

REFERENCE TITLE: **time limitation; DUI prosecutions**

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

## **SB 1085**

Introduced by  
Senator Kavanagh

**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 MUST BE COMMENCED  
17 WITHIN TWO YEARS AFTER ACTUAL DISCOVERY OF THE OFFENSE BY THE STATE OR THE  
18 POLITICAL SUBDIVISION HAVING JURISDICTION OR DISCOVERY BY THE STATE OR THE  
19 POLITICAL SUBDIVISION THAT SHOULD HAVE OCCURRED WITH THE EXERCISE OF  
20 REASONABLE DILIGENCE, WHICHEVER FIRST OCCURS.

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

23 28-1382. Driving or actual physical control while under the  
24 extreme influence of intoxicating liquor; trial by  
25 jury; sentencing; time limitation; classification

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

- 32 1. 0.15 or more but less than 0.20.
- 33 2. 0.20 or more.

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

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

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

41 1. Shall be sentenced to serve not less than thirty consecutive  
42 days in jail and is not eligible for probation or suspension of execution  
43 of sentence unless the entire sentence is served if the person is  
44 convicted of a violation of subsection A, paragraph 1 of this section. A

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

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

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

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

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

32 6. Shall pay an additional assessment of \$1,000 to be deposited by  
33 the state treasurer in the prison construction and operations fund  
34 established by section 41-1651. This assessment is not subject to any  
35 surcharge. If the conviction occurred in the superior court or a justice  
36 court, the court shall transmit the assessed monies to the county  
37 treasurer. If the conviction occurred in a municipal court, the court  
38 shall transmit the assessed monies to the city treasurer. The city or  
39 county treasurer shall transmit the monies received to the state  
40 treasurer.

41 7. Shall pay an additional assessment of \$1,000 to be deposited by  
42 the state treasurer in the public safety equipment fund established by  
43 section 41-1723. This assessment is not subject to any surcharge. If the  
44 conviction occurred in the superior court or a justice court, the court



1 shall transmit the assessed monies to the county treasurer. If the  
2 conviction occurred in a municipal court, the court shall transmit the  
3 assessed monies to the city treasurer. The city or county treasurer shall  
4 transmit the monies received to the state treasurer.

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

7 E. If within a period of eighty-four months a person is convicted  
8 of a second violation of this section or is convicted of a violation of  
9 this section and has previously been convicted of a violation of section  
10 28-1381 or 28-1383 or an act in another jurisdiction that if committed in  
11 this state would be a violation of this section or section 28-1381 or  
12 28-1383, the person:

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

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

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

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

40 5. Shall have the person's driving privilege revoked for at least  
41 one year. The court shall report the conviction to the department. On  
42 receipt of the report, the department shall revoke the person's driving  
43 privilege and shall require the person to equip any motor vehicle the  
44 person operates with a certified ignition interlock device pursuant to

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

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

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

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

29 F. In applying the eighty-four month provision of subsection E of  
30 this section, the dates of the commission of the offense shall be the  
31 determining factor, irrespective of the sequence in which the offenses  
32 were committed.

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

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

41 I. Notwithstanding subsection D, paragraph 1 of this section, at  
42 the time of sentencing if the person is convicted of a violation of  
43 subsection A, paragraph 1 of this section, the judge may suspend all but  
44 nine days of the sentence if the person equips any motor vehicle the

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

9 J. A PROSECUTION FOR A VIOLATION OF THIS SECTION MUST BE COMMENCED  
10 WITHIN TWO YEARS AFTER ACTUAL DISCOVERY OF THE OFFENSE BY THE STATE OR THE  
11 POLITICAL SUBDIVISION HAVING JURISDICTION OR DISCOVERY BY THE STATE OR THE  
12 POLITICAL SUBDIVISION THAT SHOULD HAVE OCCURRED WITH THE EXERCISE OF  
13 REASONABLE DILIGENCE, WHICHEVER FIRST OCCURS.

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