

REFERENCE TITLE: DUI; 0.20 concentration enhancement

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

## **SB 1029**

Introduced by  
Senator Waring

AN ACT

AMENDING SECTIONS 28-1382 AND 28-3319, 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 28-1382, Arizona Revised Statutes, is amended to  
3 read:

4 28-1382. Driving or actual physical control while under the  
5 extreme influence of intoxicating liquor; trial by  
6 jury; sentencing; classification

7 A. It is unlawful for a person to drive or be in actual physical  
8 control of a vehicle in this state if the person has an alcohol concentration  
9 of 0.15 or more within two hours of driving or being in actual physical  
10 control of the vehicle and the alcohol concentration results from alcohol  
11 consumed either before or while driving or being in actual physical control  
12 of the vehicle.

13 B. A person who is convicted of a violation of this section is guilty  
14 of driving or being in actual physical control of a vehicle while under the  
15 extreme influence of intoxicating liquor.

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

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

20 1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced  
21 to serve not less than thirty consecutive days in jail and is not eligible  
22 for probation or suspension of execution of sentence unless the entire  
23 sentence is served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE  
24 SHALL BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECUTIVE DAYS IN JAIL  
25 AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE  
26 UNLESS THE ENTIRE SENTENCE IS SERVED.

27 2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT  
28 THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A  
29 FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. The fine prescribed in this  
30 paragraph and any assessments, restitution and incarceration costs shall be  
31 paid before the assessment prescribed in paragraph 3 of this subsection.

32 3. Shall pay an additional assessment of two hundred fifty dollars. If  
33 the conviction occurred in the superior court or a justice court, the court  
34 shall transmit the monies received pursuant to this paragraph to the county  
35 treasurer. If the conviction occurred in a municipal court, the court shall  
36 transmit the monies received pursuant to this paragraph to the city  
37 treasurer. The city or county treasurer shall transmit the monies received  
38 to the state treasurer. The state treasurer shall deposit the monies  
39 received in the driving under the influence abatement fund established by  
40 section 28-1304.

41 4. May be ordered by a court to perform community restitution.

1           5. Shall be required by the department, on receipt of the report of  
2 conviction, to equip any motor vehicle the person operates with a certified  
3 ignition interlock device pursuant to section 28-3319. In addition, the  
4 court may order the person to equip any motor vehicle the person operates  
5 with a certified ignition interlock device for more than twelve months  
6 beginning on the date of reinstatement of the person's driving privilege  
7 following a suspension or revocation or on the date of the department's  
8 receipt of the report of conviction, whichever occurs later. The person who  
9 operates a motor vehicle with a certified ignition interlock device under  
10 this paragraph shall comply with article 5 of this chapter.

11           6. Shall pay an additional assessment of one thousand dollars to be  
12 deposited by the state treasurer in the prison construction and operations  
13 fund established by section 41-1651. This assessment is not subject to any  
14 surcharge. If the conviction occurred in the superior court or a justice  
15 court, the court shall transmit the assessed monies to the county  
16 treasurer. If the conviction occurred in a municipal court, the court shall  
17 transmit the assessed monies to the city treasurer. The city or county  
18 treasurer shall transmit the monies received to the state treasurer.

19           7. Shall pay an additional assessment of one thousand dollars to be  
20 deposited by the state treasurer in the state general fund. This assessment  
21 is not subject to any surcharge. If the conviction occurred in the superior  
22 court or a justice court, the court shall transmit the assessed monies to the  
23 county treasurer. If the conviction occurred in a municipal court, the court  
24 shall transmit the assessed monies to the city treasurer. The city or county  
25 treasurer shall transmit the monies received to the state treasurer.

26           E. Notwithstanding subsection D, paragraph 1 of this section, at the  
27 time of sentencing **IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN**  
28 **0.20**, the judge may suspend all but ten days of the sentence if the person  
29 completes a court ordered alcohol or other drug screening, education or  
30 treatment program. If the person fails to complete the court ordered alcohol  
31 or other drug screening, education or treatment program and has not been  
32 placed on probation, the court shall issue an order to show cause to the  
33 defendant as to why the remaining jail sentence should not be served.

34           F. If within a period of eighty-four months a person is convicted of a  
35 second violation of this section or is convicted of a violation of this  
36 section and has previously been convicted of a violation of section 28-1381  
37 or 28-1383 or an act in another jurisdiction that if committed in this state  
38 would be a violation of this section or section 28-1381 or 28-1383, the  
39 person:

40           1. **EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH**, shall be sentenced  
41 to serve not less than one hundred twenty days in jail, sixty days of which  
42 shall be served consecutively, and is not eligible for probation or  
43 suspension of execution of sentence unless the entire sentence has been  
44 served. **A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE**  
45 **SENTENCED TO SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF**

1 WHICH SHALL BE SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR  
2 SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN  
3 SERVED.

4 2. Shall pay a fine of not less than five hundred dollars, EXCEPT THAT  
5 A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A FINE OF  
6 NOT LESS THAN ONE THOUSAND DOLLARS. The fine prescribed in this paragraph  
7 and any assessments, restitution and incarceration costs shall be paid before  
8 the assessment prescribed in paragraph 3 of this subsection.

9 3. Shall pay an additional assessment of two hundred fifty  
10 dollars. If the conviction occurred in the superior court or a justice  
11 court, the court shall transmit the monies received pursuant to this  
12 paragraph to the county treasurer. If the conviction occurred in a municipal  
13 court, the court shall transmit the monies received pursuant to this  
14 paragraph to the city treasurer. The city or county treasurer shall transmit  
15 the monies received to the state treasurer. The state treasurer shall  
16 deposit the monies received in the driving under the influence abatement fund  
17 established by section 28-1304.

