

SUMMARY OF ARIZONA DRIVING UNDER THE INFLUENCES STATUTES

Common Acronym(s): DUI,(Driving Under the Influence), DWI (Driving While Intoxicated-Impaired), BAC – BrAC (Blood-Breath Alcohol)

Prohibited Vehicular Activity:

“drive or be in actual physical control”¹

Covered Vehicles or Devices:

“ a vehicle”² "any vehicle" ("Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.)³

Covered Locations:

“In the state”⁴

Drinking - Driving Offenses:

1. Driving etc. “While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances *if* the person is impaired to the slightest degree.”⁵

2. Driving etc. “If the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle *and* the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.”⁶

3. Driving etc. “While there is any drug defined in § 13-3401 or its metabolite in the person's body”⁷

4, Driving etc. “If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in § 28-3001 and the person has an alcohol concentration of 0.04 or more.”⁸

5. Driving etc. “If the person has an alcohol concentration of 0.15 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.”(DUI Extreme)⁹

¹ A.R.S. § 28-1321

² A.R.S. § 28-1381

³ A.R.S. § 28-101

⁴ A.R.S. § 28-1381

⁵ A.R.S. § 28-1381 (a)(1)

⁶ A.R.S. § 28-1381 (a)(2)

⁷ A.R.S. § 28-1381 (a)(3)

⁸ A.R.S. § 28-1381 (a)(4)

⁹ A.R.S. § 28-1382 (Extreme) Also see Penalties for Extreme DUI

6. Driving etc. "For a person under the age of twenty-one years while there is any spirituous liquor in the person's body.." ¹⁰

Other Criminal Offenses Involving Under the Influence Offenses (FELONY):

Aggravated Driving Under the Influence

If a person:

1. Commits a violation of § 28-1381, § 28-1382 while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating § 28-1381 or 28-1382 or admin per se. ¹¹

2. Within a period of eighty-four months commits a third or subsequent violation of § 28-1381, § 28-1382 or this section or is convicted of a violation of § 28-1381, § 28-1382 or this section and has previously been convicted of any combination of convictions of § 28-1381, § 28-1382 or this section or acts in another jurisdiction that if committed in this state would be a violation of § 28-1381, § 28-1382 or this section. ¹²

3. While a person under fifteen years of age is in the vehicle, commits a violation of either:
(a) Section 28-1381.
(b) Section 28-1382. ¹³

4. While ordered by the court or required pursuant to the department to equip any motor vehicle the person operates with a certified ignition interlock device, does either of the following: ¹⁴

(a) While under arrest refuses to submit to any test chosen by a law enforcement officer pursuant to the implied consent law.

(b) Commits any violation of Driving Under the Influence. ¹⁵

¹⁰ A.R.S. § 4-244 (33)

¹¹ A.R.S. § 28-1383 (a)(1); A.R.S. § 28-1385 {Class 4 Felony}

¹² A.R.S. § 28-1383 (a)(2) {Class 4 Felony}

¹³ A.R.S. § 28-1383 (a)(3) {Class 6 Felony}

¹⁴ A.R.S. § 28-1383 (a)(4) {Class 6 Felony}, A.R.S. § 28-3319 Interlock

¹⁵ A.R.S. § 28-1381, 28-1382, 28-1383

Criminal Damage

If a person recklessly¹⁶:

Defaces or damages property of another person; or Parks any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.¹⁷

Aggravated Criminal Damage:

If a person recklessly; without express permission of the owner:1. Defaces, damages or in any way changes the appearance of any building, structure, personal property or place used for worship or any religious purpose.2. Defaces or damages any building, structure or place used as a school or as an educational facility.3. Defaces, damages or tampers with any cemetery, mortuary or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead.¹⁸

Endangerment

A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury.¹⁹

Child Abuse

If a person; Recklessly or Negligently: ²⁰

Under circumstances likely to produce death or serious physical injury, causes a child or vulnerable adult to suffer physical injury or having the care or custody of a child who causes or permits the person or health of the child to be injured or who causes or permits a child to be placed in a situation where the person or health of the child is endangered.²¹

Under circumstances other than those likely to produce death or serious physical injury, causes a child or vulnerable adult to suffer physical injury or having the care or custody of

¹⁶ "Recklessly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. **A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.** A.R.S. § 13-105(c)

¹⁷ A.R.S. § 13-1602 (1)(4)

¹⁸ A.R.S. § 13-1603

¹⁹ A.R.S. § 13-1201 A; B Endangerment involving a substantial risk of imminent death is a class 6 felony. In all other cases, it is a class 1 misdemeanor.

