until the person has served not less than eight months in prison.

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

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

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

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

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

19 I. The time that a person spends in custody pursuant to subsection H
20 of this section shall not be counted towards the sentence imposed if the
21 person's probation is revoked and the person is sentenced to prison after
22 revocation of probation.

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

24 1. Shall report the conviction to the department. On receipt of the
25 report, the department shall revoke the driving privilege of the person. The
26 department shall not issue the person a new driver license within three years
27 of the date of the conviction and, ~~for a conviction of a violation of~~
28 ~~subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b) of this~~
29 ~~section,~~ shall require the person to equip any motor vehicle the person
30 operates with a certified ignition interlock device pursuant to section
31 28-3319. In addition, the court may order the person to equip any motor
32 vehicle the person operates with a certified ignition interlock device for
33 more than twelve months beginning on the date of reinstatement of the
34 person's driving privilege following a suspension or revocation or on the
35 date of the department's receipt of the report of conviction, whichever
36 occurs later. The person who operates a motor vehicle with a certified
37 ignition interlock device under this paragraph shall comply with article 5 of
38 this chapter.

39 2. In addition to any other penalty prescribed by law, shall order the
40 person to pay an additional assessment of two hundred fifty dollars. If the
41 conviction occurred in the superior court or a justice court, the court shall
42 transmit the monies received pursuant to this paragraph to the county
43 treasurer. If the conviction occurred in a municipal court, the court shall
44 transmit the monies received pursuant to this paragraph to the city
45 treasurer. The city or county treasurer shall transmit the monies received

1 to the state treasurer. The state treasurer shall deposit the monies
2 received in the driving under the influence abatement fund established by
3 section 28-1304. Any fine imposed for a violation of this section and any
4 assessments, restitution and incarceration costs shall be paid before the
5 assessment prescribed in this paragraph.

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

8 4. In addition to any other penalty prescribed by law, shall order the
9 person to pay an additional assessment of one thousand five hundred dollars
10 to be deposited by the state treasurer in the prison construction and
11 operations fund established by section 41-1651. This assessment is not
12 subject to any surcharge. If the conviction occurred in the superior court
13 or a justice court, the court shall transmit the assessed monies to the
14 county treasurer. If the conviction occurred in a municipal court, the court
15 shall transmit the assessed monies to the city treasurer. The city or county
16 treasurer shall transmit the monies received to the state treasurer.

17 5. In addition to any other penalty prescribed by law, shall order the
18 person to pay an additional assessment of one thousand five hundred dollars
19 to be deposited by the state treasurer in the public safety equipment fund
20 established by section 41-1723. This assessment is not subject to any
21 surcharge. If the conviction occurred in the superior court or a justice
22 court, the court shall transmit the assessed monies to the county
23 treasurer. If the conviction occurred in a municipal court, the court shall
24 transmit the assessed monies to the city treasurer. The city or county
25 treasurer shall transmit the monies received to the state treasurer.

26 K. After completing the period of suspension required by section
27 28-1385, a person whose driving privilege is revoked for a violation of
28 subsection A, paragraph 3 of this section may apply to the department for a
29 special ignition interlock restricted driver license pursuant to section
30 28-1401.

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

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

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

37 M. For the purposes of this section, "suspension, cancellation,
38 revocation or refusal" means any suspension, cancellation, revocation or
39 refusal.

40 Sec. 3. Section 28-1401, Arizona Revised Statutes, is amended to read:
41 28-1401. Special ignition interlock restricted driver licenses;
42 application fee

43 A. A person whose class D or class G license has been suspended or
44 revoked for a first ~~offense of~~ REFUSAL PURSUANT TO section 28-1321 or A FIRST
45 VIOLATION OF section 28-1383, subsection A, paragraph 3, ~~may~~ apply to the

1 department for a special ignition interlock restricted driver license that
2 allows a person to operate a motor vehicle during the period of suspension or
3 revocation subject to the restrictions prescribed in section 28-1402 and the
4 certified ignition interlock device requirements prescribed in article 5 of
5 this chapter if the person's privilege to operate a motor vehicle has been
6 suspended or revoked due to an alcohol related offense pursuant to either of
7 the following:

8 1. Section 28-1321, if the person meets the criteria of section
9 28-1321, subsection P.

10 2. Section 28-1383, if the person meets the criteria of section
11 28-1383, subsection K and the person presents evidence that is satisfactory
12 to the director that shows that the person has completed screening and
13 treatment.

14 B. An applicant for a special ignition interlock restricted driver
15 license shall pay an application fee in an amount to be determined by the
16 director.

17 C. The department shall issue a special ignition interlock restricted
18 driver license during the period of a court ordered restriction pursuant to
19 sections 28-3320 and 28-3322 subject to the restrictions prescribed in
20 section 28-1402 and the certified ignition interlock requirements prescribed
21 in article 5 of this chapter.

22 D. If the department issues a special ignition interlock restricted
23 driver license, the department shall not delete a suspension or revocation
24 from its records.

25 E. The granting of a special ignition interlock restricted driver
26 license does not reduce or eliminate the required use of an ignition
27 interlock device pursuant to section 28-3319.