

State DUI Laws: Arizona

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Arizona Revised Statutes

§ 28-1301. Definitions

In this chapter, unless the context otherwise requires:

1. "Certified ignition interlock device" means an ignition interlock device that is certified pursuant to article 5 of this chapter.

2. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code sections 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

3. "Education" means a program in which a person participates in at least sixteen hours of classroom instruction relating to alcohol or other drugs.

4. "Ignition interlock device" means a device that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start the motor vehicle by using its ignition system and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.

5. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or

any other state pertaining to the licensing of persons to operate motor vehicles.

6. "Screening" means a preliminary interview and assessment of an offender to determine if the offender requires alcohol or other drug education or treatment.

7. "Treatment" means a program consisting of at least twenty hours of participation in a group setting dealing with alcohol or other drugs in addition to the sixteen hours of education.

§ 28-1302. Applicability of chapter

This chapter applies on highways and elsewhere in this state.

§ 28-1303. Oversight council on driving or operating under the influence abatement

A. The oversight council on driving or operating under the influence abatement is established consisting of the following ten members:

1. The director of the department of public safety or the director's designee.
2. The assistant director for the motor vehicle division of the department of transportation or the assistant director's designee.
3. The director of the governor's office of highway safety.
4. One member of the public who is appointed by the governor.
5. One member of the public who is appointed by the speaker of the house of representatives.
6. One member of the public who is appointed by the president of the senate.
7. One municipal law enforcement member who is appointed by the governor on the recommendation of an Arizona association of chiefs of police.
8. One county law enforcement member who is appointed by the governor on the recommendation of an Arizona county sheriff's association.
9. One city prosecutor who is appointed by the governor on the recommendation of the Arizona prosecuting attorney's advisory council.
10. One county attorney who is appointed by the governor on the recommendation of the Arizona prosecuting attorney's advisory council.

B. Members appointed pursuant to subsection A, paragraphs 4, 5, 6, 7, 8, 9 and 10 of this section serve three year staggered terms.

C. Members appointed pursuant to subsection A, paragraphs 1, 2 and 3 of this section shall serve as advisory nonvoting members of the council.

D. The voting members of the council shall annually elect a chairperson from among the members. A member shall not serve consecutive terms as chairperson.

E. Members of the council are not eligible to receive compensation, but members who are appointed pursuant to subsection A, paragraphs 4, 5, 6, 7, 8, 9 and 10 of this section are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

F. The oversight council on driving or operating under the influence abatement may use the facilities for meeting and the staff of the Arizona criminal justice commission.

G. The oversight council on driving or operating under the influence abatement may enter into interagency agreements with the Arizona criminal justice commission and other agencies for agency business.

H. The council shall:

1. Make grants from the driving under the influence abatement fund established by section 28-1304 to political subdivisions and tribal governments that apply for monies for enforcement purposes, prosecutorial and judicial activities and alcohol abuse treatment services related to preventing and abating driving or operating under the influence occurrences in a motor vehicle or a motorized watercraft as defined in section 5-301.

2. Make grants from the driving under the influence abatement fund established by section 28-1304 to innovative programs that use emerging technologies to educate, prevent or deter occurrences of driving or operating under the influence in a motor vehicle or a motorized watercraft.

3. Receive quarterly reports from the entities receiving grants and evaluate their effectiveness. The council may make additional grants to the recipients and oversee the progress of those programs.

4. On or before December 1 of each year, submit a written report on the effectiveness of the grants provided in reducing the incidence of driving or operating under the influence to the governor, the speaker of the house of representatives, the president of the senate and shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records.

§ 28-1304. Driving under the influence abatement fund

A. The driving under the influence abatement fund is established consisting of monies deposited pursuant to section 28-1382, subsection D, paragraph 3 and subsection F, paragraph 3 and section 28-1383, subsection J, paragraph 2.

B. The oversight council on driving or operating under the influence abatement established by section 28-1303 shall administer the fund.

C. Twenty-five per cent of the monies deposited in the fund shall be used for grants for innovative programs pursuant to section 28-1303, subsection H, paragraph 2 and seventy per cent of the monies deposited in the fund shall be used for

grants to political subdivisions and tribal governments pursuant to section 28-1303, subsection H, paragraph 1.

D. Not more than five per cent of the monies deposited in the fund shall be used for administrative purposes of the oversight council on driving or operating under the influence abatement.

E. Monies in the fund are:

1. Continuously appropriated.
2. Exempt from the provisions of section 35-190 relating to lapsing of appropriations.

F. On notice from the oversight council on driving or operating under the influence abatement, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investments shall be credited to the fund.