²⁰ "Criminal negligence" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A.R.S. § 13-105 (C)

²¹ A.R.S. § 13-3623 (A) (2) Reckless, Class 3 Felony, (A)(3) Negligence, Class 4 Felony

a child who causes or permits the person or health of the child to be injured or who causes or permits a child to be placed in a situation where the person or health of the child is endangered.²²

Aggravated Assault

If a person:

Recklessly causes any physical injury to another person and

1. The person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
(Automobile)²³

Negligent Homicide

A person commits negligent homicide if with criminal negligence the person causes the death of another person, including an unborn child.²⁴

Manslaughter

If a person: Recklessly causes the death of another person²⁵

Second Degree Murder

If a person:

Under circumstances manifesting extreme indifference to human life, recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person, including an unborn child or, as a result of recklessly causing the death of another person, causes the death of an unborn child.²⁶

Degree of Impairment Required:

Under the influence of alcohol/any substance to the extent that “the person is impaired to the slightest degree.” (Ability to Drive)²⁷

²² A.R.S. § 13-3623 (B) (2) Reckless, Class 5 Felony, (B)(3) Negligence, Class 6 Felony

²³ A.R.S. § 13-1203; 13-1204 (A)(1)(2){Class 3 Felony}

²⁴ A.R.S. § 13-1102

²⁵ A.R.S. § 13-1103

²⁶ A.R.S. § 13-1104

²⁷ A.R.S. § 28-1381; *State v. Martin*, 174 Ariz. 118, 847 P.2d 619 (1993); *State v. Askren*, 147 Ariz. 436, 710 P.2d 1091(1985); *Nolan v. Wootan* 102 Ariz. 192, 427 P.2d 143 (1967)

Penalties for Driving Under the Influence Offenses:

[ARS § 28-1381,1382.

(1) For first conviction: 10-day to 6-month jail term; up to 40 hours of community service; alcohol education fines; \$1,000 assessment; surcharges; 90-day license suspension. Interlock Device, Jail costs. (See chart below)

(2) For first conviction extreme (.15 or above): 30-day to 6-month jail term, up to 30 hours community service; alcohol education; fines; \$2,000 assessment; surcharges; 90-day license suspension; Interlock Device; Vehicle impound. Jail costs (See chart below)

(3) For second conviction within 84-month period: 90-day to 6-month jail term; fines; \$2,500 assessment; surcharges; one-year license revocation; Interlock Device. Vehicle impound; Jail costs.; Alcohol screening, education, treatment. 120-day to 6-month term, if either conviction is a violation of ARS § 28-1382 (Extreme).²⁸ (See chart below)

(4) Court may order continuous alcohol monitoring on any Extreme, or Super Extreme charge even on a first offense.

(5) License will be revoked for one year, with no driving for any reason if the offense involves illegal drugs ²⁹

(6) In most jurisdictions, the court will place the person on probation which may be monitored

²⁸ A.R.S. § 28-1381, 28-1382

²⁹ A.R.S. § 28-1381 (A)(3)

Penalties for Other Criminal Offenses Involving Under the Influence Offenses:

Aggravated DUI

(1) For third or subsequent conviction within 60-month period (a class 4 felony): forfeiture of vehicle; three-year license revocation; Interlock Device; plus penalties for class 4 felony (includes min 8 months Department of Corrections) Presumptive sentence 2.5 years Department of Corrections.

(2) DUI on suspended license. (A class 4 felony): forfeiture of vehicle; three year license revocation, Interlock Device; plus penalties for class 4 felony (includes min 4 months Department of Corrections). Presumptive sentence 2.5 years Department of Corrections.

(3) DUI with children in the car. (A class 6 felony): forfeiture of vehicle; three year license revocation, Interlock Device; plus penalties for a class 6 felony.

