

REFERENCE TITLE: restricted driver license; DUI

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1029

Introduced by
Senator Gray

AN ACT

AMENDING SECTIONS 28-1321, 28-1381, 28-1382, 28-1385, 28-1401 AND 28-1402,
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 28-1321, Arizona Revised Statutes, is amended to
3 read:

4 28-1321. Implied consent; tests; refusal to submit to test;
5 order of suspension; hearing; review; temporary
6 permit; notification of suspension; special ignition
7 interlock restricted driver license

8 A. A person who operates a motor vehicle in this state gives consent,
9 subject to section 4-244, paragraph 34 or section 28-1381, 28-1382 or
10 28-1383, to a test or tests of the person's blood, breath, urine or other
11 bodily substance for the purpose of determining alcohol concentration or drug
12 content if the person is arrested for any offense arising out of acts alleged
13 to have been committed in violation of this chapter or section 4-244,
14 paragraph 34 while the person was driving or in actual physical control of a
15 motor vehicle while under the influence of intoxicating liquor or drugs. The
16 test or tests chosen by the law enforcement agency shall be administered at
17 the direction of a law enforcement officer having reasonable grounds to
18 believe that the person was driving or in actual physical control of a motor
19 vehicle in this state either:

20 1. While under the influence of intoxicating liquor or drugs.

21 2. If the person is under twenty-one years of age, with spirituous
22 liquor in the person's body.

23 B. After an arrest a violator shall be requested to submit to and
24 successfully complete any test or tests prescribed by subsection A of this
25 section, and if the violator refuses the violator shall be informed that the
26 violator's license or permit to drive will be suspended or denied for twelve
27 months, or for two years for a second or subsequent refusal within a period
28 of eighty-four months, unless the violator expressly agrees to submit to and
29 successfully completes the test or tests. A failure to expressly agree to
30 the test or successfully complete the test is deemed a refusal. The violator
31 shall also be informed that:

32 1. If the test results show a blood or breath alcohol concentration of
33 0.08 or more, or if the results show a blood or breath alcohol concentration
34 of 0.04 or more and the violator was driving or in actual physical control of
35 a commercial motor vehicle, the violator's license or permit to drive will be
36 suspended or denied for not less than ninety consecutive days.

37 2. The violator's driving privilege, license, permit, right to apply
38 for a license or permit or nonresident operating privilege may be issued or
39 reinstated following the period of suspension only if the violator completes
40 alcohol or other drug screening.

41 C. A person who is dead, unconscious or otherwise in a condition
42 rendering the person incapable of refusal is deemed not to have withdrawn the
43 consent provided by subsection A of this section and the test or tests may be
44 administered, subject to section 4-244, paragraph 34 or section 28-1381,
45 28-1382 or 28-1383.

1 D. If a person under arrest refuses to submit to the test designated
2 by the law enforcement agency as provided in subsection A of this section:

3 1. The test shall not be given, except as provided in section 28-1388,
4 subsection E or pursuant to a search warrant.

5 2. The law enforcement officer directing the administration of the
6 test shall:

7 (a) File a certified report of the refusal with the department.

8 (b) On behalf of the department, serve an order of suspension on the
9 person that is effective fifteen days after the date the order is served.

10 (c) Require the immediate surrender of any license or permit to drive
11 that is issued by this state and that is in the possession or control of the
12 person.

13 (d) If the license or permit is not surrendered, state the reason why
14 it is not surrendered.

15 (e) If a valid license or permit is surrendered, issue a temporary
16 driving permit that is valid for fifteen days.

17 (f) Forward the certified report of refusal, a copy of the completed
18 notice of suspension, a copy of any completed temporary permit and any driver
19 license or permit taken into possession under this section to the department
20 within five days after the issuance of the notice of suspension.

21 E. The certified report is subject to the penalty for perjury as
22 prescribed by section 28-1561 and shall state all of the following:

23 1. The officer's reasonable grounds to believe that the arrested
24 person was driving or in actual physical control of a motor vehicle in this
25 state either:

26 (a) While under the influence of intoxicating liquor or drugs.

