

Senate Engrossed House Bill

vehicle operation; licenses; points

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 383

HOUSE BILL 2673

AN ACT

AMENDING SECTIONS 13-105, 28-1387 AND 28-1442, ARIZONA REVISED STATUTES;
AMENDING TITLE 28, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 28-1526; AMENDING SECTION 28-3004, ARIZONA REVISED
STATUTES; RELATING TO THE OPERATION OF VEHICLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-105, Arizona Revised Statutes, is amended to
3 read:
4 13-105. Definitions
5 In this title, unless the context otherwise requires:
6 1. "Absconder" means a probationer who has moved from the
7 probationer's primary residence without permission of the probation
8 officer, who cannot be located within ninety days of the previous contact
9 and against whom a petition to revoke has been filed in the superior court
10 alleging that the probationer's whereabouts are unknown. A probationer is
11 no longer deemed an absconder when the probationer is voluntarily or
12 involuntarily returned to probation service.
13 2. "Act" means a bodily movement.
14 3. "Benefit" means anything of value or advantage, present or
15 prospective.
16 4. "Calendar year" means three hundred sixty-five days' actual time
17 served without release, suspension or commutation of sentence, probation,
18 pardon or parole, work furlough or release from confinement on any other
19 basis.
20 5. "Community supervision" means that portion of a felony sentence
21 that is imposed by the court pursuant to section 13-603, subsection I and
22 that is served in the community after completing a period of imprisonment
23 or served in prison in accordance with section 41-1604.07.
24 6. "Conduct" means an act or omission and its accompanying culpable
25 mental state.
26 7. "Crime" means a misdemeanor or a felony.
27 8. "Criminal street gang" means an ongoing formal or informal
28 association of persons in which members or associates individually or
29 collectively engage in the commission, attempted commission, facilitation
30 or solicitation of any felony act and that has at least one individual who
31 is a criminal street gang member.
32 9. "Criminal street gang member" means an individual to whom
33 at least two of the following seven criteria that indicate criminal street
34 gang membership apply:
35 (a) Self-proclamation.
36 (b) Witness testimony or official statement.
37 (c) Written or electronic correspondence.
38 (d) Paraphernalia or photographs.
39 (e) Tattoos.
40 (f) Clothing or colors.
41 (g) Any other indicia of street gang membership.
42 10. "Culpable mental state" means intentionally, knowingly,
43 recklessly or with criminal negligence as those terms are defined in this
44 paragraph:

1 (a) "Intentionally" or "with the intent to" means, with respect to
2 a result or to conduct described by a statute defining an offense, that a
3 person's objective is to cause that result or to engage in that conduct.

4 (b) "Knowingly" means, with respect to conduct or to a circumstance
5 described by a statute defining an offense, that a person is aware or
6 believes that the person's conduct is of that nature or that the
7 circumstance exists. It does not require any knowledge of the
8 unlawfulness of the act or omission.

9 (c) "Recklessly" means, with respect to a result or to a
10 circumstance described by a statute defining an offense, that a person is
11 aware of and consciously disregards a substantial and unjustifiable risk
12 that the result will occur or that the circumstance exists. The risk must
13 be of such nature and degree that disregard of such risk constitutes a
14 gross deviation from the standard of conduct that a reasonable person
15 would observe in the situation. A person who creates such a risk but who
16 is unaware of such risk solely by reason of voluntary intoxication also
17 acts recklessly with respect to such risk.

18 (d) "Criminal negligence" means, with respect to a result or to a
19 circumstance described by a statute defining an offense, that a person
20 fails to perceive a substantial and unjustifiable risk that the result
21 will occur or that the circumstance exists. The risk must be of such
22 nature and degree that the failure to perceive it constitutes a gross
23 deviation from the standard of care that a reasonable person would observe
24 in the situation.

25 11. "Dangerous drug" means dangerous drug as defined in section
26 13-3401.

