

House Engrossed Senate Bill
time limitation; DUI prosecutions

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1085

AN ACT

AMENDING SECTIONS 13-107, 28-1381 AND 28-1382, 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 13-107, Arizona Revised Statutes, is amended to
3 read:
4 13-107. Time limitations
5 A. A prosecution for any homicide, any conspiracy to commit
6 homicide that results in the death of a person, any offense that is listed
7 in chapter 14 or 35.1 of this title and that is a class 2 felony, any
8 violent sexual assault pursuant to section 13-1423, any violation of
9 section 13-2308.01, 13-2308.03 or 13-3212, any misuse of public monies or
10 a felony involving falsification of public records or any attempt to
11 commit an offense listed in this subsection may be commenced at any time.
12 B. Except as otherwise provided in this section and ~~section~~
13 ~~SECTIONS~~ 28-672, ~~28-1381 AND 28-1382~~, prosecutions for other offenses must
14 be commenced within the following periods after actual discovery by the
15 state or the political subdivision having jurisdiction of the offense or
16 discovery by the state or the political subdivision that should have
17 occurred with the exercise of reasonable diligence, whichever first
18 occurs:
19 1. For a class 2 through a class 6 felony, seven years.
20 2. For a misdemeanor, one year.
21 3. For a petty offense, six months.
22 C. For the purposes of subsection B of this section, a prosecution
23 is commenced when an indictment, information or complaint is filed.
24 D. The period of limitation does not run during any time when the
25 accused is absent from the state or has no reasonably ascertainable place
26 of abode within the state.
27 E. The period of limitation does not run for a serious offense as
28 defined in section 13-706 during any time when the identity of the person
29 who commits the offense or offenses is unknown.
30 F. The time limitation within which a prosecution of a class 6
31 felony shall commence shall be determined pursuant to subsection B,
32 paragraph 1 of this section, irrespective of whether a court enters a
33 judgment of conviction for or a prosecuting attorney designates the
34 offense as a misdemeanor.
35 G. If a complaint, indictment or information filed before the
36 period of limitation has expired is dismissed for any reason, a new
37 prosecution may be commenced within six months after the dismissal becomes
38 final even if the period of limitation has expired at the time of the
39 dismissal or will expire within six months of the dismissal.

1 Sec. 2. Section 28-1381, Arizona Revised Statutes, is amended to
2 read:

3 28-1381. Driving or actual physical control while under the
4 influence; trial by jury; presumptions; admissible
5 evidence; sentencing; time limitation;
6 classification

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

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

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

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

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

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

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

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

33 E. In any prosecution for a violation of this section, the state
34 shall allege, for the purpose of classification and sentencing pursuant to
35 this section, all prior convictions of violating this section, section
36 28-1382 or section 28-1383 occurring within the past thirty-six months,
37 unless there is an insufficient legal or factual basis to do so.

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

41 G. In a trial, action or proceeding for a violation of this section
42 or section 28-1383 other than a trial, action or proceeding involving
43 driving or being in actual physical control of a commercial vehicle, the
44 defendant's alcohol concentration within two hours of the time of driving

1 or being in actual physical control as shown by analysis of the
2 defendant's blood, breath or other bodily substance gives rise to the
3 following presumptions:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 K. If within a period of eighty-four months a person is convicted
24 of a second violation of this section or is convicted of a violation of
25 this section and has previously been convicted of a violation of section
26 28-1382 or 28-1383 or an act in another jurisdiction that if committed in
27 this state would be a violation of this section or section 28-1382 or
28 28-1383, the person:

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

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

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

36 4. Shall have the person's driving privilege revoked for one year.
37 The court shall report the conviction to the department. On receipt of
38 the report, the department shall revoke the person's driving privilege
39 and, if the violation involved intoxicating liquor, shall require the
40 person to equip any motor vehicle the person operates with a certified
41 ignition interlock device pursuant to section 28-3319. In addition, the
42 court may order the person to equip any motor vehicle the person operates
43 with a certified ignition interlock device for more than twelve months
44 beginning on the date the person successfully completes the alcohol or

1 other drug screening, education or treatment program requirements of this
2 title and the person is otherwise eligible to reinstate the person's
3 driver license or driving privilege. The person who operates a motor
4 vehicle with a certified ignition interlock device under this paragraph
5 shall comply with article 5 of this chapter.