(4) Refusal to submit to a police ordered test or Driving Under the Influence while required to install a certified interlock device. (A class 6 felony): forfeiture of vehicle; three year license revocation, Interlock Device; plus penalties for a class 6 felony.³⁰

Criminal Damage: Class 4,5,6 Felony³¹

Aggravated Criminal Damage: Class 4,5,6 Felony³²

Endangerment: Class 6 Felony

Child Abuse: Class 3,4,5,6 Felony³³

Aggravated Assault: Class 3 Felony³⁴

Negligent Homicide: Class 4 Felony

Manslaughter: Class 2 Felony³⁵

Second Degree Murder: Class 1 Felony³⁶

³⁰ A.R.S. § 28-1383 D,E,F,G,H,I,J,L,M

³¹ A.R.S. § 13-702, A.R.S. § 13-1602

³² A.R.S. § 13-1603

³³ A.R.S. § 13-702,

³⁴ Mandatory Prison if deadly weapon (automobile) used.

³⁵ A.R.S. § 13-604, A.R.S. § 13-702

³⁶ A.R.S. § 13-604, A.R.S. § 13-702

Statutory Drunk Driving Presumptions:

(1) Alcohol concentration of .05 or less - The person is presumed not to be under the influence of intoxicating liquor.

(2) Alcohol concentration of more than .05 but less than .08 - No presumption but admissible in evidence.

(3) Alcohol concentration of .08 or more - The person may be presumed under the influence of intoxicating liquor.

The above presumptions are not applicable to operators of commercial vehicles.³⁷

Implied Consent Laws:

(1) Tests permitted: Blood, breath or urine test as designated by law enforcement agency.

(2) Type of advisement required: Of 12-month license suspension for refusal; of 90 day administrative per se law penalties.³⁸

(3) Penalties for refusal: Immediate license seizure; 12-month license suspension. 24 month license suspension if second refusal within 84 months. No Criminal penalties. Police may still obtain a blood sample by warrant or if blood is drawn for medical purposes. (Blood may be drawn by force if authorized by warrant.)³⁹

(4) Admissibility of refusal: Admissible in any proceeding arising out of same facts.

(5) Administrative Per Se Law: 90-day or more license suspension if BAC is .08% or more..04% If commercial vehicle.⁴⁰

Implied Consent Laws – Accidents Involving Death or Serious Injury

A. A person who operates a motor vehicle within this state gives consent to a test or tests of the person's blood, breath, urine or other bodily substance for the purposes of determining alcohol concentration or drug content if the person is involved in a traffic accident resulting in death or serious physical injury as defined in [§ 13-105](#) and a law enforcement officer has probable cause to believe that the person caused the accident or the person is issued a citation for a violation of any provision of this article,

B. The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was involved in a traffic accident resulting in death or serious physical injury as defined in [§ 13-105](#) and who has probable cause to believe that the person caused the accident or the person was issued a citation for a violation of any provision of this article,

If the person refuses, the person's license or permit to drive will be suspended or denied for twelve months, or for two years for a second or subsequent refusal in a period of eighty-four months.⁴¹

³⁷ A..R.S/§ 28-1381 H

³⁸ A.R.S. § 28-1385

³⁹ A.R.S. § 28-1321

⁴⁰ A.R.S. § 28-1385

⁴¹ A.R.S. § 28-673

Chemical Test Laws:

[ARS § 28-1323, 1324]

(1) General provisions: Breath test result is admissible if - (a) the test was performed on an instrument approved by the Department of Health Services, (b) the operator possessed a valid permit from the department, © duplicate tests were administered and the results were within .02 of each other or the person being tested was observed for 20 minutes just prior to the test, (d) in conducting the test the operator followed an operational checklist approved by the department, and (e) the testing instrument was in proper working order as shown by the periodic maintenance records.

(2) Administrative rules & regulations: Adopted by Department of Public Safety.

(3) Disclosure of test information: No statutory provision.