27 12. "Dangerous instrument" means anything that under the
28 circumstances in which it is used, attempted to be used or threatened to
29 be used is readily capable of causing death or serious physical injury.

30 13. "Dangerous offense" means an offense involving the discharge,
31 use or threatening exhibition of a deadly weapon or dangerous instrument
32 or the intentional or knowing infliction of serious physical injury on
33 another person.

34 14. "Deadly physical force" means force that is used with the
35 purpose of causing death or serious physical injury or in the manner of
36 its use or intended use is capable of creating a substantial risk of
37 causing death or serious physical injury.

38 15. "Deadly weapon" means anything designed for lethal use,
39 including a firearm.

40 16. "Economic loss" means any loss incurred by a person as a result
41 of the commission of an offense. Economic loss includes lost interest,
42 lost earnings and other losses that would not have been incurred but for
43 the offense. Economic loss does not include losses incurred by the
44 convicted person, damages for pain and suffering, punitive damages or
45 consequential damages.

1 17. "Enterprise" includes any corporation, association, labor union
2 or other legal entity.

3 18. "Felony" means an offense for which a sentence to a term of
4 imprisonment in the custody of the state department of corrections is
5 authorized by any law of this state.

6 19. "Firearm" means any loaded or unloaded handgun, pistol,
7 revolver, rifle, shotgun or other weapon that will or is designed to or
8 may readily be converted to expel a projectile by the action of expanding
9 gases, except that it does not include a firearm in permanently inoperable
10 condition.

11 20. "Government" means the state, any political subdivision of the
12 state or any department, agency, board, commission, institution or
13 governmental instrumentality of or within the state or political
14 subdivision.

15 21. ~~"Government~~ GOVERNMENTAL function" means any activity that a
16 public servant is legally authorized to undertake on behalf of a
17 government.

18 22. "Historical prior felony conviction" means:

19 (a) Any prior felony conviction for which the offense of conviction
20 either:

21 (i) Mandated a term of imprisonment except for a violation of
22 chapter 34 of this title involving a drug below the threshold amount.

23 (ii) Involved a dangerous offense.

24 (iii) Involved the illegal control of a criminal enterprise.

25 (iv) Involved aggravated driving OR ACTUAL PHYSICAL CONTROL WHILE
26 under the influence ~~of intoxicating liquor or drugs~~. THIS ITEM APPLIES
27 ONLY IF THE OFFENSE FOR WHICH THE HISTORICAL PRIOR FELONY CONVICTION IS
28 BEING ALLEGED IS A VIOLATION OF SECTION 28-1383.

29 (v) Involved any dangerous crime against children as defined in
30 section 13-705.

31 (b) Any class 2 or 3 felony, except the offenses listed in
32 subdivision (a) of this paragraph, that was committed within the ten years
33 immediately preceding the date of the present offense. Any time spent on
34 absconder status while on probation, on escape status or incarcerated is
35 excluded in calculating if the offense was committed within the preceding
36 ten years. If a court determines a person was not on absconder status
37 while on probation or escape status, that time is not excluded. For the
38 purposes of this subdivision, "escape" means:

39 (i) A departure from custody or from a juvenile secure care
40 facility, a juvenile detention facility or an adult correctional facility
41 in which the person is held or detained, with knowledge that the departure
42 is not ~~permitted~~ ALLOWED, or the failure to return to custody or detention
43 following a temporary leave granted for a specific purpose or for a
44 limited period.

1 (ii) A failure to report as ordered to custody or detention to
2 begin serving a term of incarceration.

3 (c) Any class 4, 5 or 6 felony, except the offenses listed in
4 subdivision (a) of this paragraph, that was committed within the five
5 years immediately preceding the date of the present offense. Any time
6 spent on absconder status while on probation, on escape status or
7 incarcerated is excluded in calculating if the offense was committed
8 within the preceding five years. If a court determines a person was not
9 on absconder status while on probation or escape status, that time is not
10 excluded. For the purposes of this subdivision, "escape" has the same
11 meaning prescribed in subdivision (b) of this paragraph.