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

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

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

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

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

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

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

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

16 Q. A PROSECUTION FOR A VIOLATION OF THIS SECTION INVOLVING A
17 COLLISION THAT RESULTED IN SERIOUS PHYSICAL INJURY OR DEATH AS IDENTIFIED
18 IN A WRITTEN ACCIDENT REPORT COMPLETED PURSUANT TO SECTION 28-667 MUST BE
19 COMMENCED WITHIN TWO YEARS AFTER ACTUAL DISCOVERY OF THE OFFENSE BY THE
20 STATE OR THE POLITICAL SUBDIVISION HAVING JURISDICTION OR DISCOVERY BY THE
21 STATE OR THE POLITICAL SUBDIVISION THAT SHOULD HAVE OCCURRED WITH THE
22 EXERCISE OF REASONABLE DILIGENCE, WHICHEVER FIRST OCCURS.

23 Sec. 3. Section 28-1382, Arizona Revised Statutes, is amended to
24 read:

25 28-1382. Driving or actual physical control while under the
26 extreme influence of intoxicating liquor; trial by
27 jury; sentencing; time limitation; classification

28 A. It is unlawful for a person to drive or be in actual physical
29 control of a vehicle in this state if the person has an alcohol
30 concentration as follows within two hours of driving or being in actual
31 physical control of the vehicle and the alcohol concentration results from
32 alcohol consumed either before or while driving or being in actual
33 physical control of the vehicle:

- 34 1. 0.15 or more but less than 0.20.
- 35 2. 0.20 or more.

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

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

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

- 43 1. Shall be sentenced to serve not less than thirty consecutive
44 days in jail and is not eligible for probation or suspension of execution

1 of sentence unless the entire sentence is served if the person is
2 convicted of a violation of subsection A, paragraph 1 of this section. A
3 person who is convicted of a violation of subsection A, paragraph 2 of
4 this section shall be sentenced to serve not less than forty-five
5 consecutive days in jail and is not eligible for probation or suspension
6 of execution of sentence unless the entire sentence is served.

7 2. Shall pay a fine of not less than \$250, except that a person who
8 is convicted of a violation of subsection A, paragraph 2 of this section
9 shall pay a fine of not less than \$500. The fine prescribed in this
10 paragraph and any assessments, restitution and incarceration costs shall
11 be paid before the assessment prescribed in paragraph 3 of this
12 subsection.

13 3. Shall pay an additional assessment of \$250. If the conviction
14 occurred in the superior court or a justice court, the court shall
15 transmit the monies received pursuant to this paragraph to the county
16 treasurer. If the conviction occurred in a municipal court, the court
17 shall transmit the monies received pursuant to this paragraph to the city
18 treasurer. The city or county treasurer shall transmit the monies
19 received to the state treasurer. The state treasurer shall deposit the
20 monies received in the driving under the influence abatement fund
21 established by section 28-1304.

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

23 5. Shall be required by the department, on receipt of the report of
24 conviction, to equip any motor vehicle the person operates with a
25 certified ignition interlock device pursuant to section 28-3319. In
26 addition, the court may order the person to equip any motor vehicle the
27 person operates with a certified ignition interlock device for more than
28 twelve months beginning on the date the person successfully completes the
29 alcohol or other drug screening, education or treatment program
30 requirements of this title and the person is otherwise eligible to
31 reinstate the person's driver license or driving privilege. The person
32 who operates a motor vehicle with a certified ignition interlock device
33 under this paragraph shall comply with article 5 of this chapter.

34 6. Shall pay an additional assessment of \$1,000 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 7. Shall pay an additional assessment of \$1,000 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 8. Shall be required by the department to attend and successfully
10 complete an approved traffic survival school course.

