

ALABAMA FELONY DUI

HISTORY

Felony DUI was introduced in 1994 with the amendment of Section 32-5A-191, "Driving while Under Influence of Alcohol or Controlled Substances," (Act 94-590 effective August 20, 1994). That amendment created the offense of Felony DUI in Alabama (a Class C felony) applicable to fourth or subsequent convictions of DUI within a five year period.

Section 32-5A-191, Alabama's DUI statute, was first enacted by Act No. 80-434, Section 9-102, Ala. Acts 1980, effective May 19, 1980, repealing Section 32-5-170. The purpose of Section 32-5A-191 was not only to bring the law on driving while intoxicated in line with other states in order to achieve a degree of uniformity of treatment with Alabama sister states, but also to make the DUI statute more enforceable and to do a better job of helping identify the problem of the 'drinking driver' and to keep him off the highway. Under the prior law, proper treatment of a person convicted of DUI was not clear. For example, Section 32-6-16(f)(2) which provided that the director of public safety was authorized to revoke the license of any driver convicted of "driving a motor vehicle by a person who is an habitual user of narcotic drugs or while intoxicated," there was no clear distinction between first and subsequent convictions.

When Section 32-5A-191 repealed Section 32-5-170 in 1980, a blood alcohol content (BAC) limit was introduced, the phrase "intoxicated" was replaced with "under the influence of alcohol", and the scope of the offense was broadened to include DUI when 'in actual physical control of a vehicle'. The resulting Section provided that a DUI violation occurred when "a person drives or is in actual physical control of any vehicle where they: (1) have a BAC is 0.10 or more; (2) are under the influence of alcohol; (3) are under the influence of a controlled substance that renders the driver incapable of safely driving; or (4) under a combined influence of alcohol and a controlled substance which renders him incapable of driving safely." The DUI statute also imposed penalties and sanctions for first, second and subsequent convictions. A first conviction was subject to imprisonment in a county or municipal jail of not more than one year and/or a fine of not less than \$100, but no more than \$1,000. The sentencing court could also prohibit the driver from driving for up to 6 months. First time offender's convicted of driving under influence of alcohol were also required to complete a DUI referral program. Second and subsequent convictions, within a five year period, were subject to a fine of not less than \$250, but no more than \$1,500, and/or imprisonment for no more than one year. In addition the director of public safety was to revoke the driver's driving privilege for 6 months.

In 1983, Act 83-620 made several amendments to the DUI statute. Subsection (a)(5) was added in its entirety, extending the prohibition to include 'while under the influence of any substance which impairs the mental or physical faculties'. The minimum fine imposed for a first conviction was increased from \$100 to \$250, and a mandatory 90 day license suspension was introduced. The fines and license suspension for second convictions within a 5 year period were also increased as follows: minimum fine from \$200 to \$500, maximum fine from \$1,500 to \$2,500 and the license suspension from 6 months to 1 year. A mandatory penalty a jail sentence of 48 consecutive hours or 20 days community service was also added for a second

conviction. Additionally, a penalty provision for a third and subsequent conviction within a 5 year period was introduced, which was punishable as a misdemeanor offense with a penalty of a fine no less than \$1,000, but no more than \$5,000, and a mandatory term of imprisonment of 60 days, but no more than one year (which may include hard labor) and a mandatory license suspension for 3 years.

In 1994, Felony DUI was introduced. Act No. 94-590 amended Section 32-5A-191, introducing a penalty provision for, fourth and subsequent convictions within a 5 year period. This subsection provided penalties as follows: a minimum fine of \$2,000, maximum fine of \$5,000, and imprisonment for a term not less than one year and one day nor more than more than 10 years, and mandatory 5 years license suspension. The provision allowed the minimum sentence of one year and one day to be suspended or probated, if the defendant enrolled and successfully completed a state certified chemical dependency program recommended by and approved by the sentencing court. The amendment also provided that the Alabama Habitual Felony Offender (HFO) law was not to apply nor was a DUI felony conviction to be used for purposes of enhancements under the HFO statute. Provision was also made to provide that any person convicted DUI must be referred to a CRO officer for evaluation and at a minimum be required to complete a DUI or substance abuse court referral program approved by the Administrative Office of Courts.