§ 28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension

A. A person who operates a motor vehicle in this state gives consent, subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or 28-1383, to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter or section 4-244, paragraph 33 while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs. The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer having reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle in this state either:

1. While under the influence of intoxicating liquor or drugs.
2. If the person is under twenty-one years of age, with spirituous liquor in the person's body.

B. After an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by Subsection A of this section, and if the violator refuses the violator shall be informed that the violator's license or permit to drive will be suspended or denied for twelve months, or for two years for a second or subsequent refusal within a period of sixty months, unless the violator expressly agrees to submit to and successfully completes the test or tests. A failure to expressly agree to the test or successfully complete the test is deemed a refusal. The violator shall also be informed that if the test results show a blood or breath alcohol concentration of 0.08 or more, or if the results show a blood or breath alcohol concentration of 0.04 or more and the violator was driving or in actual physical control of a commercial motor vehicle, the violator's license or permit to drive will be suspended or denied for not less than ninety consecutive days.

C. A person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by Subsection A of this section and the test or tests may be administered, subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or 28-1383.

D. If a person under arrest refuses to submit to the test designated by the law enforcement agency as provided in

Subsection A of this section:

1. The test shall not be given, except as provided in section 28-1388, Subsection E or pursuant to a search warrant.
2. The law enforcement officer directing the administration of the test shall:
 - (a) File a certified report of the refusal with the department.
 - (b) On behalf of the department, serve an order of suspension on the person that is effective fifteen days after the date the order is served.
 - (c) Require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person.
 - (d) If the license or permit is not surrendered, state the reason why it is not surrendered.
 - (e) If a valid license or permit is surrendered, issue a temporary driving permit that is valid for fifteen days.
 - (f) Forward the certified report of refusal, a copy of the completed notice of suspension, a copy of any completed temporary permit and any driver license or permit taken into possession under this section to the department within five days after the issuance of the notice of suspension.

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

1. The officer's reasonable grounds to believe that the arrested person was driving or in actual physical control of a motor vehicle in this state either:
 - (a) While under the influence of intoxicating liquor or drugs.
 - (b) If the person is under twenty-one years of age, with spirituous liquor in the person's body.
2. The manner in which the person refused to submit to the test or tests.
3. That the person was advised of the consequences of refusal.

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

1. Fifteen days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege.
2. The department will provide an opportunity for a hearing if the person requests a hearing in writing and the request is received by the department within fifteen days after the notice is sent.

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

1. The person may submit a written request for a hearing.
2. The request for a hearing must be received by the department within fifteen days after the date of the notice or the order of suspension will become final.
3. The affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege will be suspended for twelve months from that date or for two years from that date for a second or subsequent refusal within a period of sixty months.

H. The order for suspension shall:

1. Be accompanied by printed forms that are ready to mail to the department and that may be filled out and signed by the person to indicate the person's desire for a hearing.
2. Advise the person that unless the person has surrendered any driver license or permit issued by this state the person's hearing request will not be accepted, except that the person may certify pursuant to section 28-3170 that the license or permit is lost or destroyed.

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

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

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

1. A law enforcement officer had reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle in this state either:
 - (a) While under the influence of intoxicating liquor or drugs.
 - (b) If the person is under twenty-one years of age, with spirituous liquor in the person's body.
2. The person was placed under arrest.

3. The person refused to submit to the test.

4. The person was informed of the consequences of refusal.

L. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective fifteen days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for a period of twelve months after the order of suspension becomes effective or for a period of two years after the order of suspension becomes effective for a second or subsequent refusal within a period of sixty months.

M. If the suspension order is sustained after the hearing, a motion for rehearing is not required. Within thirty days after a suspension order is sustained, the affected person may file a petition in the superior court to review the final order of suspension or denial by the department in the same manner provided in section 28-3317. The court shall hear the review of the final order of suspension or denial on an expedited basis.

N. If the suspension or determination that there should be a denial of issuance is not sustained, the ruling is not admissible in and has no effect on any administrative, civil or criminal court proceeding.

O. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

§ 28-1322. Preliminary breath tests; rules on approval of devices

A. A law enforcement officer who has reasonable suspicion to believe that a person has committed a violation of section 28-1381 or 28-1382 may request that the person submit to a preliminary breath test or tests before an arrest.

B. In addition to a breath test or tests, the officer may require that the person submit to further testing pursuant to section 28-1321.