27 (b) If the person is under twenty-one years of age, with spirituous
28 liquor in the person's body.

29 2. The manner in which the person refused to submit to the test or
30 tests.

31 3. That the person was advised of the consequences of refusal.

32 F. On receipt of the certified report of refusal and a copy of the
33 order of suspension and on the effective date stated on the order, the
34 department shall enter the order of suspension on its records unless a
35 written **OR ONLINE** request for a hearing as provided in this section has been
36 filed by the accused person. If the department receives only the certified
37 report of refusal, the department shall notify the person named in the report
38 in writing sent by mail that:

39 1. Fifteen days after the date of issuance of the notice the
40 department will suspend the person's license or permit, driving privilege or
41 nonresident driving privilege.

42 2. The department will provide an opportunity for a hearing if the
43 person requests a hearing in writing **OR ONLINE** and the request is received by
44 the department within fifteen days after the notice is sent.

1 G. The order of suspension issued by a law enforcement officer or the
2 department under this section shall notify the person that:

3 1. The person may submit a written **OR ONLINE** request for a hearing.

4 2. The request for a hearing must be received by the department within
5 fifteen days after the date of the notice or the order of suspension will
6 become final.

7 3. The affected person's license or permit to drive or right to apply
8 for a license or permit or any nonresident operating privilege will be
9 suspended for twelve months from that date or for two years from that date
10 for a second or subsequent refusal within a period of eighty-four months.

11 4. The person's driving privilege, license, permit, right to apply for
12 a license or permit or nonresident operating privilege may be issued or
13 reinstated following the period of suspension only if the person completes
14 alcohol or other drug screening.

15 H. The order for suspension shall:

16 1. Be accompanied by printed forms that are ready to mail to the
17 department, ~~and~~ that may be filled out and signed by the person to indicate
18 the person's desire for a hearing **AND THAT ADVISE THE PERSON THAT THE PERSON**
19 **MAY ALTERNATIVELY SUBMIT AN ONLINE REQUEST FOR A HEARING.**

20 2. Advise the person that unless the person has surrendered any driver
21 license or permit issued by this state the person's hearing request will not
22 be accepted, except that the person may certify pursuant to section 28-3170
23 that the license or permit is lost or destroyed.

24 I. On the receipt of a request for a hearing, the department shall set
25 the hearing within thirty days in the county in which the person named in the
26 report resides unless the law enforcement agency filing the certified report
27 of refusal pursuant to subsection D of this section requests at the time of
28 its filing that the hearing be held in the county where the refusal occurred.

29 J. A timely request for a hearing stays the suspension until a hearing
30 is held, except that the department shall not return any surrendered license
31 or permit to the person but may issue temporary permits to drive that expire
32 no later than when the department has made its final decision. If the person
33 is a resident without a license or permit or has an expired license or
34 permit, the department may allow the person to apply for a restricted license
35 or permit. If the department determines the person is otherwise entitled to
36 the license or permit, the department shall issue and retain a restricted
37 license or permit subject to this section.

38 K. Hearings requested under this section shall be conducted in the
39 same manner and under the same conditions as provided in section 28-3306.
40 For the purposes of this section, the scope of the hearing shall include only
41 the issues of whether:

42 1. A law enforcement officer had reasonable grounds to believe that
43 the person was driving or was in actual physical control of a motor vehicle
44 in this state either:

