

A.R.S. § 28-1381

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

Effective: September 26, 2025

Currentness

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

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

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

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

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

5. While operating 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 if the person has an alcohol concentration of 0.04 or more.

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

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

D. A person using a drug as prescribed by a medical practitioner who is licensed pursuant to title 32¹ and who is authorized to prescribe the drug is not guilty of violating subsection A, paragraph 3 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. If the violation involved intoxicating liquor, shall be required by the department, on report of the conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education, evidence-based psychotherapy or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.²

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

8. At the person's option, may be ordered by the court to participate in a religious program that is approved by the court. The person's participation in a religious program must be voluntary, and the purpose of the religious program may not include any effort to coerce the person to adopt or change any religious affiliation or beliefs.

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

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

1. Shall be sentenced to serve not less than ninety days in jail, thirty days of which shall be served consecutively, and is not

eligible for probation or suspension of execution of sentence unless the entire sentence has been served.

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

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

4. Shall have the person's driving privilege revoked for one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and, if the violation involved intoxicating liquor, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education, evidence-based psychotherapy or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

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

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

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

L. Notwithstanding subsection K, paragraph 1 of this section, at the time of sentencing, the judge may suspend all but thirty days of the sentence if the person completes a court ordered alcohol or other drug screening, education, evidence-based psychotherapy or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education, evidence-based psychotherapy or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

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

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

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

P. The court may order a person who is convicted of a violation of this section that does not involve intoxicating liquor to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. On receipt of the report of conviction and certified ignition interlock device requirement, the department shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to § 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education, evidence-based psychotherapy or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this subsection shall comply with article 5 of this chapter.

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

R. For the purposes of this section, "evidence-based psychotherapy" means psychotherapy services that are offered by a psychologist who is licensed pursuant to title 32, chapter 19.1³ and who integrates the best available scientific research with clinical expertise based on the context of the patient's characteristics, culture and preferences.

Credits

Added as § 28-2881 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Amended by Laws 1995, Ch. 147, § 12, eff. Oct. 1, 1997. Renumbered as § 28-1381 by Laws 1996, Ch. 76, § 3, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 106, eff. Oct. 1, 1997; Laws 1998, Ch. 302, § 21, eff. Dec. 1, 1998; Laws 1999, Ch. 11, § 8; Laws 1999, Ch. 303, § 3; Laws 2000, Ch. 4, § 2; Laws 2000, Ch. 153, § 1, eff. Oct. 1, 2000; Laws 2001, Ch. 95, § 5, eff. Sept. 1, 2001; Laws 2001, Ch. 253, § 1; Laws 2003, 2nd S.S., Ch. 5, § 5; Laws 2004, Ch. 97, § 1; Laws 2005, Ch. 187, § 26, eff. Jan. 1, 2006; Laws 2005, Ch. 307, § 4; Laws 2006, Ch. 395, § 3; Laws 2007, Ch. 219, § 1; Laws 2008, Ch. 286, § 12; Laws 2009, Ch. 124, § 1; Laws 2011, Ch. 341, § 9, eff. Jan. 1, 2012; Laws 2012, Ch. 236, § 1, eff. April 11, 2012, retroactively effective to Jan. 1, 2012; Laws 2016, Ch. 57, § 1, eff. Jan. 1, 2017; Laws 2016, Ch. 339, § 2; Laws 2018, Ch. 307, § 1; Laws 2019, Ch. 309, § 1; Laws 2023, Ch. 188, § 2; Laws 2024, Ch. 101, § 2; Laws 2025, Ch. 209, § 1.

Footnotes

¹

Section 32-101 et seq.

2

Section 28-1461 et seq.

3

Section 32-2061 et seq.

A. R. S. § 28-1381, AZ ST § 28-1381

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