C. The director of the department of public safety shall adopt rules prescribing the approval of quantitative preliminary breath testing devices.

§ 28-1323. Admissibility of breath test or other records

A. The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence in any trial, action or proceeding on establishing the following foundational requirements:

1. The test was performed using a quantitative breath testing device approved by the department of health services or the department of public safety. A properly authenticated certification by the department of health services or the department of public safety or judicial notice of department of health services or the department of public safety rules is sufficient to establish this requirement.

2. The operator who conducted the test possessed a valid permit issued by the department of health services or the department of public safety to operate the device used to conduct the test.
3. Duplicate tests were administered and the test results were within 0.02 alcohol concentration of each other or an operator observed the person charged with the violation for twenty minutes immediately preceding the administration of the test.
4. The operator who conducted the test followed an operational checklist approved by the department of health services or the department of public safety for the operation of the device used to conduct the test. The testimony of the operator is sufficient to establish this requirement.
5. The device used to conduct the test was in proper operating condition. Records of periodic maintenance that show that the device was in proper operating condition at a time before and after the test are admissible in any proceeding as prima facie evidence that the device was in proper operating condition at the time of the test. The records are public records.

B. Compliance with subsection A of this section is the only requirement for the admission in evidence of a breath test result.

C. Records that may be obtained or that are otherwise maintained pursuant to section 28-1327 are admissible as evidence in any trial, action or proceeding.

§ 28-1324. Breath test rules

The director of the department of public safety shall adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration. The rules shall include:

1. The approval of quantitative breath testing devices.
2. Procedures for ensuring the accuracy of results obtained from approved breath testing devices.
3. Qualifications for persons who conduct breath tests.
4. Qualifications for persons who instruct others in the operation of breath testing devices.

§ 28-1325. Breath test operator permits

A. The director of the department of public safety shall issue permits to operators who have received approved instruction and who have demonstrated their ability to accurately operate an approved breath testing device.

B. The director of the department of public safety may revoke the permit of a person who fails to operate a breath testing device according to the rules adopted by the director of the department of public safety.

§ 28-1326. Blood test; rules; permits

- A. The director of the department of public safety shall adopt rules prescribing the approval of methods for the analysis

of blood or other bodily substances to determine blood alcohol concentration.

B. The director of the department of public safety shall issue a permit to an analyst who has demonstrated the ability to accurately analyze blood or other bodily substances for alcohol concentration.

C. The director of the department of public safety may revoke the permit of an analyst who either:

1. Has demonstrated an inability to accurately analyze blood or other bodily substances for alcohol concentration.
2. Fails to analyze blood or other bodily substances for alcohol concentration according to rules adopted by the director of the department of health services.

§ 28-1327. Reproduction of records; admissibility; computer storage; definition

A. The head of a law enforcement agency or the director of the department of health services may place on computer storage any records concerning a quantitative breath testing device. Signatures that are found on the records do not have to be placed on computer storage.

B. A duplicate of any information that is placed on computer storage pursuant to subsection A is deemed to be an original of the record for all purposes and is admissible without further foundation in evidence if the following appears on each page:

Pursuant to section 28-1327, Arizona Revised Statutes, this document is a certified duplicate of the information contained in computer storage devices of the (name of agency).

C. For the purposes of this section, "duplicate" means a counterpart produced by any of the following:

1. The same impression or from the same matrix as the original.
2. Means of photography, including enlargements and miniatures.
3. Mechanical or electronic rerecording.
4. Chemical reproduction.
5. Any other equivalent technique that accurately reproduces the original.

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

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

1. 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.

2. 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.

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

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

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

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

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

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

F. 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.

G. In a trial, action or proceeding for a violation of this section or section 28-1383 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

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

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

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

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

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

1. Shall be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation or suspension

of execution of sentence unless the entire sentence is served.

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

3. May be ordered by a court to perform community service.

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

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

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

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

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

3. May be ordered by a court to perform community service.

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

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

L. Notwithstanding subsection K, paragraph 1 of this section, at the time of sentencing, the judge may suspend all but

thirty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

M. In applying the sixty month provision of subsection K of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

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

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

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state 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.

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

C. 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.

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

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

2. Shall pay a fine of not less than two hundred fifty dollars. The fine prescribed in this paragraph and any assessments, restitution and incarceration costs shall be paid before the assessment prescribed in paragraph 3 of this subsection.