- 1 (a) While under the influence of intoxicating liquor or drugs.
- 2 (b) If the person is under twenty-one years of age, with spirituous
- 3 liquor in the person's body.
- 4 2. The person was placed under arrest.
- 5 3. The person refused to submit to the test.
- 6 4. The person was informed of the consequences of refusal.
- 7 L. If the department determines at the hearing to suspend the affected
- 8 person's privilege to operate a motor vehicle, the suspension provided in
- 9 this section is effective fifteen days after giving written notice of the
- 10 suspension, except that the department may issue or extend a temporary
- 11 license that expires on the effective date of the suspension. If the person
- 12 is a resident without a license or permit or has an expired license or permit
- 13 to operate a motor vehicle in this state, the department shall deny to the
- 14 person the issuance of a license or permit for a period of twelve months
- 15 after the order of suspension becomes effective or for a period of two years
- 16 after the order of suspension becomes effective for a second or subsequent
- 17 refusal within a period of eighty-four months, and may reinstate the person's
- 18 driving privilege, license, permit, right to apply for a license or permit or
- 19 nonresident operating privilege following the period of suspension only if
- 20 the person completes alcohol or other drug screening.
- 21 M. If the suspension order is sustained after the hearing, a motion
- 22 for rehearing is not required. Within thirty days after a suspension order
- 23 is sustained, the affected person may file a petition in the superior court
- 24 to review the final order of suspension or denial by the department in the
- 25 same manner provided in section 28-3317. The court shall hear the review of
- 26 the final order of suspension or denial on an expedited basis.
- 27 N. If the suspension or determination that there should be a denial of
- 28 issuance is not sustained, the ruling is not admissible in and has no effect
- 29 on any administrative, civil or criminal court proceeding.
- 30 O. If it has been determined under the procedures of this section that
- 31 a nonresident's privilege to operate a motor vehicle in this state has been
- 32 suspended, the department shall give information either in writing or by
- 33 electronic means of the action taken to the motor vehicle administrator of
- 34 the state of the person's residence and of any state in which the person has
- 35 a license.
- 36 P. After completing not less than ninety consecutive days of the
- 37 period of suspension required by this section and any alcohol or other drug
- 38 screening that is ordered by the department pursuant to this chapter, a
- 39 person whose driving privilege is suspended pursuant to this section may
- 40 apply to the department for a special ignition interlock restricted driver
- 41 license pursuant to section 28-1401. Unless the certified ignition interlock
- 42 period is extended by the department pursuant to section 28-1461, a person
- 43 who is issued a special ignition interlock restricted driver license as
- 44 provided in this subsection shall maintain a functioning certified ignition
- 45 interlock device in compliance with this chapter during the remaining period

1 of the suspension prescribed by this section. This subsection does not apply
2 to a person whose driving privilege is suspended for a second or subsequent
3 refusal within a period of eighty-four months ~~or a person who within a period~~
4 ~~of eighty four months has been convicted of a second or subsequent violation~~
5 ~~of article 3 of this chapter or section 4 244, paragraph 34 or an act in~~
6 ~~another jurisdiction that if committed in this state would be a violation of~~
7 ~~article 3 of this chapter or section 4 244, paragraph 34.~~

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

9 28-1381. Driving or actual physical control while under the
10 influence; trial by jury; presumptions; admissible
11 evidence; sentencing; classification

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

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

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

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

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

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

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

32 D. A person using a drug, as prescribed by a medical practitioner
33 licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of
34 violating subsection A, paragraph 3 of this section.

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

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

43 G. In a trial, action or proceeding for a violation of this section or
44 section 28-1383 other than a trial, action or proceeding involving driving or
45 being in actual physical control of a commercial vehicle, the defendant's

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

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

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

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

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

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

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

23 2. Shall pay a fine of not less than two hundred fifty dollars.

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

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

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

41 6. Shall be required by the department, on report of the conviction,
42 to equip any motor vehicle the person operates with a certified ignition
43 interlock device pursuant to section 28-3319. In addition, the court may
44 order the person to equip any motor vehicle the person operates with a
45 certified ignition interlock device for more than twelve months beginning on

1 the date of reinstatement of the person's driving privilege following a
2 suspension or revocation or on the date of the department's receipt of the
3 report of conviction, whichever occurs later. The person who operates a
4 motor vehicle with a certified ignition interlock device under this paragraph
5 shall comply with article 5 of this chapter.