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

20 5. Shall have the person's driving privilege revoked for at least one  
21 year. The court shall report the conviction to the department. On receipt  
22 of the report, the department shall revoke the person's driving privilege and  
23 shall require the person to equip any motor vehicle the person operates with  
24 a certified ignition interlock device pursuant to section 28-3319. In  
25 addition, the court may order the person to equip any motor vehicle the  
26 person operates with a certified ignition interlock device for more than  
27 twelve months beginning on the date of reinstatement of the person's driving  
28 privilege following a suspension or revocation or on the date of the  
29 department's receipt of the report of conviction, whichever is later. The  
30 person who operates a motor vehicle with a certified ignition interlock  
31 device under this paragraph shall comply with article 5 of this chapter.

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

41 7. Shall pay an additional assessment of one thousand two hundred  
42 fifty dollars to be deposited by the state treasurer in the state general  
43 fund. This assessment is not subject to any surcharge. If the conviction  
44 occurred in the superior court or a justice court, the court shall transmit  
45 the assessed monies to the county treasurer. If the conviction occurred in a

1 municipal court, the court shall transmit the assessed monies to the city  
2 treasurer. The city or county treasurer shall transmit the monies received  
3 to the state treasurer.

4 G. Notwithstanding subsection F, paragraph 1 of this section, at the  
5 time of sentencing, **IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN**  
6 **0.20**, the judge may suspend all but sixty days of the sentence if the person  
7 completes a court ordered alcohol or other drug screening, education or  
8 treatment program. If the person fails to complete the court ordered alcohol  
9 or other drug screening, education or treatment program and has not been  
10 placed on probation, the court shall issue an order to show cause as to why  
11 the remaining jail sentence should not be served.

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

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

18 J. A person who is convicted of a violation of this section is guilty  
19 of a class 1 misdemeanor.

20 Sec. 2. Section 28-3319, Arizona Revised Statutes, is amended to read:

21 **28-3319. Action after license suspension, revocation or denial**  
22 **for driving under the influence or refusal of test;**  
23 **ignition interlock device requirement; definition**

24 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320  
25 or 28-3322, the license of a driver or the driving privilege of a nonresident  
26 is suspended or revoked, the department shall not terminate the suspension or  
27 revocation or issue a special ignition interlock restricted driver license,  
28 if applicable, pursuant to chapter 4, article 3.1 of this title until the  
29 person provides proof of financial responsibility pursuant to chapter 9,  
30 article 3 of this title.

31 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320  
32 or 28-3322, an unlicensed resident is denied a license or permit to operate a  
33 motor vehicle, the department shall not issue a license or permit until the  
34 person provides proof of financial responsibility pursuant to chapter 9,  
35 article 3 of this title.

36 C. If a person whose license or driving privilege is suspended or  
37 revoked pursuant to section 28-1321, 28-1381, 28-1382 or 28-1383 is ordered,  
38 pursuant to section 28-1381, 28-1382 or 28-1383, to attend alcohol or other  
39 drug screening, education or treatment, the department shall not either:

40 1. Terminate the suspension or issue a special ignition interlock  
41 restricted driver license, if applicable, pursuant to chapter 4, article 3.1  
42 of this title until the person provides proof from the treatment facility  
43 that the person has completed or is participating satisfactorily in alcohol  
44 or other drug screening, education or treatment.

1           2. Issue a new license or a special ignition interlock restricted  
2 driver license, if applicable, pursuant to chapter 4, article 3.1 of this  
3 title to operate a motor vehicle after the revocation until the person  
4 provides proof from the facility that the person has completed the court  
5 ordered program.

6           D. On receipt of a report of conviction from a court, the department  
7 shall require any motor vehicle the convicted person operates to be equipped  
8 with a functioning certified ignition interlock device and the convicted  
9 person to meet the requirements prescribed in section 28-1461 for twelve  
10 months if any of the following applies:

11           1. The department determines that within a period of eighty-four  
12 months a person is convicted of a second or subsequent violation of section  
13 28-1381 with a prior conviction of a violation of section 28-1381 or 28-1382  
14 or an act in another jurisdiction that if committed in this state would be a  
15 violation of section 28-1381 or 28-1382.

16           2. The ~~conviction is for a violation of~~ PERSON IS SENTENCED PURSUANT  
17 TO section 28-1382, SUBSECTION D, EXCEPT THAT IF THE PERSON'S ALCOHOL  
18 CONCENTRATION IS 0.20 OR MORE, THE CERTIFIED IGNITION INTERLOCK DEVICE IS  
19 REQUIRED FOR EIGHTEEN MONTHS.

20           3. THE PERSON IS SENTENCED PURSUANT TO SECTION 28-1382, SUBSECTION F,  
21 EXCEPT THAT IF THE PERSON'S ALCOHOL CONCENTRATION IS 0.20 OR MORE, THE  
22 CERTIFIED IGNITION INTERLOCK DEVICE IS REQUIRED FOR TWENTY-FOUR MONTHS.

23           ~~3-~~ 4. The conviction is for a violation of section 28-1383,  
24 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b).

25           E. The ~~twelve-month period~~ REQUIREMENT prescribed in subsection D of  
26 this section begins on the date of reinstatement of the person's driving  
27 privilege following a suspension or revocation or on the date of the  
28 department's receipt of the report of conviction, whichever occurs later.

29           F. A person who is required to equip a motor vehicle with a certified  
30 ignition interlock device pursuant to subsection D of this section shall  
31 comply with chapter 4, article 5 of this title.

32           G. For the purposes of this section, "certified ignition interlock  
33 device" has the same meaning prescribed in section 28-1301.