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

4. May be ordered by a court to perform community service.

5. Shall be required by the department, on receipt of the report of conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the

date of the department's receipt of the report of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

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

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

F. If within a period of sixty months a person is convicted of a second violation of this section or is convicted of a violation of this section and has previously been convicted of a violation of section 28-1381 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of this section or section 28-1381 or 28-1383, the person:

1. Shall be sentenced to serve not less than one hundred twenty days in jail, sixty days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served.

2. Shall pay a fine of not less than five hundred dollars. The fine prescribed in this paragraph and any assessments, restitution and incarceration costs shall be paid before the assessment prescribed in paragraph 3 of this subsection.

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

4. May be ordered by a court to perform community service.

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

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

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

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

H. In applying the sixty month provision of subsection F of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

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

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

§ 28-1383. Aggravated driving or actual physical control while under the influence; violation; classification; definition

A. A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:

1. Commits a violation of section 28-1381, section 28-1382 or this section 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 section 28-1381 or 28-1382 or under section 28-1385.

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

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.

B. The dates of the commission of the offenses are the determining factor in applying the sixty month provision provided in subsection A, paragraph 2 of this section regardless of the sequence in which the offenses were committed. For the purposes of this section, a third or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts.

C. The notice to a person of the suspension, cancellation, revocation or refusal of a driver license or privilege to drive is effective as provided in section 28-3318 or pursuant to the laws of the state issuing the license.

D. A person is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than four months in prison if the person is convicted under either of the following:

1. Subsection A, paragraph 1 of this section.

2. Subsection A, paragraph 2 of this section and within a sixty month period has been convicted of two prior violations of section 28-1381, section 28-1382 or this section, or any combination of those sections, or acts in another jurisdiction that if committed in this state would be a violation of section 28-1381, section 28-1382 or this section.

E. A person who is convicted under subsection A, paragraph 2 of this section and who within a sixty month period has been convicted of three or more prior violations of section 28-1381, section 28-1382 or this section, or any combination of those sections, or acts in another jurisdiction that if committed in this state would be a violation of section 28-1381, section 28-1382 or this section is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight months in prison.

F. In addition to any other penalty provided by law, a person who is convicted under subsection A, paragraph 3, subdivision (a) of this section shall be sentenced to at least the minimum sentence required pursuant to section 28-1381, except that if a person has been convicted of at least two prior violations of section 28-1381, section 28-1382 or this section, or any combination of those sections, or convicted of at least two prior acts in another jurisdiction that if committed in this state would be violations of section 28-1381, section 28-1382 or this section, or any combination of those sections, within a sixty month period, the person shall be sentenced to serve at least the minimum sentence required pursuant to this section.

G. In addition to any other penalty provided by law, a person who is convicted under subsection A, paragraph 3, subdivision (b) of this section shall be sentenced to at least the minimum sentence required pursuant to section 28-1382, except that if a person has been convicted of at least two prior violations of section 28-1381, section 28-1382 or this section, or any combination of those sections, or convicted of at least two prior acts in another jurisdiction that if committed in this state would be a violation of section 28-1381, section 28-1382 or this section, or any combination of those sections, within a sixty month period, the person shall be sentenced to serve at least the minimum sentence required pursuant to this section.

H. A person who is convicted of a violation of this section shall attend and complete alcohol or other drug screening, education or treatment from an approved facility. If the person fails to comply with this subsection and is placed on probation, in addition to the provisions of section 13-901 the court may order that the person be incarcerated as a term of probation as follows:

1. For a person sentenced pursuant to subsection D of this section, for an individual period of not more than four months and a total period of not more than one year.

2. For a person sentenced pursuant to subsection E of this section, for an individual period of not more than eight months and a total period of not more than two years.

I. The time that a person spends in custody pursuant to subsection H of this section shall not be counted towards the sentence imposed if the person's probation is revoked and the person is sentenced to prison after revocation of probation.

J. The court:

1. Shall report the conviction to the department. On receipt of the report, the department shall revoke the driving privilege of the person. The department shall not issue the person a new driver license within three years of the date of the conviction and, for a conviction of a violation of subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this section, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

2. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of two hundred fifty dollars. If the conviction occurred in the superior court or a justice court, the court shall transmit the monies received pursuant to this paragraph to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the monies received pursuant to this paragraph to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer. The state treasurer shall deposit the monies received in the driving under the influence abatement fund established by section 28-1304. Any fine imposed for a violation of this section and any assessments, restitution and incarceration costs shall be paid before the assessment prescribed in this paragraph.