In 1995, Section 32-5A-191 was amended by Act 95-784, effective 9 August, 1995, decreasing the blood alcohol content from 0.10 to 0.08. All fines, minimum and maximum, were doubled. The amendment also provided specific dispositions for fines collected, diverting these from the State General Fund. It should also be noted that Section 32-5A-194, was amended to further provide for presumptions based a defendant's BAC level.

There were two amendments in 1996; the first effective April 23, 1996 (Act 96-341) which introduced a prohibition of the operation of a school bus or day care driver while in performance of their duties with a BAC of greater than 0.02. This amendment also amended the fine distribution provision. The second amendment in 1996, Act 96-705, effective May 28, 1996, introduced subsection (b), a prohibition on the operation of a motor vehicle by a person under 21 who has BAC greater than 0.02. This amendment recognized the jurisdiction of the juvenile court and youthful offender status by providing for adjudications and finding of delinquency. It also provided that upon conviction, adjudication or finding of delinquency under this subsection the imposition of fines would be in accordance with the DUI statute unless it was the 1st offense under subsection (b) and the BAC was between 0.02 and 0.08, whereupon the person's driver's license would be suspended for 30 days in lieu of any penalties provided for first offenders 21 years of age with a BAC of 0.08 or more. The subsection also provided that there was to be no disclosure of any records or findings, made other than to courts and law enforcement agencies.

In *Casaday v. State*, 828 So.2d 960 (Ala.Crim.App. 2002), the Alabama Court of Criminal Appeals held that the plain language of Section 32-5A-191(b) provides that a violation of Section 32-5A-191(b) does not automatically confer youthful offender status on a defendant who is between the ages of 18 and 21. The Court went on to say that, "if this were the case, there would be no need to describe a finding of guilt under subsection (b) as a conviction, as well as an adjudication (as in the case of a youthful offender), or a finding of delinquency (as in the case of a juvenile). There is nothing in the express language of Section 32-5A-191 or in any precedent that supportsthe

contention that convictions under subsection (b) of the statute should be addressed any differently than convictions under subsection (a).” The Court surmised that the legislators intended subsection (b) to serve the “dual purpose of deterring underage drivers from repeating a pattern of conduct dangerous to themselves and to others, while at the same time, protecting those offenders wise enough to learn from their mistakes from having a single youthful indiscretion haunt them forever.”

In *J.S.H. v. State*, 710 So.2d 507 (Ala.Crim.App.1997) the appellant claimed that the \$1,000 fine ordered by the trial court as a part of his sentence exceeded the Juvenile Court’s statutory limit. The appellant argued that, because he was adjudicated delinquent based on a violation of Section 32-5A-191(a), he could not be sentenced as an adult under Section 32-5A-191(b). The Court of Criminal Appeals agreed. The Court held that when a minor (16 – 18 year old) is adjudicated delinquent for DUI because of a violation of Section 32-5A-191(a) the defendant must be sentenced in accordance with the Juvenile Justice Act. However, if the defendant is adjudicated delinquent for DUI in violation of Section 32-5A-191(b), then the defendant must be sentenced in accordance with that Section. Section 32-5A-191 (b) “creates a limited exception to the exclusive jurisdiction of the Juvenile Act by directing that juveniles who are convicted or adjudicated delinquent more than once be sentenced as an adult.”

An opinion by the Attorney General in 1997, 247 Ala. Op. Atty. Gen. 32, 1997 WL 1054011 (Ala.A.G.) also explained the sentencing jurisdiction of the Juvenile Court in respect of Section 32-5A-191(b). In response to two questions the Attorney General confirmed that when sentencing under the jurisdiction of the Juvenile Justice Act for a violation of Section 32-5A-191(b); for a first time offender, the sentence may include any of the penalties provided by Section 32-5A-191(b) for a first-time offender and may make any of the orders or dispositions provided in Section 12-15-71. Upon a second or subsequent adjudication of delinquency for a violation of Section 32-5A-191, a juvenile court may, in addition to those penalties provided in Sections 32-5A-191(f) through (i), impose any penalty provided in Section 12-15-71(c) except for additional fines.