12 (d) Any felony conviction that is a third or more prior felony
13 conviction. For the purposes of this subdivision, "prior felony
14 conviction" includes any offense committed outside the jurisdiction of
15 this state that was punishable by that jurisdiction as a felony.

16 (e) Any offense committed outside the jurisdiction of this state
17 that was punishable by that jurisdiction as a felony and that was
18 committed within the five years immediately preceding the date of the
19 present offense. Any time spent on absconder status while on probation,
20 on escape status or incarcerated is excluded in calculating if the offense
21 was committed within the preceding five years. If a court determines a
22 person was not on absconder status while on probation or escape status,
23 that time is not excluded. For the purposes of this subdivision, "escape"
24 has the same meaning prescribed in subdivision (b) of this paragraph.

25 (f) Any offense committed outside the jurisdiction of this state
26 that involved the discharge, use or threatening exhibition of a deadly
27 weapon or dangerous instrument or the intentional or knowing infliction of
28 death or serious physical injury and that was punishable by that
29 jurisdiction as a felony. A person who has been convicted of a felony
30 weapons possession violation in any court outside the jurisdiction of this
31 state that would not be punishable as a felony under the laws of this
32 state is not subject to this paragraph.

33 23. "Human smuggling organization" means an ongoing formal or
34 informal association of persons in which members or associates
35 individually or collectively engage in the smuggling of human beings.

36 24. "Intoxication" means any mental or physical incapacity
37 resulting from use of drugs, toxic vapors or intoxicating liquors.

38 25. "Misdemeanor" means an offense for which a sentence to a term
39 of imprisonment other than to the custody of the state department of
40 corrections is authorized by any law of this state.

41 26. "Narcotic drug" means narcotic drugs as defined in section
42 13-3401.

43 27. "Offense" or "public offense" means conduct for which a
44 sentence to a term of imprisonment or of a fine is provided by any law of
45 the state in which it occurred or by any law, regulation or ordinance of a

1 political subdivision of that state and, if the act occurred in a state
2 other than this state, it would be so punishable under the laws,
3 regulations or ordinances of this state or of a political subdivision of
4 this state if the act had occurred in this state.

5 28. "Omission" means the failure to perform an act as to which a
6 duty of performance is imposed by law.

7 29. "Peace officer" means any person vested by law with a duty to
8 maintain public order and make arrests and includes a constable.

9 30. "Person" means a human being and, as the context requires, an
10 enterprise, a public or private corporation, an unincorporated
11 association, a partnership, a firm, a society, a government, a
12 governmental authority or an individual or entity capable of holding a
13 legal or beneficial interest in property.

14 31. "Petty offense" means an offense for which a sentence of a fine
15 only is authorized by law.

16 32. "Physical force" means force used upon or directed toward the
17 body of another person and includes confinement, but does not include
18 deadly physical force.

19 33. "Physical injury" means the impairment of physical condition.

20 34. "Possess" means knowingly to have physical possession or
21 otherwise to exercise dominion or control over property.

22 35. "Possession" means a voluntary act if the defendant knowingly
23 exercised dominion or control over property.

24 36. "Preconviction custody" means the confinement of a person in a
25 jail in this state or another state after the person is arrested for or
26 charged with a felony offense.

27 37. "Property" means anything of value, tangible or intangible.

28 38. "Public servant":

29 (a) Means any officer or employee of any branch of government,
30 whether elected, appointed or otherwise employed, including a peace
31 officer, and any person participating as an advisor or consultant or
32 otherwise in performing a governmental function.

33 (b) Does not include jurors or witnesses.

34 (c) Includes those who have been elected, appointed, employed or
35 designated to become a public servant although not yet occupying that
36 position.