3. Shall order the person to pay a fine of not less than seven hundred fifty dollars.

4. In addition to any other penalty prescribed by law, shall order the person to pay an additional assessment of one thousand five hundred dollars to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

K. Aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs committed under:

1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

2. Subsection A, paragraph 3 of this section is a class 6 felony.

L. For the purposes of this section, "suspension, cancellation, revocation or refusal" means any suspension, cancellation, revocation or refusal.

§ 28-1384. Aggravated driving or actual physical control while under the influence; forfeiture of vehicle

A. If a person is convicted of violating section 28-1383, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense forfeited in the same manner as provided in title 13, chapter 39.

B. A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to a

violation described in subsection A of this section.

C. Property that is subject to forfeiture and all interests in property that are forfeited under this section shall be disposed of and allocated in the same manner as provided in title 13, chapter 39, except that all monies that are obtained as a result of forfeiture under this section shall be deposited in the state general fund.

§ 28-1385. Administrative license suspension for driving under the influence; report; hearing; summary review

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

1. The officer arrests a person for a violation of section 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

2. The person submits to a blood or breath alcohol test permitted by section 28-1321, the results of which indicate either:

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

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

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

1. Information that adequately identifies the arrested person.

2. A statement of the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle in violation of section 4-244, paragraph 33, section 28-1381 or section 28-1382.

3. A statement that the person was arrested for a violation of section 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

4. A report of the results of the chemical test that was administered.

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

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

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

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

4. Shall be accompanied by printed forms ready to mail to the department that the person may fill out and sign to indicate the person's desire for a hearing.

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

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

E. The department shall suspend the affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege for not less than ninety consecutive days from that date.

F. Notwithstanding Subsections A through E of this section, the department shall suspend the driving privileges of the person described in Subsection A of this section for not less than thirty consecutive days and shall restrict the driving privileges of the person for not less than sixty consecutive additional days to travel between the person's place of employment and residence and during specified periods of time while at employment, to travel between the person's place of residence and the person's secondary or postsecondary school, according to the person's employment or educational schedule, to travel between the person's place of residence and the office of the person's probation officer for scheduled appointments or to travel between the person's place of residence and a treatment facility for scheduled appointments if the person:

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

2. Has not been convicted of a violation of section 28-1381, 28-1382 or 28-1383 within sixty months of the date of commission of the acts out of which the current action arose. The dates of commission of the acts are the determining factor in applying the sixty month provision.

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

G. If the department receives only the report of the results of the blood or breath alcohol test and the results indicate 0.08 or more alcohol concentration in the person's blood or breath, or show a blood or breath alcohol concentration of 0.04 or more and the person was driving or in actual physical control of a commercial motor vehicle, the department shall notify the person named in the report in writing sent by mail that fifteen days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege. The notice shall also state that the department will provide an opportunity for a hearing and administrative review if the person requests a hearing or review in writing and the request is received by the department within fifteen days after the notice is sent.

H. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision. If the person is a resident without a license or permit or has an expired

license or permit, the department may allow the person to apply for a license or permit. If the department determines the person is otherwise entitled to the license or permit, the department shall issue, but retain, the license or permit, subject to this section. All hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306.

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

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

2. Whether the person was placed under arrest for a violation of section 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

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

(a) 0.08 or more.

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

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

5. Whether the test results were accurately evaluated.

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

K. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective fifteen days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny the issuance of a license or permit to the person for not less than ninety consecutive days.

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

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

N. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle

in this state has been suspended, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

§ 28-1386. Operating a motor vehicle, aircraft, watercraft or water skis under the influence; emergency response costs; definitions

A. A person who is 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, who causes an accident that results in an appropriate emergency response and who is convicted of a violation of any of the following sections is liable for the expenses of that emergency response:

1. Section 28-1381, 28-1382 or 28-1383.
2. Section 28-8279, section 28-8280 or section 28-8282, subsection C.
3. Section 5-395 or 5-397.

B. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection A, paragraph 1 of this section. The charge is a debt of that person. The public agency, for-profit entity or not-for-profit entity that incurred the expenses may collect the debt proportionally. The person's liability for the expenses of an emergency response shall not exceed one thousand dollars for a single accident. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

C. Any testimony, admission or other statement made by a defendant in a proceeding brought pursuant to this section or any evidence derived from the testimony, admission or statement is not admissible in a criminal proceeding arising out of the same accident.

D. As used in this section:

1. "Expenses of an emergency response" means reasonable costs directly incurred by a public agency, for-profit entity or not-for-profit entity that makes an appropriate emergency response to an accident, including the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an accident and the salaries of the persons who respond to the accident but excluding charges assessed by an ambulance service that is regulated pursuant to Title 36, Chapter 21.1, Article 2.

