

## **FELONY DUI SYNOPSIS**

The information in the following charts was compiled by examining the felony DUI laws in all 50 states and the District of Columbia. The analysis focuses on the felony DUI threshold, maximum authorized imprisonment, mandatory minimum sentence terms of imprisonment and minimum/maximum fines. The focus of the research was to determine how Alabama's felony DUI law compares with those of other states.

Below are the findings among the 50 states, including the District of Columbia, regarding the number of prior DUI convictions that can be considered to enhance a subsequent conviction to a felony offense. The majority of states establish a time frame in which prior DUI convictions can be considered for felony enhancement purposes. Alabama is (again) one of these states. Although the Alabama DUI statute was amended in 1987 removing the five year period requirement; in accordance with a recent decision of the Alabama Court of Criminal Appeals in *Hankins v. State*, \_\_\_ So.2d \_\_\_, 2007 WL 2811970 (Ala.Crim.App. 2007), the current DUI statute has been interpreted to have a five year time frame in respect of felony DUI enhancements. The Court concluded that 2006 amendment allowing DUI convictions from other Alabama legislative sources and out of state, within a five year period, to be considered for enhancement purposes, had the effect of re-introducing the five year time period.

### **Felony Threshold**

46 states have felony DUI. Charts 1 and 2 detail the felony threshold for each of the 46 states analyzed.

#### **Only 6 of the 46 states impose a felony DUI on the 2<sup>nd</sup> + conviction.**

*Connecticut, Idaho, Indiana, Maryland, New York and Oklahoma.*

- 2 of these states have a five year limitation for convictions that can be considered for felony DUI (2<sup>nd</sup> +)
- The other 3 states have a ten year limitation for convictions that can be considered for felony DUI (2<sup>nd</sup> +)
- One state has no time limit is 2<sup>nd</sup> DUI with a BAC >.08

#### **22 states threshold for felony DUI is upon the 3<sup>rd</sup> + DUI conviction. With the exception of three states all have some time limitation.**

*Alaska, Arizona, Delaware, Florida, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nevada, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia and West Virginia*

- 4 of the 22 states do not carry a time limitation for prior convictions that can be considered for felony DUI (3<sup>rd</sup> +)

- 1 state has a 20 year time limitation for prior convictions that can be considered for felony DUI (3<sup>rd</sup> +)
- 1 state has a 12 year time limitation for prior convictions that can be considered for felony DUI (3<sup>rd</sup> +)
- 11 of the 22 states have a 10 year time limitation for prior convictions that can be considered for felony DUI (3<sup>rd</sup> +)
- 1 state has a 7 year time limitation for prior convictions that can be considered for felony DUI (3<sup>rd</sup> +)
- 4 of the 22 states have a 5 year time limitation for prior convictions that can be considered for felony DUI (3<sup>rd</sup> +)

**Of the 6 states that imposed felony DUI on the 2<sup>nd</sup> conviction, 5 of them have provision with respect to 3<sup>rd</sup> convictions.**

*Connecticut, Idaho, Maryland, New York and Oklahoma.*

- 2 of these state has a five year limitation for convictions that can be considered for DUI felony DUI (3<sup>rd</sup> +)
- The other 3 states have a ten year limitation for convictions that can be considered for felony DUI (3<sup>rd</sup> +)

**Alabama is one of the 16 states where the threshold for felony DUI is upon the 4<sup>th</sup> + DUI.**

*Alabama, Arkansas, California, Georgia, Hawaii, Kentucky, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, South Carolina, Tennessee and Wyoming.*

- 3 of the 16 states do not carry a time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)
- 1 state has a 12 year time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)
- 4 of the 16 states have a 10 year time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)
- 2 of the 16 states have a 7 year time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)
- 1 state has a 6 year time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)

- 4 of the 16 states have a 5 year time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)

**Of the 28 states that impose DUI Felony on 2<sup>nd</sup> and 3<sup>rd</sup> convictions, 12 of them have a time provision in respect of 4<sup>th</sup> convictions.**