It should be noted, that despite the addition of Section 32-5A-191(b), there appears to be a dichotomy between the jurisdiction of the Alabama Juvenile Court and the penalty enhancements for subsequent conviction in the DUI Section. As highlighted in the previous case citations, the Juvenile Court has jurisdiction over delinquent acts. Pursuant to Section 12-1-5(6) a delinquent act includes a violation of Section 32-5A-191 committed by a person under the age of 18. The effect of this is that when a juvenile court adjudicates a violation, it is not recorded as a conviction, meaning that any juvenile that has been adjudicated for a DUI offense will have a “clean” record once they turn 18 for the purposes of the enhancements provided in Section 32-5A-191. In 2001 the Attorney General confirmed the status of DUI adjudications and findings of delinquency when determining the period of suspension. The Attorney General stated that “the Director of Public Safety must consider prior convictions under Section 32-5A-191(a) and 32-5A-191(b), but may not consider prior youthful offender adjudications or findings of delinquency.”

Op. Att'y Gen. No. 2001-280 (September 17, 2001), cited in *Casaday v. State*, 828 So.2d 960 (Ala.Crim.App. 2002).

The 1997 amendment, (Act 97-556 effective October 1, 1997), increased all minimum and maximum fines provisions by \$100. It also removed the 5 year time period previously imposed for third, fourth and subsequent convictions. The subsection relating to the distribution of funds was also amended to include the Impaired Drivers Trust Fund.

In 1999 the DUI statute was amended by Act 99-432 effective August 1, 1999 to enhance the minimum sentence of persons older than 21 years who are convicted of driving a motor vehicle while under the influence of alcohol or a controlled substance if a child under the age of 14 years was in the vehicle at the time of the offense. The effect of the enhancement was that the minimum sentence to be imposed was doubled.

In 2000 Act 2000-677, effective August 1, 2000, amended the DUI Statute to increase the minimum term of imprisonment for second convictions from 48 consecutive hours to 5 days and the alternative minimum community service from 20 days to 30 days. A minimum mandatory term of imprisonment of 10 days, to be served in the county jail, was introduced with respect to fourth or subsequent DUI (Felony DUI) convictions. The amendment also introduced the requirement for persons under 21 who are convicted with a BAC between 0.02 and 0.08 pursuant to subsection (b) to attend and complete a DUI or substance abuse referral program. The amendment also added subsection (o) providing for the suspension of the motor vehicle registration for all vehicles owned by a repeat offender for the duration of the offender's driver's license suspension. A repeat offender was defined as a person convicted of DUI in violation of the DUI Section, a municipal ordinance adopting the DUI Section or similar state law more than once in a five year period. Subsection (o) did provide for discretion should a co-owner of a vehicle be completely dependent on the vehicle for necessities of life.

The amendment in 2002 by Act 2002-502, effective July 1, 2002, made no substantive changes to the offense and penalty provisions, but further provided for the distribution of fines for offenses charged as municipal ordinance violations, including when the fine is paid on an installment basis. It also provided that the records of a person convicted, adjudicated or subject to a finding of delinquency under subsection (b) (person under the age of 21 convicted of DUI BAC greater than 0.02) could be also be disclosed to the defendants employer as well as law enforcement agencies.

In 2005, effective August 5, 2005, the DUI Statute was amended by Act 2005-326, to prohibit driving or physical control of a commercial motor vehicle when a person has a BAC of 0.04 or greater. The penalties imposed were made subject to CFR part of the Federal Motor Carrier Safety Regulations.

The most recent amendments were in 2006, effective April 28, 2006. There were two amending Acts, 2006-298 (effective 7/1/06) and 2006-654 (effective 4/28/06). The former was repealed by the latter before it came into effect. The latter amendment introduced a new subsection providing that a prior conviction for a DUI within a five year period from Alabama, a municipality within Alabama, or another state or territory or a municipality of another state or territory shall be considered by a court for enhancement of the sentence of a person who is convicted for DUI.

This amendment was the result of the Alabama Supreme Court decision in *Ex parte Bertram* 884 So.2d 889 (Ala. 2003). In that case the Court interpreted the word 'conviction' in Section 32-5A-191 to mean "conviction of violating this Section". This interpretation when applied to subsection (h) meant that it would read as follows: '[O]n a fourth or subsequent conviction [of violating this Section], a person is guilty of a Class C felony...' The Court concluded that an out-of-state DUI conviction did not count toward the total of convictions necessary to constitute a felony defined in the Section.

