

[Alaska Stat. § 28.15.181](#)

Current through the 2014 Second Regular Session of the Twenty-Eighth State Legislature

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Sec. 28.15.181. Court suspensions, revocations, and limitations

- (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license, privilege to drive, or privilege to obtain a license:
- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
 - (2) a felony in the commission of which a motor vehicle is used;
 - (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
 - (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
 - (5) operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;
 - (6) reckless driving;
 - (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
 - (8) refusal to submit to a chemical test authorized under [AS 28.33.031\(a\)](#) or [AS 28.35.031\(a\)](#) while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or authorized under [AS 28.35.031\(g\)](#);
 - (9) driving while license, privilege to drive, or privilege to obtain a license, canceled, suspended, or revoked, or in violation of a limitation;
 - (10) vehicle theft in the first degree in violation of [AS 11.46.360](#) or vehicle theft in the second degree in violation of [AS 11.46.365](#).
- (b) A court convicting a person of an offense described in (a)(1) -- (4), (6), (7), or (10) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under [AS 28.15.201](#) can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) -- (4), (6), (7), or (10) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license, privilege to drive, or privilege to obtain a license and may not grant the person limited license privileges for the following periods:
- (1) not less than one year for the second conviction; and
 - (2) not less than three years for a third or subsequent conviction.
- (c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle, commercial motor vehicle, or aircraft shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The revocation may be concurrent with or consecutive to an administrative revocation under [AS 28.15.165](#). The court may not, except as provided in [AS 28.15.201](#), grant limited license privileges during the minimum period of revocation. Except as provided under [AS 28.35.030\(n\)\(3\)](#) and [28.35.032\(p\)\(3\)](#), the minimum periods of revocation are

- (1) not less than 90 days if the person has not been previously convicted;
 - (2) not less than one year if the person has been previously convicted once;
 - (3) not less than 3 years if the person has been previously convicted twice;
 - (4) not less than 5 years if the person has been previously convicted more than twice.
- (d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than the minimum period under [AS 28.15.291\(b\)\(4\)](#).
- (e) *[Repealed, § 34 ch 119 SLA 1990.]*
- (f) The court may terminate a revocation for an offense described in (a)(5) or (8) of this section if
- (1) the person's license, privilege to drive, or privilege to obtain a license has been revoked for the minimum periods set out in (c) of this section; and
 - (2) the person complies with the provisions of [AS 28.15.211\(d\)](#) and (e).
- (g) The court may suspend the driver's license, privilege to drive, or privilege to obtain a license of a person who fails to appear in court as required by a citation for an offense involving a moving motor vehicle, or who fails to pay a fine as required by the court for an offense involving a moving motor vehicle. If the court suspends a driver's license under this subsection, the court shall also provide notice of the suspension to the department. A suspension imposed under this subsection remains in effect until the person appears in court as required by the citation, or pays the fine as required by the court. When the person appears in court or pays the required fine, the court shall terminate the suspension imposed under this subsection and provide the department and the person with written notice of the termination.
- (h) A court convicting a person under [AS 04.16.050\(c\)](#) or (d) shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license as provided in [AS 04.16.050\(c\)](#) or (d).
- (i) In this section, "previously convicted" has the meaning given in [AS 28.35.030](#).

History

(§ 19 ch 178 SLA 1978; am §§ 7 -- 9 ch 117 SLA 1982; am §§ 4 -- 7 ch 77 SLA 1983; am §§ 11 -- 15, 34 [ch 119 SLA 1990](#); am §§ 9 -- 11 [ch 3 SLA 1992](#); am §§ 2, 3 [ch 59 SLA 1993](#); am § 4 [ch 55 SLA 1994](#); am § 5 [ch 47 SLA 1996](#); am §§ 7, 8 [ch 71 SLA 1996](#); am § 6 [ch 65 SLA 2001](#); am §§ 12, 13 [ch 60 SLA 2002](#))

Annotations

Notes

REVISOR'S NOTES. --

Subsection (f) was enacted as (g); relettered in 1993, at which time former (f) was relettered as (g) (now (i)). Subsection (g) was enacted as (h). Relettered in 1996, at which time former (g) was relettered as (h) (now (i)). Subsection (h) was enacted as (i); relettered in 2001, at which time former (h) was relettered as (i).