6 J. Notwithstanding subsection I, paragraph 1 of this section, at the
7 time of sentencing the judge may suspend all but twenty-four consecutive
8 hours of the sentence if the person completes a court ordered alcohol or
9 other drug screening, education or treatment program. If the person fails to
10 complete the court ordered alcohol or other drug screening, education or
11 treatment program and has not been placed on probation, the court shall issue
12 an order to show cause to the defendant as to why the remaining jail sentence
13 should not be served.

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

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

24 2. Shall pay a fine of not less than five hundred dollars.

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

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

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

1 The city or county treasurer shall transmit the monies received to the state
2 treasurer.

3 6. Shall pay an additional assessment of one thousand two hundred
4 fifty dollars to be deposited by the state treasurer in the public safety
5 equipment fund established by section 41-1723. This assessment is not
6 subject to any surcharge. If the conviction occurred in the superior court
7 or a justice court, the court shall transmit the assessed monies to the
8 county treasurer. If the conviction occurred in a municipal court, the court
9 shall transmit the assessed monies to the city treasurer. The city or county
10 treasurer shall transmit the monies received to the state treasurer.

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

18 M. In applying the eighty-four month provision of subsection K 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 N. 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 O. AFTER COMPLETING FORTY-FIVE DAYS OF THE REVOCATION PERIOD
25 PRESCRIBED BY SUBSECTION K OF THIS SECTION, A PERSON WHOSE DRIVING PRIVILEGE
26 IS REVOKED FOR A VIOLATION OF THIS SECTION AND WHO IS SENTENCED PURSUANT TO
27 SUBSECTION K OF THIS SECTION IS ELIGIBLE FOR A SPECIAL IGNITION INTERLOCK
28 RESTRICTED DRIVER LICENSE PURSUANT TO SECTION 28-1401.

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

30 28-1382. Driving or actual physical control while under the
31 extreme influence of intoxicating liquor; trial by
32 jury; sentencing; classification

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

- 39 1. 0.15 or more but less than 0.20.
- 40 2. 0.20 or more.

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

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

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

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

13 2. Shall pay a fine of not less than two hundred fifty dollars, except
14 that a person who is convicted of a violation of subsection A, paragraph 2 of
15 this section shall pay a fine of not less than five hundred dollars. The
16 fine prescribed in this paragraph and any assessments, restitution and
17 incarceration costs shall be paid before the assessment prescribed in
18 paragraph 3 of this subsection.

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

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

29 5. Shall be required by the department, on receipt of the report of
30 conviction, to equip any motor vehicle the person operates with a certified
31 ignition interlock device pursuant to section 28-3319. In addition, the
32 court may order the person to equip any motor vehicle the person operates
33 with a certified ignition interlock device for more than twelve months
34 beginning on the date of reinstatement of the person's driving privilege
35 following a suspension or revocation or on the date of the department's
36 receipt of the report of conviction, whichever occurs later. The person who
37 operates a motor vehicle with a certified ignition interlock device under
38 this paragraph shall comply with article 5 of this chapter.

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

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

3 7. Shall pay an additional assessment of one thousand dollars to be
4 deposited by the state treasurer in the public safety equipment fund
5 established by section 41-1723. This assessment is not subject to any
6 surcharge. If the conviction occurred in the superior court or a justice
7 court, the court shall transmit the assessed monies to the county treasurer.
8 If the conviction occurred in a municipal court, the court shall transmit the
9 assessed monies to the city treasurer. The city or county treasurer shall
10 transmit the monies received to the state treasurer.

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

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

26 2. Shall pay a fine of not less than five hundred dollars, except that
27 a person who is convicted of a violation of subsection A, paragraph 2 of this
28 section shall pay a fine of not less than one thousand dollars. The fine
29 prescribed in this paragraph and any assessments, restitution and
30 incarceration costs shall be paid before the assessment prescribed in
31 paragraph 3 of this subsection.