*Idaho, Oklahoma, Alaska, Arizona, Delaware, Florida, Illinois, Kansas Louisiana, Massachusetts, South Dakota and Virginia.*

- 3 of the 12 states do have a time limitation for prior convictions that can be considered for felony DUI (4<sup>th</sup> +)
- 6 of these 12 states have a 10 year limitation for convictions that can be considered for DUI felony DUI (4<sup>th</sup> +)
- 3 of these 12 states have a 10 year limitation for convictions that can be considered for DUI felony DUI (4<sup>th</sup> +)

**2 states have a threshold for felony DUI is upon the 5<sup>th</sup> + DUI conviction.**

- Wisconsin has no time period.
- North Dakota time period is within 7 years

**4 of the 44 states that impose DUI felony on the 2<sup>nd</sup>-4<sup>th</sup> conviction also have provision for 5<sup>th</sup>+ convictions.**

- Alaska, Massachusetts and Minnesota all have a 10 year time period for 5<sup>th</sup> DUI conviction.  
Arkansas has a five year limitation for 5<sup>th</sup> DUI conviction.

**1 state imposes felony DUI only if there is a physical injury**

Colorado

**2 states impose DUI as a misdemeanor.**

New Jersey and Washington

**1 state does not categorize DUI**

Maine does not distinguish between felonies and misdemeanors and DC do not classify a DUI.

In terms of threshold level for felony DUI, now that Alabama only recognizes any 4<sup>th</sup> or subsequent DUI conviction within a five year period it may be considered to be less robust than other states that consider 2<sup>nd</sup> and 3<sup>rd</sup> DUI offenses as felonies. However, it may only be a matter of time before the Alabama legislators remove the 5 year limitation. Aside from the time restriction, comparatively Alabama's sanctions are generally in-line with felony DUI statutes of other states.<sup>1</sup>

The attached charts detail the Felony DUI threshold for the states that authorize felony punishment for repeat offenders. The percentages are based only on those states that have felony DUI statutes.<sup>2</sup> Of the 46 states studied, 13% punish as a felony on a 2<sup>nd</sup> + conviction, 47.8% convict on a 3<sup>rd</sup>+ conviction, 34.7% convict on a 4<sup>th</sup>+ conviction, and 4.5% convict on a 5<sup>th</sup>+ conviction. Thus, 95.5% of states confer felony status for DUI offenses that do not involve personal injury upon the 4<sup>th</sup> or subsequent conviction.

### **Penalties**

Charts 3- 6 display the maximum authorized terms of imprisonment, mandatory minimum terms of imprisonments and minimum, maximum and mandatory fines.

#### **Maximum Authorized Imprisonment:**

Of the states which have felony DUI statutes, 33 states have maximum terms of imprisonment of not more than 5 years, 8 states authorize between 5 and 10 years. 4 states (including Alabama) authorize up to 10 years imprisonment. 2 states authorize more than 10 years imprisonment. Alabama is one of the few states that authorize a term of imprisonment of 10 years, the vast majority of states set their maximum term of imprisonment at 5 years or less.

#### **Mandatory Minimum Terms of Imprisonment:**

Of the states analyzed, 33 states<sup>3</sup> impose mandatory minimum terms of imprisonment of more than 10 days. The remaining states provide for alternate minimum penalties, including incarceration and community service. 3 of them require at least 48 hours incarceration to be served consecutively.<sup>4</sup>

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<sup>1</sup> The five year restriction was removed in 1997, only to be reintroduced in 2006 when the legislator amended the DUI statute, for enhancement purposes, to recognize all in-state, out-of-state and municipal ordinance DUI convictions within a five year period.

<sup>2</sup> The analysis excludes Colorado, Maine, District of Columbia, New Jersey, and Washington.

<sup>3</sup> Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and West Virginia.

<sup>4</sup> Missouri, and Virginia (two others, Indiana and Missouri allow Community service as an alternative and Texas requires 10 days continuous minimum imprisonment if community supervision is granted. Oregon provides for 48 hours continuous or 250 hours community service. Michigan provides for 48 consecutive hours.