Case Notes

NOTES TO DECISIONS

THE REVOCATION PROVISIONS OF FORMER AS 28.15.210(C) WERE REENACTED by the 1978 legislature in subsection (b) of this section. [Danks v. State, 619 P.2d 720 \(Alaska 1980\)](#).

REVOCATION NOT SET ASIDE. --When a driver sought, under subsection (f), to have the driver's license revocation set aside due to the driver being acquitted of underlying criminal charges, it was not manifestly unjust to allow the revocation to stand because (1) the driver did not challenge the revocation for 16 years, and (2) the driver was not completely prohibited from driving a motor vehicle. *Poirot v. State*, -- P.3d -- (Alaska Mar. 4, 2009), (memorandum opinion).

UNDER FORMER AS 28.15.210(C), (now [AS 28.15.181\(c\)](#)) the use of "shall" excluded the idea of discretion on the part of the court in revoking the license, for the statutory time periods, of persons convicted of drunk driving if that person had previously been convicted of the same offense. [State v. Guarderas, 589 P.2d 870 \(Alaska 1979\)](#); [Danks v. State, 619 P.2d 720 \(Alaska 1980\)](#).

IN ORDER TO INVOKE THE MANDATORY ONE-YEAR LICENSE REVOCATION PENALTY OF PARAGRAPH (B)(1) of this section, the second conviction need not be for the same type of offense as the first conviction. [Belarde v. Municipality of Anchorage, 634 P.2d 567 \(Alaska Ct. App. 1981\)](#).

The one-year license revocation penalty of paragraph (b)(1) of this section may follow as a result of a conviction for any of the offenses listed under subsection (a) of this section regardless of what offense the initial conviction was predicated upon. [Belarde v. Municipality of Anchorage, 634 P.2d 567 \(Alaska Ct. App. 1981\)](#).

CONVICTION UNDER ANOTHER STATE'S STATUTE MAY BE USED for purposes of enhanced license revocation under subsection (b). [Carter v. State, 625 P.2d 313 \(Alaska Ct. App. 1981\)](#).

Convictions from other jurisdictions can be used to enhance the period of revocation. [Sather v. State DMV, 776 P.2d 1055 \(Alaska 1989\)](#).

Division of Motor Vehicles did not err in using driver's authenticated Arizona driving records reflecting an Arizona DWI conviction to enhance the period of his administrative license revocation for driving while intoxicated in Alaska. [Glascock v. State, Dep't of Pub. Safety, 890 P.2d 65 \(Alaska 1995\)](#).

CHALLENGING OUT-OF-STATE DWI CONVICTION. --The superior court had jurisdiction to consider the validity of defendant's prior DWI conviction in Wyoming since, if it had been truly entered in violation of driver's fundamental rights, it would be manifestly unjust to allow that conviction to be used to enhance the license revocation. [State, Dep't of Pub. Safety v. Fann, 864 P.2d 533 \(Alaska 1993\)](#).

APPLICATION OF PARAGRAPH (B)(2) HELD CONSTITUTIONAL. --Application of three-year license revocation provision of subsection (b) to defendant whose prior two OMVI (operating a motor vehicle while under the influence of intoxicating liquor or drugs) convictions were in 1974 and 1976 did not violate the constitutional prohibitions against ex post facto laws. [Carter v. State, 625 P.2d 313 \(Alaska Ct. App. 1981\)](#).