The 2006 amendment which allowed DUI convictions other than ones in violation of Section 32-5A-191, has subsequently been interpreted by the Alabama Court of Criminal Appeals to reinstate the 5 year time period that the 1997 amendment removed. In *Hankins v. State*, ___So.2d___, 2007 WL 2811970 (Ala.Crim.App. 2007), the Court held that the insertion of (o) (2006 amendment) did clarify the ambiguous nature of the word "conviction" in subsections (f), (g), and (h), by stating that it was to include prior out-of-state DUI convictions as well as prior in-state municipal convictions. But the Court concluded that in accordance with the traditional and well settled rules of statutory interpretation that the 2006 amendment "has restricted the use of prior DUI convictions for sentencing purposes to only those convictions that occurred within the five-year period immediately preceding the current conviction. In other words, the five-year requirement that was removed from subsections (g) and (h) in 1997 has now been reinstated."

The effect of the 2006 amendment with respect to municipal DUI convictions has recently been considered in *Ex parte Holbert*, ___ So.2d ___, 2008 WL 2699684 (Ala. 2008). In this case the Alabama Supreme Court was presented with facts that required it to determine whether a municipal DUI conviction could be counted as a 'conviction' for the purposes of a felony DUI conviction pursuant to Section 32-5A-191(h). The Court concluded that because the municipal DUI conviction was recorded before the 2006 amendment, the municipal DUI conviction could not be counted. The court did acknowledge the 2006 amendment introducing subsection (o) and noted that it was not applicable in that case as the municipal DUI conviction was recorded before that subsection became effective.

In summary, the Alabama DUI statute has evolved since 1980 to provide penalty provisions that protect the public. The penalty scheme serves to deter and also provides avenues for rehabilitation of offenders. Although the legislature has reinstated the 5 year decaying period for sentencing enhancement purposes, the DUI statute now provides a system that clearly allows sentencing courts to take into account all in-state and out-of-state DUI convictions (within a five year period), as well as municipal ordinance DUI convictions. One area of concern, is with juvenile and youth offenders that are adjudicated or subject to a finding of delinquency for violating the DUI statute, as such findings are not considered 'convictions' and can not be used for sentence enhancements for any subsection except in accordance with subsection (b).

ALABAMA DUI STATUTE HISTORY

Act No 80-434, § 9-102 Ala. Acts 1980
Effective

Introduction of §32-5A-191, repealing §32-5-170, and prohibiting driving while BAC 0.10, under the influence of alcohol; under the influence of a controlled substance rendering the driver incapable to drive or under the combined influence of alcohol and a controlled substance rendering the driver incapable to drive. The Section provided misdemeanor penalties for 1st offenders and 2nd and subsequent convictions within a five year period.

Act No. 81-803, § 9-102 Ala. Acts 1981
Effective

No substantive change.

Act No. 83-620, Ala Act 1983

Amendment strengthened various sentencing provisions, including increasing the fine to be imposed, revocation of licenses, adding mandatory jail sentence of 48 hours or 20 days community service upon a second conviction. It also added an additional penalty provision for a third or subsequent conviction within a 5 year, imposing a fine, no less than \$1000 but no more than \$5000, imprisonment for (mandatory) 60 days but no more than 1 year.

Act No. 84-259, Ala Acts 1984
Effective

No substantive change.

Act No. 94-590, Ala. Acts 1994
Effective August 20, 1994

Amendment inserted a penalty and sanction provision for a fourth and subsequent conviction within 5 years. The provisions imposed a minimum fine of \$2,000 and maximum of \$5,000, minimum term of imprisonment for one year and one day, maximum 10 years. The minimum imprisonment could be suspended or probated if the defendant enrolled and successfully completed certified chemical dependency program. The amendment recognized that the HFO statute should not be applicable and

expressly provided that a felony DUI conviction could not be considered for enhancement under that statute. The amendment also provided for court referrals for all persons convicted of DUI (not just 1st offenders) to appropriate community resources.

Act No. 95-784, Ala. Acts 1995
Effective August 9, 1995

Substituted BAC "0.08" for "0.10" and doubled all fines, minimum and maximums. Introduced fine distribution provision, diverting fines from the State General Fund.

Act No. 96-341, Ala. Acts 1996
Effective April 23, 1996

Amendment introduced prohibition on the operation of a school bus or day care vehicle while in performance of duties had a BAC of greater than 0.02. An offender of the subsection was subject to the same penalties except the first conviction would result in a 1 year license suspension. Also amended fine disbursement provision.