**Minimum/Maximum Fines:**

Of the 26 states analyzed, 19 states impose a minimum fine <\$1,000; 17 states impose a minimum fine of \$1,000 - \$4,000; 2 states, Alaska and Alabama, impose a minimum fine of \$4,000 or more; 15 states impose no minimum, only a maximum amount set. 17 of the 46 states impose some form of mandatory fine.

Alabama imposes a minimum mandatory fine of \$4,100 for a Felony DUI conviction. Only Alaska imposes a higher minimum mandatory, imposing \$10,000.

Felony DUI Thresholds 2008

Chart 1							
<u>2nd+</u>	<u>STATE</u>	<u>3rd+</u>	<u>STATE</u>	<u>4th+</u>	<u>STATE</u>	<u>5th+</u>	<u>STATE</u>
<b>2nd+ within 5 yrs</b>	Idaho	<b>3rd+ within 5 yrs</b>	Arizona	<b>4th+ within 5 yrs</b>	Alabama		
	Indiana		Mississippi		Arkansas		
			Rhode Island		Kentucky		
			South Dakota		Wyoming		
				<b>4th+ within 6 yrs</b>	Ohio		
		<b>3rd+ within 7 yrs</b>	Nevada	<b>4th+ within 7 yrs</b>	California <sup>1</sup>	<b>5th+ within 7 yrs</b>	North Dakota
					North Carolina		
<b>2nd+ within 10 yrs</b>	Connecticut	<b>3rd+ within 10 yrs</b>	Alaska	<b>4th+ within 10 yrs</b>	Georgia		
	New York <sup>3</sup>		Florida		Hawaii		
	Oklahoma		Louisiana <sup>2</sup>		Minnesota		
			Massachusetts		South Carolina		
			Michigan		Tennessee		
			Missouri				
<b>2nd BAC &gt; .08</b>	Maryland		Oregon				
			Texas				
			Utah				
			Virginia				
		<b>3rd+ within 12 yrs</b>	Iowa	<b>4th+ within 12 yrs</b>	Nebraska		
		<b>3rd+ within 20 yrs</b>	Illinois				
		<b>3rd No limit</b>	Delaware	<b>4th No limit</b>	Montana	<b>5th No limit</b>	Wisconsin
			Kansas		New Hampshire		
			Pennsylvania				
			Vermont		New Mexico		
			West Virginia				
<i>*Injury related DUI</i>		Colorado			<b>Misdemeanor</b>	New Jersey	
<i>*Does not specify felony/mis.</i>		Maine				Washington	
<i>*DUI is not classified</i>		District of Columbia					
<sup>1</sup> Not a felony if the driver is sentenced to county jail.							
<sup>2</sup> Felony if sentence is imprisonment <b>with</b> hard labor.							
<sup>3</sup> Legislation pending.							