32 3. Shall pay an additional assessment of two hundred fifty dollars.
33 If the conviction occurred in the superior court or a justice court, the
34 court shall transmit the monies received pursuant to this paragraph to the
35 county treasurer. If the conviction occurred in a municipal court, the court
36 shall 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. Shall be ordered by a court to perform at least thirty hours of
42 community restitution.

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

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

22 7. Shall pay an additional assessment of one thousand two hundred
23 fifty dollars to be deposited by the state treasurer in the public safety
24 equipment fund established by section 41-1723. This assessment is not
25 subject to any surcharge. If the conviction occurred in the superior court
26 or a justice court, the court shall transmit the assessed monies to the
27 county treasurer. If the conviction occurred in a municipal court, the court
28 shall transmit the assessed monies to the city treasurer. The city or county
29 treasurer shall transmit the monies received to the state treasurer.

30 F. In applying the eighty-four month provision of subsection E of this
31 section, the dates of the commission of the offense shall be the determining
32 factor, irrespective of the sequence in which the offenses 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 the
35 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 PRIVILEGE
38 IS REVOKED FOR A VIOLATION OF THIS SECTION AND WHO IS SENTENCED PURSUANT TO
39 SUBSECTION E OF THIS SECTION IS ELIGIBLE FOR A SPECIAL IGNITION INTERLOCK
40 RESTRICTED DRIVER LICENSE PURSUANT TO SECTION 28-1401.

41 ~~H.~~ I. A person who is convicted of a violation of this section is
42 guilty of a class 1 misdemeanor.

1 Sec. 4. Section 28-1385, Arizona Revised Statutes, is amended to read:
2 28-1385. Administrative license suspension for driving under
3 the influence or for homicide or assault involving a
4 motor vehicle; report; hearing; summary review;
5 ignition interlock device requirement

6 A. A law enforcement officer shall forward to the department a
7 certified report as prescribed in subsection B of this section, subject to
8 the penalty for perjury prescribed by section 28-1561, if both of the
9 following occur:

10 1. The officer arrests a person for a violation of section 4-244,
11 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a
12 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a
13 motor vehicle.

14 2. The person submits to a blood or breath alcohol test permitted by
15 section 28-1321 or any other law or a sample of blood is obtained pursuant to
16 section 28-1388 and the results are either not available or the results
17 indicate either of the following:

18 (a) 0.08 or more alcohol concentration in the person's blood or
19 breath.

20 (b) 0.04 or more alcohol concentration in the person's blood or breath
21 if the person was driving or in actual physical control of a commercial motor
22 vehicle.

23 B. The officer shall make the certified report required by subsection
24 A of this section on forms supplied or approved by the department. The
25 report shall state information that is relevant to the enforcement action,
26 including:

27 1. Information that adequately identifies the arrested person.

28 2. A statement of the officer's grounds for belief that the person was
29 driving or in actual physical control of a motor vehicle in violation of
30 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
31 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201
32 or 13-1204 involving a motor vehicle.

33 3. A statement that the person was arrested for a violation of section
34 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or
35 for a violation of title 13, chapter 11 or section 13-1201 or 13-1204
36 involving a motor vehicle.

37 4. A report of the results of the blood or breath alcohol test that
38 was administered, if the results are available.

39 C. The officer shall also serve an order of suspension on the person
40 on behalf of the department. The order of suspension:

41 1. Is effective fifteen days after the date it is served.

42 2. Shall require the immediate surrender of any license or permit to
43 drive that is issued by this state and that is in the possession or control
44 of the person.

1 3. Shall contain information concerning the right to a summary review
2 and hearing, including information concerning the hearing as required by
3 section 28-1321, subsections G and H.

4 4. Shall be accompanied by printed forms THAT ARE ready to mail to the
5 department, that the person may fill out and sign to indicate the person's
6 desire for a hearing AND THAT ADVISE THE PERSON THAT THE PERSON MAY
7 ALTERNATIVELY SUBMIT AN ONLINE REQUEST FOR A HEARING.