11 E. If within a period of eighty-four months a person is convicted
12 of a second violation of this section or is convicted of a violation of
13 this section and has previously been convicted of a violation of section
14 28-1381 or 28-1383 or an act in another jurisdiction that if committed in
15 this state would be a violation of this section or section 28-1381 or
16 28-1383, the person:

17 1. Shall be sentenced to serve not less than one hundred twenty
18 days in jail, sixty days of which shall be served consecutively, and is
19 not eligible for probation or suspension of execution of sentence unless
20 the entire sentence has been served if the person is convicted of a
21 violation of subsection A, paragraph 1 of this section. A person who is
22 convicted of a violation of subsection A, paragraph 2 of this section
23 shall be sentenced to serve not less than one hundred eighty days in jail,
24 ninety of which shall be served consecutively, and is not eligible for
25 probation or suspension of execution of sentence unless the entire
26 sentence has been served.

27 2. Shall pay a fine of not less than \$500, except that a person who
28 is convicted of a violation of subsection A, paragraph 2 of this section
29 shall pay a fine of not less than \$1,000. The fine prescribed in this
30 paragraph and any assessments, restitution and incarceration costs shall
31 be paid before the assessment prescribed in paragraph 3 of this
32 subsection.

33 3. Shall pay an additional assessment of \$250. If the conviction
34 occurred in the superior court or a justice court, the court shall
35 transmit the monies received pursuant to this paragraph to the county
36 treasurer. If the conviction occurred in a municipal court, the court
37 shall transmit the monies received pursuant to this paragraph to the city
38 treasurer. The city or county treasurer shall transmit the monies
39 received to the state treasurer. The state treasurer shall deposit the
40 monies received in the driving under the influence abatement fund
41 established by section 28-1304.

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

1 5. Shall have the person's driving privilege revoked for at least
2 one year. The court shall report the conviction to the department. On
3 receipt of the report, the department shall revoke the person's driving
4 privilege and shall require the person to equip any motor vehicle the
5 person operates with a certified ignition interlock device pursuant to
6 section 28-3319. In addition, the court may order the person to equip any
7 motor vehicle the person operates with a certified ignition interlock
8 device for more than twelve months beginning on the date the person
9 successfully completes the alcohol or other drug screening, education or
10 treatment program requirements of this title and the person is otherwise
11 eligible to reinstate the person's driver license or driving privilege.
12 The person who operates a motor vehicle with a certified ignition
13 interlock device under this paragraph shall comply with article 5 of this
14 chapter.

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

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

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

34 F. In applying the eighty-four month provision of subsection E of
35 this section, the dates of the commission of the offense shall be the
36 determining factor, irrespective of the sequence in which the offenses
37 were committed.

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

41 H. After completing forty-five days of the revocation period
42 prescribed by subsection E of this section, a person whose driving
43 privilege is revoked for a violation of this section and who is sentenced

1 pursuant to subsection E of this section is eligible for a special
2 ignition interlock restricted driver license pursuant to section 28-1401.

3 I. Notwithstanding subsection D, paragraph 1 of this section, at
4 the time of sentencing if the person is convicted of a violation of
5 subsection A, paragraph 1 of this section, the judge may suspend all but
6 nine days of the sentence if the person equips any motor vehicle the
7 person operates with a certified ignition interlock device for a period of
8 twelve months. If the person is convicted of a violation of subsection A,
9 paragraph 2 of this section, the judge may suspend all but fourteen days
10 of the sentence if the person equips any motor vehicle the person operates
11 with a certified ignition interlock device for a period of twelve months.
12 If the person fails to comply with article 5 of this chapter and has not
13 been placed on probation, the court shall issue an order to show cause as
14 to why the remaining jail sentence should not be served.

15 J. A PROSECUTION FOR A VIOLATION OF THIS SECTION INVOLVING A
16 COLLISION THAT RESULTED IN SERIOUS PHYSICAL INJURY OR DEATH AS IDENTIFIED
17 IN A WRITTEN ACCIDENT REPORT COMPLETED PURSUANT TO SECTION 28-667 MUST BE
18 COMMENCED WITHIN TWO YEARS AFTER ACTUAL DISCOVERY OF THE OFFENSE BY THE
19 STATE OR THE POLITICAL SUBDIVISION HAVING JURISDICTION OR DISCOVERY BY THE
20 STATE OR THE POLITICAL SUBDIVISION THAT SHOULD HAVE OCCURRED WITH THE
21 EXERCISE OF REASONABLE DILIGENCE, WHICHEVER FIRST OCCURS.

22 ~~J.~~ K. A person who is convicted of a violation of this section is
23 guilty of a class 1 misdemeanor.