

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 256
SENATE BILL 1400

AN ACT

AMENDING SECTIONS 28-1383, 28-1443 AND 41-2405, ARIZONA REVISED STATUTES;
RELATING TO AGGRAVATED 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 28-1383, Arizona Revised Statutes, is amended to
3 read:

4 28-1383. **Aggravated driving or actual physical control while**
5 **under the influence; county jail program; annual**
6 **report; violation; classification; definition**

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

10 1. Commits a violation of section 28-1381, section 28-1382 or this
11 section while the person's driver license or privilege to drive is
12 suspended, canceled, revoked or refused or while a restriction is placed
13 on the person's driver license or privilege to drive as a result of
14 violating section 28-1381 or 28-1382 or under section 28-1385.

15 2. Within a period of eighty-four months commits a third or
16 subsequent violation of section 28-1381, section 28-1382 or this section
17 or is convicted of a violation of section 28-1381, section 28-1382 or this
18 section and has previously been convicted of any combination of
19 convictions of section 28-1381, section 28-1382 or this section or acts in
20 another jurisdiction that if committed in this state would be a violation
21 of section 28-1381, section 28-1382 or this section.

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

24 (a) Section 28-1381.
25 (b) Section 28-1382.

26 4. While the person is ordered by the court or required pursuant to
27 section 28-3319 by the department to equip any motor vehicle the person
28 operates with a certified ignition interlock device, commits a violation
29 of section 28-1381, section 28-1382 or this section.

30 B. The dates of the commission of the offenses are the determining
31 factor in applying the eighty-four month provision provided in subsection
32 A, paragraph 2 of this section regardless of the sequence in which the
33 offenses were committed. For the purposes of this section, a third or
34 subsequent violation for which a conviction occurs does not include a
35 conviction for an offense arising out of the same series of acts. The
36 time that a probationer is found to be on absconder status or the time
37 that a person is incarcerated in any state, federal, county or city jail
38 or correctional facility is excluded when determining the eighty-four
39 month period provided in subsection A, paragraph 2 and subsection E of
40 this section.

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

1 D. A person is not eligible for probation, pardon, commutation or
2 suspension of sentence or release on any other basis until the person has
3 served not less than four months in prison if the person is convicted
4 under either of the following:

5 1. Subsection A, paragraph 1 of this section.

6 2. Subsection A, paragraph 2 of this section and within an
7 eighty-four month period has been convicted of two prior violations of
8 section 28-1381, section 28-1382 or this section, or any combination of
9 those sections, or acts in another jurisdiction that if committed in this
10 state would be a violation of section 28-1381, section 28-1382 or this
11 section.

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

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

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

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

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

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

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

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

44 1. Shall report the conviction to the department. On receipt of
45 the report, the department shall revoke the driving privilege of the

1 person. The department shall not issue the person a new driver license
2 within one year of the date of the conviction and, if the violation
3 involved intoxicating liquor, shall require the person to equip any motor
4 vehicle the person operates with a certified ignition interlock device
5 pursuant to section 28-3319. In addition, the court may order the person
6 to equip any motor vehicle the person operates with a certified ignition
7 interlock device for more than twenty-four months beginning on the date of
8 reinstatement of the person's driving privilege following a suspension or
9 revocation or on the date of the department's receipt of the report of
10 conviction, whichever occurs later. The person who operates a motor
11 vehicle with a certified ignition interlock device under this paragraph
12 shall comply with article 5 of this chapter.

13 2. In addition to any other penalty prescribed by law, shall order
14 the person to pay an additional assessment of two hundred fifty
15 dollars. If the conviction occurred in the superior court or a justice
16 court, the court shall transmit the monies received pursuant to this
17 paragraph to the county treasurer. If the conviction occurred in a
18 municipal court, the court shall transmit the monies received pursuant to
19 this paragraph to the city treasurer. The city or county treasurer shall
20 transmit the monies received to the state treasurer. The state treasurer
21 shall deposit the monies received in the driving under the influence
22 abatement fund established by section 28-1304. Any fine imposed for a
23 violation of this section and any assessments, restitution and
24 incarceration costs shall be paid before the assessment prescribed in this
25 paragraph.

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

28 4. In addition to any other penalty prescribed by law, shall order
29 the person to pay an additional assessment of one thousand five hundred
30 dollars to be deposited by the state treasurer in the prison construction
31 and operations fund established by section 41-1651. This assessment is
32 not subject to any surcharge. If the conviction occurred in the superior
33 court or a justice court, the court shall transmit the assessed monies to
34 the county treasurer. If the conviction occurred in a municipal court,
35 the court shall transmit the assessed monies to the city treasurer. The
36 city or county treasurer shall transmit the monies received to the state
37 treasurer.

38 5. In addition to any other penalty prescribed by law, shall order
39 the person to pay an additional assessment of one thousand five hundred
40 dollars to be deposited by the state treasurer in the public safety
41 equipment fund established by section 41-1723. This assessment is not
42 subject to any surcharge. If the conviction occurred in the superior
43 court or a justice court, the court shall transmit the assessed monies to
44 the county treasurer. If the conviction occurred in a municipal court, the
45 court shall transmit the assessed monies to the city treasurer. The city

1 or county treasurer shall transmit the monies received to the state
2 treasurer.