37 39. "Serious physical injury" includes physical injury that creates
38 a reasonable risk of death, or that causes serious and permanent
39 disfigurement, serious impairment of health or loss or protracted
40 impairment of the function of any bodily organ or limb.

41 40. "Unlawful" means contrary to law or, where the context so
42 requires, not ~~permitted~~ ALLOWED by law.

43 41. "Vehicle" means a device in, upon or by which any person or
44 property is, may be or could have been transported or drawn upon a

1 highway, waterway or airway, excepting devices moved by human power or
2 used exclusively upon stationary rails or tracks.

3 42. "Voluntary act" means a bodily movement performed consciously
4 and as a result of effort and determination.

5 43. "Voluntary intoxication" means intoxication caused by the
6 knowing use of drugs, toxic vapors or intoxicating liquors by a person,
7 the tendency of which to cause intoxication the person knows or ought to
8 know, unless the person introduces them pursuant to medical advice or
9 under such duress as would afford a defense to an offense.

10 Sec. 2. Section 28-1387, Arizona Revised Statutes, is amended to
11 read:

12 28-1387. Prior convictions; alcohol or other drug screening,
13 education and treatment; license suspension;
14 supervised probation; civil liability; procedures

15 A. The court shall allow the allegation of a prior conviction or
16 any other pending charge of a violation of section 28-1381, 28-1382 or
17 28-1383 or an act in another jurisdiction that if committed in this state
18 would be a violation of section 28-1381, 28-1382 or 28-1383 filed twenty
19 or more days before the date the case is actually tried and may allow the
20 allegation of a prior conviction or any other pending charge of a
21 violation of section 28-1381, 28-1382 or 28-1383 or an act in another
22 jurisdiction that if committed in this state would be a violation of
23 section 28-1381, 28-1382 or 28-1383 filed at any time before the date the
24 case is actually tried if this state makes available to the defendant when
25 the allegation is filed a copy of any information obtained concerning the
26 prior conviction or other pending charge. Any conviction may be used to
27 enhance another conviction irrespective of the dates on which the offenses
28 occurred within the eighty-four month provision. For the purposes of this
29 article, an order of a juvenile court adjudicating a person delinquent is
30 equivalent to a conviction.

31 B. In addition to any other penalties prescribed by law, the judge
32 shall order a person who is convicted of a violation of section 28-1381,
33 28-1382 or 28-1383 to complete alcohol or other drug screening that is
34 provided by a facility approved by the department of health services, the
35 United States department of veterans affairs or a probation department.
36 If a judge determines that the person requires further alcohol or other
37 drug education or treatment, the person may be required pursuant to court
38 order to obtain alcohol or other drug education or treatment under the
39 court's supervision from an approved facility. The judge may review an
40 education or treatment determination at the request of the state, the
41 defendant or the probation officer or on the judge's initiative. The
42 person shall pay the costs of the screening, education or treatment
43 unless, after considering the person's ability to pay all or part of the
44 costs, the court waives all or part of the costs. If a person is referred
45 to a screening, education or treatment facility, the facility shall report

1 to the court whether the person has successfully completed the screening,
2 education or treatment program. The court may accept evidence of a
3 person's completion of alcohol or other drug screening pursuant to section
4 28-1445 as sufficient to meet the requirements of this section or section
5 28-1381, 28-1382 or 28-1383 or may order the person to complete additional
6 alcohol or other drug screening, education or treatment programs. If a
7 person has previously been ordered to complete an alcohol or other drug
8 screening, education or treatment program pursuant to this section, the
9 judge shall order the person to complete an alcohol or other drug
10 screening, education or treatment program unless the court determines that
11 alternative sanctions are more appropriate.

