

REFERENCE TITLE: extreme DUI; violation

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2090

Introduced by
Representatives Biggs, Schapira: Anderson, Barto, Groe

AN ACT

AMENDING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 219, SECTION 2; REPEALING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 195, SECTION 3; 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, as amended by
3 Laws 2007, chapter 219, section 2, is amended to 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~~ AS FOLLOWS within two hours of driving or being in actual
10 physical control of the vehicle and the alcohol concentration results from
11 alcohol consumed either before or while driving or being in actual physical
12 control of the vehicle:

- 13 1. 0.15 OR MORE BUT LESS THAN 0.20.
- 14 2. 0.20 OR MORE.

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

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

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

22 1. ~~Except as otherwise provided in this paragraph,~~ Shall be sentenced
23 to serve not less than thirty consecutive days in jail and is not eligible
24 for probation or suspension of execution of sentence unless the entire
25 sentence is served IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A,
26 PARAGRAPH 1 OF THIS SECTION. A person who ~~has an alcohol concentration of~~
27 ~~0.20 or more~~ IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS
28 SECTION shall be sentenced to serve not less than forty-five consecutive days
29 in jail and is not eligible for probation or suspension of execution of
30 sentence unless the entire sentence is served.

31 2. Shall pay a fine of not less than two hundred fifty dollars, except
32 that a person who ~~has an alcohol concentration of 0.20 or more~~ IS CONVICTED
33 OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION shall pay a fine
34 of not less than five hundred dollars. The fine prescribed in this paragraph
35 and any assessments, restitution and incarceration costs shall be paid before
36 the assessment prescribed in paragraph 3 of this subsection.

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

- 1 4. May be ordered by a court to perform community restitution.
- 2 5. Shall be required by the department, on receipt of the report of
3 conviction, to equip any motor vehicle the person operates with a certified
4 ignition interlock device pursuant to section 28-3319. In addition, the
5 court may order the person to equip any motor vehicle the person operates
6 with a certified ignition interlock device for more than twelve months
7 beginning on the date of reinstatement of the person's driving privilege
8 following a suspension or revocation or on the date of the department's
9 receipt of the report of conviction, whichever occurs later. The person who
10 operates a motor vehicle with a certified ignition interlock device under
11 this paragraph shall comply with article 5 of this chapter.
- 12 6. Shall pay an additional assessment of one thousand dollars to be
13 deposited by the state treasurer in the prison construction and operations
14 fund established by section 41-1651. This assessment is not subject to any
15 surcharge. If the conviction occurred in the superior court or a justice
16 court, the court shall transmit the assessed monies to the county treasurer.
17 If the conviction occurred in a municipal court, the court shall transmit the
18 assessed monies to the city treasurer. The city or county treasurer shall
19 transmit the monies received to the state treasurer.
- 20 7. Shall pay an additional assessment of one thousand dollars to be
21 deposited by the state treasurer in the state general fund. This assessment
22 is not subject to any surcharge. If the conviction occurred in the superior
23 court or a justice court, the court shall transmit the assessed monies to the
24 county treasurer. If the conviction occurred in a municipal court, the court
25 shall transmit the assessed monies to the city treasurer. The city or county
26 treasurer shall transmit the monies received to the state treasurer.
- 27 E. Notwithstanding subsection D, paragraph 1 of this section, at the
28 time of sentencing, if the person ~~has an alcohol concentration of less than~~
29 ~~0.20~~ IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS
30 SECTION, the judge may suspend all but ten days of the sentence if the person
31 completes a court ordered alcohol or other drug screening, education or
32 treatment program. If the person fails to complete the court ordered alcohol
33 or other drug screening, education or treatment program and has not been
34 placed on probation, the court shall issue an order to show cause to the
35 defendant as to why the remaining jail sentence should not be served.
- 36 F. If within a period of eighty-four months a person is convicted of a
37 second violation of this section or is convicted of a violation of this
38 section and has previously been convicted of a violation of section 28-1381
39 or 28-1383 or an act in another jurisdiction that if committed in this state
40 would be a violation of this section or section 28-1381 or 28-1383, the
41 person:
- 42 1. ~~Except as otherwise provided in this paragraph,~~ Shall be sentenced
43 to serve not less than one hundred twenty days in jail, sixty days of which
44 shall be served consecutively, and is not eligible for probation or
45 suspension of execution of sentence unless the entire sentence has been

1 served IF THE PERSON IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 1
2 OF THIS SECTION. A person who ~~has an alcohol concentration of 0.20 or more~~
3 IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION
4 shall be sentenced to serve not less than one hundred eighty days in jail,
5 ninety of which shall be served consecutively, and is not eligible for
6 probation or suspension of execution of sentence unless the entire sentence
7 has been served.

8 2. Shall pay a fine of not less than five hundred dollars, except that
9 a person who ~~has an alcohol concentration of 0.20 or more~~ IS CONVICTED OF A
10 VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION shall pay a fine of
11 not less than one thousand dollars. The fine prescribed in this paragraph
12 and any assessments, restitution and incarceration costs shall be paid before
13 the assessment prescribed in paragraph 3 of this subsection.

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

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

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

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

1 7. Shall pay an additional assessment of one thousand two hundred
2 fifty dollars to be deposited by the state treasurer in the state general
3 fund. This assessment is not subject to any surcharge. If the conviction
4 occurred in the superior court or a justice court, the court shall transmit
5 the assessed monies to the county treasurer. If the conviction occurred in a
6 municipal court, the court shall transmit the assessed monies to the city
7 treasurer. The city or county treasurer shall transmit the monies received
8 to the state treasurer.

9 G. Notwithstanding subsection F, paragraph 1 of this section, at the
10 time of sentencing, if the person ~~has an alcohol concentration of less than~~
11 ~~0.20~~ IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS
12 SECTION, the judge may suspend all but sixty days of the sentence if the
13 person completes a court ordered alcohol or other drug screening, education
14 or treatment program. If the person fails to complete the court ordered
15 alcohol or other drug screening, education or treatment program and has not
16 been placed on probation, the court shall issue an order to show cause as to
17 why the remaining jail sentence should not be served.

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

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

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

26 Sec. 2. Repeal

27 Section 28-1382, Arizona Revised Statutes, as amended by Laws 2007,
28 chapter 195, section 3, is repealed.