

# OFFICE OF THE ATTORNEY GENERAL



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Honorable George F. McMinn, Director  
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Driver License - Driving  
Under Influence - Sentences -  
Crimes and Offenses

The maximum length of time a  
license holder may be revoked  
for multiple DUI convictions  
is three years from the date  
of his last DUI conviction.

Dear Mr. McMinn:

This opinion is issued in response to your request for  
an opinion from the Attorney General.

## QUESTION

Does a second or subsequent revocation  
period of a driver license, mandated by  
Section 32-5A-191 of the Code of Alabama  
1975, run concurrently or consecutively  
with prior revocation periods required  
under Section 32-5A-191?

## FACTS AND ANALYSIS

Section 32-5A-191(d) provides as a result of a second  
DUI conviction within a five-year period ". . . the director  
of public safety shall revoke the driving privileges or  
driver license of the person so convicted for a period of one  
year." Section 32-5A-191(e) provides that a third or subse-  
quent conviction within a five-year period should result in a  
three-year revocation.

Whether revocation periods should be computed consecutively or concurrently is a question of statutory construction. When examining legislative statutes that may be subject to differing interpretation, the Alabama Supreme Court in Shelton v. Wright, 439 So.2d 55 (Ala. 1983) stated:

"The fundamental rule of statutory construction is that a court is under a duty to ascertain and effectuate legislative intent as expressed in the statute, see e.g., Gundy v. Ozier, 409 So.2d 764, 765, 766 (Ala. 1981), which may be gleaned from the language used, the reason and necessity for the act and the purpose sought to be obtained. See Rinehart v. Reliance Ins. Co., 273 Ala. 535, 538, 142 So.2d 254, 256 (1962)."

In an earlier driver license case requiring judicial interpretation of a statute, the Court held there is an inherent duty of the reviewing court in cases involving statutory construction to give effect to legislative intent, and it should look not only to the language of the statute but also to its purpose and object as well. Shoemaker v. Atchison, 406 So.2d 986 (Ala.Crim.App. 1981).

The Alabama appellate courts have already resolved three cases regarding the correct duration of suspension or revocation. In Loftin v. City of Montgomery, 480 So.2d 606 (Ala. Crim.App. 1985), the Court held the date of conviction, not the date of offense, would control the determination of enhancement of sentence in a DUI punishment. In Loyd v. Director, DPS, 480 So.2d 577 (Ala.Civ.App. 1985), the Court held the Director had a nondiscretionary duty to revoke a driver license for three years upon the third DUI conviction, even though the District Court imposed punishment as a first offender due to nonrepresentation by counsel in the previous offenses. Finally, in Ex Parte Welch, 519 So.2d 517 (Ala. 1987), the Court held the Driver License Compact, Sections 36-6-30 through 36-6-36, could not be utilized to deny a new resident the opportunity to apply for an Alabama driver license when such new resident was revoked in his previous state, so long as the individual met the minimum revocation period set by Alabama statutes. In the Welch decision, there is some language which bears upon our original question when Justice Almon, writing for the Court, stated: ". . . the legislatively declared policy of this State is that two convictions for DUI result in no more than a one-year revocation, and a longer revocation is contrary to that policy." (at 522.) Consequently, it may be inferred that a third DUI

conviction would only result in a three-year period of revocation, even though the second DUI conviction, one-year revocation has not yet expired when the third DUI conviction resulted.

Corpus Juris Secundum states, in deciding computation of a period of suspension or revocation:

"The date when a revocation begins and the manner in which it is computed depend on the provisions of the governing statutes. The effective date of a revocation based on a conviction or convictions must be from a date not earlier than the conviction or last operative conviction, and is generally from such date." 60 C.J.S. § 164.24 Motor Vehicles.

With regard to consecutive or concurrent treatment of multiple revocation or suspension periods, C.J.S. states:

"A motorist whose operator's license has been suspended in one matter and revoked in another is not entitled to serve the penalties concurrently but must serve them consecutively." 60 C.J.S., supra.

In Commonwealth v. Morin, 373 A.2d 1170 (Pa.Cmwlth. 1977), the Court held a multiple violator cannot expect the sanction equivalent to that imposed on a unitary violation, and the suspension and revocation of a driver license based on multiple traffic offenses occurring during a continuous series of events was proper.

In Commonwealth v. Martin, 517 A.2d 217 (Pa.Cmwlth. 1986), the Court held that a motorist whose license was suspended for refusal to submit to a breath test and revoked for unrelated violations was not entitled to serve penalties concurrently.

In a similar vein, the Alaska Supreme Court held that multiple DWI convictions entered on the same day should be counted individually for sentencing purposes. To do otherwise would only encourage habitual drunk drivers to plead guilty to accumulated DWI charges on the same day, thus reducing the length of their future driver license

revocations, at the expense of public safety. Wik v. State of Alaska, Dept. of Public Safety, 786 P.2d 384 (Ak. 1990).

My research has failed to develop a single case where this exact question regarding time computation has been subjected to judicial review. I believe that Alabama appellate courts, if faced with this question, would hold the maximum period for DUI revocation to be three years, regardless of previous convictions. This opinion is based both on equity and the legislative intent of the DUI statute. For example, an individual could go on a week-long drinking binge and be arrested and convicted of three, four, or five DUI's in a very short period yet successfully complete rehabilitation and never again consume another drop of alcohol, but still be ineligible for reinstatement for ten years if the revocation period was computed consecutively.

This harsh result defeats the underlying purpose of driver licensing which is to ensure a minimum of competence and skill on part of drivers of motor vehicles generally, yet prohibit those who are irresponsible or unfit to operate a motor vehicle. If the above example is used, there becomes a point in time where a consecutive revocation period no longer serves a useful purpose and becomes unduly harsh and oppressive.

Based on language used in the Welch decision - "the legislatively declared policy of this state . . . [and] longer revocation is contrary to that policy" - indicates that the maximum length of time an individual license holder who is convicted of three or more DUI's may remain revoked by operation of law is three years, regardless of the total number of prior DUI convictions. This opinion is supported by the wording of § 32-5A-191(e) that "On a third or subsequent conviction . . . the director of public safety shall revoke . . . for a period of three years." (Emphasis added.)

#### CONCLUSION

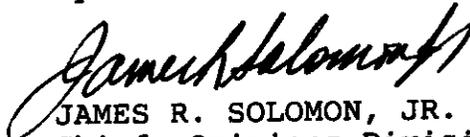
The maximum length of time a license holder may be revoked for multiple DUI convictions is three years from the date of his last DUI conviction.

Honorable George F. McMinn  
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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

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Attorney General  
By:

  
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Chief, Opinions Division

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