3 K. After completing the period of suspension required by section
4 28-1385, a person whose driving privilege is revoked for a violation of
5 subsection A, paragraph 3 of this section may apply to the department for
6 a special ignition interlock restricted driver license pursuant to section
7 28-1401.

8 L. The court may order a person who is convicted of a violation of
9 this section that does not involve intoxicating liquor to equip any motor
10 vehicle the person operates with a certified ignition interlock device
11 pursuant to section 28-3319. On RECEIPT OF THE report of ~~the~~ conviction
12 and certified ignition interlock device requirement, the department shall
13 require the person to equip any motor vehicle the person operates with a
14 certified ignition interlock device pursuant to section 28-3319. In
15 addition, the court may order the person to equip any motor vehicle the
16 person operates with a certified ignition interlock device for more than
17 twelve months beginning on the date of reinstatement of the person's
18 driving privilege following a suspension or revocation or on the date of
19 the department's receipt of the report of conviction, whichever occurs
20 later. The person who operates a motor vehicle with a certified ignition
21 interlock device under this subsection shall comply with article 5 of this
22 chapter.

23 M. THE SHERIFF OF A COUNTY WITH A POPULATION OF LESS THAN FIVE
24 HUNDRED THOUSAND PERSONS MAY ESTABLISH AN AGGRAVATED DRIVING UNDER THE
25 INFLUENCE JAIL PROGRAM. IF THE SHERIFF ESTABLISHES AN AGGRAVATED DRIVING
26 UNDER THE INFLUENCE JAIL PROGRAM, THE PROGRAM MAY NOT BE IMPLEMENTED UNTIL
27 THE STATE DEPARTMENT OF CORRECTIONS ENTERS INTO AN AGREEMENT WITH THE
28 COUNTY BOARD OF SUPERVISORS PURSUANT TO SECTION 31-234 TO FACILITATE THE
29 PROGRAM. NOTWITHSTANDING SUBSECTIONS D AND E OF THIS SECTION, IF THE
30 VIOLATION OCCURS IN A COUNTY THAT HAS ESTABLISHED AND IMPLEMENTED AN AGGRAVATED
31 DRIVING UNDER THE INFLUENCE JAIL PROGRAM OR IN A COUNTY THAT IS
32 CONTIGUOUS TO A COUNTY THAT HAS ESTABLISHED AND IMPLEMENTED AN AGGRAVATED
33 DRIVING UNDER THE INFLUENCE JAIL PROGRAM AND THE PERSON IS PLACED ON
34 PROBATION, THE MANDATORY TERM OF INCARCERATION THAT THE PERSON WOULD
35 OTHERWISE SERVE IN PRISON MAY BE SERVED IN THE JAIL OF THE COUNTY THAT
36 ESTABLISHED AND IMPLEMENTED THE PROGRAM. A PERSON WHO IS INCARCERATED IN
37 A COUNTY JAIL PURSUANT TO THIS SUBSECTION IS NOT ELIGIBLE FOR ANY RELEASE,
38 WORK DETAIL OR MONITORING PROGRAM THAT THE PERSON WOULD NOT OTHERWISE BE
39 ELIGIBLE FOR IF INCARCERATED IN PRISON. A COUNTY SHERIFF WHO ESTABLISHES
40 AN AGGRAVATED DRIVING UNDER THE INFLUENCE JAIL PROGRAM PURSUANT TO THIS
41 SUBSECTION SHALL SUBMIT AN ANNUAL REPORT TO THE ARIZONA CRIMINAL JUSTICE
42 COMMISSION THAT CONTAINS THE DATA THAT THE ARIZONA STATISTICAL ANALYSIS
43 CENTER DETERMINES IS NECESSARY TO PREPARE A RECIDIVISM REPORT PURSUANT TO
44 SECTION 41-2405.

1 **N.** Aggravated driving or actual physical control while under
2 the influence of intoxicating liquor or drugs committed under:

3 1. Subsection A, paragraph 1, 2 or 4 of this section is a class 4
4 felony.

5 2. Subsection A, paragraph 3 of this section is a class 6 felony.

6 **O.** For the purposes of this section, "suspension, cancellation,
7 revocation or refusal" means any suspension, cancellation, revocation or
8 refusal.

9 Sec. 2. Section 28-1443, Arizona Revised Statutes, is amended to
10 read:

11 28-1443. Minimum or medium security facility

12 A. A city, town or county may establish a minimum **OR MEDIUM**
13 security facility for the confinement of persons convicted of a violation
14 of section 28-1381, **OR** 28-1382 **OR** 28-1383.

15 B. A judge may order a person sentenced pursuant to section
16 28-1381, **OR** 28-1382 **OR** 28-1383 to serve the person's sentence in a minimum
17 **OR MEDIUM** security facility if one has been established.

18 C. The state department of corrections may enter into an agreement
19 with a county, city or town pursuant to title 11, chapter 7, article 3 for
20 the incarceration in a minimum **OR MEDIUM** security facility of persons
21 sentenced pursuant to section 28-1381, **OR** 28-1382 **OR** 28-1383.