2. "Public agency" means this state and any city, county, municipal corporation, district or other public authority that is located in whole or in part in this state and that provides police, fire fighting, medical or other emergency services.

§ 28-1387. Prior convictions; alcohol or other drug screening, education and treatment; license suspension; supervised probation; civil liability; procedures

A. The court shall allow the allegation of a prior conviction or any other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days before the date the case is actually tried and may allow the allegation of a prior conviction or any other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of section 28-1381, 28-1382 or 28-1383 filed

at any time before the date the case is actually tried if this state makes available to the defendant when the allegation is filed a copy of any information obtained concerning the prior conviction or other pending charge. Any conviction may be used to enhance another conviction irrespective of the dates on which the offenses occurred within the sixty month provision. For the purposes of this article, an order of a juvenile court adjudicating a person delinquent is equivalent to a conviction.

B. In addition to any other penalties prescribed by law, the judge shall order a person who is convicted of a violation of section 28-1381 or 28-1382 to complete alcohol or other drug screening that is provided by a facility approved by the department of health services or a probation department. If a judge determines that the person requires further alcohol or other drug education or treatment, the person may be required pursuant to court order to obtain alcohol or other drug education or treatment under the court's supervision from an approved facility. The judge may review an education or treatment determination at the request of the state or the defendant or on the judge's initiative. The person shall pay the costs of the screening, education or treatment unless the court waives part or all of the costs. If a person is referred to a screening, education or treatment facility, the facility shall report to the court whether the person has successfully completed the screening, education or treatment program.

C. After a person who is sentenced pursuant to section 28-1381, Subsection I has served twenty-four consecutive hours in jail or after a person who is sentenced pursuant to section 28-1381, Subsection K or section 28-1382, Subsection D or F has served forty-eight consecutive hours in jail and after the court receives confirmation that the person is employed or is a student, the court may provide in the sentence that the defendant, if the defendant is employed or is a student and can continue the defendant's employment or studies, may continue the employment or studies for not more than twelve hours a day nor more than five days a week. The person shall spend the remaining day, days or parts of days in jail until the sentence is served and shall be allowed out of jail only long enough to complete the actual hours of employment or studies.

D. Unless the license of a person convicted under section 28-1381 or 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the department on receipt of the abstract of conviction of a violation of section 28-1381 or 28-1382 shall suspend the license of the affected person for not less than ninety consecutive days.

E. When the department receives notification that the person meets the criteria provided in section 28-1385, Subsection F, the department shall suspend the driving privileges of the person for not less than thirty consecutive days and shall restrict the driving privileges of the person for not less than sixty consecutive additional days to travel between any of the following:

1. The person's place of employment and residence and during specified periods of time while at employment.
2. The person's place of residence and the person's secondary or postsecondary school, according to the person's employment or educational schedule.
3. The person's place of residence and a treatment facility for scheduled appointments.
4. The person's place of residence and the office of the person's probation officer for scheduled appointments.

F. If a person is placed on probation for violating section 28-1381 or 28-1382, the probation shall be supervised unless the court finds that supervised probation is not necessary or the court does not have supervisory probation services.

G. Any political subdivision processing or using the services of a person ordered to perform community service pursuant to section 28-1381 or 28-1382 does not incur any civil liability to the person ordered to perform community service as a result of these activities unless the political subdivision or its agent or employee acts with gross negligence.

H. Except for another violation of this article, the state shall not dismiss a charge of violating any provision of this article unless there is an insufficient legal or factual basis to pursue that charge.

§ 28-1388. Blood and breath tests; violation; classification; admissible evidence

A. If blood is drawn under section 28-1321, only a physician, a registered nurse or another qualified person may withdraw blood for the purpose of determining the alcohol concentration or drug content in the blood. The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

B. If a law enforcement officer administers a duplicate breath test and the person tested is given a reasonable opportunity to arrange for an additional test pursuant to subsection C of this section, a sample of the person's breath does not have to be collected or preserved.

C. The person tested shall be given a reasonable opportunity to arrange for any physician, registered nurse or other qualified person of the person's own choosing to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

D. If a person under arrest refuses to submit to a test or tests under section 28-1321, whether or not a sample was collected pursuant to subsection E of this section or a search warrant, evidence of refusal is admissible in any civil or criminal action or other proceeding. The issue of refusal is an issue of fact to be determined by the trier of fact in all cases.

E. Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated section 28-1381 and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes. A person who fails to comply with this subsection is guilty of a class 1 misdemeanor.

F. A person who collects blood, urine or any other bodily substance under this section or any hospital, laboratory or clinic employing or using the services of the person does not incur any civil liability as a result of this activity if requested by a law enforcement officer to collect blood, urine or other bodily substances unless the person, while performing the activity, acts with gross negligence.

G. A statement by the defendant that the defendant was driving a vehicle that was involved in an accident resulting in injury to or death of any person is admissible in any criminal proceeding without further proof of corpus delicti if it is otherwise admissible.

§ 28-1389. Waiver of fine, surcharge or assessment

Notwithstanding any other law, the court shall not waive a fine or assessment imposed pursuant to this article or a surcharge imposed pursuant to section 12-116.01 or 12-116.02 for a conviction of an offense listed in this article.

§ 28-1441. Driving under the influence; records

The court shall maintain and make accessible to the general public all records regarding the disposition of cases in which a person is charged with a violation of section 28-1381, 28-1382 or 28-1383. The court shall include in these records an explanation of its reasons for accepting any plea agreement or dismissing any charge of a violation of section 28-1381, 28-1382 or 28-1383.

§ 28-1442. Driving under the influence; records; reporting

A. The administrative office of the courts shall report to the governor's office of highway safety by September 1 of each year for the previous fiscal year:

1. The number of complaints issued charging a violation that include both sections 28-1381 and 28-1382.
2. The number of complaints issued charging a violation that include either section 28-1381 or 28-1382.

B. By September 1 of each year the motor vehicle division shall report to the governor's office of highway safety the number of ignition interlock devices ordered to be installed pursuant to sections 28-1381, 28-1382 and 28-1383 for the previous fiscal year.

C. By September 1 of each year each county attorney and municipal prosecutor shall report to the governor's office of highway safety the number of cases dismissed pursuant to section 28-1387, subsection H for the previous fiscal year.

D. By October 1 of each year the governor's office of highway safety shall report the information collected for the previous fiscal year pursuant to subsections A, B and C of this section to the president of the senate and the speaker of the house of representatives.

§ 28-1443. Minimum security facility

A. A city, town or county may establish a minimum security facility for the confinement of persons convicted of a violation of section 28-1381 or 28-1382.

B. A judge may order a person sentenced pursuant to section 28-1381 or 28-1382 to serve the person's sentence in a minimum security facility if one has been established.

C. The state department of corrections may enter into an agreement with a county, city or town pursuant to title 11, chapter 7, article 3 for the incarceration in a minimum security facility of persons sentenced pursuant to section 28-1381 or 28-1382.

§ 28-1444. Reimbursement of incarceration costs

A. The court shall order a person who is sentenced to a term of incarceration for a violation of this chapter to reimburse the political subdivision that is responsible for the costs of the person's incarceration for those incarceration costs.

B. The court may determine the amount of incarceration costs to be paid based on the following factors:

1. The per diem per person cost of incarceration incurred by the political subdivision that incarcerates the person.
2. The person's ability to pay part or all of the incarceration costs.

§ 28-1461. Use of certified ignition interlock devices

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319:

1. The person shall:

(a) Pay the costs for installation and maintenance of the certified ignition interlock device.

(b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.

(c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of inspection of the certified ignition interlock device for accurate operation and the results of the inspection to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

3. If the person's driving privilege has been reinstated, but the person's driving privilege is limited pursuant to sections 28-1381, 28-1382, 28-1383 or 28-3319, the person shall provide proof to the department of installation of a functioning certified ignition interlock device within thirty days from the date the department notifies the person of the ignition interlock requirement.

B. The department shall make a notation on the driving record of a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 that states that the person shall not operate a motor vehicle unless it is equipped with a certified ignition interlock device.

§ 28-1462. Ignition interlock device certification; installer bonds

A. After consulting with the director of the department of public safety, the assistant director for the motor vehicle division of the department of transportation shall:

1. Certify ignition interlock devices.

2. Publish a list of certified ignition interlock devices that includes information about the manufacturers of the devices and where the devices may be ordered.

3. Make the list available to the courts and probation departments without charge.

B. The assistant director shall adopt rules prescribing the requirements for certification of an ignition interlock device. These rules shall include:

1. The procedure for certification of ignition interlock devices.
2. Provisions to ensure the reliability of the ignition interlock device over the range of motor vehicle environments.
3. Provisions to ensure that the ignition interlock device works accurately in an unsupervised environment.

