

Suggested Statutory change to 28-1382(A)(2) Agg DUI with priors

28-1383(A)(2) requires:

[w]ithin a period of eighty-four months ... is convicted of a violation of section 28–1381, section 28–1382 or this section and has previously been convicted of ... acts in another jurisdiction **that if committed in this state** would be a violation of section 28–1381, section 28–1382 or this section.

This means that the Court must do an elements test for every State’s DUI law to see if it’s a prior in AZ. So we get people with of out-of-state DUI priors that can’t be used as a prior DUI in our prosecution under Title 28 (but, ironically enough, if they are felony DUI’s they would be historical because of the change in title 13 definition of historical prior conviction)

Accordingly, we agree with Moran's conclusion that the state failed to prove every element of the aggravated DUI offenses under A.R.S. § 28–1383(A)(2) beyond a reasonable doubt. We recognize that this result may seem counterintuitive, but such results are not uncommon when comparing the elements of foreign offenses. See, e.g., *Norris*, 221 Ariz. 158, ¶ 10 & n. 5, 211 P.3d at 39–40 & 40 n. 5. Perhaps because of this shortcoming, our legislature has changed our laws in title 13 regarding enhanced criminal sentences, thereby superseding Crawford and greatly simplifying the use of out-of-state historical prior felony convictions. See 2012 Ariz. Sess. Laws, ch. 190, §§ 1–2 (amending A.R.S. §§ 13–105 and 13–703(M)). The terms of our aggravated DUI statute, however, continue to specify that this substantive offense requires any prior DUI conviction to establish a violation of Arizona law, had the out-of-state act been committed here. See A.R.S. § 28–1383(A)(2); *Goulder v. Ariz. Dep’t of Transp.*, 177 Ariz. 414, 416, 868 P.2d 997, 999 (App.1993) (specific inclusion of Arizona's DUI statute in law indicates legislative intent to exclude certain out-of-state convictions). If the legislature wishes to allow generic DUI offenses committed in other states to establish aggravated DUI, or if it wishes to specify a different test for determining which foreign convictions expose a person to aggravated DUI charges in Arizona, the legislature remains free to do so.⁸

State v. Moran, 232 Ariz. 528, 535, ¶ 21, 307 P.3d 95, 102 (App. 2013)

So I suggest a change to Title 28-1383(A)(2) to hold people accountable for DUI’s in other states, and to be more consistent with Title 13 prior convictions.

The court in *Moran*, footnote 8, cited a NM statute as a way to do it:

G. For the purposes of this section, “prior DWI conviction” means:

- (1) a prior conviction under Section 66-8-102 NMSA 1978; or
- (2) a prior conviction in New Mexico or any other jurisdiction, territory or possession of the United States, including a tribal jurisdiction, when the criminal act is driving under the influence of alcohol or drugs.

N.M. Stat. Ann. § 66-8-101 (West)

So my suggested changes:

ARS 28-1383(A)(2)

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:

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1. Commits a violation of § 28-1381, § 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 § 28-1381 or 28-1382 or under § 28-1385.
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 **any criminal acts** in another jurisdiction **of driving under the influence of alcohol or drugs** ~~that if committed in this state would be a violation of § 28-1381, § 28-1382 or this section.~~

Also need to modify some misd DUI sections to be consistent:

ARS 28-1381

K. If within a period of eighty-four 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 § 28-1382 or 28-1383 or **any criminal acts** in another jurisdiction **of driving under the influence of alcohol or drugs** ~~that if committed in this state would be a violation of this section or § 28-1382 or 28-1383~~, the person:

ARS 28-1382

E. If within a period of eighty-four 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 § 28-1381 or 28-1383 or **any criminal acts** in another jurisdiction **of driving under the influence of alcohol or drugs** ~~that if committed in this state would be a violation of this section or § 28-1381 or 28-1383~~, the person: