

42-2-138. Driving under restraint - penalty.

(1) (a) Any person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that the person's license or privilege to drive, either as a resident or a nonresident, is under restraint for any reason other than conviction of DUI, DUI per se, DWAI, habitual user, or UDD is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than five days nor more than six months, and, in the discretion of the court, a fine of not less than fifty dollars nor more than five hundred dollars may be imposed. The minimum sentence imposed by this paragraph (a) shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part, or reduce or suspend the fine under this paragraph (a); but, in a case where the defendant is convicted although the defendant established that he or she had to drive the motor vehicle in violation of this paragraph (a) because of an emergency, the mandatory jail sentence or the fine, if any, shall not apply, and the court may impose a sentence of imprisonment in the county jail for a period of not more than six months and a fine of not more than five hundred dollars. Such minimum sentence need not be five consecutive days but may be served during any thirty-day period.

(b) Upon a second or subsequent conviction under paragraph (a) of this subsection (1) within five years after the first conviction thereunder, in addition to the penalty prescribed in said paragraph (a) of this subsection (1), except as may be permitted by section 42-2-132.5, the defendant shall not be eligible to be issued a driver's or minor driver's license or extended any driving privilege in this state for a period of three years after such second or subsequent conviction.

(c) This subsection (1) shall apply only to violations committed on or after July 1, 1974.

(d) (I) A person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that the person's license or privilege to drive, either as a resident or nonresident, is restrained under section 42-2-126 (3), is restrained solely or partially because of a conviction of DUI, DUI per se, DWAI, habitual user, or UDD, or is restrained in another state solely or partially because of an alcohol-related driving offense is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second or subsequent conviction, the person shall be punished by imprisonment in the county jail for not less than ninety days nor more than two years and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than three thousand dollars. The minimum county jail sentence imposed by this subparagraph (I) shall be mandatory, and the court shall not grant probation or a suspended sentence thereof; but, in a case where the defendant is convicted although the defendant established that he or she had to drive the

motor vehicle in violation of this subparagraph (I) because of an emergency, the mandatory jail sentence, if any, shall not apply, and, for a first conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than one year and, in the discretion of the court, a fine of not more than one thousand dollars, and, for a second or subsequent conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than two years and, in the discretion of the court, a fine of not more than three thousand dollars.

(II) In any trial for a violation of subparagraph (I) of this paragraph (d), a duly authenticated copy of the record of the defendant's former convictions and judgments for DUI, DUI per se, DWAI, habitual user, or UDD or an alcohol-related offense committed in another state from any court of record or a certified copy of the record of any denial or revocation of the defendant's driving privilege under section 42-2-126 (3) from the department shall be prima facie evidence of the convictions, judgments, denials, or revocations and may be used in evidence against the defendant. Identification photographs and fingerprints that are part of the record of the former convictions, judgments, denials, or revocations and the defendant's incarceration after sentencing for any of the former convictions, judgments, denials, or revocations shall be prima facie evidence of the identity of the defendant and may be used in evidence against the defendant.

(e) Upon a second or subsequent conviction under subparagraph (I) of paragraph (d) of this subsection (1) within five years after the first conviction thereunder, in addition to the penalty prescribed in said subparagraph (I), except as may be permitted by section 42-2-132.5, the defendant shall not be eligible to be issued a driver's or minor driver's license or extended any driving privilege in this state for a period of four years after such second or subsequent conviction.

(f) Upon entry of a plea of guilty or nolo contendere to a violation of paragraph (a) or (d) of this subsection (1), or upon a verdict or judgment of guilt for such violation, the court shall require the offender to immediately surrender his or her driver's license, minor driver's license, provisional driver's license, temporary driver's license, or instruction permit issued by this state, another state, or a foreign country. The court shall forward to the department a notice of the plea, verdict, or judgment on the form prescribed by the department, together with the offender's surrendered license or permit. Any person who violates the provisions of this paragraph (f) by failing to surrender his or her license or permit to the court commits a class 2 misdemeanor traffic offense.

(2) (a) In a prosecution for a violation of this section, the fact of the restraint may be established by certification that a notice was mailed by first-class mail pursuant to section 42-2-119 (2) to the last-known address of the defendant, or by the delivery of such notice to the last-known address of the defendant, or by personal service of such notice upon the defendant.

(b) In a prosecution for a violation of this section, the fact of restraint in another state may be established by certification that notice was given in compliance with such state's law.

(3) The department, upon receiving a record of conviction or accident report of any person for an offense committed while operating a motor vehicle, shall immediately examine its files to determine if the license or operating privilege of such person has been restrained. If it appears that said offense was committed while the license or operating privilege of such person was restrained, except as permitted by section 42-2-132.5, the department shall not issue a new license or grant any driving privileges for an additional period of one year after the date such person would otherwise have been entitled to apply for a new license or for reinstatement of a suspended license and shall notify the district attorney in the county where such violation occurred and request prosecution of such person under subsection (1) of this section.

(4) For purposes of this section, the following definitions shall apply:

(a) "Knowledge" means actual knowledge of any restraint from whatever source or knowledge of circumstances sufficient to cause a reasonable person to be aware that such person's license or privilege to drive was under restraint. "Knowledge" does not mean knowledge of a particular restraint or knowledge of the duration of restraint.

(b) "Restraint" or "restrained" means any denial, revocation, or suspension of a person's license or privilege to drive a motor vehicle in this state or another state.

(5) It shall be an affirmative defense to a violation of this section, based upon a restraint in another state, that the driver possessed a valid driver's license issued subsequent to the restraint that is the basis of the violation.