8 5. Shall be entered on the department's records on receipt of the
9 report by the officer and a copy of the order of suspension.

10 6. Shall inform the person that the person's driving privilege,
11 license, permit, right to apply for a license or permit or nonresident
12 operating privilege may be issued or reinstated following the period of
13 suspension only if the person completes alcohol or other drug screening.

14 7. Shall contain information on alcohol or other drug education and
15 treatment programs that are provided by a facility approved by the department
16 of health services.

17 D. If the blood alcohol concentration test result is unavailable at
18 the time the test is administered, the result shall be forwarded to the
19 department before the hearing held pursuant to this section in a form
20 prescribed by the director.

21 E. If the license or permit is not surrendered pursuant to subsection
22 C of this section, the officer shall state the reason for the nonsurrender.
23 If a valid license or permit is surrendered, the officer shall issue a
24 temporary driving permit that is valid for fifteen days. The officer shall
25 forward a copy of the completed order of suspension, a copy of any completed
26 temporary permit and any driver license or permit taken into possession under
27 this section to the department within five days after the issuance of the
28 order of suspension along with the report.

29 F. The department shall suspend the affected person's license or
30 permit to drive or right to apply for a license or permit or any nonresident
31 operating privilege for not less than ninety consecutive days from that
32 date. If the person is otherwise qualified, the department may reinstate the
33 person's driving privilege, license, permit, right to apply for a license or
34 permit or nonresident operating privilege following the period of suspension
35 only if the violator completes alcohol or other drug screening.

36 G. Notwithstanding subsections A through F of this section, the
37 department shall suspend the driving privileges of the person described in
38 subsection A of this section for not less than thirty consecutive days and
39 shall restrict the driving privileges of the person for not less than sixty
40 consecutive additional days to travel between the person's place of
41 employment and residence and during specified periods of time while at
42 employment, to travel between the person's place of residence and the
43 person's secondary or postsecondary school, according to the person's
44 employment or educational schedule, to travel between the person's place of
45 residence and the office of the person's probation officer for scheduled

1 appointments or to travel between the person's place of residence and a
2 screening, education or treatment facility for scheduled appointments if the
3 person:

4 1. Did not cause death or serious physical injury as defined in
5 section 13-105 to another person during the course of conduct out of which
6 the current action arose.

7 2. Has not been convicted of a violation of section 4-244, paragraph
8 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four
9 months of the date of commission of the acts out of which the current action
10 arose. The dates of commission of the acts are the determining factor in
11 applying the eighty-four month provision.

12 3. Has not had the person's privilege to drive suspended pursuant to
13 this section or section 28-1321 within eighty-four months of the date of
14 commission of the acts out of which the current action arose.

15 4. Provides satisfactory evidence to the department of the person's
16 completion of alcohol or other drug screening that is ordered by the
17 department. If the person does not complete alcohol or other drug screening,
18 the department may impose a ninety day suspension pursuant to this section.

19 H. If the officer does not serve an order of suspension pursuant to
20 subsection C of this section and if the department does not receive the
21 report of the results of the blood or breath alcohol test pursuant to
22 subsection B, paragraph 4 of this section, but subsequently receives the
23 results and the results indicate 0.08 or more alcohol concentration in the
24 person's blood or breath, or a blood or breath alcohol concentration of 0.04
25 or more and the person was driving or in actual physical control of a
26 commercial motor vehicle, the department shall notify the person named in the
27 report in writing sent by mail that fifteen days after the date of issuance
28 of the notice the department will suspend the person's license or permit,
29 driving privilege or nonresident driving privilege. The notice shall also
30 state that the department will provide an opportunity for a hearing and
31 administrative review if the person requests a hearing or review in writing
32 and the request is received by the department within fifteen days after the
33 notice is sent.

34 I. A timely request for a hearing stays the suspension until a hearing
35 is held, except that the department shall not return any surrendered license
36 or permit to the person but may issue temporary permits to drive that expire
37 no later than when the department has made its final decision. If the person
38 is a resident without a license or permit or has an expired license or
39 permit, the department may allow the person to apply for a restricted license
40 or permit. If the department determines the person is otherwise entitled to
41 the restricted license or permit, the department shall issue, but retain, the
42 license or permit, subject to this section. All hearings requested under
43 this section shall be conducted in the same manner and under the same
44 conditions as provided in section 28-3306.

1 J. For the purposes of this section, the scope of the hearing shall
2 include only the following issues:

3 1. Whether the officer had reasonable grounds to believe the person
4 was driving or was in actual physical control of a motor vehicle while under
5 the influence of intoxicating liquor.

6 2. Whether the person was placed under arrest for a violation of
7 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
8 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
9 13-1204 involving a motor vehicle.

10 3. Whether a test was taken, the results of which indicated the
11 alcohol concentration in the person's blood or breath at the time the test
12 was administered of either:

13 (a) 0.08 or more.

14 (b) 0.04 or more if the person was driving or in actual physical
15 control of a commercial motor vehicle.

16 4. Whether the testing method used was valid and reliable.

17 5. Whether the test results were accurately evaluated.

18 K. The results of the blood or breath alcohol test shall be admitted
19 on establishing the requirements in section 28-1323 or 28-1326.

20 L. If the department determines at the hearing to suspend the affected
21 person's privilege to operate a motor vehicle, the suspension provided in
22 this section is effective fifteen days after giving written notice of the
23 suspension, except that the department may issue or extend a temporary
24 license that expires on the effective date of the suspension. If the person
25 is a resident without a license or permit or has an expired license or permit
26 to operate a motor vehicle in this state, the department shall deny the
27 issuance of a license or permit to the person for not less than ninety
28 consecutive days. The department may reinstate the person's driving
29 privilege, license, permit, right to apply for a license or permit or
30 nonresident operating privilege following the period of suspension only if
31 the violator completes alcohol or other drug screening.

32 M. A person may apply for a summary review of an order issued pursuant
33 to this section instead of a hearing at any time before the effective date of
34 the order. The person shall submit the application in writing to any
35 department driver license examining office together with any written
36 explanation as to why the department should not suspend the driving
37 privilege. The agent of the department receiving the notice shall issue to
38 the person an additional driving permit that expires twenty days from the
39 date the request is received. The department shall review all reports
40 submitted by the officer and any written explanation submitted by the person
41 and shall determine if the order of suspension should be sustained or
42 cancelled. The department shall not hold a hearing, and the review is not
43 subject to title 41, chapter 6. The department shall notify the person of
44 its decision before the temporary driving permit expires.

1 N. If the suspension or determination that there should be a denial of
2 issuance is not sustained after a hearing or review, the ruling is not
3 admissible in and does not have any effect on any civil or criminal court
4 proceeding.

5 O. If it has been determined under the procedures of this section that
6 a nonresident's privilege to operate a motor vehicle in this state has been
7 suspended, the department shall give information either in writing or by
8 electronic means of the action taken to the motor vehicle administrator of
9 the state of the person's residence and of any state in which the person has
10 a license.

11 Sec. 5. Section 28-1401, Arizona Revised Statutes, is amended to read:
12 28-1401. Special ignition interlock restricted driver licenses;
13 application fee

14 A. A person whose class D or class G license has been suspended or
15 revoked for a first ~~offense of~~ REFUSAL PURSUANT TO section 28-1321, A SECOND
16 VIOLATION OF SECTION 28-1381 OR 28-1382 or A FIRST VIOLATION OF section
17 28-1383, subsection A, paragraph 3, ~~—~~ may apply to the department for a
18 special ignition interlock restricted driver license that allows a person to
19 operate a motor vehicle during the period of suspension or revocation subject
20 to the restrictions prescribed in section 28-1402 and the certified ignition
21 interlock device requirements prescribed in article 5 of this chapter if the
22 person's privilege to operate a motor vehicle has been suspended or revoked
23 due to an alcohol related offense pursuant to ~~either~~ ANY of the following:

24 1. Section 28-1321, if the person meets the criteria of section
25 28-1321, subsection P.

26 2. SECTION 28-1381, IF THE PERSON MEETS THE CRITERIA OF SECTION
27 28-1381, SUBSECTION O AND THE PERSON PRESENTS EVIDENCE THAT IS SATISFACTORY
28 TO THE DIRECTOR AND THAT SHOWS THAT THE PERSON HAS COMPLETED THE REQUIREMENTS
29 PRESCRIBED IN SECTION 28-1387, SUBSECTION B.

30 3. SECTION 28-1382, IF THE PERSON MEETS THE CRITERIA OF SECTION
31 28-1382, SUBSECTION H AND THE PERSON PRESENTS EVIDENCE THAT IS SATISFACTORY
32 TO THE DIRECTOR AND THAT SHOWS THAT THE PERSON HAS COMPLETED THE REQUIREMENTS
33 PRESCRIBED IN SECTION 28-1387, SUBSECTION B.

34 ~~2-~~ 4. Section 28-1383, if the person meets the criteria of section
35 28-1383, subsection K and the person presents evidence that is satisfactory
36 to the director AND that shows that the person has completed ~~screening and~~
37 ~~treatment~~ THE REQUIREMENTS PRESCRIBED IN SECTION 28-1387, SUBSECTION B.

38 B. An applicant for a special ignition interlock restricted driver
39 license shall pay an application fee in an amount to be determined by the
40 director.

41 C. The department shall issue a special ignition interlock restricted
42 driver license during the period of a court ordered restriction pursuant to
43 sections 28-3320 and 28-3322 subject to the restrictions prescribed in
44 section 28-1402 and the certified ignition interlock requirements prescribed
45 in article 5 of this chapter.

1 D. If the department issues a special ignition interlock restricted
2 driver license, the department shall not delete a suspension or revocation
3 from its records.

4 E. The granting of a special ignition interlock restricted driver
5 license does not reduce or eliminate the required use of an ignition
6 interlock device pursuant to section 28-3319.

7 Sec. 6. Section 28-1402, Arizona Revised Statutes, is amended to read:
8 28-1402. Issuance of special ignition interlock restricted
9 driver license; restrictions

10 A. On application pursuant to section 28-1401, subsection A the
11 department may, and pursuant to section 28-1401, subsection C the department
12 shall, issue a special ignition interlock restricted driver license that only
13 allows a person whose class D or class G license has been suspended or
14 revoked for a first ~~offense of~~ REFUSAL PURSUANT TO section 28-1321, A SECOND
15 VIOLATION OF SECTION 28-1381 OR 28-1382 or A FIRST VIOLATION OF section
16 28-1383, subsection A, paragraph 3 to operate a motor vehicle that is
17 equipped with a functioning certified ignition interlock device and only as
18 follows:

19 1. Between the person's place of employment and residence during
20 specified periods of time while at employment.

21 2. Between the person's place of residence, the person's place of
22 employment and the person's secondary or postsecondary school according to
23 the person's employment or educational schedule.

24 3. Between the person's place of residence and a screening, education
25 or treatment facility for scheduled appointments.

26 4. Between the person's place of residence and the office of the
27 person's probation officer for scheduled appointments.

28 5. Between the person's place of residence and the office of a
29 physician or other health care professional.

30 6. Between the person's place of residence and a certified ignition
31 interlock device service facility.

32 B. The department may only issue a special ignition interlock
33 restricted driver license to an applicant who is otherwise qualified by law.

34 C. Except as provided in section 28-1463, if the department suspends,
35 revokes, cancels or otherwise rescinds a person's special ignition interlock
36 restricted license or privilege for any reason, the department shall not
37 issue a new license or reinstate the special ignition interlock restricted
38 driver license during the prescribed period of suspension or revocation or
39 while the person is otherwise ineligible to receive a license.