

House Engrossed

DUI; alternative treatment

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HOUSE BILL 2728

AN ACT

AMENDING SECTION 28-1381, 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 28-1381, Arizona Revised Statutes, is amended to
3 read:

4 28-1381. Driving or actual physical control while under the
5 influence; trial by jury; presumptions; admissible
6 evidence; sentencing; time limitation; violation;
7 classification; definition

8 A. It is unlawful for a person to drive or be in actual physical
9 control of a vehicle in this state under any of the following
10 circumstances:

11 1. While under the influence of intoxicating liquor, any drug, a
12 vapor releasing substance containing a toxic substance or any combination
13 of liquor, drugs or vapor releasing substances if the person is impaired
14 to the slightest degree.

15 2. If the person has an alcohol concentration of 0.08 or more
16 within two hours of driving or being in actual physical control of the
17 vehicle and the alcohol concentration results from alcohol consumed either
18 before or while driving or being in actual physical control of the
19 vehicle.

20 3. While there is any drug defined in section 13-3401 or its
21 metabolite in the person's body.

22 4. If the vehicle is a commercial motor vehicle that requires a
23 person to obtain a commercial driver license as defined in section 28-3001
24 and the person has an alcohol concentration of 0.04 or more.

25 5. While operating a vehicle for hire as defined in section 28-9501
26 or while providing transportation network services as defined in section
27 28-9551 as a transportation network company driver as defined in section
28 28-9551 if the person has an alcohol concentration of 0.04 or more.

29 B. It is not a defense to a charge of a violation of subsection A,
30 paragraph 1 of this section that the person is or has been entitled to use
31 the drug under the laws of this state.

32 C. A person who is convicted of a violation of this section is
33 guilty of a class 1 misdemeanor.

34 D. A person using a drug as prescribed by a medical practitioner
35 who is licensed pursuant to title 32 and who is authorized to prescribe
36 the drug is not guilty of violating subsection A, paragraph 3 of this
37 section.

38 E. In any prosecution for a violation of this section, the state
39 shall allege, for the purpose of classification and sentencing pursuant to
40 this section, all prior convictions of violating this section, section
41 28-1382 or section 28-1383 occurring within the past thirty-six months,
42 unless there is an insufficient legal or factual basis to do so.

43 F. At the arraignment, the court shall inform the defendant that
44 the defendant may request a trial by jury and that the request, if made,
45 shall be granted.

1 G. In a trial, action or proceeding for a violation of this section
2 or section 28-1383 other than a trial, action or proceeding involving a
3 person who is driving or ~~being~~ in actual physical control of a commercial
4 motor vehicle, ~~OR~~ a vehicle for hire as defined in section 28-9501 or
5 involving a person who is providing transportation network services as
6 defined in section 28-9551 as a transportation network company driver as
7 defined in section 28-9551, the defendant's alcohol concentration within
8 two hours of the time of driving or being in actual physical control as
9 shown by analysis of the defendant's blood, breath or other bodily
10 substance gives rise to the following presumptions:

11 1. If there was at that time 0.05 or less alcohol concentration in
12 the defendant's blood, breath or other bodily substance, it may be
13 presumed that the defendant was not under the influence of intoxicating
14 liquor.

15 2. If there was at that time in excess of 0.05 but less than 0.08
16 alcohol concentration in the defendant's blood, breath or other bodily
17 substance, that fact shall not give rise to a presumption that the
18 defendant was or was not under the influence of intoxicating liquor, but
19 that fact may be considered with other competent evidence in determining
20 the guilt or innocence of the defendant.

21 3. If there was at that time 0.08 or more alcohol concentration in
22 the defendant's blood, breath or other bodily substance, it may be
23 presumed that the defendant was under the influence of intoxicating
24 liquor.

25 H. Subsection G of this section does not limit the introduction of
26 any other competent evidence bearing on the question of whether or not the
27 defendant was under the influence of intoxicating liquor.

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

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

32 2. Shall pay a fine of not less than \$250.

33 3. May be ordered by a court to perform community restitution.

34 4. Shall pay an additional assessment of \$500 to be deposited by
35 the state treasurer in the prison construction and operations fund
36 established by section 41-1651. This assessment is not subject to any
37 surcharge. If the conviction occurred in the superior court or a justice
38 court, the court shall transmit the assessed monies to the county
39 treasurer. If the conviction occurred in a municipal court, the court
40 shall transmit the assessed monies to the city treasurer. The city or
41 county treasurer shall transmit the monies received to the state
42 treasurer.