Act No. 96-705, Ala Act 1996
Effective May 28, 1996

Amendment added subsection (b) prohibiting the operation of a motor vehicle by a person under 21 who has BAC between over 0.02. Subsection (b) provided all violations including adjudications and findings of delinquency were subject to the penalties provided in the DUI statute with the exception of 1st offenders who had a BAC between 0.02 and 0.08; the penalty was limited to 30 day license suspension. The conviction, adjudication or finding of delinquency was deemed confidential

Act No. 97-556, Ala. Acts 1997,
Effective October 1, 1997

Amendment increased all minimum and maximum fines by \$100. It also removed the 5 year time period for third, fourth and subsequent convictions (still applied to 2nd convictions). Amended distribution of funds subsection to include the Impaired Drivers Trust Fund.

Act No. 99-432, Ala. Acts 1999,
Effective September 1, 1999

Amendment introduced sentence enhancements (doubled the minimum punishment) with respect to any person over 21 who is convicted of a DUI offense where a child under the age of 14 years was in the vehicle at the time of the offense.

Act No. 2000-677, Ala. Acts 2000,
Effective August 1, 2000

Amendment to subsection (b) introduced requirement for persons under 21 who are convicted with a BAC between 0.02 and 0.08 are to attend and complete a DUI or substance abuse referral program.

The amendment also increased the minimum terms of jail and community service for second convictions from 48 hours imprisonment or 20 days community service to 5 days imprisonment or 30 day community service. It also introduced a minimum term of imprisonment of 10 days to be served if sentence is suspended or probated sentenced imposed for fourth and subsequent DUI convictions. A subsection providing for the suspension of a repeat offender's vehicle registration for as long as their driver's license is suspended was also introduced.

Act No. 2002-502, Ala. Acts 2002,
Effective July 1, 2002

The amendment in 2002 made no substantive changes to the offense and penalty provisions. It did provide for further distribution of fines for offenses charged as municipal ordinance violations including when the fine is paid on an installment basis. It also provided that the records of a person convicted, adjudicated or subject to a finding of delinquency under subsection (b) (person under the age of 21 convicted of DUI BAC greater than 0.02 – 0.08) could be also be disclosed to the defendants employer.

Act No. 2005-326, Ala. Acts 2005,
Effective August 5, 2005

Amendment provided that the driver of a commercial motor vehicle would be guilty of driving under the influence of alcohol if the person had a BAC of 0.04 or greater than a certain percentage of alcohol in his or her blood.

Act No. 2006-298, Ala. Acts 2006

Repealed before effective by Act No. 2006-654

Act No. 2006-654, Ala. Acts 2006,
Effective April 28, 2006

Amended to provide that a prior conviction for DUI in Alabama, a municipality in Alabama, or another state or territory or a municipality of another state or territory within a five year period could be considered by a court for enhancement of the sentence of a person who is convicted for DUI pursuant to Section 32-5A-191.

Consequential effect as interpreted by Alabama Court of Criminal Appeals was to re-instate 5 year decaying period for all previous DUI convictions.

