



# ARIZONA HOUSE OF REPRESENTATIVES

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## **SB 1408: aggravated unlawful flight; law enforcement**

**Sponsor: Senator Gowan, LD 19**

**Committee on Judiciary**

### **Overview**

Establishes *aggravated unlawful flight from a pursuing law enforcement vehicle* as a criminal offense carrying a class 4 or class 2 felony classification depending on the circumstances.

### **History**

#### ***Unlawful Flight***

Under current law, a person commits *unlawful flight from a pursuing law enforcement vehicle*, a class 5 felony, by wilfully fleeing or attempting to elude a pursuing official law enforcement vehicle and the law enforcement vehicle is either:

- 1) marked to show that it is an official law enforcement vehicle and has engaged its siren and lights pursuant to [A.R.S. § 28-624](#); or
- 2) unmarked and either of the following applies:
  - a) the driver admits to knowing that the vehicle was an official law enforcement vehicle; or
  - b) evidence shows that the driver knew that the vehicle was an official law enforcement vehicle ([A.R.S. § 28-622.01](#)).

Arizona courts have interpreted *wilfully*, which is defined in [A.R.S. § 1-215](#), to be equivalent to *knowingly*, which is defined in [A.R.S. § 13-105](#). See *State v. Gendron*, 166 Ariz. 562, 565 (App. 1990), *vacated in part on other grounds*, 168 Ariz. 153 (1991).

*Serious physical injury* is defined as physical injury that creates a reasonable risk of death or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb. *Physical injury* is defined as the impairment of physical condition ([A.R.S. § 13-105](#)).

#### ***Driving Under the Influence***

A person commits *driving under the influence* (DUI), a class 1 misdemeanor offense, by driving or being in actual physical control of a vehicle in Arizona under any of the following circumstances:

- 1) while under the influence of intoxicating liquor, any drug (regardless of whether the person is or has been entitled to use the drug under Arizona law), 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 [A.R.S. § 13-3401](#) or its metabolite in the person's body, except if the person is using a drug as prescribed by a medical practitioner who is licensed pursuant to A.R.S. Title 32 and who is authorized to prescribe the drug; or
- 4) if the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in [A.R.S. § 28-3001](#) and the person has an alcohol concentration of 0.04 or more ([A.R.S. § 28-1381](#)).

A person commits *extreme DUI*, also a class 1 misdemeanor, by driving or being in actual physical control of a vehicle in Arizona and the person has an alcohol concentration as follows within two hours of driving or being in actual physical control of the vehicle and the alcohol concentrations results from alcohol consumed either before or while driving or being in actual physical control over the vehicle:

- 1) 0.15 or more but less than 0.20; or
- 2) 0.20 or more ([A.R.S. § 28-1382](#)).

### **Provisions**

1. Establishes *aggravated unlawful flight from a pursuing law enforcement vehicle* as a criminal offense involving a driver who wilfully operates a motor vehicle in a manner that recklessly endangers the life of another person while attempting to flee or elude a pursuing law enforcement vehicle as described in [A.R.S. § 28-622.01](#). (Sec. 1)
2. Classifies this new offense as a class 4 felony unless any of the following applies, in which case the offense becomes a class 2 felony:
  - a) the offense results in serious physical injury as defined in [A.R.S. § 13-105](#) to another;
  - b) at the time of the offense the driver was transporting a minor under 15 years old;
  - c) at the time of the offense the driver was in violation of A.R.S. §§ [28-1381](#) (DUI) or [28-1382](#) (extreme DUI), in which the driver is not eligible for release until the person has served at least 4 months in prison. (Sec. 1)

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