12 C. After a person who is sentenced pursuant to section 28-1381,
13 subsection I has served twenty-four consecutive hours in jail or after a
14 person who is sentenced pursuant to section 28-1381, subsection K or
15 section 28-1382, subsection D or E has served forty-eight consecutive
16 hours in jail and after the court receives confirmation that the person is
17 employed or is a student, the court shall provide in the sentence that the
18 defendant, if the defendant is employed or is a student and can continue
19 the defendant's employment or schooling, may continue the employment or
20 schooling for not more than twelve hours a day nor more than six days a
21 week, unless the court finds good cause to not allow the release and
22 places those findings on the record. The person shall spend the remaining
23 day, days or parts of days in jail until the sentence is served and shall
24 be allowed out of jail only long enough to complete the actual hours of
25 employment or schooling.

26 D. Unless the license of a person convicted under section 28-1381
27 or 28-1382 has been or is suspended pursuant to section 28-1321 or
28 28-1385, the department on receipt of the abstract of conviction of a
29 violation of section 28-1381 or 28-1382 shall suspend the license of the
30 affected person for not less than ninety consecutive days.

31 E. When the department receives notification that the person meets
32 the criteria provided in section 28-1385, subsection H, the department
33 shall suspend the driving privileges of the person for not less than
34 thirty consecutive days and shall restrict the person's driving privileges
35 as described in section 28-144 for not less than sixty consecutive
36 additional days.

37 F. If a person is placed on probation for violating section 28-1381
38 or 28-1382, the probation shall be supervised unless the court finds that
39 supervised probation is not necessary or the court does not have
40 supervisory probation services.

41 G. Any political subdivision processing or using the services of a
42 person ordered to perform community restitution pursuant to section
43 28-1381 or 28-1382 does not incur any civil liability to the person
44 ordered to perform community restitution as a result of these activities

1 unless the political subdivision or its agent or employee acts with gross
2 negligence.

3 H. The court may order alternative sanctions to community
4 restitution that is ordered pursuant to section 28-1381, subsection K or
5 section 28-1382, subsection E if the court determines that education,
6 treatment or other alternative sanctions are more appropriate.

7 ~~I. Except for another violation of this article, the state shall~~
8 ~~not dismiss a charge of violating any provision of this article unless~~
9 ~~there is an insufficient legal or factual basis to pursue that charge.~~

10 Sec. 3. Section 28-1442, Arizona Revised Statutes, is amended to
11 read:

12 28-1442. Driving under the influence; records; reporting

13 A. The administrative office of the courts shall report to the
14 governor's office of highway safety by September 1 of each year for the
15 previous fiscal year:

16 1. The number of complaints issued charging a violation that
17 include both sections 28-1381 and 28-1382.

18 2. The number of complaints issued charging a violation that
19 include either section 28-1381 or 28-1382.

20 B. By September 1 of each year the motor vehicle division shall
21 report to the governor's office of highway safety the number of ignition
22 interlock devices ordered to be installed pursuant to sections 28-1381,
23 28-1382 and 28-1383 for the previous fiscal year.

24 C. By September 1 of each year the motor vehicle division shall
25 report to the governor's office of highway safety the number of ignition
26 interlock devices that are currently in use in this state pursuant to an
27 order to be installed pursuant to sections 28-1381, 28-1382 and 28-1383.

28 ~~D. By September 1 of each year each county attorney and municipal~~
29 ~~prosecutor shall report to the governor's office of highway safety the~~
30 ~~number of cases dismissed pursuant to section 28-1387, subsection I for~~
31 ~~the previous fiscal year.~~

32 ~~E. D.~~ By October 1 of each year the governor's office of highway
33 safety shall report the information collected for the previous fiscal year
34 pursuant to subsections A, B, ~~AND C~~ ~~and D~~ of this section to the
35 president of the senate and the speaker of the house of representatives.