MAGISTRATE ERRED IN CONCLUDING FORMER SUBSECTION (C)(3) APPLIED to a defendant who at the time of his two current offenses had not been convicted of more than one driving while intoxicated offense. [Thomas v. State, 694 P.2d 789 \(Alaska Ct. App. 1985\)](#).

THE DATE OF THE LATEST ARREST must be used in calculating whether a person convicted of driving while intoxicated (DWI) or failure to submit to a breathalyzer test has been convicted of a similar offense or offenses within the preceding ten years. [Wik v. State, Dep't of Pub. Safety, 786 P.2d 384 \(Alaska 1990\)](#).

REVOCATION BEYOND LIFE OF LICENSE. --Once a license is validly revoked, the revocation remains in effect for the full period ordered, regardless of whether the originally valid license might otherwise have expired at some point during the period of revocation. [Fielding v. State, 733 P.2d 271 \(Alaska Ct. App. 1987\)](#).

CONSECUTIVE PERIODS OF REVOCATION. --The DWI provision does not expressly require consecutive periods of revocation; however, there is no indication that the legislature intended different treatment under this

section than that which it clearly provided for under [AS 28.15.291](#), and there is no reason to distinguish between revocations under these two statutes. [Fielding v. State, 733 P.2d 271 \(Alaska Ct. App. 1987\)](#).

Imposition of two 10-year driver's license revocation periods consecutively rather than concurrently was justified, where defendant's ever-lengthening record of driving offenses demonstrated both the extent of the danger to the public as well as his apparent inability to conform his conduct to the law. [Williamson v. State, Dep't of Pub. Safety, 779 P.2d 1238 \(Alaska 1989\)](#).

LIFETIME REVOCATION. --This section authorizes a court to revoke a driver's license for any period of years, including a lifetime revocation. Moreover, allowing such a lifetime license revocation does not render this section unconstitutionally vague, as the language of this section seems clear. [Dodge v. Municipality of Anchorage, 877 P.2d 270 \(Alaska Ct. App. 1994\)](#).

Defendant's revocation was vacated where there was no basis to revoke his driver's license for the rest of his life, because such a punishment should be reserved for chronic offenders whose records demonstrate that they should never be allowed to drive a motor vehicle again. [Fine v. State, 22 P.3d 20 \(Alaska Ct. App. 2001\)](#).

While intoxicated, defendant drove his vehicle off the road, hitting a boy and narrowly missing the boy's brother, and continued to drive after he hit the boy. The trial court was not clearly mistaken in finding that this case was an extreme one in which a lifetime revocation of defendant's driver's license was required to protect the public. [Bottcher v. State, 300 P.3d 528 \(Alaska 2013\)](#).

SENTENCE NOT UNCONSTITUTIONALLY EXCESSIVE. --Lifetime revocation of driver's license was not unconstitutionally excessive and so disproportionate to DWI offense as to be cruel and unusual punishment, where defendant had a 20-year history of repeated offenses involving the operation of motor vehicles while intoxicated, had caused a person's death during one of these offenses, and last DWI offense involved a serious accident, a blood-alcohol content of more than twice the legal limit, and the endangerment of numerous people. [Dodge v. Municipality of Anchorage, 877 P.2d 270 \(Alaska Ct. App. 1994\)](#).

PRESUMPTIVE SENTENCING STATUTES AS AID IN INTERPRETING SUBSECTION (C). --Because the presumptive sentencing scheme in [AS 12.55.125](#) -- [12.55.165](#) furthers a similar purpose as and contains similar language to subsection (c) of this section, and because the two statutes were enacted contemporaneously, the former constitutes a valuable aid in interpreting the latter. Thus, we may assume the legislature intended that "prior conviction" be defined the same way in both statutes. [Tulowitzke v. State, Dep't of Pub. Safety, 743 P.2d 368 \(Alaska 1987\)](#).