Penalties for Driving under the Influence (DUI) in Alabama 1980-2008

BAC=Blood Alcohol Content
CRO = Court Referral Officer

Effective Date	1 st Conviction	2 nd Conviction in less than 5 years	3 rd Conviction within 5 years	4 th Conviction and subsequent within 5 years (Class C felony)
5/19/1980 to 5/27/1983 BAC .10	Min fine \$100 Max fine \$1000 May prohibit driving on highways no longer than 6 months Mandatory CRO	Min fine \$200 Max fine \$1,500 Imprisonment max 1 year Mandatory license suspension 6 mths	Same as 2 nd Conviction (only provided for second and subsequent convictions)	N/A
5/27/1983 to 8/19/1994 BAC .10	Min fine \$250 Max fine \$1000 Mandatory license suspension 90 days Mandatory CRO	Min fine \$500 Max fine \$2,500 Max imprisonment 1 year ¹ Mandatory 48 consecutive hours of imprisonment or 20 days community service Mandatory license suspension 1 year.	Min fine \$1,000 Max fine \$5,000 Max Imprisonment 1 year ¹ Mandatory 60 days Mandatory license suspension 3 years.	N/A
8/20/1994 to 8/8/1995 BAC .10 CRO for convicted offenders	Min fine \$250 Max Fine \$1,000 Max Imprisonment 1 year Mandatory license suspension 90 days	Min fine \$500 Max fine \$2,500 Max imprisonment 1 year ¹ mandatory 48 consecutive hours of imprisonment or 20 days community service Mandatory license suspension 1 year.	Min fine \$1,000 Max fine \$5,000 Max Imprisonment 1 year ¹ Mandatory 60 days imprisonment Mandatory license suspension 3 years.	Min fine \$2,000 Max fine \$5,000 Min imprisonment 1 year and 1 day Max imprisonment 10 years. ² Imprisonment may be suspended or probated if the def. completes certified chemical dependency program. Mandatory license suspension 5 years.
8/9/1995 to 6/10/1999 BAC lowered to .08 CRO all offenders	Min fine \$500 Max Fine \$2,000 Max Imprisonment 1 year Mandatory license suspension 90 days	Min fine \$1,00 Max fine \$5,000 Max imprisonment 1 year ¹ mandatory 48 consecutive hours of imprisonment or 20 days community service Mandatory license suspension 1 year.	Min fine \$2,000 Max fine \$10,000 Max Imprisonment 1 year ¹ Mandatory 60 days Mandatory license suspension 3 years.	Min fine \$4,000 Max fine \$10,000 Min imprisonment 1 year and 1 day Max 10 years imprisonment. ² Imprisonment may be suspended or probated if the def. completes certified chemical dependency program. Mandatory license suspension 5 years. May include house arrest to include electronic monitoring if available
From 4/23/1996 BAC .08 CRO for convicted offenders	NO CHANGE to general provisions inserted provision that 1 st offense School bus, day care driver BAC .02 and over sentenced in accordance with penalties provided in the DUI statute, except first offense suspension of driving privilege increased to one year.			

¹ may include hard labor

² Imprisonment may include hard labor if not more than 3 yrs serve in county jail. If less than 1 year and 1 day must serve in county jail

Effective Date	1 st conviction	2 nd Conviction Within 5 years	3rd Conviction	4th Conviction and subsequent (Class C felony)
From 5/28/1996 BAC .08 CRO for convicted offenders	NO CHANGE to general provisions, inserted provision for youths under 21 years of age driving with BAC over 0.02 – subsection (b). Applies to juveniles and youthful offenders. Provides adjudications and convictions pursuant to this code section are confidential. Juveniles (16 and 17 year olds) under the jurisdiction of the juvenile court are punished pursuant to the provisions of subsection (b). Youths convicted pursuant to subsection (b), may have conviction counted for enhancement purposes upon subsequent conviction, Juvenile and YO adjudications cannot be used since only if “convictions” can be used for later enhancements. when subsequently convicted for DUI.			
From 10/1/1997 BAC .08 CRO for convicted offenders	NO CHANGE to general provision Inserted provision for Drivers over 21 with passenger/s under age of 14 Sentenced in accordance with penalties provided in the DUI statute, except the minimum punishment that a person would receive if child not present is doubled. Removed ‘within 5 years period’ with respect o the third, fourth and subsequent convictions.			
6/10/1999 to 5/23/2000 BAC .08 CRO for convicted offenders	Min fine \$600 Max Fine \$2,100 Max Imprisonment 1 year Mandatory license suspension 90 days	Min fine \$1,100 Max fine \$5,100 Max imprisonment 1 year ¹ NO CHANGE: Mandatory 48 consecutive hours or 20 days community service Mandatory license suspension 1 year.	Min fine \$2,100 Max fine \$10,100 NO CHANGE: Max Imprisonment 1 year ¹ Mandatory 60 days imprisonment Mandatory license suspension 3 years.	Min fine \$4,100 Max fine \$10,100 NO CHANGE: Min imprisonment 1 year and 1 day Max 10 years imprisonment ² Imprisonment may be suspended or probated if the def. completes certified chemical dependency program. Mandatory license suspension 5 yrs.
5/23/2000 To Today BAC .08 CRO for convicted offenders	NO CHANGE to general provision CHANGE to (b) under 21 year olds dealt with under (b) shall attend and complete DUI or substance abuse referral program	Min fine \$1,100 Max fine \$5,100 Max imprisonment 1 year ¹ mandatory 5 consecutive days imprisonment or 30 days community service Mandatory license suspension 1 year.	NO CHANGE	Min fine \$4,100 Max fine \$10,100 NO CHANGE: Min imprisonment 1 year and 1 day Max 10 years imprisonment ² Imprisonment may be suspended or probated if serve min 10 days in county jail and def. completes certified chemical dependency program Mandatory license suspension 5 years.
Suspension of a repeat offender’s vehicle registration for as long as their driver’s license is suspended was also introduced.				