22 Sec. 3. Section 41-2405, Arizona Revised Statutes, is amended to
23 read:

24 41-2405. Arizona criminal justice commission; powers and
25 duties; staff

26 A. The Arizona criminal justice commission shall:

27 1. Monitor the progress and implementation of new and continuing
28 criminal justice legislation.

29 2. Facilitate research among criminal justice agencies and maintain
30 criminal justice system information.

31 3. Facilitate coordinated statewide efforts to improve criminal
32 justice information and data sharing.

33 4. Prepare for the governor a biennial criminal justice system
34 review report. The report shall contain:

35 (a) An analysis of all criminal justice programs created by the
36 legislature in the preceding two years.

37 (b) An analysis of the effectiveness of the criminal code, with a
38 discussion of any problems and recommendations for revisions if deemed
39 necessary.

40 (c) A study of the level of activity in the several areas of the
41 criminal justice system, with recommendations for redistribution of
42 criminal justice revenues if deemed necessary.

43 (d) An overall review of the entire criminal justice system,
44 including crime prevention, criminal apprehension, prosecution, court

1 administration and incarceration at the state and local levels as well as
2 funding needs for the system.

3 (e) Recommendations for constitutional, statutory and
4 administrative revisions that are necessary to develop and maintain a
5 cohesive and effective criminal justice system.

6 5. Provide supplemental reports on criminal justice issues of
7 special timeliness.

8 6. In coordination with other governmental agencies, gather
9 information on programs that are designed to effectuate community crime
10 prevention and education using citizen participation and on programs for
11 alcohol and drug abuse prevention, education and treatment and disseminate
12 that information to the public, political subdivisions, law enforcement
13 agencies and the legislature.

14 7. Make recommendations to the legislature and the governor
15 regarding the purposes and formula for allocation of fund monies as
16 provided in section 41-2401, subsection D and section 41-2402 through the
17 biennial agency budget request.

18 8. Adopt rules for the purpose of allocating fund monies as
19 provided in sections 41-2401, 41-2402 and 41-2407 that are consistent with
20 the purposes set forth in those sections and that promote effective and
21 efficient use of the monies.

22 9. Make reports to the governor and the legislature as they
23 require.

24 10. Oversee the research, analyses, studies, reports and
25 publication of crime and criminal justice statistics prepared by the
26 Arizona statistical analysis center, which is an operating section of the
27 Arizona criminal justice commission.

28 11. Prepare an annual report on law enforcement activities in this
29 state that are funded by the drug and gang enforcement fund or the
30 criminal justice enhancement fund and that relate to illicit drugs and
31 drug related gang activity. The report shall be submitted by October 31
32 of each year to the governor, the president of the senate and the speaker
33 of the house of representatives and a copy shall be submitted to the
34 secretary of state. The report shall include:

35 (a) The name and a description of each law enforcement program
36 dealing with illegal drug activity or street gang activity, or both.

37 (b) The objective and goals of each program.

38 (c) The source and amount of monies received by each program.

39 (d) The name of the agency or entity that administers each program.

40 (e) The effectiveness of each program.

41 12. Compile and disseminate information on best practices for cold
42 case investigations, including effective victim communication procedures.
43 For the purposes of this paragraph, "cold case" means a homicide or a
44 felony sexual offense that remains unsolved for one year or more after

1 being reported to a law enforcement agency and that has no viable and
2 unexplored investigatory leads.

3 13. BEGINNING JANUARY 1, 2019, SUBMIT AN ANNUAL RECIDIVISM REPORT
4 TO THE LEGISLATURE THAT COMPARES THE RECIDIVISM RATE FOR A PERSON WHO
5 SERVES A TERM OF MANDATORY INCARCERATION IN A COUNTY JAIL PURSUANT TO
6 SECTION 28-1383 AND A PERSON WHO SERVES THAT TERM OF MANDATORY
7 INCARCERATION IN PRISON.

8 B. The Arizona criminal justice commission, as necessary to perform
9 its functions, may:

10 1. Request any state or local criminal justice agency to submit any
11 necessary information.

12 2. Form subcommittees, make studies, conduct inquiries and hold
13 hearings.

14 3. Subject to chapter 4, article 4 of this title, employ
15 consultants for special projects and such staff as deemed necessary or
16 advisable to carry out this section.

17 4. Delegate its duties to carry out this section, including:

18 (a) The authority to enter into contracts and agreements on behalf
19 of the commission.

20 (b) Subject to chapter 4, article 4 and, as applicable, articles 5
21 and 6 of this title, the authority to appoint, hire, terminate and
22 discipline all personnel of the commission, including consultants.

23 5. Establish joint research and information facilities with
24 governmental and private agencies.

25 6. Accept and expend public and private grants of monies, gifts and
26 contributions and expend, distribute or allocate monies appropriated to
27 the commission for the purpose of enhancing efforts to investigate or
28 prosecute and adjudicate any crime and to implement this chapter.

APPROVED BY THE GOVERNOR APRIL 17, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2018.