PRIOR CONVICTIONS ENTERED SIMULTANEOUSLY. --All prior driving while intoxicated convictions must be counted separately for purposes of driver's license revocation following a subsequent conviction, regardless of whether the prior convictions were entered simultaneously. [Tulowitzke v. State, Dep't of Pub. Safety, 743 P.2d 368 \(Alaska 1987\)](#).

VIOLATION OF LIMITED LICENSE AFTER CONVICTION FOR DRIVING WHILE INTOXICATED. --A person who drives in violation of a limited license that is issued following a conviction for driving while intoxicated (DWI) is subject to a minimum jail term of ten days. [State v. Robertson, 749 P.2d 902 \(Alaska Ct. App. 1988\)](#).

APPLICATION HELD NOT RETROACTIVE. --Where defendant whose driver's license had been revoked moved for the issuance of a limited license in reliance on newly amended language in [AS 28.15.201](#), and did so within the time limitations of R. Crim. P. 35(a), it was error for the trial court to rule the issuance of such license was precluded by [AS 01.10.100](#) (relating to the effect of repeals or amendments) because defendant had been sentenced prior to the amended provision's effective date. Application of this provision prior to the effective date of the amendment was not a retroactive application of an amendment to the sentencing scheme promulgated under former AS 28.15.291(c) (now [AS 28.15.291\(d\)](#)) and subsection (d) of this section. [Howell v. State, 834 P.2d 1254 \(Alaska Ct. App. 1992\)](#).

APPLIED IN [State v. Stagno, 739 P.2d 198 \(Alaska Ct. App. 1987\).](#)

QUOTED IN [Wylie v. State, 797 P.2d 651 \(Alaska Ct. App. 1990\); Hill v. State, 32 P.3d 10 \(Alaska Ct. App. 2001\).](#)

STATED IN [Manderson v. State, 655 P.2d 1320 \(Alaska Ct. App. 1983\); Wooley v. State, 221 P.3d 12 \(Alaska Ct. App. 2009\).](#)

CITED IN [Swensen v. Municipality of Anchorage, 616 P.2d 874 \(Alaska 1980\); Anderson v. Municipality of Anchorage, 645 P.2d 205 \(Alaska Ct. App. 1982\); Uhde v. State, 654 P.2d 1323 \(Alaska Ct. App. 1982\); Caulkins v. State, Dep't of Pub. Safety, 743 P.2d 366 \(Alaska 1987\); State v. Waalkes, 749 P.2d 1360 \(Alaska Ct. App. 1988\); State, Dep't of Pub. Safety v. Conley, 754 P.2d 232 \(Alaska 1988\); State v. Straetz, 758 P.2d 133 \(Alaska Ct. App. 1988\); Thorne v. Department of Pub. Safety, 774 P.2d 1326 \(Alaska 1989\); Tyler v. State, 24 P.3d 1260 \(Alaska 2001\); Smith v. State, 83 P.3d 12 \(Alaska Ct. App. 2004\); Nevers v. State, 123 P.3d 958 \(Alaska 2005\); Stevens v. State, 135 P.3d 688 \(Alaska Ct. App. 2006\); Patrick v. Municipality of Anchorage, 305 P.3d 292 \(Alaska 2013\); Patrick v. Municipality of Anchorage, 305 P.3d 292 \(Alaska 2013\).](#)

Research References & Practice Aids

COLLATERAL REFERENCES. --

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, [79 ALR2d 866](#).

Suspension or revocation of driver's license for refusal to take sobriety test, [88 ALR2d 1064](#).

Denial, suspension, or cancellation of driver's license because of physical disease or defect, [38 ALR3d 452](#).

Validity and construction of statute or ordinance mandating imprisonment for habitual repeated traffic offender, [2 ALR4th 618](#).

Validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, [48 ALR4th 367](#).

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, [18 ALR5th 542](#).

USER NOTE:

For more generally applicable notes, see notes under the first section of this article, chapter or title.

ALASKA STATUTES

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