1 5. Shall pay an additional assessment of \$500 to be deposited by
2 the state treasurer in the public safety equipment fund established by
3 section 41-1723. This assessment is not subject to any surcharge. If the
4 conviction occurred in the superior court or a justice court, the court
5 shall transmit the assessed monies to the county treasurer. If the
6 conviction occurred in a municipal court, the court shall transmit the
7 assessed monies to the city treasurer. The city or county treasurer shall
8 transmit the monies received to the state treasurer.

9 6. If the violation involved intoxicating liquor, shall be required
10 by the department, on report of the conviction, to equip any motor vehicle
11 the person operates with a certified ignition interlock device pursuant to
12 section 28-3319. In addition, the court may order the person to equip any
13 motor vehicle the person operates with a certified ignition interlock
14 device for more than twelve months beginning on the date the person
15 successfully completes the alcohol or other drug screening, education,
16 EVIDENCE-BASED PSYCHOTHERAPY or treatment program requirements of this
17 title and the person is otherwise eligible to reinstate the person's
18 driver license or driving privilege. The person who operates a motor
19 vehicle with a certified ignition interlock device under this paragraph
20 shall comply with article 5 of this chapter.

21 7. Shall be required by the department to attend and successfully
22 complete an approved traffic survival school course.

23 8. AT THE PERSON'S OPTION, MAY BE ORDERED BY THE COURT TO
24 PARTICIPATE IN A RELIGIOUS PROGRAM THAT IS APPROVED BY THE COURT. AN
25 APPROVED RELIGIOUS PROGRAM MAY BE CONSIDERED BY THE COURT AS AN
26 ALTERNATIVE TO OTHER CONDITIONS IMPOSED PURSUANT TO THIS SECTION. THE
27 PERSON'S PARTICIPATION IN A RELIGIOUS PROGRAM MUST BE VOLUNTARY, AND THE
28 PURPOSE OF THE RELIGIOUS PROGRAM MAY NOT INCLUDE ANY EFFORT TO COERCE THE
29 PERSON TO ADOPT OR CHANGE ANY RELIGIOUS AFFILIATION OR BELIEFS.

30 J. Notwithstanding subsection I, paragraph 1 of this section, at
31 the time of sentencing the judge may suspend all but one day of the
32 sentence if the person completes a court ordered alcohol or other drug
33 screening, education, EVIDENCE-BASED PSYCHOTHERAPY or treatment program.
34 If the person fails to complete the court ordered alcohol or other drug
35 screening, education, EVIDENCE-BASED PSYCHOTHERAPY or treatment program
36 and has not been placed on probation, the court shall issue an order to
37 show cause to the defendant as to why the remaining jail sentence should
38 not be served.

39 K. If within a period of eighty-four months a person is convicted
40 of a second violation of this section or is convicted of a violation of
41 this section and has previously been convicted of a violation of section
42 28-1382 or 28-1383 or an act in another jurisdiction that if committed in
43 this state would be a violation of this section or section 28-1382 or
44 28-1383, the person:

1 1. Shall be sentenced to serve not less than ninety days in jail,
2 thirty days of which shall be served consecutively, and is not eligible
3 for probation or suspension of execution of sentence unless the entire
4 sentence has been served.

5 2. Shall pay a fine of not less than \$500.

6 3. Shall be ordered by a court to perform at least thirty hours of
7 community restitution.

8 4. Shall have the person's driving privilege revoked for one year.
9 The court shall report the conviction to the department. On receipt of
10 the report, the department shall revoke the person's driving privilege
11 and, if the violation involved intoxicating liquor, shall require the
12 person to equip any motor vehicle the person operates with a certified
13 ignition interlock device pursuant to section 28-3319. In addition, the
14 court may order the person to equip any motor vehicle the person operates
15 with a certified ignition interlock device for more than twelve months
16 beginning on the date the person successfully completes the alcohol or
17 other drug screening, education, **EVIDENCE-BASED PSYCHOTHERAPY** or treatment
18 program requirements of this title and the person is otherwise eligible to
19 reinstate the person's driver license or driving privilege. The person
20 who operates a motor vehicle with a certified ignition interlock device
21 under this paragraph shall comply with article 5 of this chapter.