Blood-Drawing Statute:

Only a physician, registered nurse, or other qualified person, may withdraw blood for purposes of police testing. However, the qualifications of the person taking the blood sample are not foundational. (A police officer in the field may qualify.)⁴²

Independent Test Statute:

The person tested must be given a reasonable opportunity to arrange for a physician or other qualified person of his or her own choosing to administer a chemical test in addition to the police test. The failure or inability of the person to obtain such a test does not preclude the admission of the police test.⁴³

Plea Bargaining Statute:

Neither a traditional DUI nor a per se DUI offense may be dismissed in return for a guilty plea by the defendant to another offense or for the purpose of pursuing another misdemeanor or petty offense, unless there is an insufficient legal or factual basis to pursue the traditional (common law) DUI or per se offense.⁴⁴

JURY TRIAL: Right to a jury is provided by statute.⁴⁵ (At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.)

⁴² A.R.S. § 28-1388

⁴³ See ARS § 28-1381 M.

⁴⁴ See ARS § 28-1381 G.

⁴⁵ See A.R.S § 28-1381 (F) – 28-1382

Suspension of Driver's License for Alcohol Related Offenses Statutes:

Administrative Per Se Law: [A.R.S. § 28-1385] If BAC is 0.08 percent or greater, 0.04 percent if commercial vehicle, license suspension 90 days, subject to 60 day permit.

Implied Consent Law [A.R.S. § 28-1321]: If refuses to submit to testing, license revoked for 1 year. Two years if prior refusal within 84 months

Driving etc. under the influence; if BAC is 0.08; 0.15 (extreme); Suspension 90 days.

Driving etc. under the influence; if BAC is 0.08; 0.15 (extreme); With one prior offense One year revocation. With two or more prior offenses, Three year revocation.

Drugs: suspension one year

Aggravated DUI: Three year revocation.

Any Felony with Motor Vehicle: Suspension one year

Person under the age of 21 Driving etc. with spiritous liquor: Two year suspension

Administrative Review: Any person who has received a notice of suspension or notice of intended suspension of 90 days for a violation of admin per se, may request with in 15 days, that the information to be reviewed by the Director of Department Motor Vehicles or one of his agents to determine if the evidence of the suspension is sufficient.(Summary review) ⁴⁶

Administrative Hearings: Any person who has received a notice of intended suspension or 90 days for a violation of admin per se or one year for a refusal pursuant to the implied consent law may request a hearing on the matter within 15 days of receipt of that notice. The hearing will be conducted by the Director of the Department of Motor Vehicle or one of his agents.⁴⁷ Within 30 days of the issuance of the hearing results, a person aggrieved by the determination of the hearing shall have the right to file a petition in the superior court for judicial review.⁴⁸

⁴⁶ A,R,S § 28-1385, S

⁴⁷ A,R.S. § 28-28-1321

⁴⁸ A,R.S. § 28-28-1321

Penalties Mandatory

A.R.S. 28-1381 First Offense

Jail	Fines & assessments	Interlock	Community Service	Alcohol Education	License
10 days (Ct may suspend 9) 24 hours consecutive	\$1460.00	Mandatory 12 months	\ Judge may order	Mandatory	90 days Judge may order permit for 60 days

A.R.S 28-1381 Second Offense

Jail	Fines & assessments	Interlock	Community Service	Alcohol Education	License
90 days consecutive (Court may suspend 60)	\$3420.00 Plus jail costs	Mandatory 12 months	\ Judge must order min 30 hours	Mandatory	12 month revocation

A.R.S. 28-1382 (Extreme) (.BAC 15-.19) (BAC ,20) (Super Extreme) First Offense

Jail	Fines & assessments	Interlock	Community Service	Alcohol Education	License
30 days consecutive (Court may suspend 20)	\$2710.00 Plus jail costs	Mandatory 12 months	\ Judge may order	Mandatory	90 days
45 days consecutive if BAC .20 or above	\$ 3170.00 Plus jail costs	Mandatory 18 months	Same	Same	Same

A.R.S. 28-1382 (Extreme) (BAC .15 - .19) (BAC .20) (Super Extreme) Second Offense

Jail	Fines & assessments	Interlock	Community Service	Alcohol Education	License
120 days consecutive (Court may suspend 60)	\$3670.00 Plus jail costs	Mandatory 12 months	\ Judge must order min 30 hours	Mandatory	12 month revocation
180 days. 90 consecutive if BAC .20 or above	\$ 4590.00 Plus jail costs	Mandatory 24 months	Same	Same	Same