## FELONY DUI - CONVICTIONS

**Chart 3**

No Felony DUI	2nd	3rd	3rd (cont)	4th	4th (cont)	5th
<b>DC</b> DUI not classified	<b>*Connecticut</b> 2nd w/in 10 yrs	<b>*Alaska</b> since 1/1/96 and w/in 10 yrs	<b>Michigan</b> 3rd+ w/in 10 yrs	<b>Alabama</b> 4th+ within 5yrs <i>reinstated</i>	<b>*Minnesota</b> 4th+ w/in 10 yrs.	<b>*Alaska</b> 5th+ since 1/1/96 and w/in 10 yrs
<b>Maine</b>	<b>*Idaho</b> 2nd+ w/BAC>.20 w/in 5 yrs	<b>*Arizona</b> 3rd+ w/in 7 yrs	<b>Mississippi</b> 3rd+ w/in 5 yrs	<b>*Alaska</b> 4th since 1/1/96 and w/in 10 yrs	<b>*Missouri</b> 4th+ w/in 10 yrs	<b>*Arkansas</b> 5th+ w/in 5 yrs
<b>New Jersey</b>		<b>California</b> w/in 10 yrs sent to state prison not local jail	<b>*Missouri</b> 3rd+ w/in 10 yrs	<b>*Arizona</b> 4th+ w/in 5 yrs	<b>Montana</b> 4th+	<b>*Massachusetts</b> 5th+ w/in 10 yrs
<b>Washington</b>	<b>Indiana</b> 2nd+ w/in 5 yrs		<b>Nebraska</b> 3rd+ w/in 12 yrs 3rd on violation	<b>*Arkansas</b> 4th w/in 5 yrs	<b>Nebraska</b> 4th+ w/in 12 yrs 4th on violation	<b>*Minnesota</b> 5th+ w/in 10 yrs
<b>Colorado</b> <i>Only if Injury</i> occurs	<b>* Missouri</b> 2nd+ w/in 10 yrs	<b>*Connecticut</b> 3rd+ w/in 10 yrs	<b>Nevada</b> 3rd+ w/in 7 yrs	<b>*Delaware</b> 4th+	<b>New Hampshire</b> 4th+	<b>North Dakota</b> 5th+ w/in 7 yrs
	<b>Nebraska</b> 2nd on violation	<b>*New York</b> 3rd+ <b>w/in 10 yrs</b>	<b>*New York</b> 3rd+ <b>w/in 10 yrs</b>	<b>Florida</b> 4th+ w/in 10 yrs	<b>New Mexico</b> 4th	
	<b>*New York</b> 2nd w/in 10 yrs	<b>*Delaware</b> 3rd w/in 5yrs	<b>*Oklahoma</b> 3rd w/in 10 yrs	<b>Georgia</b> 4th w/in 10 yrs	<b>North Carolina</b> 4th+ w/in 7 yrs	<b>Wisconsin</b> 5th+
	<b>*Oklahoma</b> 2nd w/in 10 yrs	<b>Florida</b> 3rd w/in 10 yrs	<b>Oregon</b> 3rd+ w/in 10 yrs	<b>*Idaho</b> 4th+ w/in 10 yrs	<b>*Oklahoma</b> 4th+ w/in 10 yrs	
	<b>Maryland</b> BAC >.08	<b>Hawaii</b> 3rd+ w/in 10 yrs	<b>Pennsylvania</b> 3rd +	<b>*Illinois</b> 4th+ w/in 20 yrs	<b>Ohio</b> 4th+ w/in 6 yrs	
		<b>*Idaho</b> 3rd+ w/in 5 yrs	<b>Rhode Island</b> 3rd+ w/in 5 yrs	<b>*Kansas</b> 4th+	<b>South Carolina</b> 4th+ w/in 10 yrs	
		<b>*Illinois</b> 3rd w/in 20 yrs	<b>*South Dakota</b> 3rd w/in 5 yrs	<b>Kentucky</b> 4th+ w/in 5 yrs	<b>*South Dakota</b> 4th+ w/in 5 yrs	
		<b>Iowa</b> 3rd w/in 12 yrs	<b>Texas</b> 3rd+ w/in 10 yrs	<b>*Louisiana</b> 4th+ w/in 10 yrs if imprisonment w/ hard labor	<b>Tennessee</b> 4th+ w/in 10 yrs	
		<b>*Kansas</b> 3rd +	<b>Utah</b> 3rd+ w/in 10 yrs	<b>*Massachusetts</b> 4th w/in 10 yrs	<b>*Virginia</b> 4th+ w/in 10 yrs	
		<b>*Louisiana</b> 3rd w/in 10 yrs if imprisonment w/ hard labor	<b>Vermont</b> 3rd+			
		<b>*Massachusetts</b> 3rd+ w/in 10 yrs	<b>*Virginia</b> 3rd+ w/in 10 yrs			
		<b>Maryland</b> 3rd+ w/in 5yrs	<b>West Virginia</b> 3rd+			
					<b>Wyoming</b> 4+ w/in 5yrs	

\*States that provide separate felony punishments for subsequent offenses.