22 5. Shall pay an additional assessment of \$1,250 to be deposited by
23 the state treasurer in the prison construction and operations fund
24 established by section 41-1651. This assessment is not subject to any
25 surcharge. If the conviction occurred in the superior court or a justice
26 court, the court shall transmit the assessed monies to the county
27 treasurer. If the conviction occurred in a municipal court, the court
28 shall transmit the assessed monies to the city treasurer. The city or
29 county treasurer shall transmit the monies received to the state
30 treasurer.

31 6. Shall pay an additional assessment of \$1,250 to be deposited by
32 the state treasurer in the public safety equipment fund established by
33 section 41-1723. This assessment is not subject to any surcharge. If the
34 conviction occurred in the superior court or a justice court, the court
35 shall transmit the assessed monies to the county treasurer. If the
36 conviction occurred in a municipal court, the court shall transmit the
37 assessed monies to the city treasurer. The city or county treasurer shall
38 transmit the monies received to the state treasurer.

39 7. Shall be required by the department to attend and successfully
40 complete an approved traffic survival school course.

41 L. Notwithstanding subsection K, paragraph 1 of this section, at
42 the time of sentencing, the judge may suspend all but thirty days of the
43 sentence if the person completes a court ordered alcohol or other drug
44 screening, education, **EVIDENCE-BASED PSYCHOTHERAPY** or treatment
45 program. If the person fails to complete the court ordered alcohol or

1 other drug screening, education, EVIDENCE-BASED PSYCHOTHERAPY or treatment
2 program and has not been placed on probation, the court shall issue an
3 order to show cause as to why the remaining jail sentence should not be
4 served.

5 M. In applying the eighty-four month provision of subsection K of
6 this section, the dates of the commission of the offense shall be the
7 determining factor, irrespective of the sequence in which the offenses
8 were committed.

9 N. A second violation for which a conviction occurs as provided in
10 this section shall not include a conviction for an offense arising out of
11 the same series of acts.

12 O. After completing forty-five days of the revocation period
13 prescribed by subsection K of this section, a person whose driving
14 privilege is revoked for a violation of this section and who is sentenced
15 pursuant to subsection K of this section is eligible for a special
16 ignition interlock restricted driver license pursuant to section 28-1401.

17 P. The court may order a person who is convicted of a violation of
18 this section that does not involve intoxicating liquor to equip any motor
19 vehicle the person operates with a certified ignition interlock device
20 pursuant to section 28-3319. On receipt of the report of conviction and
21 certified ignition interlock device requirement, the department shall
22 require the person to equip any motor vehicle the person operates with a
23 certified ignition interlock device pursuant to section 28-3319. In
24 addition, the court may order the person to equip any motor vehicle the
25 person operates with a certified ignition interlock device for more than
26 twelve months beginning on the date the person successfully completes the
27 alcohol or other drug screening, education, EVIDENCE-BASED PSYCHOTHERAPY
28 or treatment program requirements of this title and the person is
29 otherwise eligible to reinstate the person's driver license or driving
30 privilege. The person who operates a motor vehicle with a certified
31 ignition interlock device under this subsection shall comply with article
32 5 of this chapter.

33 Q. A prosecution for a violation of this section involving a
34 collision that resulted in serious physical injury or death as identified
35 in a written accident report completed pursuant to section 28-667 must be
36 commenced within two years after actual discovery of the offense by the
37 state or the political subdivision having jurisdiction or discovery by the
38 state or the political subdivision that should have occurred with the
39 exercise of reasonable diligence, whichever first occurs.

40 R. FOR THE PURPOSES OF THIS SECTION, "EVIDENCE-BASED PSYCHOTHERAPY"
41 MEANS PSYCHOTHERAPY SERVICES THAT ARE OFFERED BY A PSYCHOLOGIST WHO IS
42 LICENSED PURSUANT TO TITLE 32, CHAPTER 19.1 AND WHO INTEGRATES THE BEST
43 AVAILABLE SCIENTIFIC RESEARCH WITH CLINICAL EXPERTISE BASED ON THE CONTEXT
44 OF THE PATIENT'S CHARACTERISTICS, CULTURE AND PREFERENCES.