

A.R.S. § 28-1321

§ 28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license

Effective: September 14, 2024

Currentness

A. A person who operates a motor vehicle in this state gives consent, subject to § 4-244, paragraph 34 or § 28-1381, 28-1382 or 28-1383, to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter or § 4-244, paragraph 34 while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor as prescribed in § 28-1381 or drugs. The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer having reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle in this state either:

1. While under the influence of intoxicating liquor as prescribed in § 28-1381 or drugs.

2. If the person is under twenty-one years of age, with spirituous liquor in the person's body.

B. After an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by subsection A of this section, and if the violator refuses the violator shall be informed that the violator's license or permit to drive will be suspended or denied for twelve months, or for two years for a second or subsequent refusal within a period of eighty-four months, unless the violator expressly agrees to submit to and successfully completes the test or tests. A failure to expressly agree to the test or successfully complete the test is deemed a refusal. The violator shall also be informed that:

1. If the test results show a blood or breath alcohol concentration of 0.08 or more, if the results show a blood or breath alcohol concentration of 0.04 or more and the violator was driving or in actual physical control of a commercial motor vehicle, a vehicle for hire as defined in § 28-9501 or while providing transportation network services as defined in § 28-9551 as a transportation network company driver as defined in § 28-9551 or if the results show there is any drug defined in § 13-3401 or its metabolite in the person's body and the person does not possess a valid prescription for the drug, the violator's license or permit to drive will be suspended or denied for not less than ninety consecutive days.

2. The violator's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege may be issued or reinstated following the period of suspension only if the violator completes alcohol or other drug screening.

C. A person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subsection A of this section and the test or tests may be administered, subject to § 4-244, paragraph 34 or § 28-1381, 28-1382 or 28-1383.

D. If a person under arrest refuses to submit to the test designated by the law enforcement agency as provided in subsection A of this section:

1. The test shall not be given, except as provided in § 28-1388, subsection E or pursuant to a search warrant.

2. The law enforcement officer directing the administration of the test shall:

(a) File a certified report of the refusal with the department within thirty days after the date of the arrest. If a certified report is not forwarded to the department as prescribed by this subdivision, the department shall not enter an order of suspension on its records unless the violation listed in subsection A of this section resulted in death or serious physical injury as defined in § 13-105.

(b) On behalf of the department, do one of the following:

(i) Serve an order of suspension on the person that is effective thirty days after the date the order is served.

(ii) Advise the person that the certified report will be submitted to the department and that the department will notify the person in writing if an order of suspension is entered. The law enforcement officer shall direct the person to ensure the person's address is updated with the department pursuant to § 28-448.

(c) Require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person. The law enforcement agency may do either of the following to a driver license or permit taken into possession under this subdivision:

(i) In compliance with §§ 41-151.15 and 41-151.19, destroy the driver license or permit.

(ii) Forward the driver license or permit to the department within thirty days after the issuance of the notice of suspension.

(d) If the license or permit is not surrendered, state the reason why it is not surrendered.

(e) If a valid license or permit is surrendered, issue a temporary driving permit that is valid for thirty days.

(f) Forward the certified report of refusal, a copy of the completed notice of suspension and a copy of any completed temporary permit to the department within thirty days after the issuance of the notice of suspension.

E. The certified report is subject to the penalty for perjury as prescribed by § 28-1561 and shall state all of the following:

1. The officer's reasonable grounds to believe that the arrested person was driving or in actual physical control of a motor vehicle in this state either:

(a) While under the influence of intoxicating liquor as prescribed in § 28-1381 or drugs.

(b) If the person is under twenty-one years of age, with spirituous liquor in the person's body.

2. The manner in which the person refused to submit to the test or tests.

3. That the person was advised of the consequences of refusal.

F. On receipt of the certified report of refusal and a copy of the order of suspension, the department shall enter the order of suspension on its records. The order of suspension is effective thirty days after the date that the order was served unless a timely request for a hearing as provided in this section is filed by the accused person. If the department receives only the certified report of refusal, the department shall notify the person named in the report in writing sent by mail that:

1. Thirty days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege.

2. The department will provide an opportunity for a hearing if the person requests a hearing in writing or online and the request is received by the department within thirty days after the notice is sent.

G. The order of suspension issued by a law enforcement officer or the department under this section shall notify the person that:

1. The person may submit a written or online request for a hearing.

2. The request for a hearing must be received by the department within thirty days after the date of the notice or the order of suspension will become final.

3. The affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege will be suspended for twelve months from that date or for two years from that date for a second or subsequent refusal within a period of eighty-four months.

4. The person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege may be issued or reinstated following the period of suspension only if the person completes alcohol or other drug screening.

H. The order for suspension shall:

1. Be accompanied by printed forms that are ready to mail to the department, that may be filled out and signed by the person to indicate the person's desire for a hearing and that advise the person that the person may alternatively submit an online request for a hearing.

2. Advise the person that unless the person has surrendered any driver license or permit issued by this state the person's hearing request will not be accepted, except that the person may certify pursuant to § 28-3170 that the license or permit is lost or destroyed.

I. On the receipt of a request for a hearing, the department shall set the hearing within sixty days. The department may hold the hearing in person, by telephone or by videoconference. If the department holds the hearing in person, the hearing shall be held in the county in which the person named in the report resides unless the law enforcement agency filing the certified report of refusal pursuant to subsection D of this section requests at the time of its filing that the hearing be held in the county where the refusal occurred.

J. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire not later than when the department has made its final decision. If the person is a resident without a license or permit or has an expired license or permit, the department may allow the person to apply for a restricted license or permit. If the department determines the person is otherwise entitled to the license or permit, the department shall issue and retain a restricted license or permit subject to this section.

K. Hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in § 28-3306. For the purposes of this section, the scope of the hearing shall include only the issues of whether:

1. A law enforcement officer had reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle in this state either:

(a) While under the influence of intoxicating liquor as prescribed in § 28-1381 or drugs.

(b) If the person is under twenty-one years of age, with spirituous liquor in the person's body.

2. The person was placed under arrest.

3. The person refused to submit to the test.

4. The person was informed of the consequences of refusal.

L. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective thirty days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for a period of twelve months after the order of suspension becomes effective or for a period of two years after the order of suspension becomes effective for a second or subsequent refusal within a period of eighty-four months, and may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the person completes alcohol or other drug screening.

M. If the suspension order is sustained after the hearing, a motion for rehearing is not required. Within thirty days after a suspension order is sustained, the affected person may file a petition in the superior court to review the final order of suspension or denial by the department in the same manner provided in § 28-3317. The court shall hear the review of the final order of suspension or denial on an expedited basis.

N. If the suspension or determination that there should be a denial of issuance is not sustained, the ruling is not admissible in and has no effect on any administrative, civil or criminal court proceeding.

O. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information either in writing or by electronic means of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

P. After completing any alcohol or other drug screening that is ordered by the department pursuant to this chapter, a person whose driving privilege is suspended pursuant to this section may apply to the department for a special ignition interlock restricted driver license pursuant to § 28-1401. Unless the certified ignition interlock period is extended by the department pursuant to § 28-1461, a person who is issued a special ignition interlock restricted driver license as provided in this subsection shall maintain a functioning certified ignition interlock device in compliance with this chapter during the remaining period of the suspension prescribed by this section. This subsection does not apply to a person whose driving privilege is suspended for a second or subsequent refusal within a period of eighty-four months.

Q. Notwithstanding § 28-1401, the department may issue a special ignition interlock restricted driver license to a person for an offense described in subsection A of this section. A person who applies for and who is issued a special ignition interlock restricted driver license pursuant to this subsection agrees to the administrative action taken by the department against the person's license. Once the department issues a special ignition interlock restricted driver license pursuant to this subsection, the person waives any right to an administrative hearing contesting the administrative action against the person's license pursuant to this section or § 28-1385.

Credits

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