¹ May include hard labor

² Imprisonment may include hard labor if not more than 3 yrs serve in county jail. If less than 1 year and 1 day must serve in county jail

Effective Date	1 st conviction	2 nd Conviction Within 5 years	3 rd Conviction (effective 2006 within 5 year period)	4 th Conviction and subsequent (effective 2006 within 5 years) (Class C felony)
8/5/2005 BAC .08 CRO for convicted offenders	NO CHANGE to general provisions BUT included Driver of a commercial vehicle where BAC 0.04 and over Commercial license suspended in accordance CFR part of the Federal Motor Carrier Safety Regulations.			
04/28/2006 BAC .08 CRO for convicted offenders	NO CHANGE to general provisions but inserted a provision recognizing all prior DUI convictions that are not section 32-5A-191 convictions from within Alabama, a municipality in Alabama, or another state or territory or a municipality of another state or territory within a five year period. Consequential effect (as interpreted by Alabama Court of Criminal Appeals) was to reinstate 5 year decaying period for all previous DUI convictions.			
04/28/2006 To today BAC .08 CRO for convicted offenders	Min fine \$600 Max Fine \$2,100 Max Imprisonment 1 year Mandatory suspension 90 days	Min fine \$1,100 Max fine \$5,100 Max imprisonment 1 year ¹ mandatory 5 consecutive days imprisonment or 30 days community service Mandatory license suspension 1 year.	Min fine \$2,100 Max fine \$10,100 Max Imprisonment 1 year ¹ Mandatory 60 days imprisonment Mandatory suspension license 3 years	Min fine \$4,100 Max fine \$10,100 Min imprisonment 1 year and 1 day Max 10 years imprisonment ² Imprisonment may be suspended or probated if serve min 10 days in county jail and def. completes certified chemical dependency program Mandatory license suspension 5 years.

¹ May include hard labor

² Imprisonment may include hard labor if not more than 3 yrs serve in county jail. If less than 1 year and 1 day must serve in county jail

* CRO (Court Referral Officer). Any person convicted DUI must be referred to a CRO officer for evaluation and at a minimum be required to complete a DUI or substance abuse court referral program approved by the Administrative Office of Courts

Alabama Felony DUI Information: Convictions, Admissions, and Releases

	Number of Felony DUI Convictions ¹	Number of Felony DUI ADOC Admissions	Number of Felony DUI ADOC Releases
2000	1,116	670	452
2001	1,257	761	641
2002	1,285	780	749
2003	1,091	742	836
2004	993	656	754
2005	974	569	606
2006	895	469	668
2007	546	343	571

¹ The years 2000 -2004 for Felony DUI Convictions use a June 1st - May 31st time period. The Alabama Sentencing Commission Annual Report reported the number of felony convictions using the June 1st - May 31st time period before changing to reporting by fiscal year in the 2008 Annual Report. The 2008 Annual Report provides information on the number of felony convictions for the three most recent fiscal years.

Source: Alabama Sentencing Commission Felony Offender Cohorts

The reduced convictions and DOC admissions for felony DUI could be based on any one, or a combination of the following factors:

On March 7, 2003 (request for rehearing denied November 21, 2003), the Alabama Supreme Court interpreted the DUI statute to prohibit the use of out-of-state DUI convictions for enhancement purposes in *Ex parte Bertram*, 884 So.2d. 889 (Ala. 2003);

Act 2006-654, effective April 28, 2006, while authorizing the use of out-of-state and municipal ordinance DUI convictions for enhancement purposes, established a five year cap on all prior convictions;

October 1, 2008, the Sentencing Standards, which include Felony DUI, were implemented.

Further reductions may occur due to the Supreme Court's recent decision in *Ex parte Holbert*, 2008 WL 2699684(Ala. 7/11/08), holding that prior in-state DUI convictions from municipal court (prior to the amendment of the DUI statute effective 4/28/06) could not be used to enhance the defendant's conviction to Felony DUI.