C. The assistant director shall not certify an ignition interlock device unless all of the following are satisfied:

1. The device requires a deep-lung breath sample or another accurate measure of the concentration by weight of alcohol in the breath.
2. The device is made by a manufacturer that is covered by product liability insurance.
3. The manufacturer of the device indemnifies this state against any liability that may result from the use of the device.

D. The assistant director may adopt, in whole or in part, the guidelines, rules, regulations, studies or independent laboratory tests performed and relied on by other states or agencies or commissions of other states in the certification or approval of ignition interlock devices.

E. Each installer of a certified ignition interlock device shall submit to the department a bond in a form to be approved by the assistant director and in an amount of at least twenty-five thousand dollars. The bond inures to the benefit of any person who is ordered or required to equip a motor vehicle with an ignition interlock device pursuant to article 3 of this chapter or section 28-3319 and who suffers a loss because of either of the following:

1. Insolvency or discontinuance of business of the installer of the device.
2. Failure of the installer or agent of the installer to comply with any rule adopted pursuant to this section.

F. The assistant director shall adopt a warning label design to be affixed to each certified ignition interlock device on installation. The label shall contain a warning that a person tampering with, circumventing or otherwise misusing the ignition interlock device is guilty of a class 1 misdemeanor.

G. After consultation with the director of the department of public safety, the assistant director may include information the assistant director deems necessary in the notice prescribed in section 28-3318 regarding certified ignition interlock devices.

§ 28-1463. Proof of compliance; suspension; hearings

A. If a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 does not submit proof of compliance to the department as prescribed in section 28-1461, the department shall suspend the person's driving privilege until proof of compliance is submitted to the department. The department shall require use of the certified ignition interlock device for one year from the date the person submits proof of compliance as prescribed in

section 28-1461. If a person does not request a hearing pursuant to subsection B of this section, the department shall immediately suspend the person's driver license.

B. A person whose driver license is suspended pursuant to this section may submit a written request for a hearing. The written request must be received by the department within fifteen days after the date of the order of suspension. On receipt of a request for a hearing, a hearing shall be held within thirty days.

C. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered driver license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision.

D. Hearings requested pursuant to this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the person was ordered or required to equip a motor vehicle with an ignition interlock device pursuant to article 3 of this chapter or section 28-3319.

2. Whether the person submitted proof of compliance or inspection pursuant to section 28-1461.

§ 28-1464. Ignition interlock devices; violations; classification; definition

A. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 and who is required to operate a motor vehicle owned by the person's employer in the course and scope of the person's employment may operate that motor vehicle without the installation of a certified ignition interlock device if the person notifies the person's employer that the person, in conjunction with the person's sentence, has specific requirements in order to operate a motor vehicle and the nature of the requirements and the person has proof of the employer's notification in the person's possession while operating the employer's motor vehicle for normal business. For the purposes of this subsection, a motor vehicle that is partly or entirely owned or controlled by the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 is not a motor vehicle that is owned by an employer.

B. Except in cases of a substantial emergency, a person shall not knowingly rent, lease or lend a motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 unless the motor vehicle is equipped with a functioning certified ignition interlock device.

C. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 and who rents, leases or borrows a motor vehicle from another person shall notify the person who rents, leases or lends the motor vehicle to the person that the person has specific requirements for the operation of the motor vehicle and the nature of the requirements.

D. During any period when a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 is required to operate only a motor vehicle that is equipped with a certified ignition interlock device, the person shall not request or permit any other person to breathe into the ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

E. A person shall not breathe into an ignition interlock device or start a motor vehicle equipped with an ignition interlock

device for the purpose of providing an operable motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319.

F. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 shall not tamper with or circumvent the operation of an ignition interlock device.

G. A person who is not a manufacturer's authorized installer or an agent of a manufacturer's authorized installer and who is not a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 shall not tamper with or circumvent the operation of an ignition interlock device.

H. Except as provided in Subsection A of this section or in cases of substantial emergency, a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 shall not operate a motor vehicle without a functioning certified ignition interlock device during the time period prescribed in section 28-3319 or by a court pursuant to section 28-1381, 28-1382 or 28-1383.

I. A person who violates this section is guilty of a class 1 misdemeanor. Additionally, if a person is convicted of violating Subsection A, C, D, F or H of this section, the department shall extend the duration of the certified ignition interlock device requirement for not more than one year.

J. For the purposes of this section, "substantial emergency" means that a person other than the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 is not reasonably available to drive in response to an emergency.