36 Sec. 4. Title 28, chapter 5, article 2, Arizona Revised Statutes,
37 is amended by adding section 28-1526, to read:

38 28-1526. Point assessment

39 IF A PERSON VIOLATES CHAPTER 3 OR 4 OF THIS TITLE, THE DEPARTMENT
40 MAY ASSESS POINTS AGAINST THE PERSON'S DRIVING RECORD FOR ONLY ONE
41 VIOLATION IF MULTIPLE VIOLATIONS RESULT FROM THE SAME ACTION OR COURSE OF
42 CONDUCT. FOR THE PURPOSES OF THIS SECTION, THE DEPARTMENT SHALL ASSESS
43 THE NUMBER OF POINTS FOR THE VIOLATION THAT THE DEPARTMENT DETERMINES HAS
44 THE HIGHEST NUMBER OF POINTS.

1 Sec. 5. Section 28-3004, Arizona Revised Statutes, is amended to
2 read:

3 28-3004. License records

4 A. The department shall file an application for a license and shall
5 maintain suitable indexes containing, in alphabetical order:

6 1. Each application denied, with a note on each application of the
7 reason for the denial.

8 2. Each application granted.

9 3. Except as provided in subsection B of this section, the name of
10 each licensee whose license has been suspended or revoked by the
11 department, with a note after each name of the reason for the action.

12 B. ~~EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION~~, the director
13 shall expunge from the public records maintained by the department a note
14 of a suspension or revocation made pursuant to section 28-1385 if, after
15 the suspension or revocation period, ~~EITHER OF THE FOLLOWING OCCURS~~:

16 1. The licensee submits a certified copy of the court record
17 indicating ~~EITHER OF THE FOLLOWING~~:

18 (a) A dismissal ~~OR~~ ~~OF THE VIOLATION ON WHICH THE SUSPENSION OR~~
19 ~~REVOCAION IS BASED AND SUBMITS PROOF THAT THE CHARGE WAS NOT REFILED~~
20 ~~WITHIN SIX MONTHS AFTER THE DISMISSAL.~~

21 (b) A finding of not guilty of the violation on which the
22 suspension or revocation is based.

23 2. ~~AFTER TWELVE MONTHS THE LICENSEE HAS NOT BEEN CHARGED WITH A~~
24 ~~VIOLATION OF SECTION 28-1381 OR 28-1382 RESULTING FROM THE EVENT ON WHICH~~
25 ~~THE SUSPENSION OR REVOCAION IS BASED.~~

26 C. The director shall not expunge the record or shall rescind the
27 expungement of the record if the licensee operates a commercial motor
28 vehicle without the proper class of commercial driver license, holds a
29 commercial driver license or is convicted of or found responsible for a
30 violation of chapter 3, 4 or 5 of this title that occurred during the
31 suspension or revocation period or if the licensee's driver license or
32 permit is suspended pursuant to section 28-1321 or suspended and
33 restricted pursuant to section 28-1385 during the suspension or revocation
34 period.

35 ~~C.~~ D. The department shall file all abstracts of court records of
36 convictions and judgments it receives under the laws of this state and
37 shall maintain convenient records of the abstracts or make suitable
38 notations on the abstracts in order that an individual record of each
39 licensee showing the convictions and judgments of the licensee and the
40 traffic accidents in which the licensee has been involved is readily
41 ascertainable and available for the consideration of the department on an
42 application for renewal of a license and at other suitable times.

43 ~~D.~~ E. The department shall maintain the records pursuant to this
44 section for five years after the application, suspension, revocation or
45 abstract of a court record of conviction or judgment has become inactive.

1 Sec. 6. Exemption from rulemaking

2 Notwithstanding any other law, for the purposes of this act, the
3 department of transportation is exempt from the rulemaking requirements of
4 title 41, chapter 6, Arizona Revised Statutes, for one year after the
5 effective date of this act.

6 Sec. 7. Effective date

7 Section 28-1526, Arizona Revised Statutes, as added by this act, is
8 effective from and after December 31, 2022.

APPROVED BY THE GOVERNOR JULY 6, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 6, 2022.